
Committee Meeting

of

ASSEMBLY REGULATORY OVERSIGHT COMMITTEE

“Discussion on the management and operations of the Department of Environmental Protection relating to the promulgation, implementation, and enforcement of department regulations”

LOCATION: Committee Room 8
State House Annex
Trenton, New Jersey

DATE: February 6, 2003
9:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman William D. Payne, Chairman
Assemblyman Joseph Cryan, Vice-Chairman
Assemblywoman Nilsa Cruz-Perez
Assemblywoman Connie Myers
Assemblyman John E. Rooney



ALSO PRESENT:

James F. Vari
Office of Legislative Services
Committee Aide

Gabby Mosquera
Assembly Majority
Committee Aide

Thea M. Sheridan
Assembly Republican
Committee Aide

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ASSEMBLYMAN WILLIAM D. PAYNE (Chairman): Good morning. We're going to welcome you to this hearing, this morning, of our meeting of the Assembly Regulatory Oversight Committee.

We welcome Commissioner Brad Campbell from DEP.

Before we start, I'd like to take the attendance. I have been informed that all of the members are on their way here. In deference to the Commissioner, who has other commitments, I am going to start now.

We'll take the attendance, if you will, however.

MR. VARI (Committee Aide): Vice-Chairman Cryan.

ASSEMBLYMAN CRYAN: Here.

MR. VARI: Chairman Payne.

ASSEMBLYMAN PAYNE: Here.

Thank you.

As I said, our other members of the Committee will be here, and they will be introduced as they arrive.

We, as I said, welcome the Commissioner, Brad Campbell.

This morning we begin the formal process of reviewing New Jersey's State departments' regulatory policies -- of all of the State departments. During the past two months, our staff has met with many of our State's business, environmental, and local government organizations to take inventory of their regulatory concerns and their recommendations on how best to effectuate changes to these regulations. We, in New Jersey, want to make sure that we are business friendly, that we are able to encourage businesses to operate successfully in the State of New Jersey. So we want to clear out any of the kinds of areas that may be causing some delays in having -- in order to

bring about those kinds of regulatory policies that, in fact, will enhance development in this state.

So it's my hope that by undertaking this review, our Committee will be able to work with the departments to institute changes where necessary, to clarify existing practices when appropriate, and provide an ongoing forum for addressing future regulatory concerns. I'm not sure that the answers to all of our problems are necessarily new legislation. I think, very often, what we find is that there's a need, perhaps, to promulgate those kinds of regulations that have been enacted, and also, to implement it -- to make sure that there's an implementation of those regulations that have, in fact, been passed in the past. I think that, by this review, we'll be able to find out, just in those areas, what we are able to -- really smooth out those obstacles that we find.

Based on our preliminary review, we identified key regulatory issues and their related departments. To best address these issues, this Committee will hear from the departments one by one. Since the largest number of issues related to the Department of Environmental Protection, we will begin with DEP. And as we bring the relevant departments before us, we will focus our attention on the issues you -- the business community, environmental and local government organizations -- have already identified to us. We will take testimony on the issue rather than the organization, which means we will hear all testimony related to timetable or backlog concerns before advancing to the next issue.

Again, I thank Commissioner Campbell for being with us, and we appreciate your interest in being here today. It certainly demonstrates your

commitment to addressing many long-term regulatory concerns within the DEP.

Just before you start your testimony, Commissioner, I would like to introduce Assemblywoman Connie Myers, who has arrive and is present for this hearing.

Thank you very much.

Are there any comments that my Vice-Chair or anyone would like to make at this time? (no response)

Otherwise, we will commence with your testimony.

Thank you very much.

COMMISSIONER BRADLEY M. CAMPBELL: Thank you very much, Mr. Chairman and members of the Committee. Thank you for convening this hearing today on a subject that's very close to my heart and even closer to my daily work.

I think it's important to frame the discussion concerning the challenges of regulatory reform at DEP with a couple of principles. Before I do that, I want to make clear that the Governor has very clearly articulated his view, and mine, that there is much work to be done to reform our regulatory process. I think within that challenge, and in meeting that challenge, there are a few principles that, I think, we can establish, and I hope are widely shared and shared by the Committee.

The first is that we're not in a position of choosing between strong environmental protection and a more rationale, predictable system. I truly believe we can have strengthened protection of the environment, strengthened protection of natural resources, and at the same time, produce a system that's

more predictable, more rational, and less burdensome to business. That's my first principle. There really is the potential for gains for all constituencies by reforming DEP, the regulatory process at DEP, and other agencies.

Second, we have to be realistic about resources. In order to expedite the analysis and processing of permits, in order to better reconcile the business decision-making timetable with the regulatory decision-making timetable, you need staff to process those permits and address those issues. I think that there was almost a schizophrenia in the past -- at least in the prior administration -- to assume that one could make New Jersey open for business and be faithful to that mantra, and cut the staffing that's needed to process the permits and process the decisions, in some cases -- in some areas of the department -- by more than 20 percent.

Governor McGreevey, in the context of making very tough choices about the budget, has cut a number of worthy programs across State government, including a number of worthy programs at the Department of Environmental Protection. But what the Governor also recognized is that we'll only be hurting not only our environment, but our economy -- if we try to further cut the staffs that we need to keep permits and approvals moving.

The third principle is that we need to focus on real reform. There are a number of changes that have been made over the course of the past eight or 10 years. A number of them, and particularly the legislative EMAP initiative, which was referred to, Mr. Chairman, in your communications, have been salutary and helpful. At the same time, much of the regulatory system is very little changed from the way in which it was first designed, when the first environmental statutes were enacted a generation ago. We are entering the

information age with a system largely designed in the context of the 1970s. Here we need to focus not on adding appealing overlays to the existing system, but root and branch reform, fundamentally changing what we do and how we do it, both to protect the environment better and to give the regulated community a more predictable, rational system.

That having been said, we're applying those principles in a system that truly has been broken. In a number of programs, backlogs have been overwhelming. In the case of water allocation, entering the department on the brink of a drought emergency that we suffered last year, there were more than 800 decisions that were left for the department. A backlog like that is simply unacceptable. And it created a perverse and irrational system in which the business side plans projects, whether it's housing or commercial development, long before the decision is made about whether there's water there to support that project and how much. That's exactly the reverse of how the system should work. I think we need change to that system.

I think we've made progress -- and I'll outline that to some extent -- but there are, across a range of programs, a number of backlogs. The solutions in many cases have been worse than the underlying problem. I'll give you just a few examples. One is, that even as the prior administration introduced some regulatory reforms, they also, in a number of areas, added additional, analytical, time-consuming processes that made the system worse for everybody.

I'd give you two examples. The first is the septic rule, struck down last year by the court. But the notion that, if you have more than six septic units, you had to go through an additional analytical process that, in the case

of DEP, was taking years. The same for wastewater plan amendments. The same for Governor Whitman's Executive Order 109. In each case, adding a lengthy overlay of analytical process, but giving the business community no clear guidance, and frankly, giving DEP no clear mandate as to what standards should apply in that process. The result of this combination of additional overlays of analysis has been an absence of standards -- has been a system that can't say, yes, and can't say, no.

It can't say, yes, because worthy projects where builders are playing by the rules, builders or other regulated parties are playing by the rules, and are doing an environmentally appropriate or even beneficial project, are dragged through the same torturous process as everyone else. A system that can't say, no, because -- even those projects that may be inappropriate from an environmental perspective -- there are no standards within the process, in many cases, to make the system predictable or for the department to say, no, to those projects. This system has to change. And I think we need, increasingly, to look at ways to reform that.

Let me give you a sense of what we're doing to implement reforms. First, as much as we need to change the system, we also need to do better within the current system while we have it. So, for example, in the area of water allocation, which I mentioned earlier, we have processed more decisions in the past. Despite the presence of the drought emergency, we have processed more decisions within the last six months than in the prior two years. We are-- Across programs, I have set a goal from the start of my tenure that we wanted to cut backlogs in half within a year and to eliminate, or to virtually eliminate, the backlogs within two years.

In a number of program areas, I think we'll meet that target. I think we'll meet that target in preconstruction permits in the air program. I think we'll meet that target in several other programs as well, but I don't realistically think we'll make it in certain programs. We'll come close, and we'll greatly increase the processing rate in the Title 5 program. But because of the complexity of the requirements and because of the absence of funding for additional contractor supports, we won't make it there. But even within the process, I think we can make significant improvements in what we're doing, to have a glide path. And the discussion about how to eliminate the backlogs has, in a sense, shaped the reform agenda in terms of what we're going to change.

So, for example, in figuring out how we can process these permits, we've identified a number of areas where we can use more general permits and use more innovative approaches to more quickly process permits. I think you have to understand, again, the system in context and in the context of resources. Over the last decade, the number of parties and activities, as a result of State mandates, as a result of Federal mandates, that are regulated in some sense by DEP has more than doubled. At the same time, the resources and staffing available to implement those mandates, to process the permits, to make the decisions, has been flat or declining. As I said, in certain programs at DEP -- environmental regulation being the leading example -- they have declined by more than 20 percent.

We can't simply do business the same way and expect to eliminate these backlogs. We need to change the way we do business. Those changes, I think, are moving forward in a number of contexts. A number of you may

have seen our efforts, under Governor McGreevey's effort, to combat sprawl and congestion, to have a landscape approach to regulation, informally known as the BIG Map. While part of that effort is intended to create regulatory incentives for development in the right places, it's also, more broadly, an effort to make DEP standards more predictable and make the regulatory system more rational. It's our hope that, in implementing the landscape-based approach that's in the BIG Map, we will eliminate the analysis and paralysis of the current wastewater rule system. For example, in areas appropriate for development, to provide a 90-day turnaround across all of DEP's programs, and across all programs, whether it's an area appropriate for development or not; to replace the current system of putting the regulated community into an endless analytical process -- to replace that with very clear standards that are predictable and that can be, essentially, understood before a developer or a business begins the process and the investments of planning where a project should take place and how it should be designed. So whether-- In that system, wherever you are on the landscape, it's our hope to provide a more rational, predictable system, and to get out of this process of forcing parties into a system that requires endless analysis and provides no clear guidance or standards.

I think much of the popular press reporting on the BIG Map approach has understandably and properly focused on the effort to better control development and better manage growth, and to encourage redevelopment in our cities and older suburbs. But there's another piece to that entire approach which is producing a more rational system, one in which we not only eliminate these endless analytical processes, but where we

recognize that the one-size-fits-all system we currently have -- in which every project is treated the same, whether it's in an already developed area or in the most pristine area of the state, goes through the same regulatory process -- that that system cannot be sustained and shouldn't be sustained.

We need to have standards tailored to the landscape. We need to have a more rational, predictable system. And in my view, that's part of the effort to comprehensively map our requirements, to make our regulatory outcomes more predictable, to align our regulatory outcomes with those of other departments and with those of the State plan. So we're -- in those areas, where I'm saying we should expedite turnaround times and get quicker decisions, the Department of Transportation is doing the same thing. The Department of Community Affairs is doing the same thing. That approach is the path to a more rational system, one that truly will strengthen protection of the environment and natural resources and give our businesses a more predictable system.

I'm grateful for a range of businesses represented in our outreach, who've helped shape that system and who are continuing to help shape that system. So that effort, I think, is central to our work.

There are other administrative steps we're taking as well. There are a number of areas, and I think these are most fully reflected in our brownfields initiatives, where we can do better in providing predictability and certainty to the regulated community, and also better reconcile our decision-making timetables with those on the business side.

So, for example, we have clarified a number of the issues of liability that had stymied developers, and we have produced new regulatory

approaches -- in particular, providing no further action letters for soil, even if there's a groundwater remedy later to be decided -- and, further, changed our process in order to ensure that we're doing what we need to do on the regulatory side to respect and honor the decision-making timetable on the business side. We need a reciprocal understanding -- there are times when, for example, analysis of complicated toxic cleanup sites -- where we need the business community to work with us and understand that certain of these decisions take time.

But some of the existing practices in the department have simply got to change. There was a historical practice that, if there was a dispute between a developer and a case manager on what the right remedy to clean up a site would be, if there was that dispute, the site and the decision languished. One of the things we've introduced in our brownfields package is an approach where, if there is such a dispute -- and this is really something we took at the suggestion of the Chemical Industry Council and the Business and Industry Association -- we should have a technical review panel to review it and decide it and move on, and get the site cleaned up and get it off our books and back into reuse.

We are also piloting an effort to make better use of private consultants, creating our Cleanup Star program, where we will set up a process in which we will pre-qualify consultants. And with certain safeguards in place, if a brownfields' redeveloper wants to use a qualified consultant, and subject to certain safeguards, we will be able to rely more fully on the work product that's produced by that consultant in making our decisions -- and reduce the processing time for decisions, particularly at low-risk sites. This, again, is a

suggestion from the business community that we've taken to heart, that we've incorporated it into our programs, and that we're in the process of implementing.

We also need reforms, I think, in the area of enforcement. We are beginning to produce-- We will, in the next 30 days, announce new policies -- on supplemental environmental projects, on the use of third-party certification in lieu of enforcement, and on voluntary self-disclosure -- that will help make the enforcement system more fair, to avoid the circumstance in which violations that we would never have discovered as a department don't lead to the same onerous penalties that would have occurred if-- I'm sorry. That when a regulated party voluntarily discloses a violation, that we would never have discovered, to allow us not to impose the same onerous penalties we would if it were something where we had to find it ourselves. I think this is an area, across the board, where we're looking at more fair approaches to enforcements and, also, enforcement better targeted to violations that have an impact on public health or the environment.

There's been a lot of discussion, I think, that we've generated in the course of strengthening the enforcement function of the department and being more visible about enforcement. That's the right thing to do, both for businesses and for the public. But that brings with it, as we increase our enforcement attention, an increased attention to being fair and to being smart about how we do enforcement.

Finally, there are a number of areas that I would commend to this Committee, and have discussed with Assemblyman Cryan and others, where legislative support for reform would be helpful. I mentioned earlier the water

allocation process. We will need to redesign that process if we're truly going to eliminate backlogs over the long term, and if we're going to avoid the current circumstance in which water allocation decisions are made long after individuals have invested time and money developing projects. I'm grateful to Assemblyman Cryan for our dialogue on that issue.

Second, we need reform to the way regulations are produced. We currently have a system in which, in order to respond to a reasonable comment from the public that suggests that we make a substantial change in our regulatory approach, we have to repropose the rule. It is an anomaly of New Jersey's approach to the Administrative Procedure Act.

At the Federal level, the standard is one where you can make a substantial change in a regulation, in response to a public comment, as long as the original proposal gave the public fair notice of what the range of outcomes might be. It also allows you to propose regulation to say, well, there are a couple ways to approach this, and we're laying out for public comment alternative *A*, alternative *B*, and alternative *C*. And then, at the end of that process, find out which one makes the most sense and is the most likely to achieve the desired result in a cost-effective way.

The current straight-jacket of the Administrative Procedure Act, as construed by the courts and as drafted by the Legislature, has been one in which -- no, no -- any substantial change in the regulation means you have to repropose it. And given the complexities and legal niceties of that process, that means an additional year delay and a diversion of resources from other priorities. From my perspective, that is a poor use of resources. It puts, I think, the decision makers, like me, in an enormously difficult position where,

in order to make a commonsense change in a regulation, if it's at all substantial, you have to, basically, add another year to the process. And that's true whether the regulation is one that's strengthening environmental protection or one reforming the system. And as we undertake substantial reforms of the system, I think that problem is going to be more pronounced.

Finally, I think, I would urge the Committee to consider the current legislation in which regulations sunset automatically and have to be repromulgated periodically. While there are many benefits to that process in terms of particular rules that need to be revisited periodically, it also creates a -- there are a number of occasions where it's a make-work statute, in which resources that could be better spent on needed reforms to the system and needed strengthening of environmental protections are instead spent on the treadmill of repromulgating existing rules. So I would urge the Committee to look at that, to look at water allocation, to look at broader authorization for reforms that would expedite the process, particularly under this landscaped approach. I'd be pleased to work with the Committee on any of those issues and, also, to entertain your questions this morning.

ASSEMBLYMAN PAYNE: Thank you very much.

Commissioner, let me announce that Assemblyman Rooney has arrived and is attending, just for the record.

You've covered a great deal. You've covered a great deal here. As you said initially, that New Jersey is a state which obviously needs to be, wants to be business friendly. You indicated that there are a number of areas that you inherited from previous administrations. I think you mentioned a backlog of some 800 decisions that you inherited in taking over. I think what I've

heard you say is that there are a number of regulations or restrictions that your department has, or has inherited, that probably, by review-- And certainly the testimony of people who came before our staff early on will point to some of the areas where simply using common sense, perhaps, or logic, or the fact that we have now entered into a new era of technology, as well, will probably help to smooth out a lot of these areas without the need for any additional kinds of legislation or funding, etc.

You've enlightened me and, I think, the rest of the members of our Committee on a lot of these areas. I would entertain any questions that any of our members have.

Vice-Chairman Cryan.

ASSEMBLYMAN CRYAN: Thank you, and good morning, again.

Nice off-the-cuff, plenty of notes, and then we appreciate all the comments. I want to talk to you about a couple of areas in terms of the system. Not only just the fact that it's broken, but what areas we're going to improve upon a little bit, and then I have a couple questions on the brownfields.

COMMISSIONER CAMPBELL: Okay.

ASSEMBLYMAN CRYAN: You talked about this idea -- if you can't say, yes, and you can't say, no, which is probably the most frustrating thing known to man. One of the things you mentioned was Executive Order 109, which I'm not that familiar with, and I was hoping that you could expand upon that for a moment and then let me follow up with some other questions.

COMMISSIONER CAMPBELL: For certain wastewater decisions and other decisions, Executive Order 109 requires additional analysis.

Probably to use a more familiar reference, that's sort of the equivalent of the environmental impact statement for certain decisions. But it doesn't provide very clear guidance on what standards have to be met within that analysis, what requirements have to be met in that process. From my perspective, while I certainly value and respect the motivation and intent of wanting to have additional analysis of things that might produce -- in that case, I think it was motivated again by concerns about sprawl. I don't think that analysis necessarily adds value unless you have standards that are clear. I'd much prefer -- and I think both the business community and the environmental community had some common ground in saying, "However high you want to set the bar, at least make very clear what the bar is, where the bar is."

ASSEMBLYMAN CRYAN: I attended a builder's association meeting breakfast yesterday, and the common complaint was, besides the sprawl map, as you might imagine, was the idea that they don't know the rules. And you talked about that -- which is the can't say, yes, can't say, no, thing -- quite clearly, which I was pleased about. We talk about this area of reform. Have you identified specific regulations that you'd like to see overturned? Is there specific areas that you'd like to see us identify and look at as a Committee, or is it a more of a general-- You talked about targets of cutting the backlog in half in a year, and so on. Are there specific areas that you believe we should turn our attention to?

COMMISSIONER CAMPBELL: Yes. We need to redesign the water allocation system, plain and simple. It's broken. There are areas where, within my current authority at the department, I think, we can eliminate and modify certain requirements to make them less burdensome.

Let me give you a few examples. The two I mentioned, the wastewater planning process. EO-109 is one. Let me give you another, sort of, anecdotal example. Under the wastewater management planning statutes, a project of a certain size requires an amendment to the wastewater management plan. Some communities don't yet have a wastewater management plan in place. So there are projects that are waiting for the township to do a wastewater management plan so that they, then, do an amendment, rather than being allowed to have that proceed. I think that planning effort, while it may be valuable, is just too long. It's holding projects hostage to a process, in essence, that they don't control. There are also areas that, by moving away from the one-size-fits-all approach toward a more landscaped approach, based on a mapping approach-- And we have a lot of work to do on the map. I'm in direct contact with the builders about the need to ensure there are adequate areas for growth.

ASSEMBLYMAN CRYAN: They mentioned that, yes.

COMMISSIONER CAMPBELL: I'm sure they did.

But there are certain areas, if we shift to a landscape approach, there are certain areas and certain regulations that can be applied differently. There's a process known as the treatment works approval, TWAs, that adds 90 days to any given building project. In certain areas, undeveloped areas, pristine areas, there is certain -- and areas where there may be issues of sprawl -- there's probably value added to going through some version of that process. In already developed areas, all it does is add a 90-day delay to the project. So, in the so-called green light areas on the map, I would expect to eliminate those

entirely, eliminate the requirement or just allow builders to self-certify so that it doesn't add delay to the timetable.

More than anything else, more than any single cry that we've gotten from builders and developers, it's that time is money. And that the more -- if you can create quick turnaround times, we're willing to respect what the right places are to grow if you can give us an easier path in those places.

I think the map is one way of doing that in a way that will reduce burdens without compromising environmental protection.

ASSEMBLYMAN CRYAN: As somebody who represents Elizabeth, which has, perhaps, one of the greatest brownfield initiatives in the Jersey Gardens Mall, I wanted you to take me through a little bit, and I was trying to take notes. It's a particular area of interest. Bonnie Watson Coleman has a bill, which I'm very interested in, which redirects some CBT moneys towards brownfield reinvestment -- something that helps, I think, many of our districts here in the State.

You talked about issues of liability and new opportunities. Is there more, in terms of your brownfield initiatives, that needs to be done or that this Committee should be aware of?

COMMISSIONER CAMPBELL: Well, I'm happy to share with the Committee the entire brownfields initiative. I think the items the Governor has outlined, in terms of making additional funds available by enacting the Bennett/Codey legislation that would -- for the constitutional referendum to provide more flexibility in the dedicated underground storage tank funds, and within that fund to provide more flexibility for both brownfields' grants and for underground storage tank funding -- I think that's

an important compliment to the legislation that you and Assemblywoman Coleman have sponsored.

Many of the elements that are in our brownfields' package, I think, are-- I think all of the elements we have announced are within our current authority. As we get greater experience in administering those provisions and, potentially, if any of them are challenged, there may be areas where we'll want to work on codifying those efforts in legislation.

ASSEMBLYMAN CRYAN: Did you say you have created a technical review panel? Is that actually in the process now, or is it there?

COMMISSIONER CAMPBELL: It's in process now. It was in the directive I announced in November with Mayor Bollwage and others. We began the process of establishing that. So it's in process now.

ASSEMBLYMAN CRYAN: Okay. It's in process now.

And my last area, because I'm sure others have many questions, as I see John's hand up a few times. This idea of enforcement -- third-party enforcement. Would we be looking more to communities? And, also, I found it surprising when you talked about voluntary self-disclosure. I don't know why this idea of going to confession for me just seems to be an issue. Could you just expand upon that for me a little more, just so I understand?

COMMISSIONER CAMPBELL: Yes. I might have merged them together a little too much. The first is in terms of voluntary disclosure. There are a couple of areas where -- and particularly under-- The historic practice has been that if you come in and disclose a violation, it's treated no differently than if we had to send out an inspector to find the violation. In some cases, particularly at facilities that have very complex technical processes, violations

are disclosed that we would have been quite unlikely to find. And so, both the environment and fairness are served if we can find a way to soften the enforcement pain in those cases. You need to have some recognition if there's some economic benefit from the noncompliance, but certainly there shouldn't be any kind of burdensome aspect to the penalty, or punitive--

ASSEMBLYMAN CRYAN: Can I ask something, and I know you didn't finish, but do you find -- and we always hear about these horrible polluters and we have this image out there. I'm assuming, a lot of good people just make a mistake here, don't they, a lot of times? Does that happen more often than maybe a public perception might be?

COMMISSIONER CAMPBELL: I think most businesses comply with the law. The vast majority of businesses in the state are good stewards of the environment and comply with the regulations. There are exceptions, though, and sometimes those exceptions need to be treated severely. And they need to be treated severely, in part, to be fair to those businesses that have dug into their pockets, that have made the investments, that have paid the cost of compliance.

ASSEMBLYMAN CRYAN: But this idea of good business is, and being able to come forward voluntarily, is an idea that, "Hey look, we're not against you here. We realize that we can work together." Is that part of the--

COMMISSIONER CAMPBELL: That's a significant part of it, and to create more incentives for those businesses to come forward. But what we have under, for example, the Clean Water Enforcement Act provisions, say, we can't compromise the economic benefit of compliance when we -- even for a self-disclosed violation. What I'm hoping, and I think it would be

enormously controversial to propose a legislative change to that, but what I'm hoping is if that we can get a workable policy on the table for self-disclosure, that we can build consensus around an approach that would allow us to consider more flexibility in that area.

The second part of your question was about third-party certification. What I have offered to a range of business sectors is to pilot an approach in which, if a business is willing to undertake third-party certification of compliance, that we would take them off our books for -- and meet certain other safeguards and standards, go a little bit beyond compliance, which many of our businesses do -- that we'd be willing to take them off our books for enforcement purposes, and treat that, and redeploy our enforcement resources where they're going to get more of a return.

Again, under the current statutory constraints, the Clean Water Enforcement Act generally requires an inspection of every major facility every year. In a lot of cases, that creates a pattern of our using resources, go back to the same facility time and time again, where we know that inspection isn't going to be productive in terms of actual -- either violations or environmental improvements. If we can find a way to satisfy that requirement through third-party certification, the business would have more predictability and certainty, and we would be able to use our resources better.

And in those cases, where, let's say, they had a unintentional, non-recurring, non-serious violation or exceedance at some point, my hope would be we could design something akin to a tax return that they could file on a scheduled penalty of some sort, and we would be able to use our resources more wisely and effectively. There are many details of this to work out, but

my hope is to find a single sector that will be willing to pilot this approach with us so we can work out the kinks and define, kind of, an alternative path, which is the, sort of, working name of it at this point.

ASSEMBLYMAN PAYNE: Thank you for those responses.

Let me -- before I move on to Assemblyman Rooney -- I think you mentioned before that your department is doing their side, as far as regulations and regulatory activities, and that we, also, need cooperation from the business community side as well. I think there were problems when they developed that, more and more. The fact that we believe that most of the people in business in the State of New Jersey are good citizens -- are good citizens, no question about it.

One polluter, however, can pollute an entire river. I think that that's the kind of thing we need to remember and keep in mind, that although the vast majority of our business community, our good citizens -- that, as I said, one polluter can destroy a whole area. And therefore, the corporate community needs to cooperate with you to see to it that those, who are bad eggs in that community, will cooperate to make sure that we have a very clean environment.

Assemblyman Rooney.

ASSEMBLYMAN ROONEY: Thank you very much.

I apologize for being late. As you know, I'm probably the furthest legislator from Trenton. I'm right up on the New York border, about three miles from the Hudson.

ASSEMBLYMAN PAYNE: Maybe we'll move the Capitol up that way, for you to make it more convenient for you, all right? (laughter)

ASSEMBLYMAN ROONEY: It's just that when I -- 9:00 meetings. I mean, I'm in rush hour all the way through. It's a little later, it's a lot better.

But I want to, first, thank you for returning my call. I think that's the first time I've had a call from a commissioner or the DEP in many, many years, so-- (laughter) So you started off well.

COMMISSIONER CAMPBELL: This is a new administration, my friend. (laughter)

ASSEMBLYMAN ROONEY: I think you know my problems, even as a Republican, you know my problems with the previous administration, so-- We did go over several issues, and I appreciate the candor.

As a mayor of a small town, we have, and in fact, to Joe Cryan's question, there are people who deliberately polluted the environment. I have one in my town who buried over 500 barrels of chemicals in his backyard. And that was in the late '60s. We're dealing with that today, and the DEP has come through. We notified the DEP in '83, '84. In '86, they found out -- they said they couldn't find the potentially responsible party and, kind of, just left it as listed, potentially, contaminated. The property then -- it came into a situation where it couldn't be sold. The owner, the current owner at that time, who never polluted anything, basically went into bankruptcy. We picked up the property. We applied under the -- basically for the spill fund money, and spill fund, EPA, has been very cooperative.

The thing is, that what's interesting is, we found the PRP through an anonymous tip. The Attorney General has a lawsuit against him today.

The man is, personally, worth over \$200 million, has a company that does over 26 million a year, and he's refused to cooperate with us, which makes him subject to triple damages under the State law. And California, as an environmentally friendly state, we're hoping that they'll cooperate. So we're looking at -- to recoup our money, which to date has been approximately \$2 million. This is just getting the barrels out of the ground. We still have to deal with the cleanup, which could be tens of million dollars, because we have 55 times 500 gallons of chemicals in our ground. Fortunately, we're not on well water, but the site is approximately 1,000 feet from New York state, which does have wells. We've been working with them on a very close basis.

I want to thank DEP, because they've done an excellent job. Sue Boyle has been excellent. So you get that compliment. The rest may not be quite as good.

ASSEMBLYMAN PAYNE: All right.

Does anyone else have any-- Are you finished? (laughter)

ASSEMBLYMAN ROONEY: No. No. I've got several issues. You don't want to stop there. (laughter)

As I spoke to you, one of the problems, and I heard you just glance over it, there's a lot of DOT grants on various roads. And we've been informed by DOT that it's nine months -- either you use it or you lose it. Some of the DEP, and I've discussed this with you previously, and I know you're going to address it, but some of the DEP permits are taking over nine months. So we're getting into a conflict with DEP, DOT. DEP is not giving the permits. DOT is saying, "Get those permits in nine months and get with the project." So

that's something I want to bring to your attention. We've discussed it. I heard you mention it, but that's-- We've got to correct it.

I'm just going to go on for a few things, and then I'll let you respond. The other issue that the small towns -- and this is what-- We have to differentiate here. We're talking about businesses. We're talking about individuals, and we're also talking about municipalities and different types of problems.

On cleaning a brook -- when I first started in Northvale as mayor, it took us about three years to get a permit. Senator Cardinale and I passed a bill. It takes about three weeks to get a permit. Those permits were relatively inexpensive. They were for the entire project, and we were able to do it very quickly. Now I understand that DEP is taking it in segments -- now some segments being 500 feet -- and charging us a lot more than they did before. This is upping the cost of local government to prevent flooding in our towns. We're there trying to work to prevent flooding to our residents, to our businesses, to everyone, and DEP is not helping. These permit costs are getting out of hand. So that's another issue that I want to bring to your attention.

The tech site we've talked about. There are some problems that we've had where DEP said that they were going to-- Well, it wasn't on tech, it was a different one. I'll skip over that.

I want to hit on an individual, and this I brought to your attention, also. I won't mention the name. This has been going on since 1998. There's an individual at DEP -- I don't think he's there any longer -- who agreed and gave the individual a line of the wetlands. That's where the

individual actually built his property. Here's where I say we should differentiate. The man is a builder. He built the house for his son, and he wants to build a second house for his daughter. He's been in limbo with permits. Actually, he can't even get a mortgage on the house, because of the permits, etc. He can't get his C.O.s, because he doesn't have DEP approval. There was a wetlands line that keeps moving, depending on who you talk to at DEP.

They threw him into enforcement. We've got a battle with enforcement. We've got a battle with the permits. I think you know the case.

COMMISSIONER CAMPBELL: I know the case.

ASSEMBLYMAN ROONEY: He's just given you a response, but it's taken almost five years. What's happened is, the man's son died of a heart attack about two years ago. He's trying to get a mortgage for his daughter-in-law. It's a hardship situation. That shouldn't mean anything. But there's been an individual at DEP who set the original line. That's where they went to, and now he's between enforcement and-- I can't believe that people won't work together. Because permits are telling him, "Well, we can't do anything until enforcement gets in."

When I spoke to someone down there, they were telling me it would be \$4,000 to \$6,000. It's now, I think, \$24,000 to \$26,000 in penalties, and it makes no sense at all. He's tried to cooperate. And I'd like you to get back into that.

I'll finish up with a couple of my favorite issues.

ASSEMBLYMAN PAYNE: I thought those were your favorite issues. (laughter)

ASSEMBLYMAN ROONEY: No, these are bills, now. I'm going to throw in a little bit of commercial for my bills. We came very close to getting a ban on MTBE in the state. And you know that MTBE is a major problem in well waters. I've been fighting against MTBEs for almost 10 years. You can document all of that.

ASSEMBLYMAN PAYNE: MTBE is?

COMMISSIONER CAMPBELL: Methyl tertiary butyl ether.

ASSEMBLYMAN ROONEY: It's an additive to gasoline that's supposedly an oxygenate. What it does -- it takes, basically, the CO out of the air. What does it put in the air? Formaldehyde. It also puts things in your wells that you wouldn't want to drink. When you get into Tom's River and some of the other situations, we have contamination, and a lot of it is MTBE. We should ban it. The Federal government started to ban it, and then they backed off, because, again, the pressure of the industry. You know, congressional pressure is even worse than the pressure down here. We should have done it. We came close to it. Please look into that. I don't care whose bill it is. We just should ban MTBE in this state.

Another issue: We have a moratorium on building in this state. This has been in effect. I was the original sponsor of the legislation. I'm the original sponsor of the buffer bills, that are called out, in the moratorium. I'd like DEP -- and they walked away from the table as soon as the Whitman administration came in. We were that close with the Florio administration. The Whitman administration walked away from it, no buffers. We need buffers around our reservoirs and we need buffers around our feeder streams.

The buffer bills should be a top priority for DEP. And steep slopes -- throw that in also, we have a problem with that.

So those are the tasks I give you today. I'll be happy to sit down and talk to you anytime that's convenient to both of us. So please take the environment and these issues into consideration.

ASSEMBLYMAN PAYNE: Thank you very much, Assemblyman. You got here late, but you sure made up for it that time. (laughter)

ASSEMBLYMAN ROONEY: I always do, you know that. (laughter)

ASSEMBLYMAN PAYNE: This hearing is going to conclude no later than 11:30, and we will continue it on February 13, if, in fact, there is still some issues that need to be answered.

This time I'm going to call upon--

Oh, I'm sorry. Commissioner, do you want to respond, briefly, to the Assemblyman.

COMMISSIONER CAMPBELL: Let me respond. I'll try to be quick, knowing that the time is short.

First of all, on transportation projects, I agree. There are too many projects that are held up too long. Sometimes the problem isn't DEP, sometimes the problem is a township engineer doesn't know what they have to do to file, etc., and I'm working closely with Commissioner Lettiere in the context of the BIG Map and in the context of the particular projects. There are, roughly, 16 bridge projects that are currently being held up in one manner or another, because the paperwork hasn't been pushed. We're hoping to expedite those and move them along. So I certainly agree with those.

On buffers: The Governor's Category 1 initiative to strengthen buffers and, also, our pending stormwater regulations to increase buffering along our streams, I think, are enormously important and consistent with your effort. We expect the sprawl package to include the steep slope pieces that you have advocated and that we support. And the other items I can follow up with you on separately, in the interest of time.

ASSEMBLYMAN ROONEY: I really appreciate it. Thank you.

ASSEMBLYMAN PAYNE: Thank you very much.

Assemblywoman Cruz-Perez.

ASSEMBLYWOMAN CRUZ-PEREZ: Commissioner, thank you so much for coming this morning. Most of the questions that I have, you addressed. But I want to, like Assemblyman Rooney, say thank you to you, because you've been very responsive. I want to commend you.

A few months ago, you had a team of people coming into Camden City and make a big inspection all over. I want to know how often do these inspections take place, and what happened? Because I know you found tons of violations when you were there. That happened a few months ago. Thank you very much. In 12 years, this is the first time that I've seen a team of people conducting inspections in Camden City. So I want to know, after the inspection, after you have all the findings, what's the step and what's happening and what's going on?

COMMISSIONER CAMPBELL: Well, in some cases, facilities--

First of all, thank you for your comments.

Secondly, I think the Camden initiative is illustrative of, in many ways, of what we need to do on enforcement reform. It was odd to me that

many in the business community objected to that, in part, because we worked with the local Chamber of Commerce before we went in, and in part because the business that had been most sharply criticized by the community was actually supportive as well. They were tired of being the only smokestack and the only -- being identified as the only problem in the community, when actually, the threats to the community extended to, in some cases, facilities that weren't even regulated and wouldn't ordinarily show up on our radar screen.

So, by having a concentrated effort in one area, we were able to discover a different set of violations. In every case, our objective was compliance of the more than 100 violations that we discovered. A number of those businesses, we were able to get them into compliance within a matter of days. So they were complying with the law and back on track. In the case of the facilities, for example, that had open barrels of hazardous wastes in areas that were exposed to workers and children, we were able to get rid of those, get rid of the threat to the community.

So our effort has been to follow up with those facilities, to eliminate the threat where -- as quickly as possible, and for the businesses that had more minor problems, to get them into compliance as quickly as possible. We also, interestingly, set up a program with the local vocational school to train students in how to identify potential violations and where they may need to come into regulatory compliance. So, from our perspective, that was an enormously successful effort. Obviously, given the resources an effort like that takes, 78 inspectors covering more than 700 facilities over a course of a week, we can't do it every day. But there are a number of other communities that

we're identifying now and where we'll undertake similar efforts in cooperation with local businesses and elected officials.

ASSEMBLYWOMAN CRUZ-PEREZ: Thank you.

ASSEMBLYMAN PAYNE: Thank you very much.

Assemblywoman Myers.

ASSEMBLYWOMAN MYERS: Yes, thank you.

Good morning.

I wasn't sure how to prepare for this meeting, and I'm a little confused as to how this morning has gone. I guess, about a decade ago the voters gave the Legislature the power to overturn regulations that they deemed inconsistent with legislative intent. This is a constitutional provision. This occurred because there was a great deal of dissatisfaction among citizens and business groups, particularly DEP, where they found regulations difficult to deal with. They needed more of a formal avenue for their concerns to be expressed besides having just to go to the DEP. So to have the Commissioner come in and tell us, I guess, what you see needing improvement in your regulatory processes is just, kind of -- threw me off a little bit this morning. Because, certainly, the Commissioner has the power to change his regulations at any time, through the New Jersey Register. The Commissioner is a member of the Governor's Cabinet and has the ability to propose statutory and policy changes at any time through the Governor's office.

I also sit on the Environment Committee, which meets the afternoon that this Committee meets, and so I'm voting -- when we meet, I'm also voting on environmental issues in the afternoon. It seems to me, now I have like a double committee, two committees doing the same thing. Because

certainly, I care about the things that you've raised, but I also do get quite a bit of correspondence at my office still concerned about bureaucratic regulatory problems at the department. I was looking forward to this Committee examining some specifics, which I won't bring up this morning, because it's getting late, and I know there are a number of people here that also want to testify.

But, perhaps, the Commissioner could come back, if, indeed, we carry this forward and discuss some specific regulations, so that we can do the job I thought this Committee was constituted to do, and that is, when there are concerns from our citizenry or from our business groups about existing regulations, this Committee, as the voice of the people, has the power to bring it forward to you and talk about what changes we might see as necessary.

ASSEMBLYMAN PAYNE: As the Assemblywoman, I'm sure, is very well aware, that prior to this hearing we did have meetings with representatives of the business community to discuss what their concerns were, etc. I think the notice that went out for this hearing -- and so the Committee, we discussed the management operations of your department and to discuss those kinds of areas that we might be able to improve.

I think one of the things that we all are aware of is that, as you said earlier, you inherited a backlog of some 800 decisions that have not been made, and also, the fact that your department had had, in the past, a staff cut of over 20 percent. However, the work load did not decrease. So I think what we're doing here today is, number one, several things. One is reviewing the operations of your department, underscoring the kinds of areas that, as you mentioned, there needs to be more predictability. What we're trying to do

here is develop an environment where there can be cooperation between the business community and the government and to find out where we are, where we can go from here. I appreciate those kinds of issues that you--

You may want to respond to what the Assemblywoman said.

COMMISSIONER CAMPBELL: Yes, let me respond just briefly.

First of all, I'm happy to return at any time to discuss specific regulations. And I, also, meet quarterly with a range of business and other interests and have made the same entreaty to them, that I think the Committee has made to me, which is help me identify the areas where reform is needed. And that's been a very productive discussion and one that I've acted on.

I'll give you one of the tougher examples for me, recognizing the challenges we have in communities in Camden. There was a proposal for an environmental equity rule that would have added another overlay of process for certain facilities, and it was proposed at the very last moment by the prior administration. Although I am committed to environmental justice, committed to addressing pollution problems in long-neglected communities across the state, this rule, I thought, was wrongheaded, and the business community identified the fact that it would add a lot of process, without changing outcomes, and without providing much guidance as to how to do better. And so, on that basis and with some criticism from a number of constituency groups, I decided we weren't going to adopt that regulation in final form. Again, I was kind of hamstrung by the administrative procedure. I had the option of either reproposing, not adopting, but the idea of making

substantial changes just couldn't be on the table because of the legal straitjacket.

So I am very anxious to hear your ideas and those of the Committee as to areas of particular focus, and I'm happy to return at your convenience.

ASSEMBLYWOMAN MYERS: Just one quick comment. I didn't want to imply in any way that I thought you weren't doing your job. My comment was to say that, perhaps, we are not doing ours.

ASSEMBLYMAN PAYNE: Thank you.

And I'm so glad to see that a legislator finally admits that, perhaps, we're not doing our job. (laughter)

ASSEMBLYMAN ROONEY: Has anybody defined our jobs? (laughter)

ASSEMBLYMAN PAYNE: Thank you very much, Commissioner. I appreciate your coming here today. And we will, as I said, follow up on those kinds of comments you have made, and if necessary, we will invite you back to a future hearing.

Thank you.

COMMISSIONER CAMPBELL: Okay. Thank you very much, Mr. Chairman and members of the Committee.

ASSEMBLYMAN PAYNE: We have, from the New Jersey State Chamber of Commerce, Michael Egenton.

MICHAEL EGENTON: Thank you, Mr. Chairman. Thank you for the opportunity to invite us here today to offer some views and comments and suggestions. I also want to thank members of your staff who worked closely

with us, Gabriel and John -- very receptive. I also want to recognize Thea Sheridan. Staff like this is important to us, because when there's issues that arise and they reach out to us to try to get our opinion, it's very important to us. So I just wanted to take a moment to recognize their efforts and the efforts of this Committee.

I know it's easy to get up here, which we have done in the business community, over the years, and criticize DEP for a lot of the decisions and management practices that they've done, but I always want to be a fair individual and give due credit where it's due. I have been with the State Chamber now for nine-and-a-half years. I can honestly say that I have seen improvement, both first initiated by Commissioner Bob Shinn and continued by Commissioner Bradley Campbell. What we've always been looking for is to be able to sit at the table, that interactive dialogue with the department, to be a part of the process rather than part of the problem, and come forward with the solutions.

He mentioned about the quarterly meetings that we have going on. We have one coming up this week, which I think is important. Sort of, what are you working on, what are we working on? So I have to say that. And your staff has been very commendable at DEP as well. They've been reaching out to us. We get e-mails and phone calls. I'd like to see that process continue, because, obviously, in the days of old when I first started at the Chamber, it was the old regime of command and control, and it's our way or the highway, and who cares what your opinion is. I think that's half the battle. That's what the business community always strives for and looks for.

We recently had a Chamber Environment Committee meeting, and one of the commissioners, Assistant Commissioner Evan Van Hook, who handles the Site Remediation Program, met with us. It was a great meeting, and he had asked us to do a little homework assignment, which we're in the process of doing right now. He said, "Give me your top 10, top 20 innovative ways and ideas that we can improve the site remediation process," which I thought was fantastic. We have a lot of good people involved in the Chamber, very articulate, very smart, and familiar with site remediation and brownfields and such.

We put together a list. I've been communicating with the Assistant Commissioner. We're going to meet with him in about a week or two to discuss it further. So I wanted to share some of the good things that are happening. As I said, I know it's easy, sometimes, to get up here and be a critic with things that are going on, and I just wanted to point that out.

I was very happy to hear the Commissioner use some key words. That, in the business community, is the way that we operate in order to survive here. He used words like clarity, predictability, certainty. He said, "Time is money, quick turnaround." I mean, you all know, because you all run businesses. That's what we're looking for. We're looking for quick decisions to be made, that our members don't have to wait around for a long time for a permit. And quite honestly, I'd rather not focus on actual regulations. I think, in due time, where we need to, and that's the power and authority of this Committee, we could look at the regulations like the tech regs or stormwater rules or things like that. I think the broad principles should be addressed. I was happy to see that he's on the right frame of mind that we're on.

Just one note as far as -- in the membership of the Chamber -- when you mentioned, Assemblywoman, about what happened in Camden -- I fully recognize and appreciate that that's the job of the DEP, to go in there and make sure that everyone is consistent with the rules of the game. However, the key word I would use here is perception, and I mentioned that to the Commissioner. The reason why he got a little bit of a backlash from us is the perception that was out there, from members of the Chamber and other associations was, "Why are you out to get us?" particularly in light that we had picked Camden to be redeveloped.

The Governor is full-vested in Camden, to go in there, do brownfields redevelopment. So I just wanted to, at least, address that. That perception is reality. And when we get our members calling us back saying, "What happened in Camden? Are we next?" there is that fear factor that's out there, as well as what the intention was. The perception out there is, there's a little, like, "Oh, no. Are we going back to the 'we're coming out to get' idea?" So I hope that we don't pursue that.

As the Commissioner said, and I'll fully agree, that I wholeheartedly believe that members of the State Chamber of Commerce are good actors that want to do the right thing, that constantly call us to say, "Hey, what is the right thing?" And that's probably one of my suggestions, aside from the timetable, quick turnaround of permits, and backlog.

Our larger companies, obviously, have the resources and the manpower -- the lawyers and such -- to spend time on regulations and know how to address them, Mr. Chairman. But what about the small business guy?

He's the guy who has five, six, 10 employees. He doesn't, quite honestly, have time to know what new regulation came out and how to address it.

I think that whole education process, that outreach process is important. I'd like to see more of that. Again, I recognize, with the State budget constraints, you need money to do good things. But if there's a way that we can have a continuing dialogue -- with the small business community, with the mom and pops, with the people that are trying to run their jobs -- to reach out to them -- maybe they can do, through local chambers or rotaries or whatever the groups are in the local communities, on a regular basis, to meet and say, "Hey, this is an informal session. Here's what's going on at DEP. Here's new regulations. Here's how you address it."

Because, obviously, we've heard horror stories in the past where people were penalized because their paperwork wasn't filled out correctly. Again, I was a person of good faith. I think people want to do the right thing. And, obviously, if there are bad actors out there, we understand that, and they need to be reprimanded.

Some of the other reform areas that he talked about, like 90-day turnarounds on programs, that's great. Because again, I can't emphasize more that time is money and to make decisions. We're operating here in New Jersey -- it's no longer regional competitiveness or county by county, but we're a global marketplace now. There is continuing competition with other states about how they can bring people in and say, "Aw, don't worry about what's going on in New Jersey. Let's tell you what's going on in our state." We fly representatives in, and they roll out the red carpet, and they say, "We can turn your permit over like that." That still is the underlying perception out there.

We need to make sure that we're on top of the economic competitiveness, because unified we're great, but -- even on a regional perspective. But when you're competing-- And I get calls from other chambers from other states saying, "You're doing this now, and we're just sitting back watching you destroy yourselves. And we're going to go after your Fortune 500 companies and attract them here." That does happen. I think it's important, if we want to strive to grow businesses.

And again, I'll be the first to say I recognize the budgetary constraints. And the Chamber, as Assemblyman Cryan knows, was at the table last year trying to negotiate how we went forward with the Corporate Business Tax. We didn't like the tax, but at least we were at the table to say, "We know you have a budgetary problem." And it's good to see that some of the CBT money is being used -- worthwhile -- within some of the programs at DEP.

The last thing I'll say, Chairman, because I know there's a number of other people that want to give comment, and I gave Gabriel a memo highlighting some of the areas that I thought we can improve upon-- I believe, strongly, whatever the outcome of this hearing, that what you do here, as State legislators, particularly on this Committee, we've utilized this Committee in the past. Assemblywoman Myers had mentioned it. You -- I've always felt, in my opinion -- are a very strong arm of the legislative process. You have the ability to take a look at regulations and say, "When we passed that law a year or two years ago, did they abide by our legislative intent?" Because too many times I hear what you guys do, when the Chamber supports a bill. It gets passed, the Governor signs it, and later on-- I'm not just even focusing on DEP -- on other departments, they'll have regulators in there writing *War and*

Peace, and then you're trying to figure out, what is this? This is not what you guys passed.

So I think you're an important -- and I can't emphasize it more -- an important tool of the legislative process. And we hope to see more of that. The last note that I'll also bring up was -- Assemblyman Rooney brought this up -- about the departments communicating with one another. There's a lot of that that goes on. I happen to handle environment transportation energy issues for the Chamber. So I interact a lot with DEP and DOT. It's amazing over the years how, like, I'll be on a small airport advisory board at DOT -- I'll ask them, "Are you working with DEP on the smart growth and the BIG Map?" And they're just, like, "No. No. We're doing our own thing." You can't do your own thing in the way State government should operate. Interdepartmental communication is very, very important, particularly in light of where we want to go with the Smart Growth initiative.

We, right now with the Chamber, are addressing it. We have a survey that we're doing through George Taber's publication, *NJBIZ*, asking the business community, "What do you think?" Because we don't want to come up with our own decision on this. We want to hear from our members. It's a very important policy that's being instituted. And want to say, do you feel this is the right way that we're going with smart growth? Would it hurt your business or would it help your business? So we're trying to get that information, get the input back. And we'd be happy to, when that issue comes to fruition, come back to your folks here in the Legislature and let you know what's going on there.

So, Chairman, that's pretty much it, in a quick, sort of, roundabout of what the Chamber has been addressing, what we hear from our members.

ASSEMBLYMAN PAYNE: Thank you very much.

MR. EGENTON: Thank you.

ASSEMBLYMAN PAYNE: We have some brief comments or questions from Assemblyman Cryan first, and then Nilsa Cruz-Perez.

ASSEMBLYWOMAN CRUZ-PEREZ: Cruz-Perez.

ASSEMBLYMAN PAYNE: Cruz-Perez. (laughter)

ASSEMBLYMAN CRYAN: Thanks for your information today.

MR. EGENTON: Thanks.

ASSEMBLYMAN CRYAN: You heard the Commissioner talk about, in particular, the reforms -- one of the things he talked about was this idea that if they have to repropose every rule. I was wondering what your thoughts were on that, as a chamber? Would you think someone, I suppose, might argue that we're trying to hide things and the others, some might argue that it's real reform--

MR. EGENTON: Right.

ASSEMBLYMAN CRYAN: --which is the view I would take. What would the Chamber's view of that be?

MR. EGENTON: Well, I recognize the Commissioner's frustration with that, because there's so many rules out there. As I said, they're very complex, and a lot of time I don't even have the knowledge to understand them. Thank God I have people that are engineers and such on my Environment Committee that can address those rules, and there's so many. I

would say that if there's a rule that has to be sunset and has to be repromulgated, if there's only technical changes then go forward with it. But if it's something of substance that's dramatically going to change something then, obviously, it has to be readdressed. And us being involved in the process, we would want to be able to address that.

I would say, though, one of the other issues I forgot to mention, because there are so many rules out there, is sometimes the timing with rules, like three or four major rules will come out at the same time. And then, I usually turn to the same cluster of people within the Chamber Environment Committee and say, "Help me out, address this rule, tell me what you think." And they've got, like, five or six different regulations that they're looking at.

I know over the Christmas holidays, we all know that people go away around December and there's not many people around. And one of the things -- there were a couple of rules that came out from DEP, and we sent a letter in to the Commissioner saying, on one of the rules, "Can you give us an extension? Because, quite honestly, the people are not around to address it. It's the holidays." I mean, real life situations. And they did address it. They gave us an extension on that rule. That's important because, obviously, we're not just dealing with DEP. There's a lot of other agencies that have regulations out there, so we want to make sure that there's a time fashion involved in it.

ASSEMBLYMAN CRYAN: So, as a general comment, as long as it's reasonable, the Chamber would substantially agree to the fact that this idea of sunseting automatically should be looked at and, also, this idea of reproposing rules should have a commonsense approach. Is that what you're saying?

MR. EGENTON: Right. Commonsense approach, if it's technical in nature. As you folks do, when there's technical amendments on a bill, there's no under-the-microscope analysis. Everyone takes it--

ASSEMBLYMAN CRYAN: Interesting. I'm surprised. I'm actually surprised. I thought you guys would be opposed to that.

My last thing is that -- because I hear from builders in my community -- I'm interested in the Chamber's viewpoint -- that there's so many levels of approval in DEP.

MR. EGENTON: Right.

ASSEMBLYMAN CRYAN: And I hear the frustration continually. The Chamber view, if-- I know you've mentioned or certainly provided some information on case managers.

MR. EGENTON: Yes.

ASSEMBLYMAN CRYAN: I was interested today, and I asked the Commissioner about this technical review team--

MR. EGENTON: Right.

ASSEMBLYMAN CRYAN: --which has a great deal of interest to me, because to me that seems how you're going to be able-- I don't know how many times we overturn case managers--

MR. EGENTON: Yes. Yes.

ASSEMBLYMAN CRYAN: --but my guess is, not a whole lot.

MR. EGENTON: Right.

ASSEMBLYMAN CRYAN: What are your thoughts on that and how much-- Are you willing to trust the view of case managers, or does this idea of additional oversight, actually, help the Chamber in some instances?

MR. EGENTON: No. I'm fully an advocate of the oversight.

The case manager situation, what we've heard, is usually one individual in the department saying, "Well, this is my opinion. And you either go with it or not." And obviously, when you operate like that, and your whole money and time is invested in one individual in the department saying, "Well, this is what I believe, and take it or leave it," that that's a little hard to swallow. One of the suggestions that I spoke to your staff about was that case managers, not section chiefs or higher, should be delegated the authority to make routine decisions to move things quickly. That technical review for-- Obviously, you have diverse opinions -- other individuals involved in it taking a look, rather than one case manager saying, "Well, I don't think you should get this permit because of this, and that's why." That's very opinionated, and it's very subjective, in my opinion.

I think we need to address that because, maybe, if we have a technical review board look at it, they may not come up with the same decision that one specific case manager comes up with.

ASSEMBLYMAN CRYAN: So you guys like the idea -- I just want to summarize it from a business aspect -- you guys, as a general rule for the Chamber, like the idea of routine decisions, but instead of going two or three levels above, you actually prefer this idea of a technical review panel?

MR. EGENTON: Yes. Yes.

ASSEMBLYMAN CRYAN: Got it. Thanks.

MR. EGENTON: Assemblyman, I'll just add, this is all-- The goal here is to move things along, not to let it drag. If anything -- I mentioned to Gabriel and John when we met -- is, time is money. Make a decision. I

understand, maybe at the end, the decision is not something you want to hear or like, but make a decision. Because obviously, then our member has got to move on to something else.

ASSEMBLYMAN CRYAN: I heard the Commissioner pretty much say the same thing.

MR. EGENTON: Yes. We're glad to hear that.

ASSEMBLYMAN PAYNE: Assemblywoman Cruz-Perez.

ASSEMBLYWOMAN CRUZ-PEREZ: Thank you, Michael, for coming and testifying. You know Camden is a unique situation.

MR. EGENTON: Right.

ASSEMBLYWOMAN CRUZ-PEREZ: You have all kind of stuff going on in there. I'm very happy that they actually took some action. And I'm very much in favor. I fought very hard for the businesses to stay in Camden, and to help them to get the permits.

Talking about the permits, tell me, basically, what's going on with the permits. I get a lot of calls in my office. They keep saying to me that it is still impossible to get permits on time. That it is very difficult. So what needs to be done to help this process?

MR. EGENTON: Yes, I fully agree with you. I mean, we encourage and want to see growth in Camden and in development there. The permitting process, obviously, needs to be improved. The timing of it needs to be improved. Particularly, like, again -- that the Governor has focused on Camden in redevelopment and everything. There should be more of an outreach to your local businesses that are there, that happen to be there, that stayed in Camden, that are -- through thick or thin -- businesses that didn't

move out of the city. They should be given a little, what I call, TLC -- a little more attention, a little more help through the process in order to get the permitting done. I agree. I hear that a lot, particularly in our cities.

Because, again, it goes back to the small businessperson. A lot of times when they have to get a permit, they don't have the resources or knowledge how to follow through on it.

ASSEMBLYWOMAN CRUZ-PEREZ: You were talking about a ranking process where-- Would you explain that to me? What exactly that ranking process will do? Would it put some business ahead of another one to get the permit?

MR. EGENTON: Yes. I'm trying to remember where it was in my comments.

ASSEMBLYWOMAN CRUZ-PEREZ: Prioritizing ranking system.

ASSEMBLYMAN PAYNE: You said in your early memos that, "The recommendation from several business groups is for the Department to establish a priority ranking system for all permits and approvals. Ranking would help companies prioritize their internal actions."

MR. EGENTON: Right. Okay.

Obviously, there are different projects that have more time constraint on it than others. That's what we want to address, the ones that we need quick decisions on, rank them. Separate the difficult cases from the easy ones, get them out of the way, and then focus the resources of the staff, at the Department, to focus on the ones that should move quickly. Obviously, that's what I call the low-hanging fruit, the easy stuff to get to. And then, when you

have the more difficult situations, that's where you focus all your energy on, put your best people on, to make it move forward. I mean, we see that a lot in the brownfields program, now, that, over the years, a lot of the easier brownfield sites have been addressed, and they're moving along. Now, as we enter this age with the Smart Growth initiative, we have the difficult brownfield sites -- the liability issues and such. So those are the ones, I think, that are going to be harder to tackle.

ASSEMBLYWOMAN CRUZ-PEREZ: Thank you, Mike.

MR. EGENTON: Thank you.

ASSEMBLYMAN PAYNE: Assemblyman Rooney.

ASSEMBLYMAN ROONEY: Just a comment. One of the things that Joe Cryan said before was the -- as far as the caseworkers. The initial caseworkers, sometimes not technically qualified on these applications, you get an accountant for the most part -- somebody who comes in there and just looks at the numbers, up until the site investigation. And that's where I find that we've got a major problem. This is what we had up in our town. Because I've got, so far -- I've got three sites. One is a major one. Then I've got a little cleaners that had a leaking underground storage tank -- another one that we acquired because of non-tax payment. And on that one, one of the caseworkers down there, I didn't realize it, but she was not technically qualified. And when we started getting into the situation, she's denying everything on us.

So we had to appeal it. And every time we went for the appeal, we won. So it's really the quality of the people and the technical expertise of the people, and I think Mike will probably bear me out on that.

MR. EGENTON: Yes, I would agree.

ASSEMBLYMAN ROONEY: When you get up to a person who knows what they're doing and who knows technically, whether they'd be a scientist or whatever, they're usually receptive to the cleanup or to whatever. But God help us from those damn bean counters.

ASSEMBLYMAN PAYNE: Thank you very much. I appreciate your testimony, and it sounds to me as if there's a good relationship between the Department and the Chamber of Commerce.

MR. EGENTON: There is.

ASSEMBLYMAN PAYNE: I'm very glad to hear that, and certainly if we can keep moving in that direction, we would be able to resolve a lot of the problems or obstacles that have existed in the past.

Thank you very much.

MR. EGENTON: Right.

Thank you, Chairman.

ASSEMBLYMAN PAYNE: Dave Pringle.

DAVID PRINGLE: Thank you, Mr. Chairman.

My name is David Pringle. I'm the Campaign Director for the New Jersey Environmental Federation. We have 70,000 individual members throughout the state, and an additional 100-member groups. I appreciate the opportunity to testify before you today, and the Committee's interest in DEP's regulatory process.

New Jersey faces severe and unaddressed environmental problems, and we need that process to be as focused as possible to effectively address those problems. I'm going to be a little impromptu, just based on some of the

comments I heard today. One of the questions I'm hearing is, are most businesses complying with the law, are they good guys or not? And with all due respect, I think that's the wrong question that the Committee should be focusing on. I think the more appropriate question should be, are our rules and laws in place and effectively protecting the environment, which is, after all, the mission of the Department of Environmental Protection?

With that, I was concerned when I first saw -- John and Gabby have done terrific outreach. I was very slow in taking advantage of that outreach. So I want to acknowledge that up front. But when I did get the e-mail, a week or so ago, on some of the details and the questions and focus of this hearing, I was a little taken aback by some of the issues there. At first glance, it appears to be that it could have been written by the folks who are advocating Whitman's open-for-business-at-any-cost policies in the '90s. I know that's not where the Committee's focus is, but it is a bit of a cause of concern.

Clearly, the regulatory process at DEP could be better. It needs to be fixed. There is unanimity, I think, out there that there is not enough certainty in the rule-making process and permitting decisions at DEP. Builders and environmentalists agree on that. I think we would disagree on where that finality should be, but we recognize that that finality needs to be there. I think many stakeholders in the business and developing committee, as well, have a lot of hope with the DEP's BIG Map initiative that it can provide that certainty. At the very least, I think it will hold builders and environmentalists accountable, and force us to put our cards on the table.

Environmentalists have always said that we're willing to say, "Accept, yes," if DEP says, "No," in the right places. And similarly, the builders have always said, "We're willing to not develop certain areas if you tell us where we can develop and that there's enough land there to be developed."

Again, I think that initiative has a lot of potential, and it's really just getting started. It's just been announced in the last few weeks. There's a concept map up on the Web. I really encourage the Committee to be actively involved in that process and supportive of it. I think it has a lot of potential.

Let me just highlight just a couple things why -- and I suggest that we don't have enough rules and laws in place. New Jersey has the worst air quality of any state in the country. There are regions in the country that are worse -- Houston and Los Angeles, in particular -- but as a State, as a whole, our air quality is worse than any other in the country. Similarly, we have the highest percentage of polluted waterways in the country. Approximately 85 percent of our waterways fail to meet water quality standards. Over 1,000 of our waterways are under Federal mandate to be cleaned up. Yet, up until the last year or two, there had been not one cleanup going in place. And the cleanups that are going on are flawed, but DEP is in the process of correcting that. At the same time, we have the highest development rate of any state in the country. We're losing 11 football fields a day, 50 acres a day, to development.

Accordingly, I would suggest that we need more rigorous regulatory and legislative attention in terms of environmental protection. Let me, quick, focus on five points on the regulatory side. In the mid-1990s, we had two tragic, fatal explosions at chemical plants in North Jersey: in Lodi,

Napp Technologies; and in Paterson, Morton Chemical. The chemicals involved at those locations were reactive chemicals, so they weren't covered by the Toxic Catastrophic Prevention Act. So that shows a gaping loophole in regulatory and environmental protections, that DEP is now acting to close that loophole.

Similarly, a year before the Napp Technologies explosion, Governor Whitman deleted two-thirds of the chemicals covered under the State Right to Know law. There were 3,000 chemicals covered, 2,000 were taken off. The excuse to take those chemicals off were because it was things like Q-tips and Wite-Out and silly things that shouldn't be on there. However, two of the chemicals on that list that were cut were the chemicals that caused the tragic fatal explosion -- five workers died -- at Napp Technologies, in Lodi.

To this day, those chemicals haven't been put back on the list, and that's something that we think needs to occur. There had been, especially -- Assemblyman Ciesla, Assemblywoman Weinberg had spent a lot of time and energy, in the '90s, trying to right that wrong. Unfortunately, Assemblywoman Heck, who represented Lodi, to this day has been MIA in trying to correct that problem.

Similarly on the Pollution Prevention Act. In the mid-1990s, Assemblyman DiGaetano attempted to weaken that law. It passed the Assembly, despite Assemblyman Rooney, among others, was very involved in opposing that effort, and it died in the Senate a year later. Three independent reports came out showing the Pollution Prevention Act was a tremendous success for the chemicals and for the companies that were covered under it, requiring folks to take a look at their processes to reduce the use of toxics so

that we not only eliminate emissions, but also worker exposures and the risk to transportation and the like.

As a result of those reports, and one of the things those reports found, that those-- I forget the exact figure, but approximately for every dollar spent on pollution prevention, \$1.50 was saved. So not only was it protecting the environment, but it was good for businesses' bottom line. As a result of those reports, the Sierra Club and the Environmental Federation worked with Senator Sinagra, Senator Adler, then-Assemblyman Luongo to introduce legislation to expand the Pollution Prevention Act, to expand the number of companies covered, and expand the types of chemicals that are covered under it.

Unfortunately, that legislation has never gone anywhere, so we'd urge the Committee to take a look at that. Some of that can, also, be done through the regulatory process. I would say the biggest problem, to a degree, that business has problems with DEP, it's because DEP is tremendously underresourced. DEP was disproportionately cut and hit throughout the 1990s. To give you an example, while State government, overall, has grown, DEP employees -- those are the folks, the environmental cops on the beat, the permit writers, the rule makers -- there are 7 percent fewer DEP workers now than there were in 1994.

On top of that, under Whitman, for budgetary reasons, they cut the DEP. Unlike other State workers, DEP workers work a 35-hour work week. It had been 40. So when you factor that in, there's actually 17 percent fewer work hours going on in DEP now than there were in 1994. When you look at DEP's two core, most important programs -- the regulatory and

enforcement programs -- there are 20 percent fewer workers now than there were 10 years ago. And again, when you factor in the reduced-workload week, it's actually a 30 percent cut. At the same time, DEP's workload has increased.

That's why you're seeing, in addition to the lack of certainty, that's why you're seeing decisions being delayed. In some ways, DEP hopes that if they just wait long enough, the permit applicant will just go away. That's one of the ways they're trying to deal with that workload. That, obviously, doesn't make sense. So recognizing this is a very difficult fiscal climate, there is no easy answer to that problem, but it is something that we need to take a look at seriously.

I think one of the other problems that industry is seeing now, is they're not used to environmental laws being enforced, because they weren't under Governor Whitman. Between 1994 and 1996, there was an 80 percent drop in the number of financial penalties assessed and collected. In the first year of the McGreevey administration, they've collected more in penalties than was assessed in the entire eight years of the Whitman administration.

Another thing, I think, we need -- and one of the biggest tools, I think, the State has -- is how they spend their money. I'm not only talking on the direct State services budget-type issues, but on the capital and infrastructure programs. Between the Transportation Trust, the drinking water and clean water revolving funds, HMFA, DCA -- literally hundreds of millions of dollars are spent every year. And right now, they're spent propagating sprawl, which doesn't make sense, in and of itself. But in addition, if we stop doing that, we would then have greater resources to invest in the places that we really want that smart growth to occur.

Another thing that's going on regulatorily, and I agree with Michael on this, is that public involvement at DEP has increased incredibly in the last year. In addition to Assemblyman Rooney's comment of returning calls, it never would have even occurred to me to bother calling Commissioner Shinn, or let alone any of his assistants, because they weren't cooperative and weren't supportive and weren't concerned. That level is incredible. We are in quarterly meetings. Other stakeholders are in quarterly meetings.

The McGreevey administration had a transition team of DEP that had over 200 participants. That transition committee has continued to meet periodically, at least two times since the inauguration, on the stormwater rule, on the water supply management process. There was a meeting a month ago to kick off that process that over 200 people are involved in. It's all stakeholders at every level.

ASSEMBLYMAN PAYNE: Excuse me, David.

MR. PRINGLE: Yes.

ASSEMBLYMAN PAYNE: You'll probably want to wind up if you want to allow for any questions, okay.

MR. PRINGLE: Okay. I will do that.

That's actually the end of my regulatory thoughts.

I just want to, very briefly, touch on some legislation. As a result of all that, I think DEP is moving in the right direction in terms of appropriate regulatory reform. And again, I urge the Committee to support that. The other area where the Committee and the Legislature, more broadly, I think, really needs to take a look at is on the legislative arena. In light of our

environmental problems, we need to do a better job with the rules on the books, but we need better laws on the books as well.

The good news is there's been a sea change in the Legislature in the last year. I can honestly say I have flip-flopped how I spend my time. I would have said, in the 1990s, in the Legislature, I probably spent 90 percent of my time defending against environmental attacks and bad environmental laws. That is no longer the case. That is a sea change, and in no way, shape, or form do I want to downplay that. That said, we have been very disappointed in the lack of proactive efforts in the Legislature, and especially in the Assembly in moving proactive environmental legislation. The things that have moved have either started in the Governor's office or the Senate, generally, or have stalled or have been weakened in the Senate, and the Assembly has signed off on it.

On school pesticides, on the budget--

Assemblyman Cryan, I can't commend you enough on how you handled yourself in the Corporate Business Tax hearings -- that was tremendous and wonderful. But we need to do a lot more.

Four of the five members of this Committee have sent a letter to the Speaker urging him to post the clean car bill. This is the single, biggest thing the Legislature could do this year to clean up our air. A majority of both Houses, a majority of all four caucuses are on the bill. Yet, the bill hasn't moved. Again, it's the single, biggest thing that this Legislature could do to clean up our air.

On sprawl: Assemblyman Rooney has a steep slope bill in. Governor McGreevey is in the process of drafting a sprawl package, and we need to aggressively move that forward.

One final comment. Assemblyman Cryan, you asked about the rule-making process in terms of how to adopt a rule and all. It is an incredibly burdensome process. And while, in an ideal world, it would be great to have it be more efficient, we're very concerned that that could have the unintended effect of weakening environmental protections. And I'll give you the one example. Two times, under the Whitman administration, the DEP made a wholesale effort to gut the Federal Clean Water Act implementation in New Jersey -- in 1996, and again in 2000. The environmental community created an uproar. A majority of both Houses, both caucuses -- both Houses sent a letter to the Governor, sponsored by us, asking her to roll it back and stop that effort. She didn't stop that effort.

We introduced -- Assemblyman (*sic*) Lance and Assemblyman (*sic*) Bagger -- with a majority of both caucuses sponsoring it, an oversight resolution, which was the ultimate reason this Committee does exist, to-- If the Whitman administration didn't cease and desist on this bad water rule, that the Legislature would veto it. It passed the Assembly. It was going to pass the Senate. It passed Committee. It was posted. But on the day that Christie Whitman was nominated, DiFrancesco did not want to embarrass her the day she was nominated for EPA, so they didn't move it. But the point is that we needed that oversight resolution, and we needed-- Had we not had that kind of process, had we not had a very difficult rule making, Governor Whitman would have gone ahead and adopted that rule, and it would have resulted in

literally hundreds of millions of gallons of additional sewage discharge every day being dumped into our already polluted waterways, and opening up 10 percent of New Jersey's 300,000 to 400,000 acres for unfettered development.

So while it would be great to make the rule-making process more efficient, we need to be very careful as to how we do it.

Thank you for taking the time.

ASSEMBLYMAN PAYNE: Thank you very much for your very enlightening testimony. Thank you very much.

Hal Bozarth.

HAL BOZARTH: Thank you, Mr. Chairman.

ASSEMBLYMAN PAYNE: Identify yourself and your organization.

MR. BOZARTH: I'm Hal Bozarth. I'm representing the New Jersey Chemistry Council. We have about 100 members throughout the State of New Jersey in the chemical, pharmaceutical, flavors and fragrance, and some refinery, operations. There are about 87,000 or 93,000 people who have a job in one of those manufacturing industries in the State of New Jersey. The number is down, precipitously.

You've all heard the story about manufacturing fleeing the Northeast and, specifically, New Jersey. Coupled with the historically unfriendly attitude of New Jersey's government toward manufacturing, the global economy, as you know, in the last couple of years has had significant downturns. We're competing not nationally, as Mr. Egerton said, but we're competing globally. There have been plant shut downs after plant shut downs,

closure, consolidations; one company buying another, then closing facilities, laying off people.

I guess what gets lost in all of that, because the bad economy is talked about by everyone, is the fact that those people who had a manufacturing job as a leg up, as a way to participate in our great Democratic capitalist system, will not have a place to start.

My father had a job in Camden. I was thinking about it, when you were talking, Assemblywoman. That's how I got a chance to go to college. He had a manufacturing job. He had two or three. A long time ago, when Camden was an industrial hub and when people could start with meager income and meager backgrounds and climb the ladder of economic success, they did it because of manufacturing jobs. They did it in Newark. They did it in Paterson. They did it across the great cities that used to populate New Jersey. And for a lot of reasons, most of those manufacturing jobs have gone.

I come to you, today, to say there are some things that we can do to save some of those remaining manufacturing jobs and to give people the opportunity to climb the ladder of economic success and have their kids go to college. And some of those things that we can do and this Committee can do deal directly with the efficiency of the Department of Environmental Protection. It's a global economy. In these bad economic times, decisions are made about where new investments go. Investments can go to existing plants in Gloucester County or in Paterson, or they can go to Indiana or California or Shanghai, or wherever it is.

In order to compete for that new investment, New Jersey has got to tell a story that, while protecting its valuable and vital resources and

environment, it's also opened to those new investments. The line should be, "If you'll comply with our stringent environmental regulations, we'll make it as easy for you as possible to put the capital here in New Jersey and to give those people who would love to have a job a liveable wage." Our wages are extraordinary in the business of chemistry. An operator without a college degree with significant training, he can make \$50,000, \$60,000 a year, plus all the benefits that go along with it.

If we get research and development here in New Jersey in the business of chemistry, an R and D job will go for \$120,000, plus benefits. There's a facility in Bound Brook -- it's an old chemical facility -- that would like to redevelop into an R and D facility and bring in 500 of those research and development jobs. But the global company which owns that property in Bound Brook, an old industrial center, sees the process through which it must get its permits as the most costly in the nation, probably in the world -- the most difficult no-end game, no predictability, none of the things that the guy with a dollar who is going to invest it somewhere needs to know. He says, "I've got millions of dollars. I need to invest them. I've got three places. Let's rank those three places. Let's see who can compete for those dollars in the broadest terms and who we can give that money to."

Never, never, never does anyone say, "The regulations are too tough in New Jersey. They want to protect their environment too much." That's never the consideration. The consideration is, how do I get through the process? This Commissioner has got it right. The last commissioner had it right. There's not rape, robbery, and pillage going on out in the environment. There hasn't been for an awful long time. We suffer from the sins of the past,

and I'll grant you that. We're doing the best we can to clean those up in a cooperative fashion. But I think we've got to recognize that the old way of command and control of regulatory process in the area of the environment is not conducive to our economic benefit. We will not have any of those jobs left.

I brought some charts and some information, and I have one or two, Mr. Chairman, suggestions that I'd like to give you. I'll pass them around. I apologize. The lavender one -- one of my secretaries chose this -- and I don't necessarily have enough for more than just the members. These are figures from the Department.

ASSEMBLYMAN PAYNE: Was that to match your outfit today, lavender?

MR. BOZARTH: No. Nor my shoes. (laughter)

This information, Mr. Chairman, comes from the Department, and it breaks down by program, specifically, in the Department, the permit backlogs, you see, for the year 2000, the year 2001. There's one reason why we have these figures. Back in 1993, one of -- what I'll consider -- the finest legislators in New Jersey, Joe Dorio, passed a package of bills entitled the Environmental Improvement and Accountability Program, EMAP for short. One of the things that that group of laws dictated was that every year, by a date certain, the Department of Environmental Protection -- because it had not done so before -- would have to tell the regulated community and the public at large how many permits were backlogged and for how long.

Things went along okay for the '90s, and every now and then we got a report. But then things started to stop. The law said they had to provide

the report. They didn't provide the report. In 2000, we got a report. In 2003, we got the report for 2001. We still don't have 2002. I know the Commissioner is aware of the situation. He's committed to trying to deal with it. But look at the numbers. Look at the numbers for a second.

There's very little or no change in the backlog. If you add them up, you get way over 4,000 or 6,000 permits that are backlogged, according to the Department. That's people waiting to do environmental cleanup. That's people waiting to put in new equipment on air sources to clean up the environment. That's waiting for people to get a permit to clean up a brownfield site in Newark that can't do it because he can't get a permit. That's what permit backlogs mean.

Look, nobody is going to build-- Very few people -- I should back up -- are going to come to New Jersey and say, "Look, I'm looking for a greenfield. I've got a chemical plant." And I'll grant you, that's not going to happen any more. That investment that's going on in Louisiana and Texas and North Carolina, now, and South Carolina and Pennsylvania and New York, will never come to New Jersey. So I'm not even hoping for that any more, at this stage in my career. What I'm hoping for is the ability to hold those manufacturing jobs we've got here, now, and not chase them away, and get some new investment at those existing plants.

Let me pass something else around to you. The second chart, again from the DEP, deals with fees. Another thing that Speaker Dorio mandated in his EMAP package of bills was, that each year the Department of Environmental Protection had to report to the public and through the Legislature how much money was being spent, how much money was being

raised by permit fees, and how many employees and where they were actually working. Sometimes we get these reports from our friends at the Department, and sometimes they're too busy to comply with the law, I guess. I don't know, because we don't get those reports.

If my members had said to the Department, "We're too busy to comply with these laws," they'd throw us in jail. They'd throw us in jail in a second. But when the Department has a mandate that the Legislature passed and a governor signed into law, I don't think it has the right to say, "Sorry, we're too busy." This Commissioner is aware of that as a problem, is committed to dealing with it, and I give him a lot of credit for it.

This is information that you may want to look at. If you look down the full-time employees on the right-hand side, you'll see that there are a lot of people doing, for instance, air permitting work. There are a lot of people doing water pollution control work. I submit to this Committee that the number of people being regulated, from an air permit point of view, grows fewer and fewer. We know we're in a global recession. The economy is horrible. Manufacturing jobs have been bleeding from the State of New Jersey for most of the last 10 years. There are few people here that we need to regulate. The number of bureaucrats does not go down, but the number of permit backlog does continue to go up. Something is out of sync here. Something is wrong.

If you go back and have staff look at what we commonly call *The Doria Package*, you'll see a lot of the things that then-Speaker Dorio did were right on point. If this Legislature were to do the similar kinds of things now,

my guess is you'd give the tools to Commissioner Campbell that he talked about needing to do away with those backlogs.

I guess one of the problems with being around here for a long time is you get to have somewhat of a historical perspective. I've known commissioners that most of you have never heard of, and each and every one of them has come to committees just like this and promised that they'd do away with the permit backlog by a certain date -- each and every one of them.

And here's the reality of what I've learned over the years. The problems with the way we regulate in the environment are systemic. I give credit to each commissioner, like this Commissioner, who wants to do the right thing and get the bottleneck taken care of and work things through. The bottom line is that unless the systemic problems are addressed and changed for legislative oversight, we're not going to get anything different when I come in front of you, Assemblyman Payne, next year.

One more chart, and then a couple suggestions. My friends in the environmental community, I guess, want to say to you, "There's no real need for regulatory reform. The Commissioner is wrong. He must be drinking something funny, because we see the need for more regulations." I, respectfully, disagree with that. Again, I'm not looking to change a standard in an environmental rule. What I'm looking to do is make the process work in a way that that backlog page goes away, that the costs go down.

If you look at this -- this is from the Environmental Protection Agency, before that woman, Mrs. Whitman, took over -- who must be some sort of devil to hear some of the testimony here today. These are the criteria pollutant emissions by state. I think this buttresses one of the points I made

about fewer and fewer places needing fewer and fewer permits. We may be getting permits in areas other than the old historical areas. But if you look here, this shows where those criteria pollutants, the most problematic, are, from a state point of view. What state is producing all these? Try to find New Jersey? Look for Hawaii, because we're right next to Hawaii in criteria pollution emissions. Look at the states which are upwind from us, meaning as their air comes this way, we get the benefits of that.

If you took all the sources of air pollution in the State of New Jersey and you could identify them -- if we thought our tools were good enough -- about 11 percent or 12 percent of that pollution comes from what I call stationary sources, people that I represent in this case today. The vast majority of air pollution comes either from out of state, which you're all familiar with the transport issue, or the automobiles, which my friends in the environmental community say there's a fix to that and maybe you'll support that. But the bottom line is, if most of the air pollution comes from areas other than the people that I represent, given the context of the fact that we rank next to Hawaii in criteria pollutants, why are we spending the most money of any state in the nation on permit fees? Why are we doing that? And why do we have one of, if not the largest staffs to work on stationary sources?

If you really want to look at a regulatory fix for the environmental problem, and you could wave a magic wand, I would suggest that you would wave it by redirecting the employment of all those people working on those ever-decreasing number of stationary sources and have them do something else. Because that's where the real pollution comes from. We talk about the bad

polluters and the midnight dumpers and-- Okay, every now and then, you're going to find them.

I commend Commissioner Campbell for going to Camden and doing the kind of sweep that he did. I think he ought to do it in Newark and in Paterson and in all those places that, for whatever reason, have been historically neglected. I think that's where some real good could come. I don't think he had enough people down in Camden doing a sweep. I think he ought to have more. Maybe we could take some of those 236 people who are in air permitting right now, who have a backlog of over 1,500 permits -- for how long, God only knows, because we can't get the reports -- and send them down to Assemblywoman Cruz-Perez's area and try to do some actual environmental cleanup. Maybe that's a way to do it.

Let me talk, just basically, about a couple of things -- because I know I'm taking too much time, Mr. Chairman -- but a couple of things that this Committee could, specifically, do to try to change this. I think the first thing you can do is go back and look at Speaker Doria's package and mandate that those things occur. The Doria package says there's got to be a quarterly report as to the backlog. There's not. I know it's manpower intensive, but I also know that you, as the real policy leaders of the Legislature, won't know what the issue is if you don't have the facts. Don't rely on me and what I give you as the backlog report, even though it comes from them. Ask them, say, last quarter, "How many permits were backlogged for a year or more? How many for two years or more? How many people have been working on those that are backlogged for two years, as opposed to the underground storage tank, which is a paperwork deal?"

Secondly, develop general permits in as many places as can be developed. So that way, everybody gets a permit, rather than having a process that takes a year -- involves lawyers and engineers and all sorts of things -- for something that has minimal or no potential impact to the environment. Give them a general permit. Charge them their fee. Get them on the books and check them, periodically, whenever you can. But understand that those general permits mean the potential for environmental damage or harm is relatively small related to the rest of the activities that are in the Department.

Expand general permits. If we expanded general permits by 20 percent, the backlog would drop precipitously, more than 20 percent. Next thing, real quick. Develop de minimis level permits. In specific areas with air waste or whatever, there has to be a recognition that below some level there's not an environmental danger that we need to worry about, and allow those sources which are below -- let the Department scientists decide what that level is -- allow them out of the process.

The more these little things -- that don't mean anything in the large picture of this kind of map that you force DEP people to regulate -- the less time they have to worry about the larger sources. It's a very neutral-sum game. The more you do the little unimportant stuff, the less you do the big important stuff.

I think this Commissioner seems to recognize that he's got to move that focus around somehow or other. But that's something -- de minimis level permits, quarterly backlog reports, general permits, standardized inspection procedures. Send to the regulated community, and publish an

inspection checklist. So that if it's the Hal Bozarth Chemical Company -- and he's still here -- tell him ahead of time what the inspector is going to look at. "This is what the law said you have to look at, Mr. Bozarth. Here's my checklist. I'll be there tomorrow." Or put it on the Web, make it my responsibility to look for it and don't tell me when you're coming. I don't care. Just tell us what the rules are for inspections, and make sure every inspector inspects for the same things.

The stories that we have that drive our people somewhat crazy, more than many things, is that one inspector thinks *X* is a violation and another one thinks it's not a violation. So you're lucky if you get somebody on a good day, and you're unlucky -- because they're all making it up as they go along, for all intents and purposes. Get a checklist. Let's have a regulation based on what the inspection checklist ought to be, and let's decide what's going to be inspected for.

ASSEMBLYMAN PAYNE: Thank you.

Could you, kind of, conclude now, please, Hal?

MR. BOZARTH: Everybody should do the same thing. And that's my last one. I'm sorry.

ASSEMBLYMAN PAYNE: Okay.

MR. BOZARTH: How did I do?

ASSEMBLYMAN PAYNE: Good.

MR. BOZARTH: A little long? Sorry.

ASSEMBLYMAN PAYNE: You're a big guy. (laughter)

I think Mr. Cryan would like to have a question.

ASSEMBLYMAN CRYAN: They're on the charts and a couple of them are just acronyms for me.

The lavender one, the pretty one.

MR. BOZARTH: Yes.

ASSEMBLYMAN CRYAN: Okay. ISRA means?

MR. BOZARTH: ISRA -- that's for industrial site cleanup responsibility act.

ASSEMBLYMAN CRYAN: Industrial site cleanup.

MR. BOZARTH: I'm sorry.

ASSEMBLYMAN CRYAN: That's all right.

ASSEMBLYMAN ROONEY: Industrial Site Remediation Act.

MR. BOZARTH: Remediation Act.

Thank you.

ASSEMBLYMAN CRYAN: I should have just asked Rooney over there, afterwards.

UST?

MR. BOZARTH: Underground storage tanks.

ASSEMBLYMAN CRYAN: Underground storage tanks.

And TCPA?

MR. BOZARTH: Toxic Catastrophe Prevention Act.

ASSEMBLYMAN CRYAN: Okay. Well, guys, you helped the new guy here a little bit.

ASSEMBLYMAN ROONEY: Yes, no problem.

ASSEMBLYMAN CRYAN: I have one quick question on fees collected -- that chart. One of the ones that, kind of, jumped off the page at

me -- and I got your air pollutant message pretty clearly. Water pollution control, and I'm not asking you to explain it, just if you had any insight -- 21 million to 5 million in fees collected, which I thought was kind of astonishing, yet the cost rose. Can you define total cost for me, by the way?

MR. BOZARTH: No, I can't define total cost for you. These are DEP fund report information--

ASSEMBLYMAN CRYAN: Okay. So it's just the cost of--

MR. BOZARTH: I guess it's the cost for that part of the Department, dealing with those issues.

ASSEMBLYMAN CRYAN: Anything from your perspective on fees collected? I mean, that's a -- 15 million or so. That's more than Lehman makes in a year.

MR. BOZARTH: From my perspective, the good news is, fees and fines, by log, go to the general revenue, rather than specifically and directly to the Department. We think that's a good idea, because then you, the Legislature, disclose how much money the Department gets.

ASSEMBLYMAN CRYAN: Right.

MR. BOZARTH: It used to be the other way around -- that all the fines that were collected went directly to the Department. Guess what happened to the fines? It's like the police guy who's standing outside behind the billboard saying, "My salary is dependent on how many tickets I write." Clearly, a deal.

My point here is that we need to really look to see where we're placing our resources relative to the environment.

ASSEMBLYMAN CRYAN: I got the point. It just jumped off the page.

MR. BOZARTH: These are good questions. I know the Department could answer these.

ASSEMBLYMAN CRYAN: I could get them. I just figured, since you supplied the charts, and I also just wanted to say thanks. It was nice to get some specific ideas. The message I got from you is pretty much the same message as the Commissioner, with maybe a different path on how to get there. Let's reform the streamline.

MR. BOZARTH: And I'm not even sure it's a different path. We're looking forward to working with the Commissioner, to kind of flush out the things he's talking about. I believe he's on the right path. I think he's got the right idea. It's just, how do we get there? And again -- I'm sorry to do this -- but I do remember commissioners, who none of you have ever heard of, who've also said those things. It's a management issue. I'm hopeful that the management expertise of this Commission -- or is enough to really break through and solve some of these problems, again, with your help.

Thank you.

ASSEMBLYMAN CRYAN: Thank you.

ASSEMBLYMAN PAYNE: Thank you.

Assemblyman Rooney.

ASSEMBLYMAN ROONEY: I wanted to say that Hal Bozarth has represented his industry extremely well in all the years that I've been down here. And I know all those commissioners that he's talking about, because I've served under them, also.

One of the parts of the presentation that is interesting to me is, basically, expanding the base, the manufacturing base, in New Jersey. What you said is true. People come in here and they try to expand. I think there has to be a cooperation or something, a link, between the Department of Commerce and the DEP. When someone wants to expand in New Jersey or locate new facilities in New Jersey, I think we should have the Department of Commerce involved immediately, and basically walk through, hand in hand, through the process, and say, "This is an industry that we want in New Jersey. These are jobs that we want in New Jersey."

Again, I'm not saying that we're going to violate any rules or laws that exist but--

MR. BOZARTH: Nor am I.

ASSEMBLYMAN ROONEY: --it's important that we attract new business to New Jersey. I've sat on every -- in the last 20 years -- I've sat on every board that's examined why manufacturing jobs are leaving. The two biggest reasons are not the regulations -- sorry about that -- but the biggest cost is, basically, the cost of labor in New Jersey and the cost of energy in New Jersey. Those are the two biggest reasons that people leave New Jersey.

And I want to, also, say that ECRA and ISRA have been the best job-retention programs in the State of New Jersey, for the simple reason that if you're going to leave New Jersey, you got to clean it up before you leave. So I've always supported ECRA and ISRA, and I just want to say that. That's why we have a lot of jobs in New Jersey. They can't afford to leave, and I don't want them to be able to afford to leave. We'll keep those jobs.

But Hal is a good advocate and advisory, depending on which issue. I mean, he's a great source of information. I've seen this before. This was the most impressive graph that I've ever seen, and this was during that whole thing about the car, the Clean Air Act, and everything else. We, in New Jersey, suffer as a result of our neighbors to our west. Prevailing winds come through here, they pollute New Jersey, and this is the problem.

We've got to get the administration-- And again, McGreevey is now suing -- well, the EPA -- and going after them for allowing these coal-burning plants. I commend that, and I think we should support it as a group.

I just wanted to thank you for coming, again. And I've listened to that a long time.

ASSEMBLYMAN PAYNE: Much of what you have said seems to be rather elementary to me. Much of the things you've revealed today are things that, seems to me, that with better coordination, cooperation, etc., we should be able to resolve a lot of them.

MR. BOZARTH: I agree.

ASSEMBLYMAN PAYNE: I suppose that your relationship -- you've had relationships with previous commissioners. Is it better or worse now than it was, or is it about the same as it has been over the many, many years that you've talked about, since the last century that you've started?

MR. BOZARTH: I think this Commissioner has reached out to the regulated community and the manufacturers, specifically, and said that he will do his best on the area of regulatory reform. We appreciate that. The problem with the reform issues are always, and historically, sooner or later

someone will want to demigog (*sic*), and say that the changes that are made in good faith for the right reasons, without sacrificing environmental protections, are gutting environmental statutes. And then everybody gets afraid to really make the changes. And so, a lot of people will sit back and say, “We’ll wait until the sparks start to fly, see how bad they are, and maybe we don’t have to worry, as a bureaucracy person in the DEP, because this is all going to blow up anyway and nothing will happen.”

And so reform always starts out uppermost in everyone’s mind, and it becomes politicized because some people will make the environment such an emotionally charged issue that there are no shades of gray. It’s only black and white. I would strongly suggest that you look for the gray and avoid those people who want to polarize this issue for their own political aggrandizement.

Thank you, Mr. Chairman.

ASSEMBLYMAN PAYNE: Thank you very much. Thank you.
Jeff Tittel.

J E F F T I T T E L: That was an interesting introduction, I guess.
(laughter)

ASSEMBLYMAN PAYNE: A perfect segue.

MR. TITTEL: Thank you. Jeff Tittel, Director of the New Jersey Sierra Club.

One of the things, as a New Jersey resident my whole life, that I’ve noticed growing up in Newark and Hillside, and living in places like Ringwood and Lambertville, is that certain parts of New Jersey tend to have a better environment than other parts of New Jersey. And part of it, I think, is just the

fact that in a State like New Jersey, the older communities tend to get a disproportionate share of pollution. That's one of the reasons why you need a strong Department of Environmental Protection. When I was a kid, the stream by my house, I could throw matches at it and watch it go -- flare up. And then I could go hiking out in a place called Schley Mountain and see streams you could actually drink from and catch fish in.

And I think that's part of the problems that we still see in New Jersey -- is that a lot of our industry is in the areas where most of our people live. It does have an impact. Even when companies are meeting their permits, when you look at the cumulative impacts in a community, it still may mean that the air is not healthy. In fact, most people who live in urban New Jersey do not have healthy air, and it's not necessarily because someone's violating the law. It's because we need to move forward and do more to help clean up and have stricter standards.

And that really is where I'd like to talk about what we need to do more of in New Jersey, and that is to try to look at the State much more holistically when it comes to permitting. I think that's one of the biggest flaws that we have -- that we're not looking at secondary and cumulative impacts; that every regulation and every permit is piecemeal site by site.

And other states do a better job of that. I think New York, with their Environmental Quality Review Act, looks more at that. We see so many times, in this State, one permitting program at cross purposes with another permitting program.

I'll give you an example. Last year, the Berlin well. They gave a permit for a well because they thought the town needed the water. And then

when they turned the well on, it was drying out wetlands with endangered species. And then they had to stop it and now it's still going forward. And part of the reason is that we're not looking at things, in the first place, better.

This is a state where we don't really require EISs. We're going to have a major development in the Meadowlands, and there's not any EIS required. And they can have tremendous impacts on the region around there, both from air quality and water quality standpoints.

It's sort of funny listening to industry, and I agree with a lot of them in a lot of ways. I call the DEP the Department of Eventual Permits. They don't want to say, yes, but they can't say, no, and everybody gets stuck in a limbo. And that hurts us, as well, because we see, in many cases, the permit will eventually come out, even though, maybe, in a case of a wetland or a stream encroachment permit, there's something that's going to impact the environment in a negative way near a reservoir.

I mean, I can give you story after story where one part of the DEP isn't talking to the other part, where the water people are running a water line next to a piece of property the State's buying, up by Sterling Forest, and ends up raising the price of the property because DEP just permitted a water line to an adjacent property, without looking at the impact that it's going to be to the Green Acres Program. So a piece of property that would have been bought for \$2 million went for \$9 million, because of DEP's own not looking holistically at their own programs. And I think that's where we really need to start looking more in our regulatory processes: To pick up the secondary and cumulative impacts.

Many times, when we look at sewer plants, we'll permit it right here, and say, "Well, here, you can degrade this much. And then down here, because there's more water in the stream, it can degrade this much." And by the time you get to the end of the stream, it's all discharge. And, yet, we have to drink that water. Again, it gets into, I think, what the real changes that have to be. We also need to look more at a two-tiered approach, I think, also, because one size doesn't fit all. We'll see people in the wetlands program spending as much time dealing with a quarter-acre fill, in a brownfield site in Paterson, as they will with a massive 2,000-unit subdivision or, I should say, up next to the Rockaway River.

One of the problems that we saw with the last administration not only was the ability not to say, no, and the permits would eventually come out, but was this concept of retroactive permitting, which is: You violate the law and we'll give you the permit later -- which they did in the case of Garfield DeMarco, and they did it in Highlands in Morris, and a whole -- other things. I think that's one of the changes that we see.

But we really need to update and modernize a lot of the rules that we have in New Jersey. Many of them go back to the beginning of the DEP, to the 1970s. It's sort of like we're still driving a 1972 Pinto. And, yet, here we are in a new millennium.

And I'll give you just one example of a rule that needs to be fixed, and that's under water -- under droughts. If you go to a drought emergency, under a Stage 4, we can take polluted water and put it in our pipes and make you boil your drinking water. But we can't make any of the dischargers, that are polluting that water, clean up, so that water doesn't have to be boiled. I

mean, back during the drought of '99, when the Passaic River was running at 10 milligrams per liter nitrates, that's a-- A septic tank discharges at 40 milligrams per liter nitrates, so you just think of how dirty the Passaic River was.

Some of the sewer plants wanted to do some things differently by shutting their plants on and off to help lower the nitrate levels. They were technically in violation of their permits when they tried to clean up the river, because our rules and regulations don't allow for those kinds of adjustments. We need to look at those kinds of things much more as we go forward. And so many times, as I said, they're at cross purposes.

I'll give you an example that we were involved with in Paterson. There's a chemical plant called Heterene, and it blew up, and it was next to a school and kids got sick. When EPA came there, they found 1,200 leaky barrels of different kinds of toxic materials. A week earlier, the DEP's air permitting program, actually, was at that site and visited it and missed those barrels. I think that's another problem that we, kind of, have -- is that we need to do more cross-training so the air permitting people can look at other things as well.

It's just like we have people who are going out checking fishing licenses, and meanwhile somebody is dumping something illegally. They don't have the power to go out there and say, "You can't do that." I think those are the kinds of changes that we really need to look at as we go forward.

But also, I think we need to look what the Legislature can do. There's a lot of things that, I think, we should look at. Sometimes when the Legislature gets involved, it's not necessarily for the good of the environment.

We sometimes end up doing weakenings. One of the changes that I thought was really wrong and actually slows down the permitting process was, under the Whitman years, we changed the law that says that if you want to have a regulation in New Jersey that's stricter than the Federal regulations, you have to come up with specific reasons, which means it slows down the process.

New Jersey, historically, always had regulations that were stricter than Federal on air and water, because we've had a disproportionate share of pollution. I think that's one thing that we should be looking at and changing.

Another issue that was changed, about a year or so ago, was the Department was coming up with a program to deal with natural resource damages, which is a way of assessing fees for destroying those resources that belong to all of us, whether they're wetlands or groundwater, through spills or contaminating fish. The Department came up with a good program that was challenged. The Department ended up winning, and then a line was added to a bill dealing with statutes of limitations on cleanups, basically banning the Department from having this program. And, yet, this program would be a clear, concise way of collecting those damages. Instead now, they have to go and sue everybody, which takes more time, costs more money.

Dave mentioned clean car -- well, actually, this Legislature, in '94, passed a bill blocking clean car from being done through regulations. And that's why we need a bill. For instance, we could have done it through regulation like New York state did.

So I think this is a work in progress. But the kinds of things that I think we need to be looking at, if we really want to help make permitting quicker, make a regulatory system work better, is, we need to have clear

standards. We need to have, I think, a holistic approach to permitting, where we're not just looking at a wetland permit, a stream encroachment permit. That we're looking at them together and looking at their impacts together. The same thing with air. We have to look at things cumulatively so we help deal with those neighborhoods and those communities that have those problems, because maybe there are ways of doing other mitigations.

Maybe one of the ways that we help the people in Camden, because they have dirtier air than other communities, is, then, we have to come in there with other programs -- to help plant more trees, to help do things like have clinics for kids because of the asthma problems -- but to bring in other resources, to look at: How do we make this community more liveable, at the same time we allow the industry to stay there?

I think that's part of what we really need to do. I think the other really important part is that we really do need to have the EIS for major projects, so that we can look more holistically at where we're going. And then, finally, I just think that the State of New Jersey has a lot of problems, but there are a lot of good people working hard at doing good things. And I think, by working together, we can come up with a good game plan that really helps us have growth, a strong economy, and a clean environment. New Jersey's three largest industries are water dependent. And the Governor's initiatives to help protect our water, really, actually, help our economy, because the pharmaceutical and petrochemical industry are water dependent, as is tourism, and as is food processing. And so, as we protect our natural resources, we actually help grow our economy.

People in this State are getting frustrated with sprawl. If we don't deal with those issues, well, you know what, people will be moving out to other states where there's less problems.

When I was in the private sector, we used to get pitched all the time about moving to Winston-Salem, North Carolina, and they would say, "Hey, we live next to a national forest," or we'd get Boulder, Colorado -- said, "Live in a community with some of the cleanest air and the greatest mountains in the world." Those are some of the other things that are used to try to attract business out of New Jersey. And quality of life and a clean environment are important resources to maintain businesses. The fact that our beaches are much cleaner now, and you can go swimming in the ocean, I think, does a lot to help save -- or we can rebuild Atlantic City and bring some of the growth there that we'd like to see, instead of going into the Pinelands. Because we've got beautiful beaches and a clean ocean now, and maybe people would rather live there than in the middle of some sprawl development in the Pinelands.

So I think that tackling the issue of sprawl will actually help make our communities more liveable, because we'll be putting in those resources to clean up the brownfields, to bring in mass transit, to clean up the combined sewer overflow, and those other things, at the same time, protecting those areas where we get our natural resources from. If we lose the Highlands, well, then, we won't have any water for any growth in Newark or for chemical plants in Linden. So you have to realize that we're all in this together, and we all need to work together. New Jersey has some of the most serious environmental problems of any state in the country. At the same time, I think we've got the

will of the public to actually get things done, so that we can have a much better state.

ASSEMBLYMAN PAYNE: Thank you, Jeff.

Much of that, and reason for that, is because you and people in your organizations have been advocating for these kinds of things. I would just say that a lot of what you're saying, it just makes such common sense. And it's a matter of -- I don't know whether bureaucracy is so large, or whatever it is -- but you mentioned clear standards are needed, and that holistic approach to things, etc. These things don't require -- I don't think -- I'm not so sure that we need a whole lot of more legislation things. We need the implementation of what we have, and we need to be able to have communication between various departments to see to it that we implement those things that are on the books.

Now you mentioned one thing about training. I'm not sure that -- what did you say -- they went to a site and did not find the barrels that existed there the week before?

MR. TITTEL: Because they weren't -- that was their job, not to look for that. They were only looking for air. They weren't looking for barrels.

ASSEMBLYMAN PAYNE: Yes, right. Exactly. So that this is something I'm not sure requires a great deal of training, but it requires something more, I guess -- and that is, explain what the holistic approach, again, is, what we're talking about.

Thank you very much.

Mr. Rooney, yes.

ASSEMBLYMAN ROONEY: Mr. Chairman, just to address the Meadowlands issue, there is a bill in, that I put in, to do the EIS. And they're going to make a decision next Wednesday, according to them. So I'd like to see that move with your help.

The other thing is, that one of the things that Jeff missed was, there is a hole and a loophole in the law. We had a situation. I guess, it was Hackensack. There was a warehouse there. It was, what I call, a transient warehouse, where one week it might be garden supplies such as hoses and lawn chairs and things like that, and the next week it was chemicals. And unfortunately, the fire occurred when the chemicals were there, and the firemen had no knowledge of that. I proposed some legislation -- it never got passed under the former administration -- and what it just did was say, if you're bringing in some chemicals that may be hazardous in a fire, you should send a bill of lading to the local police department, at least, so they can notify the fire department. And that's something that's a gaping hole. If it happens again, I'm going to be the first to tell you, "I told you so," and it will be our fault, because we didn't do anything to plug that gap. And we need to do that.

ASSEMBLYMAN PAYNE: Thank you very much.

Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Two quick things. Did you hear the Commissioner talk about his proposal to -- when he repropose the rules, that sometimes he shouldn't have to go back, each and every time, and repost them? What were your thoughts on that?

MR. TITTEL: I think it depends on who the commissioner is.

ASSEMBLYMAN CRYAN: Well, why don't we deal with the current one.

MR. TITTEL: Well, I think the current Commissioner is much better. I think we saw it in the last administration -- times when they would repropose and they made changes and they were trying to weaken things. We ended up going to court. So I think that there are ways of trying to streamline the permitting process and maybe if the changes are de minimis, it would work. But the concern you always get is that, if we change the procedure and we've got a really good commissioner now, what happens when we get a bad commissioner.

ASSEMBLYMAN CRYAN: So you'd be open to de minimis changes and some ideas on that.

MR. TITTEL: Yes. And I think there's other things we could work on to quicken the process. Right now, it takes a long time to become-- And again, one of the examples is, why do we have to have a special statement and do special research if a regulation is going to be stricter than the Federal one? It doesn't make sense.

ASSEMBLYMAN CRYAN: And that leads me into my other thing. Can you go over that, for those of-- I'm just not aware -- if it's-- If I understood it right, if we want more stringent law in New Jersey--

MR. TITTEL: Regulation.

ASSEMBLYMAN CRYAN: --than we need to show a specific case?

MR. TITTEL: Yes.

ASSEMBLYMAN CRYAN: That's a law from us in the Legislature?

MR. TITTEL: Yes. There was a law passed, under the Whitman-- Let's say the Federal standard in business was something that's kicking around -- for arsenic is 10 parts per million, which is probably like one-in-a-1,000 cancer risk, which is actually the current Federal standard. I'm almost -- fairly close on the one in a 1,000. New Jersey law says that we should have a one-in-a-million cancer risk, which would lower it, substantially lower. Now, if we adopt a rule that's lower, on that standard for arsenic, than 10 -- let's say we want to cut it to five -- we have to come up with special reasons in order to do that, because we're now taking a position that's stronger than the Federal government. And that means we have to do research and justify it and put it into the rule and give an interpretation, in order to go forward with it.

ASSEMBLYMAN CRYAN: Really?

MR. TITTEL: Yes. Even though we're trying to be more protective of our citizens. Even though the Federal law is weaker than the State law.

ASSEMBLYMAN CRYAN: I'll assure you that -- and I'm seeing other heads nod here -- we'll take a look at that. I have an interest in that. That's crazy.

MR. TITTEL: Thank you.

ASSEMBLYMAN PAYNE: Thank you very much.

As usual, your testimony is very enlightening.

Tim Dillingham.

TIM DILLINGHAM: Good morning, Mr. Chairman and members of the Committee. My name is Tim Dillingham. I'm the Assistant Director of a national coastal conservation group called the American Littoral Society. I appreciate your reaching out. I talked to your staff a couple weeks ago about this effort.

Just by way of back business, several of you I've not had a chance to work with. I had the good fortune to precede Mr. Tittel in the Sierra Club, from 1991 to 1997, as the State Director there. So I was very involved in the debates in those days about the Federal standards legislation, audits, the reductions in the Right To Know Act, the attempted appeal, Pollution Prevention Act.

I think that Assemblywoman Myers is -- offered a great insight early on about this process in that, I think, you really need -- in trying to balance out these questions about how you gain greater efficiencies in government review processes, with maintaining a level of protection -- to be very, very specific.

The sad history is that in the name of regulatory reform, in the name of efficiency of retaining businesses, there were a whole host of efforts that really were intended to try to weaken the environmental standards of New Jersey. The Federal exceedance standard that you just discussed was one of those. It was an attempt to take New Jersey out of leadership position, primarily in the regulation of toxic materials and pollution discharges, and drag it back down to the level of Mississippi or other places. It was wrapped up in a very attractive -- some language about competition.

I think the other, sort of, major principle or idea that you're going to have to wrestle with is that New Jersey is an enormously complex place, from an environmental perspective. We have seven and a half, eight million people on a very small place and, as Mr. Bozarth said, an enormous legacy of bad decisions on the environment that, for better or worse, color how we have to deal with the situation today.

There is, I think, a baseline of complexity that we're simply going to have to deal with. Which raises the question of, what types of resources will be put there and what is it we want to have happen? Do we want to have a basic, sort of, streamlined regulatory process, or do we want to be able to undertake functions like technical assistance and outreach. I think one of the most innovative things and needed things that the Governor has proposed is the idea of putting dedicated staff people into urban redevelopment areas to address the, often, lack of local infrastructure, planning infrastructure -- people who know how to deal with the permitting processes, to take them through the necessary steps to make sure that that redevelopment, those permits happen in a way that doesn't have to sacrifice compliance with the standards that are being addressed. Clearly, that takes a lot of resources. And the Commissioner, earlier, talked about some of the challenges he's facing there.

I think another part that you're going to have to look at very closely is accountability on the part of the regulated community itself. I do a lot of work now, and have in the past, with, particularly, the builders' community. The game at DEP is to get your application in and then to negotiate. So the applications that go in are often for proposed developments that are too large, that are not in conformity with the regulations, and then a

whole host of lawyers, engineers, consultants are brought to bear, in essence, to pressure the Department to modify, to negotiate around the design of these projects. Clearly, that takes a lot of time.

If the building community or any regulated community really wants a quick yes or no, then there needs to be a mechanism designed to say that if your permit comes in the door and it is significantly out of compliance with what the regulations require, the DEP ought to be able to reject it out of hand. Bring it back when you've got it closer to what the regulations ought to have.

There was something discussed by the Committee earlier where the, I think, the Chamber mentioned that they liked the idea of being able to appeal decisions up the chain of command through multiple personnel. Well, obviously, that takes time. Clear noes, clear yeses are dependent upon limiting the discretion of staff members.

I think the Commissioner's BIG Map idea, from a land-use perspective, holds a lot of promise in that it's going to force the State to engage in a debate to say where growth is appropriate and where it's not appropriate, and then send a regulatory mechanism which, hopefully, will give us that same kind of answer -- to say, no, if you propose a large development in the red zone, or, yes, in a green zone. But part of making that work is taking the discretion away from the departments. And when you look at the way the regulations are set up, in many cases there is an enormous amount of discretion. The agencies, in the past, have been jealous to let go of that, because it's power.

So I think there are, indeed, fundamental changes that need to happen. I think the Commissioner has laid out some which are definitely on the right path. I'm very concerned about the resurrection of these ideas of third-party certifications or environmental audits, the idea that, yes, while I think the vast majority of the business community probably are compliant with the law, it's the role of the public agency to ensure that that happens. Because the history is out there that -- and recent history is out there that when we stop regulating, when we stop conducting strong oversight, then people have a tendency to try to push the edges of the game. And in this case, we're talking about chemicals. We're talking about processes that can, not only, threaten peoples' health, but can cause a loss of certain resources that are irreplaceable.

So I think the good citizen idea and the idea of environmental law is troubling. One idea that was brought up in the early '90s, that maybe you want to re-examine, is empowering communities where these facilities are located to have an enforcement role. If there's a need to supplement the Department's role, the Environmental Rights Act in New Jersey has worked very effectively for citizens groups to intervene when the agencies have failed to enforce the laws. That may be one way. I'm a strong believer that if there's a strong enforcement presence out there that people will play the game by the rules and you'd get the resulting efficiencies that you'd looked for.

And along those lines, Assemblyman Cryan's questions about the Administrative Procedures Act -- there are provisions in it now that minor amendments to the rules in response to comments can move forward without reproposal. It's a protective mechanism so that people who are going to be affected by the regulations -- whether the regulated community itself or the

environmental community or the rest of the public -- has an opportunity to see what the Department is proposing. And when you allow them to make substantive changes without adoption, your only recourse is to go to court. And many people don't have the resources to play that last chapter in the game. So I think that's not a good idea to go down, in the name of streamlining.

ASSEMBLYMAN PAYNE: You said that -- give the opportunity for the affected community to review the proposals. Is that what you said? Because you, kind of, slurred over that, your last comment.

MR. DILLINGHAM: Yes, I'm sorry. There is a proposal, and I can go back and find it. The idea was that you would empower -- in the same way that the Environmental Rights Act, which is a statute in New Jersey, allows for citizens to go to court to seek the enforcement of laws, if they can demonstrate that the Department hasn't taken enforcement action and that there's some pollution issue-- We might expand that in terms of regulatory compliance issues, short of violations.

ASSEMBLYMAN CRYAN: To local municipalities or to citizen groups?

MR. DILLINGHAM: I've seen proposals that do both, actually. So it just simply broadens the enforcement authorities.

ASSEMBLYMAN PAYNE: Thank you very much.

MR. DILLINGHAM: Thank you.

ASSEMBLYMAN PAYNE: Oh, I'm sorry.

Assemblywoman Myers.

ASSEMBLYWOMAN MYERS: Thank you, Tim. I appreciated much of what you said, having been a former DEP employee and having some insights.

I think that, as far as local enforcement, there is an existing mechanism, the County Environmental Health Act, which appears to work pretty well in my district. I'm not sure about the rest of this State, but it's a mechanism that's already there, and they really are a part of DEP. They already have an oversight group within the Department. They've always been very willing to come out to local sites to work with local folks much more easily and better than the employees in Trenton. So I always advocated for expansion of that program. I know money is always a problem. But, as I said, it is already a DEP program.

MR. DILLINGHAM: I would agree. That's probably a pretty good model to start with.

Thank you.

ASSEMBLYMAN CRYAN: Can I ask one more question?

ASSEMBLYMAN PAYNE: Sure.

ASSEMBLYMAN CRYAN: This idea that -- it's negotiations when they bring in proposals, that you brought up, which was the first I heard of it today, anyway. Then no matter how they come in, they'll just come in and negotiate so that they can get closer to the specs. I mean, I recognize that some folks have a lot more experience, and I found that to be kind of astonishing. Sorry, I'm not a builder.

If you come in and you're way out of line -- if you're looking for 2,000 units and the proposal will only support 200, I mean, they'll negotiate that? They can't reject it out of hand? Is that what you're telling me?

MR. DILLINGHAM: I think the history is, they don't reject it out of hand -- that the permits are reviewed for administrative completeness, make sure you have all the pieces in them. Then the performance standards, as we've been talking about, are phrased in such a way-- For example, take the coastal rules that the application has to demonstrate that it will not result in significant impacts to threaten an endangered species. Well, the builder may come out and say, "Well, I'm reserving 10 percent of this forest or this coastal wetland." And I am asserting that that's not going to do it.

And then there's an investigative process that it has to go through. So the idea, obviously, is to push the boundary as far as possible in the hopes that what you end up with is as big as possible.

ASSEMBLYMAN CRYAN: This idea that the Commissioner brought up about case managers being able to reject things and just send them back, I assume that that would be something that you would be in favor of then?

MR. DILLINGHAM: I think that that's probably a good idea, yes.

ASSEMBLYMAN CRYAN: Okay, thanks. Interesting.

ASSEMBLYMAN PAYNE: Assemblywoman Myers.

ASSEMBLYWOMAN MYERS: Just to comment, Assemblyman, but you have to understand how this process began. It began because of something the Commissioner was telling you about, the lack of really crystal-clear standards.

ASSEMBLYMAN CRYAN: Right.

ASSEMBLYWOMAN MYERS: And because of that, the employees have, as Tim told you quite honestly, a lot of discretion, and they enjoy the power that that discretion gives them. They're not going to give it up easily. They use that power.

So the engineers and the consultants who have to submit these applications have learned over the years that there's not much point in submitting an application. There's always room for negotiation. They're better off dealing -- figuring out which employee they're going to have to deal with, where he's coming from. It's a very political process in this department.

I've also worked for the Department of Transportation, and what they did there was, they had a lot more reliance on outside engineers. So it might be useful to interview them as to how they feel that works. Certainly the State employees probably feel it hasn't worked well.

DOT was a whole different kind of agency when they did that. I think, probably, DEP could benefit more from that kind of -- bringing some of the outside world into the department -- than the DOT needed. But that's how they did cope with having a backlog of things that needed to get done and being able to address it without busting the State budget. Personally, I think that we need to have more of that. But it's a whole process. It's not just one side or the other.

ASSEMBLYMAN CRYAN: Okay.

ASSEMBLYWOMAN MYERS: There's a whole system that's developed over a long period of time.

ASSEMBLYMAN PAYNE: Thank you very much.

The last person to testify today is Sara Bluhm, NJBIA.

SARA BLUHM: Good morning. I'm Sara Bluhm. And on behalf of our 19,000 members, I'm glad to be here today. Many of those members are small businesses.

I know myself, before I came to the Association, my first experience with DEP was when I worked for the Camden County Girl Scouts. I used to work at Camp Inawendiwin, and one year our lower dam broke, and that affected our lower lake. Well, I was counselor there and assistant director. I was a canoe instructor. I was everything, because Girl Scouts are a nonprofit, and if it was easier that I could go out and I could get trained to be a canoe instructor, all right. I was a canoe instructor for the morning; in the afternoon I was the arts director -- different things like that. Well, we didn't have very much experience with DEP regulations. I know it took over three years to get a permit to fix our lower dam, so that meant we didn't have a lower lake for all of those years.

And I brought along with me the New Jersey *Register*. This is this week's *Register*. This impacts many of my businesses. I just wanted to show you a small section of it. This section (indicating large section), here, that is in my hands, are environmental protection regulations. This happens to deal with site remediation. For many of my members, this is just, basically, a bunch of gobbledygook. They don't understand what this all means or how it impacts them, and that's why they look to us to help translate it.

Right now, we're in the process, because it hasn't been done before, of writing a small businessmen's guide to permitting at the DEP. This guide is already over 70 pages, because there's that many different intricacies

in the permitting process. We've been pushing for online permitting, general permits, different things that can help our members access their permits quicker, faster, more efficiently -- also, reduce the workload on the Department.

Historically, our Department of Environmental Protection has been bigger than California's. As a result, there's also many of our permits that cost more. You saw earlier a chart of the different fees. You also saw the different air pollution. Our Title 5 permits are now the most expensive in the nation. This is an EPA program. And some of the things that we've asked is, why does it cost so much more to get a permit here in this State for a program that has to be done in all states?

With the new administration, one of the things that-- We looked to our members of our Environmental Committee to help us, and we said to them, what are some areas that we can work with the new administration? And we came up with 15 points. We had over 350 members of the Association that really know environmental affairs. These 15 points have been our guide for the past two years, and going to the Department and saying, where are areas of cooperation? What are some things that we can look into? And if you haven't seen our 15 points, I'll share those with you, too. They've been floating around.

And looking through, some of the things that pop out in my head is, we've been trying to reduce the cost of site remediation. This goes along with brownfield initiatives. Site remediation is also very costly in this State, and a lot of it has to do with permit backlogs. I know that we've been asking for a list of good consultants that the Department likes, and we know that they

fill out the forms efficiently, and that they usually get their permits reviewed with little work that has to be done by the Department, and things like that. Tell us who the good consultants are, and we can pass that on to our members, that they know this is going to help DEP get their job done quicker.

Now, there other areas of site remediation that we would also like to fix, and that's why we're working. And just like many of my other colleagues have testified, we do participate in working groups. We do have meetings quarterly with the Commissioner. But there's other things. We would also like to go back and revisit Assemblyman Doria's EMAP policy. Let's update it. It's been quite a few years since we've looked at that, technology has changed. We'd like to see more in that area, but there's other things, too, that have been undertaken more easily.

Under No. 7, dealing with the streamlining of EMAP, there was a committee that was passed into public law in 2001 to review the scope and context of regulatory impact statements required in rule proposals. That's something that we could do. We'd like to also expand good actor policies. Our Association has recently entered into an agreement with the EPA for performance track members. These are people who have to meet a certain criteria within their facilities. We know that they are the best of the best. We also have done this with OSHAs, VPP, and Star programs, and we're saying that these guys are good. And so you don't necessarily have to go around and do enforcement all the time on them, because they have already proven that they're the best of the best, and you can concentrate on other areas. We'd like to see more of that done at the State level.

We had tried that on Silver and Gold Track, but that program has kind of fallen off to the wayside. So there's other areas of cooperation there. But I know that we are running short on time, but I would just encourage you to look at these 15 points. There's a lot of things in here that we can do to encourage voluntary contributions from the business community, but also there's ideas of improvement within the Department and ways that we can improve the regulatory process so that this becomes easier to read.

ASSEMBLYMAN PAYNE: Thank you very much.

I would hope that whoever is preparing that could understand what they're writing about as well, not only--

MS. BLUHM: Yes.

ASSEMBLYMAN PAYNE: I'd like to say thank you for your testimony, and also that we will have the continuation of this hearing on the 13th at 10:00.

Assemblyman Doria will be one of the persons who will be testifying, along with -- the NJBIA, I think again, will be back, and the New Jersey Builders Association and the Federation of Independent Businesses, etc. The New Jersey Association of Counties would like to comment, also the Public Interest Research Group.

So we will conclude this hearing.

And what I have heard today does not sound, to me, like it's an awful lot of complex kinds of solutions to some of the problems that exist here. I think one of the obligations and responsibilities that we have, as the Regulatory Oversight Committee, is to see to it that a lot of the regulations that have, in fact, been promulgated in the past are implemented. Many of

them don't seem, to me, as I say, to be extremely difficult or complex, but it's a matter of oversight and seeing to it that they are implemented as they were intended to be.

Thank you very much.

This hearing is concluded.

(MEETING CONCLUDED)