Committee Meeting

of

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

"To take testimony from individuals and representatives of businesses and industries concerning State regulations adopted or proposed which are inconsistent with legislative intent or duplicative with other State regulations"

LOCATION: Freeholder's Meeting Room
County Office Building
Mount Holly, New Jersey

DATE: October 18, 1993
10:30 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Peter Inverso, Chairman
Senator Raymond J. Zane

ALSO PRESENT:

Senator William C. Haines
Senator Bradford S. Smith
Assemblyman Robert C. Shinn, Jr.
Assemblyman Jose F. Sosa

Albert Porroni
Marci Levin Hochman
Office of Legislative Services
Aides, Senate Legislative Oversight Committee

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, CN 068, Trenton, New Jersey 08625

New Jersey State Legislature

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

STATE HOUSE, CN-068
TRENTON, NEW JERSEY 08625-0068
(609) 292-4625

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE LEGISLATIVE OVERSIGHT COMMITTEE

FROM: SENATOR JOHN O. BENNETT, CHAIRMAN

SUBJECT: **COMMITTEE MEETING - October 18, 1993**

The public may address comments and questions to Albert Porroni, Legislative Counsel, Marci Levin Hochman, Assistant Legislative Counsel, or make bill status and scheduling inquiries to Judith A. Saulli, secretary, at (609) 292-4625.

The Senate Legislative Oversight Committee will meet on **Monday, October 18, 1993 at 10:30 A.M. in the Freeholders' Meeting Room, County Office Building, Room 123, Mount Holly, New Jersey.**

The purpose of the meeting will be to take testimony from individuals and representatives of businesses concerning State regulations adopted or proposed which are inconsistent with legislative intent or conflicting or duplicative with other State regulations.

Directions from Trenton: Route 295 South to the Burlington-Mount Holly exit #45A (Beverly-Rancocas Road). Continue on Beverly-Rancocas Road through four traffic lights. After the fourth light the County Office Building will be on the left side. A municipal parking lot is on the right side.

Issued 10/12/93

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SENATOR PETER INVERSO (CHAIRMAN): Good morning. I'm sorry to delay a few minutes the start of the meeting, but if there were more parking spaces in Mt. Holly, I would have been here a little sooner.

This is another of the meetings of the Senate Legislative Oversight Committee. As you all know, this Committee was given its opportunity by the vote of the people in November, enabling the Legislature to, in essence, review the rules and regulations promulgated as a result of legislation that we passed, to ensure that those rules and regulations are in keeping with what the intent of the legislation was, and the intent of the Legislature in passing that legislation

We look upon this Committee as a very, very important Committee, one that is able to respond and react to the public with regard to the concerns that they have, that perhaps what they're confronting in dealing with the State bureaucracy and others is not in keeping with what the Legislature had intended. So it's a very -- I think, a very important Committee, and one that has had sessions and will continue to have sessions over the next legislative term.

I'd like to just introduce the members of the Committee who are with us today. We have Senator Zane, who is a member of the Committee; and we have Senator Brad Smith, who is sitting in in place of a Committee member. I'm Senator Peter Inverso. Senator John Bennett is Chair of this Committee, and unfortunately he was not able to be with us today. He has a personal matter he's attending to involving his daughter, and I told him I would sit in in his place. I'm also pleased to have with us today, in attendance, an individual I just heard on the radio talking about whether we can eliminate the tolls on the Parkway -- Senator Haines, and we have Assemblyman Bob Shinn.

So with that, we will begin hearing the testimony. The first person we're going to call upon is Mr. Joseph Brancotta, of Georgia-Pacific, and I believe you're with a Jan Clark.

Is it Ms. Jan Clark?

J A N L. C L A R K: Good morning.

SENATOR ZANE: Senator, before you begin, may I ask a question? The only notice that I have indicates that the purpose of the meeting is to take testimony of individuals or representatives of business concerning State regulations. Is that what we're doing?

SENATOR INVERSO: That's my understanding, Senator, yes.

SENATOR ZANE: Okay, okay.

SENATOR INVERSO: Yes.

SENATOR ZANE: So we're not dealing with a specific problem, just in general?

SENATOR INVERSO: That's my understanding, yes.

Mr. Brancotta.

J O S E P H B R A N C A T O : Good morning, Senator.

SENATOR INVERSO: Excuse me. I'm sorry. I didn't even ask if you two had an opening statement -- being we're starting a little later.

SENATOR SMITH: Well, I would just like to thank the Oversite Committee for scheduling this hearing this morning.

I have had, basically, an open-door policy with businesses throughout the seventh legislative district -- and even beyond the district -- and over the course of the last two years have heard some very interesting, shocking, and strange stories about what is happening to business and jobs in this State with respect to their relationship with State agencies

I think it's very important that this Oversight Committee has been created and is delving into the problems

that are occuring in the State because, quite frankly, we're losing jobs like crazy, and unless we -- I view this as a crisis situation -- and unless we start to turn things around, using this Committee as a tool and other tools in the Legislature, we are going to have a State that is a bedroom state. People will simply sleep here and go to work in other states. That's something that we cannot afford to have happen to New Jersey.

So I look forward to the testimony today and the work of this Committee in the Legislature to start to make New Jersey, once again, a good place for people to live and work.

Thank you.

SENATOR INVERSO: Thank you, Senator.

SENATOR HAINES: Senator, I have a comment too.

I feel that this passing the idea of legislative oversight is one of the most important pieces of legislation that we've had since I've been in the Legislature. I know Senator Zane and others have started the legislation -- it's been a bipartisan process -- but I do think, as Senator Brad Smith has said here, that we have a situation in New Jersey -- we may be the most overregulated state in the nation. We have overlapping regulations; we have regulations that don't make any sense. We are, in fact, encouraging business to leave New Jersey, and we are encouraging businesses not to come to New Jersey.

I have meetings with businessmen all the time, as well as other groups, but they all tell me the same thing, that we're vastly overregulated, and that this overregulation may be as important as the over-taxation that's causing them to leave the State and not to come into New Jersey.

Thank you very much, Mr. Chairman.

SENATOR INVERSO: Senator Haines, those comments have elicited a request for a response by Senator Zane.

SENATOR ZANE: No, not a response at all.

SENATOR INVERSO: Okay.

SENATOR ZANE: I'd just like to thank the people of the State of New Jersey for finally passing my legislation, a battle that I began some fifteen or eighteen years ago, I guess with, at that time, Governor Byrne. I don't know anything-- And I would also indicate that at one time, when you were in the Assembly, you gave me a very key vote to put it on the ballot and the people didn't pass it at that time. This past year, it was finally passed.

In my opinion, it's probably if not the most important -- and not because I'm the sponsor of it -- the most important piece of Legislation that has ever passed because, and I'll give you a real good, quick example: DEPE, in my opinion, was clearly on their way this past year to doing the California fuel in New Jersey. It would have been typical of things that they would have done. Because of this legislation having been passed, approved by the voters amending the Constitution, and setting up this process, they had to come back to the Legislature, which was a courtesy that normally was not extended. They just went and did what they had to do.

I think the overall economic climate-- The prospects for new jobs and attracting industry are greatly enhanced as a result of the power that we in the Legislature now have to, in my opinion, break the back of the bureaucrats -- and I don't mean that in the literal sense, but in a figurative sense -- because they were running this State. Far more responsibility should fall on their shoulders for the state of affairs in the State of New Jersey than it should on this Governor, any other Governor, or the Legislature. So I'm really pleased that we're moving ahead with this process.

SENATOR INVERSO: Yes, sir.

MR. BRANCATO: Thank you, Senator, and members of the Legislative Oversight Committee. I'd like to thank you for allowing me to take a few moments to talk.

My name is Joe Brancato, and I'm the Environmental Manager for Georgia-Pacific Corporation. We're in Delair, New Jersey. We are 100 percent recyclable and we make wallboard paper products at our Georgia-Pacific mill in Delair. We have about 80 people on our payroll.

In the last few years -- last four years since I've been there -- we have spent more on environmental and trying to meet the regs than we have on production equipment. We have spent close to a $1,000,000 in the last four years just to try to meet your regulations. We have an environmental emission statement. I would like to read that into the record, because I think it's kind of pertinent to this situation.

It says that the Delair Paper Mill adheres to the Georgia-Pacific Corporation policy of manufacturing paper products of the highest quality, and being environmentally safe -- sensitive at the same time. The Delair Paper Mill will not knowingly violate any environmental law. We will stop production and correct any situation that causes a pollutable incident.

The Delair Paper Mill community has a long history of eliminating all possible sources of pollution. The future will be no different from the past. We will not be followers, but leaders in the environmental compliance field. Along with that, we have done our best to try to meet every kind of regulation that comes to be, but as soon as one regulation comes out, another one comes out. We try to meet one; we can't meet that; we have to meet the other. So it's costing us quite a few dollars moneywise.

We just can't afford a lot of the regulations that you're putting on our back. One of the things-- Two examples I'd like to cite for you are: On our DMR permit, which is a Discharge Monitoring Report that we put out every month, we had an exceedance of -- in temperature of 32 degrees centigrade.

Our permit says we will be no higher than 30 degrees centigrade on the discharge to the Delaware River. On a Monday morning, we stopped the flow of water to the Delaware and we saved it for four days in our clarifier. We had to let this water go because we had no place to put it in the mill. Consequently, the water that had been cooking in this hot weather went out and caused us a violation of 32 degrees. We don't think that was quite fair. We don't really have the facility right there to cool it down. In order to do that, it would cost us quite a few dollars, plus chemicals, and we may cause another pollutable incident with the chemicals that we're disbursing into the cooling system.

Some of the regulations that you're putting on us are really outlandish and, from what I understand, just can't be met at any cost. The paper industry that I'm affiliated with-- As many meetings as I go to throughout the United States, they know that you don't come to Jersey. You don't expand. You don't do anything in Jersey; you move.

Thank you.

SENATOR SMITH: Can we ask questions?

SENATOR INVERSO: Yes, just give me-- Ms. Clark, do you have anything?

MS. CLARK: I'm with Georgia-Pacific Government Affairs. I've worked with Joe extensively on the regulations and he is correct in that there are a lot of conflicting ones. In order for us to meet some environmental standards, we have to break others. What we would like is a streamlined process.

SENATOR INVERSO: If you could supply us with any specifics where there are conflicts between requirements that are imposed upon you, that would help this Committee get more specific.

MS. CLARK: We will this week -- written specifics.

SENATOR INVERSO: We'd appreciate that.

Yes, Senator Smith.

SENATOR SMITH: Mr. Brancato, your facility is a paper recycling facility?

MR. BRANCATO: Yes, sir. One hundred percent recycling.

SENATOR SMITH: So what, you take old newspapers --

MR. BRANCATO: We take everything that you put on your curb on trash day. We recycle it. All paper products, whether it's newspapers, magazines, envelopes -- you name it; we do it. We buy from a paper broker who has access to all the counties in the State. In turn, we get it from that broker and we process it into wallboard paper.

SENATOR SMITH: Part of that process-- I guess you use a lot of water in that process?

MR. BRANCATO: We do, yes, sir.

SENATOR SMITH: And this water that you were talking about going into the Delaware, that's excess water or--

MR. BRANCATO: It's treatable water that we can't put into the building. We have to discharge it someplace.

SENATOR SMITH: Do you have to have a permit for that?

MR. BRANCATO: Yes, sir.

SENATOR SMITH: What kind of fees are you charged for that?

MR. BRANCATO: Well, in 1989 we were being charged $500--

SENATOR SMITH: For a year?

MR. BRANCATO: --for a discharge permit per year. As of right now, we're assessed $96,000.

SENATOR SMITH: A year?

MR. BRANCATO: A year, and we have argued that down to in the 70s.

SENATOR INVERSO: Excuse me, are we talking apples and apples? You're saying that what cost you $500 in 1989--

MR. BRANCATO: Yes, sir.

SENATOR INVERSO: --is today costing you approximately $96,000, and you're getting them to concede down to $70,000?

MR. BRANCATO: We've conceded down to $72,000 and some.

SENATOR INVERSO: For the exact permitting situation?

MR. BRANCATO: No, let me straighten out the situation. We have reduced our flow to the river. We've had-- Many times we've only had two weeks of discharge to the river, yet our increase in the permit fees is disastrous.

MS. CLARK: May I?

SENATOR INVERSO: Yes, please.

MS. CLARK: The process has not changed. Our production has gone from full-time capacity at $500 a year, down to approximately ten days a month of production -- operating, and now we're being assessed -- well, we were assessed $90-something-thousand -- it's down to $70-something-thousand for less production.

SENATOR INVERSO: Senator Smith, there.

SENATOR SMITH: Yes, I wanted to ask one more question. This was in 1989 that you were --

MR. BRANCATO: Yes, sir.

SENATOR SMITH: --$500 a year? How many employees did you have at that point in time?

MR. BRANCATO: At that point, we had about 150 employees. We ran 24 hours a day. We ran four shifts for seven days a week.

SENATOR SMITH: How many employees do you have now that you're paying $70,000 a year?

MR. BRANCATO: We have approximately 70 employees right now.

SENATOR SMITH: So your operation has essentially been cut in half?

MR. BRANCATO: Yes, sir.

SENATOR SMITH: What's the future of your facility here?

MR. BRANCATO: Well, from what I understand, it may be -- we may be sold, or the GP might say, "Hey, expenses are too much."

SENATOR INVERSO: Senator Zane.

SENATOR ZANE: If we were asking DEPE, "Kindly try to explain to us why, since 1989, at full capacity the fee was $500, and here we are in 1993 and there are 10 days per month." Isn't that what you said, "They are 140 times greater than that at $70,000"? What would they say the reasons were? What have they told you the reasons are?

MR. BRANCATO: They have a formula that they cook up and they design. They put these fees in -- these parameters in based on, you know, DMR's that they've read, things of that sort and--

SENATOR ZANE: What is a DMR?

MR. BRANCATO: DMR, everybody that has a discharge monitoring report, excuse me --

SENATOR ZANE: Okay, I understand it.

MR. BRANCATO: To flow to the Delaware, you must have a discharge monitoring report, and it must be submitted to the Department every month. This has all kinds of information on what your permit allows you to have.

SENATOR ZANE: Does this increase from $500 to $70,000 result from a fine --

MR. BRANCATO: No.

SENATOR ZANE: --or an assessment to you?

MR. BRANCATO: No, sir.

SENATOR ZANE: It's just the increase in the fee?

MR. BRANCATO: The privilege to discharge to the river and get nothing for it.

MS. CLARK: From what we understand, when we questioned the increased fees and sat down, what was explained to us was that to run the program, the department comes up with "X" number of dollars and then allocates out the cost. Due to

a lot of businesses leaving the State of New Jersey because of the prohibitive costs, the overlapping regulations, and conflicting regulations, fewer and fewer businesses are picking up the total burden. The pie increased, but also the pieces did for fewer businesses.

SENATOR ZANE: Have you ever looked at the cost of doing business in another neighboring state versus New Jersey? Have you made any analysis?

MR. BRANCATO: Yes, Delaware has said to come. You know, "We'll throw money at you. Bring your business to us; we want you here."

SENATOR ZANE: Would you have those kind of fees in Delaware?

MR. BRANCATO: I don't know.

SENATOR ZANE: You don't know.

MR. BRANCATO: I don't know, but I've heard that Delaware's fee structure is a lot different and easier to get along with. The people from the department we're working in, they really want your business. Our Pryor, Oklahoma mill who makes the same exact product, runs more often, has more employees, their fee was $500.

SENATOR INVERSO: You know, we may seem shocked by that because this is one of the most extraordinary increases that I've heard of. But it's in keeping with what we have heard through the budget process, as well as previews to this Committee. There seems to be no relationship between the service being delivered and the associated cost, and I know DEPE is not going to a time and billing on some of their services, if you will. There are pro's and con's on the efficacy of that in terms of keeping sure the cost is what it should be, that industry and small businesses bear only what is appropriate to bear for whatever the activity that DEPE is doing.

But General Motors, in my district -- well, actually it's the fifteenth district outside the city of Trenton -- tells a similar tale. Just to renew a permit cost them $10,000. They were in competition with their sister plants in Michigan, and I believe the other one was Ohio. In Michigan, similar permitting was $100 cost, and there was no charge in Ohio. Obviously something is wrong. This is why we're--

Senator Haines?

SENATOR HAINES: Yes, I'd like to ask you why you cut down -- I know the answer, I think -- but why you cut down from running around the clock to ten days a month? Why did you cut back on that?

MR. BRANCATO: Housing is down. Our end product goes into making wallboard--

SENATOR HAINES: Oh, okay.

MR. BRANCATO: --and the housing market is way down; therefore, they're not -- sales are down. In six months, we usually feel it.

SENATOR HAINES: Do you think that if DEPE forces other businesses out of State -- and they seem to be almost telling you to leave with their attitude -- that the rates will continue to go up?

MR. BRANCATO: That's an agency that has everything. I can't tell you that.

SENATOR HAINES: Okay, you probably can't answer that. I want you to know that what they did has nothing to do with any legislation that was passed. This is not a legislative matter. That's strictly a decision that they have made on their own, and this is why we have this Committee, because that was a bad decision on their part, as far as I'm concerned, and it darn well needs to be corrected -- the fees, I'm talking about.

SENATOR INVERSO: Yes, Senator Smith.

SENATOR SMITH: Mr. Brancato, you may not know the answer to this question, but it raises a point. If you were today running at the same capacity that you were running at in 1989 when your fee was $500, what would your fee be today? Do you have any idea?

MR. BRANCATO: I don't know. I couldn't tell you that at all.

SENATOR SMITH: Because you're at half the capacity and you're at $70-some-thousand dollars.

MR. BRANCATO: We're at-- We run-- Our discharge to the river is less than half of what we were. Our production-- Our discharge to the river many days is shut down; we flow nothing to the river. The river itself past our plant is the -- the Coast Guard estimated it at one million gallons per day going past our plant. We have discharged-- I figured out the maximum we could discharge without going over our permit would be 175,000 to 150,000 gallons per day -- 150,000 gallons as adverse to one million gallons per day.

SENATOR INVERSO: It's obvious that this charge isn't volume driven, and it's obvious that with what's occurring in the private sector in this State with regard to reduced activity and reduction in the employment force, it doesn't send a message to Trenton that maybe we've got to tighten our belt, and we've tried to. You know, the Legislature is making attempts to do that to constrain the costs of government. But this is an agency that seems to have lost sight of the kind of reaction they should be having to what's happening out in the private sector; that is, you don't just throw more costs at them. We have to see -- look within to see how we can keep our costs in line.

MR. BRANCATO: What I've said--

SENATOR INVERSO: I'm sorry.

MR. BRANCATO: Excuse me. What I've said before I could see this coming -- that in the next five years the

employment is going to go away from the industry, but to the State. There will be nobody to regulate.

SENATOR INVERSO: I don't believe, for one, that the State is the employer of last resort, nor should it be the employer of last resort. Without a private economy humming along -- we know how bad it is out there now -- the State government can't exist either, so we recognize what needs to be done.

I think this Committee, as well as the Joint Economic Recovery Committee, has taken steps to send a message out there that New Jersey once again could be business-friendly both to large and small businesses. We want to keep what we have. We want to attract new businesses. It's not something that's going to happen overnight, but we've put several initiatives in place, none of them in and of themselves significant, but when pulled together, I think it sends a proper message out there to the New Jerseyans and to people throughout the country that New Jersey can once again become a good, business-friendly State, that we're trying.

Thank you for your comments.

MR. BRANCATO: Thank you, sir.

SENATOR SMITH: Thank you.

MR. BRANCATO: Thank you.

SENATOR INVERSO: John Schroeder, of Sybron Chemicals, Inc.

John.

J O H N S C H R O E D E R: I was asked if I had anything to hand out, to bring it in. (distributes literature)

SENATOR INVERSO: Yes, please.

MR. SCHROEDER: I'm John Schroeder, Vice President of Manufacturing for Sybron Chemicals, Inc. Sybron Chemicals is a worldwide manufacturer of specialty chemicals, including ion exchange resins, which are used to purify water; and selectively adapted bacteria, which are used for environmental cleanup and things like that.

I'd like to thank the Committee for allowing Sybron to comment on both the nature and effect of the New Jersey State regulations on its business. In general, I'm going to comment on three different issues relating to the regulations of the Department of Environmental Protection and Energy.

First will be the degree to which their regulations go beyond the Federal requirements. That's kind of some of the detail that I've handed out to you, but I'll talk about that also. Second is the proliferation of fees and fines relative to those regulations. Then, finally, I'd like to personalize it and discuss the huge cost to Sybron and probably other New Jersey businesses from these regulations.

I'm going to use a variety of different regulations as examples, including the New Jersey Spill Regulations, the Toxic Catastrophe Prevention Act Regulations, the Clean Air Act, and a little bit about pollution prevention. Now, I also want to stress I'm not going to talk about less environmental protection. What I'm going to talk about is less paperwork, less command and control mentality. If we could achieve those things, business will have a lower cost, and we believe that the environment will also be better off.

To start, I'd just like to show you an example of what happens when New Jersey takes over and runs some of its programs. This particular document (indicating documents) -- I only show you so you can take a look at its thickness -- is the Federal Spill Requirements. Here's New Jersey, a few trees killed in this one. In this reg, New Jersey regulates facilities storing as little as 20,000 gallons of 1700 different substances. The Federal regulation requires facilities to store one million gallons, 50 times as much of only 400 substances, or only one quarter of the substances are covered.

To make this even worse, New Jersey regs require inspections to be documented before every time you pump a

material -- in our facility that's hundreds, if not thousands of times each week -- and the regs also require that we map 15 miles downstream on the Rancocas, which is where we're located, for environmentally sensitive areas. That cost us, in our case, about $35,000, although I've heard ranges of $25,000 to $75,000 for other facilities.

I'm going to talk a little bit more about these costs later. Obviously, in the 77 pages here, there are other requirements. There are extensive requirements in the areas of training, operating procedures, emergency procedures, and so forth. There also are some things that I view that really do have something to do with preventing spills from reaching the waters of the State, which I think is the intent of those regulations, for instance, dikes, cement floors, and so forth. Those things we're in agreement with. We believe that should be done.

I'll show you another difference. OSHA regulates what's called Process Safety Management. Process Safety Management, I guess, really relates to preventing catastrophic releases -- Bhopal, those types of releases. This is OSHA's regulation (indicating); here's New Jersey's. Obviously, the New Jersey regs in these number of pages are incredibly prescriptive -- they lay out detailed requirements for every aspect of plant performance.

What OSHA does is set guidelines and say, "Okay, meet the rough guidelines and perform", but New Jersey, again, covers every detail. Fifteen pages of this is an annual checklist you have to fill out, which is a preface to the annual inspection that you get. Essentially, a facility like Sybron has three chemicals that are covered by this. We, again, to comply -- to be ready for an annual inspection -- need to have somewhere between thousand's and tens of thousand's of pieces of paper at our fingertips for the inspection. Our plant has just over 100 hourly employees and

our inspection was four days, five-man DEPE team, so a huge amount of time-- It's absolutely impossible for a facility like our's to comply with every bit of a regulation like this.

Another example is pollution prevention. Industry fully supported the concept of pollution prevention. In fact, Sybron is one of three companies -- we joined two others -- that volunteered for and underwent a pre-pilot program to go ahead before the law was even passed -- the Pollution Prevention Act -- and start working on the regs and to help out. So we were really involved and interested in this program, and very supportive of it.

After the regs came out, we took a look and estimated that the paperwork you had to fill out before you started doing anything was about ten man-years worth of paperwork. We had kind of gone through a subtlety different process and said, "Wait a minute. We can get all this information and get to the business of pollution prevention with just over a man-year of paperwork." We made those comments, but unfortunately the regs have come out that will require the ten man-years worth, I think what that does is, people will spend that ten man-years, when they could have been spending one doing the paperwork and nine preventing pollution.

So again, another big problem, and one other note: Right now there are no specific Federal requirements for pollution prevention, and New Jersey is sitting there with-- I could have shown another one just as thick for pollution prevention.

One other example, I guess, is the Clean Air Act, where right now New Jersey has proposed some amendments that go, again, beyond the Federal requirements. Right now, they are -- I guess in their own words -- now regulating 1000 chemical plants, or intending to regulate 1000 chemical plants in New Jersey that would not be regulated by the Federal act in terms of a leak detection or repair program. What this means

is that you must look at every flange, every valve, every piece of equipment in your facility and keep records, test to see if they're leaking, and so forth. The Federal government requires that certain very specific manufacturers of large volume chemicals do this, but New Jersey, again, is going to go beyond. What I hope is good from these examples is that New Jersey regulations are so prescriptive and so detailed that no one, no matter how well-staffed, how well-intentioned, can really comply.

One other note on this, because there is a way to deal with this: In South Carolina, where we also have a facility that manufactures special textile chemicals, when the regulations come out from the Fed's, South Carolina just takes them and says these are our regulations, so places do it. It can be done that way.

However, this leads to my second issue, which is fees and fines. I think it's become pretty well-known that 83 percent of the Department's funding comes from these fines. And just as another illustration, for the two regs I showed you, these were the Federal regs (indicating). The same length are the New Jersey fees and fines -- I mean, a part of the regs. I find this really quite incredible, and to be clear, most of these fines and fees -- they're not for polluting. They're for things like missing a piece of paper.

For example, missing training one person out of fifty in your facility, in the leak detection program, was talking about if you miss one valve, you'll be fined. Spill Regulation contains fines, for example, for almost every section of the 77 pages of the regulations. And, of course, you've already heard a little bit about fees. Many facilities, as Joe mentioned, have seen their waste treatment plant fees growing. Our story here is $12,000 was our waste water fee in 1989, over $85,000 in 1993, with, I would say, probably a 30 or 40 percent increase in production, so that there is some increase there

due to that, but largely it's due to the fact of balancing, I think, the DEPE's budget here and having to cover their costs. Application fees for air permits have also grown from about $50 in the late '80s, to over $1000 today for air pollution applications.

I'd like to turn just for a few seconds to Sybron itself. Relative to spill control, we've estimated that we'll be spending somewhere between $250,000 and $500,000 for capital improvement to satisfy the requirements of the regulation over the next year or two. This is for a site that has never had a significant discharge as defined by the act.

Paperwork and administrative burdens are estimated that they're going to take one to two man-years of effort each year to keep up with. This is in addition to the mapping that I mentioned earlier, where we spent our $35,000, and also a major written plan will be required by the act. We weren't even covered by the rules prior to 1991. We weren't a major facility under the act, but the DEPE changed it. They changed it because of incidents like the Valdez and like the pipeline problem in the Arthur Kill. These were massive spills. Now they're covering spills down as low as zero to nine gallons. To me, again, I just find this incredible. These are orders of magnitude greater than Sybron could ever deal with.

Process safety management: We spent over $1 million so far to upgrade our facilities to meet the principles of process-safety management and are estimating that we're spending two to three man-years every single year to maintain compliance. Of course, New Jersey has already changed their original 1986 rules -- recently issued a new set. These are even more prescriptive and cover more items than before. And of course, every time you have an annual inspection, things are found that are wrong. Right now we're looking, typically, at $50,000 to $100,000 of extra expenses that stem out of every annual inspection.

We believe we really are an extraordinarily responsible small company. We've already, as I've noted, been one of the three companies to volunteer for pollution prevention. As many of you in this room know, we have a community relations program that we believe is second to none in the country, but the regulations that I talked about really don't seem to take any of this into account. They set page after page of requirements and costs with too little regard for the benefit to be derived from these costs.

I've shown millions of dollars, and man-year after man-year of effort that we have to go through to comply for a plant with just over 100 employees. I strongly urge that this Committee carefully review these and other similar regulations, and act to change them to require performance, not paperwork.

Thank you.

SENATOR INVERSO: Thank you.

Any questions from the Committee?

Assemblyman Shinn.

ASSEMBLYMAN SHINN: Just a comment, Peter, if I may?

SENATOR INVERSO: Sure.

ASSEMBLYMAN SHINN: It just struck me as being interesting: Both these companies that testified are both in the environmental business. One is a recycler of environmental -- of paper, the other one is an environmental clean-up company, which we sorely need in this State.

If we're going to implement our recycling goals and our environmental strategies, you have to have local companies that: a), use a product so that you have a market to recycle; and b), I know Sybron does a lot of bioremediation for spill clean-ups and that's important. A quick response to a spill is absolutely critical with fuel oil spills, etc. So these aren't just normal companies we're hearing; these are companies that deal in the environmental field. I think that's particularly noteworthy.

The other thing that I thought -- just back to Georgia-Pacific for a moment-- I just did some quick numbers on-- I guess the Clean Water Act is how they're regulating your discharge, right? The NJPDES permit -- Clean Water Act?

MR. BRANCATO: (speaking from audience) Yes, sir.

ASSEMBLYMAN SHINN: The background river temperature is 60 degrees or so, something like that?

MR. BRANCATO: Depending on the time of the year.

ASSEMBLYMAN SHINN: Right about now somewhere around 60, 58, 56 -- and your normal discharge temperature is 30 degrees?

MR. BRANCATO: No, it's normally 20 degrees centigrade.

ASSEMBLYMAN SHINN: Okay, so you were actually discharging warmer than your permit requires--

MR. BRANCATO: Two degrees warmer.

ASSEMBLYMAN SHINN: --and in my rough calculations, that's like 0.0003 impact on background temperature. I mean, it's like 0.0003 of a degree, is that -- that's a minor violation under the Clean Water Act?

MR. BRANCATO: We haven't got the word back from the State yet on that.

ASSEMBLYMAN SHINN: I think one problem we have to deal with legislatively is, we did the Clean Water Act Bill, as you recall, from the Legislature. We can't differentiate the Department. If you listen to the inspector commenting to a Sybron or a Georgia-Pacific, they will say, "We have no jurisdiction; the Legislature has tied our hands. We have to fine you," -- bing, bing, bing, bing. Minor violations like the temperature violation-- I've heard violation after violation that people are getting fined. If you have, what, -- two minors, it's a major; or three minors, it's a major; one or the other, I think.

MR. BRANCATO: Four, four is a crime.

ASSEMBLYMAN SHINN: Four, okay, four. Even though it's a minor violation that has no significant impact like temperature, then you become a major violator. Then it can get into a whole new catagory of horrendous fines--

MR. BRANCATO: Fortunes.

ASSEMBLYMAN SHINN: The bottom line, when you stretch all that out -- and it's complicated and it's hard to get a handle on -- but the bottom line is: These companies are going to expand elsewhere, and maybe sometime in the future, unless things change, aren't going to be here. That's going to be sad.

I'm just thinking of where Sybron's located in Pemberton Township. They are about the only industry in Pemberton Township of any real size or employment volume. That loss would be horrendous to Pemberton Township, so I really think this thing is an area that we have to investigate legislatively, and really spend some time on the issues. Get DEPE back into a budget process and get a handle on this whole area. It has dynamic implications.

SENATOR INVERSO: Excuse me. I'd like to: One, welcome Assemblyman Jose Sosa, who joined us; and Assemblyman Sosa does have a question; and then I'll get back to you sir.

ASSEMBLYMAN SOSA: Thank you, Chairman. Welcome to the seventh district.

SENATOR INVERSO: Nice to be here.

ASSEMBLYMAN SOSA: Mr. Schroeder, can you help me out in terms of where you see DEPE permits, regulations, fines, and so on, are? Have they plateaued? Are they still growing in size, in scope, and number at this point?

MR. SCHROEDER: I think for sure they're growing in size, scope, and number. Again, one of the reasons I showed those number of pages is because that didn't used to be the case. There wasn't ten pages of fines listed in the back of a regulation, and now there is. Of course, the numbers are going up as well in terms of the dollars.

ASSEMBLYMAN SOSA: I sit on the Joint Committee on Economic Recovery, and we had testimony a while back from a firm that is in the business of relocating corporations across the country. One of the observations that they've made about New Jersey is that governors, both Democrat and Republican, have been faulty in trying to recruit more companies into the State of New Jersey.

Clearly, based on the testimony that we're hearing today, that has been understood for quite a long time. DEPE has been an impediment. I understand that The Wall Street Journal has just reported that New Jersey, I think, ranks 43rd in the country in terms of attractiveness to small businesses. The question I have for you is, what is your breaking point? When do you decide that you've had enough, and when do you decide, then, to make a decision about whether to stay or move?

MR. SCHROEDER: It's very, very hard to do that because our business is extremely capital intensive; to pick up a facility and relocate it is almost impossible. But to give you an example, we recently made an acquisition of a product line of the textile business, and we manufacture products similar to this product line in both our New Jersey facility and in our South Carolina facility.

We went down to talk with the environmental folks, the governor's staff, and so forth in South Carolina. Open arms welcomed us. They met with us; they expedited the process of permitting. Truly, in our minds this was a major factor in terms of deciding to take that product line and put it down in South Carolina. Again, it would be very, very tough to pick up our business and move it. But future decisions that are, "Where do we locate new lines," well, that's more an open question.

ASSEMBLYMAN SOSA: From a businessperson's perspective, I know that legislators and people in the administration have their own views about how to tackle this

particular problem of the operations and the scope of that department. Do you have any particular feelings about how that should be at least preliminarily studied, reviewed, and then acted upon?

MR. SCHROEDER: Yes, a couple. First, I think that something ought to be done to take the DEPE and essentially say, "If you're going to do something that's essentially the same thing that a Federal regulation or act does, then you should do it to that degree and no more." Most of the Federal acts take into account things like, "It's worse in our State," which is generally what you hear as a response to that.

The Clean Air Act said if you're a severe nonattainment state, you regulate more harshly. So, again, you can still do exactly what the Federal acts say in New Jersey; you don't have to go beyond it. I think when it comes to fees and fines, one thing that has to be done there is, you can't continue to fine people for bureaucratic and paperwork types of problems. What you've got to do is say for those things you get some time. You get a chance to fix them, if indeed they had to be there. It was important that the laws be that prescriptive in the first place. Maybe if you don't do them after the second or third time, a fine is more appropriate. If you have a discharge, if you harm the environment -- that's where the fines and fees ought to be involved -- the fines ought to be involved.

ASSEMBLYMAN SOSA: Well, how often does that happen? Isn't there a window of time that you have to fix your problem before you get fined?

MR. SCHROEDER: In many, acts after an inspection you're just nailed right away.

SENATOR INVERSO: Mr. Schroeder.

Sorry, you had your hand up?

MR. BRANCATO: (from audience) I was just going to say that in places that we-- Our employees -- most of them are high school educated, and they've been around and been around learning our process and everything. If we were to close down-- I mean, it's not really hard -- easy to train these people into something else. So you don't really lose a good worker.

SENATOR HAINES: Mr. Chairman.

SENATOR INVERSO: Yes, sir.

SENATOR HAINES: John, what's -- this is overhead, I guess. This is where you put it. What does it do to your overhead? What percentage of your overhead do you put aside for this? It seems to me that, you know, it acts -- it sounds as if it's almost impossible to continue.

MR. SCHROEDER: Well, it's impossible to keep up, that's for sure. We've never really stood back and calculated the costs of compliance as what is a percentage of our overhead. As I've indicated, we're talking not just about our environmental department, which is how a lot of companies have historically done this, but when I talk about five, six man-years of effort each year, it's extending fully into the operations. Jerry Misner, our plant manager, is heavily involved. We're all involved. So everybody's spending time. It's probably a worthwhile number to sit back and try to calculate, because it's huge as a percentage of our total overhead

SENATOR HAINES: You haven't done that?

MR. SCHROEDER: No.

SENATOR HAINES: To me there should be intent in terms of fines. I think I would like to see DEPE have to prove intent before they can make a fine. Would this make sense to you?

MR. SCHROEDER: Yes.

SENATOR HAINES: I mean, you guys-- I know your company; I've been through it. You guys have bent over backwards to do the right thing. You really have. I don't think any other company has gone to the extent that you guys have bent over backwards to do the right thing, and then they fine you because you don't have the paperwork on a valve? I mean, that's -- that's asinine.

MR. SCHROEDER: We didn't like it either.

SENATOR HAINES: There's probably a worse word for it, but that was the only one I could think of.

SENATOR INVERSO: Well, don't hold back, Senator. We're a completely open hearing today.

Yes, Senator Smith.

SENATOR SMITH: Mr. Schroeder, you indicated that you used one example of missing -- you missed training for one person out of fifty. What did that involve?

MR. SCHROEDER: Yes, well I was using generic examples. In our specific case, under TCPA one of the things that is required -- or that you can write up plans as we did -- to do is to train your mechanics, for example, to work on the processes. We had one mechanic who was absent during the period that we did the training -- on vacation, I believe -- and that's out of 33 mechanics -- or not 33, about 20 mechanics in this case -- and indeed, we received a little fine after the inspection for that. Nineteen of the twenty were trained; one wasn't. We didn't have any releases.

SENATOR SMITH: I'm not sure if this was related to Sybron or not, but I had heard that there was -- you had a pump problem; that you had to have some testing done on a pump and you had to get a permit because-- Maybe Jerry knows about that--

MR. SCHROEDER: That's our well pump, yes. I don't know that much about it. I think we had to get a temporary permit to discharge to the creek.

SENATOR SMITH: Your drink-- It was your drinking water?

MR. SCHROEDER: No, it was our plant process water--

SENATOR SMITH: Oh, process water--

MR. SCHROEDER: --but it's a PRM deep well, and basically one that most towns use for their drinking water. We needed to flush and so forth, the well. We needed to pump at high volumes for a short period of time, so we needed to get a permit on an emergency basis to do it--

J E R R O L D M I T Z N E R: (speaking from audience) And the story--

SENATOR INVERSO: Jerry, go ahead.

MR. MITZNER: The story was that when we called up and asked for permission to do this testing on this well -- after it had been prepared, the DEPE said we needed a special permit at one time. But we needed to conduct our priority pollutant analysis, which takes six weeks and costs $1200 to do. This is just to take well water and pump it right into the river for a couple of hours.

SENATOR INVERSO: We're transcribing this hearing. Anyone that is asked to make a comment, or wishes to make a comment should come forward so we can pick it up, because the Office of Legislative Services staff is not able to pick up your comments.

Would you care to repeat that -- forward, yes. This way we'll have a complete record. Just introduce yourself.

MR. MITZNER: My name is Jerry Mitzner, from Sybron Chemical. After we repaired a well pump, we needed to test out the pump to make sure it was pumping at its rated requirements. So we called the DEPE to notify them that we were going to pump water out of the acquifer right into the river for a couple of hours. They said we needed a permit and we said, "Fine, we'd like to get a permit." They said, "Well, in order to do that, you need to obtain a priority

pollutant analysis," which characterizes all the pollutants in a water stream. This makes sense for most discharges, but when all you're doing is pumping water out of the acquifer, this is obviously irrelevant and expensive. It's a $1200 test that takes six weeks to get the analysis back from an independent laboratory, but this is what the administrator required of us. We said, "This is absurd. We don't have that time to wait, nor do we want to spend that kind of money."

Finally, we went higher in the department and they did, indeed, grant the permit on a temporary basis without those costs. But it took somebody at a very high level in the department to make that judgement, and the people responsible for that permit would not make that decision.

SENATOR INVERSO: Anything else?

Okay, thank you, gentlemen. Thank you for coming in.

Next we'll have Fred Hardt, from the Pemberton Township Board of Education; and Dennis Stann, from the Pemberton Township Board of Education -- Starr. I'm sorry, it looks like two N's instead of R's.

F R E D E R I C K W. H A R D T, ESQ: I also have Mr. Curry here, who is our plant operator. I will pass on his information with some handouts which may be needed to understand what I'm going to say. (distributes literature)

Senator--

SENATOR INVERSO: Yes, go ahead.

MR. HARDT: My name is Fred Hardt. I'm the attorney for the Pemberton Board of Education, special needs district located in Burlington County. Our Superintendent, Dr. Elder, and the President of the Board, Mack Thatcher, had hoped to be here today. Unfortunately, they're in Washington with Congressman Saxton and the Department of Defense trying to come to grips with Fort Dix, McGuire, and assorted problems that have to hold for our district, which has a primary function of educating Fort Dix's children.

We also operate a small sewer plant at the Helen Fort School. Mr. Curry is the licensed plant operator for that system. He is responsible to our Superintendent of Plant Facilities -- or Building and Grounds, Dennis Starr. I can't ever get the title down pat. One of the schools that we operate out of the thirteen is the Helen Fort Middle School. The sewer plant operates for that system. We educate in any given year approximately 6900 students. It is not a small district.

In October of 1991, a chlorinator at the plant broke. This led to a malfunction in the system and a discharge into a tributary of the Rancocas. We attempted to rebuild the chlorinator. It broke again, leading to another discharge, all of which was corrected between the months of October and December of 1991. I think it's in-- We were subsequently fined, and the matter was resolved. Our tale of woe is what I am here to elaborate on. I think it's important to know what we were fined for and how that process worked. Before you, you will see a series of definitions. They are from a manual which is used by the Department.

SENATOR INVERSO: Well, there's one set. Just one set that you've made available to us.

MR. HARDT: Now, there are a series -- there are copies for everyone, Senator.

SENATOR INVERSO: Oh, there are?

MR. HARDT: Yes, and I'm not sure I didn't leave the manual with you. Yes, I'm going to need that back.

SENATOR INVERSO: These people charge you to get this back. (laughter)

MR. HARDT: They are from this manual, which is for the Discharge Monitoring Report. This is the form which is filled out and submitted monthly. You have a copy of a sample which is applicable to Pemberton's plant. In March, I think it

was, we were assessed a penalty in the amount of $50,000 for violating not the standards of a district, not for discharges, but for exceeding the standards set forth in the DMR.

SENATOR SMITH: This was the school district?

MR. HARDT: The school district. If you take a look at the penalty on the second page. This is this document. (indicating)

SENATOR INVERSO: Oh, I have a different document.

MR. HARDT: On the second page, you will see--

SENATOR INVERSO: If you could just give us a moment, maybe we can catch up with you on the distribution of the documents.

MR. HARDT: Sure.

SENATOR INVERSO: It will just be a moment. Are you referring to this document here, "In the Matter of Pemberton Township?"

MR. HARDT: Yes, it's an Administrative Order and Notice of Civil Administrative Penalty.

SENATOR INVERSO: Right. Okay, I think that's the last one we circulated.

MR. HARDT: On the second and third pages, you will see a listing of the nature of the violation. You will note on the third page that under pH and FC, which is fecal coliform and so forth, you are dealing with weekly averages, monthly averages, and items along that line. The district engages in monthly testing. A test-- The report reflects a monthly test. If you conducted a series of tests, you could average them and put that information in the form. But we didn't do that, we reported the one test result.

When you had a discharge that one test, because it was in close proximity to the discharge, meant it's in violation of the regulations. It wasn't that the violation was particularly serious in and of itself, but that in a statistical averaging of only one test, you ended up with a significant excess of the

parameters under the permit. In addition, although the form manual suggests that you are to average such things as test results on pH factoring, the DMR, which is the basis upon which penalties are assessed, requires that you put the minimum requirement down on the form.

What do I mean? If at six o'clock in the morning you test a plant effluent for pH and you get a reading of 5.5, and then later in the day you test the pH of that effluent and get a 7, the instructions suggest that you are to average the two to get an average result, put it on the form, and send it. That's not the way the form is to be filled out. You must use the 5.5, not an average, but the minimum result that you achieved. Some of the violations that we are achieving are the result of putting down the minimum number rather than average. Had we averaged, we would have been in compliance with our permit limitations.

In any event, this matter went to to a hearing. We resolved the issue. We ended up paying a fine of $10,000 based on my recommendation, which was in part premised on the fact that we would be spending more money than $10,000 to litigate this, because I had no hope that we would be successful. The administrative operations would probably have to go to the Appellate Division for success, and success at the Appellate Division is not necessarily guaranteed.

As part of the settlement of this matter, we were required to prepare an operations manual. This is an operations manual for the sewer plant. (indicating) The settlement agreement suggested that this was to be submitted by April 1. The settlement, or the Administrative Order was approved by the Pemberton Board of Education on March 8. The Board had hired a consultant to prepare the manual at a cost of approximately $5,000. It was delivered to my office in a local district on March 25. I suggested that these two gentlemen review it because they had to live with the resulting document.

Through inadvertance and stupidity on my part, this did not make it to the DEPE until April 13. In June, several months later, we received back from the Department its review. It recommended very minor changes in the manual, which were subsequently made and incorporated in the manual which is now on file with the district. It also suggested, because we were thirteen days late in filing the manual which they took two months to review and approve as to sufficiency, we should pay them $17,000, or approximately $7,000 more than what it was initially -- we were initially fined. That is because--

SENATOR SMITH: Mr. Hardt, can I stop you for a second?

MR. HARDT: Sure.

SENATOR SMITH: You're saying that the DEPE assessed a fine against the school district for $17,000 because this manual was twelve days late?

SENATOR INVERSO: Two pieces, $10,000 was the original fine, and $7,000 was for a late submission.

MR. HARDT: No, sir, $17,000 exclusive of the $10,000.

SENATOR INVERSO: I thought I heard you say that it went up.

Did you hear it that way also?

SENATOR ZANE: No.

SENATOR INVERSO: I thought I heard you say it was $17,000.

MR. HARDT: As set forth in the letter of June 21 which is before you, DEPE assessed a fine -- actually they sent along a receipt. We could send the money into them.

SENATOR ZANE: Are you saying that the whole thing cost $27,000?

SENATOR INVERSO: $27,000.

MR. HARDT: Exactly. We have not paid this.

SENATOR INVERSO: Okay. Sorry, sir, but I thought I had heard the opposite, the same as Senator Zane had heard.

MR. HARDT: Ten thousand dollars initially, and seventeen thousand dollars more because the manual did not reach them. Now, we did some investigation, and our investigation--

SENATOR SMITH: How late was the manual?

SENATOR INVERSO: Thirteen days.

MR. HARDT: Our investigation suggests had we called on March 30, it is routine for the DEPE to grant extensions. We did not call. That is our fault. We should have. I don't think that lack of a call is worth $17,000. We have asked for consideration of this matter at the DEPE. We have not gotten relief on this point yet. There is a petition before the Commissioner asking to amend the Administrative Order -- since the fines are built into the order -- to change the date from April 1 to May 1. If that is granted, then these fines disappear. There is no guarantee we will get that.

SENATOR SMITH: I have a question for you. I'm looking at this consent order here, and it talks about stipulated penalities of so many -- $1000 per day for the first seven days, $2000 for eight to fourteen days. Is that the provision under which you were assessed this $17,000 fine?

MR. HARDT: Yes, sir.

SENATOR SMITH: So it was in the order that they could do this.

MR. HARDT: Yes, and the order is really, I don't believe, negotiable. I think these are boilerplate orders which the department utilizes uniformly. I would hope that they would have used some reason in the assessment of penalties under it, but apparently if you are in violation of any provision, the penalty flows naturally from that consequence.

SENATOR SMITH: Are there statutes that permit the DEPE to fine for late reports?

MR. HARDT: Not to my knowledge. If you exceed NJPDES discharge limits, obviously there is a penalty provision.

SENATOR SMITH: Well, that's talking about discharges, but we're talking about a late report.

MR. HARDT: That's correct.

SENATOR SMITH: Is there any statutory approval for them to fine for late reports?

MR. HARDT: I would also note that there is a difference between the DMR's. We have just been notified that we're in violation of our permit. The DMR requires that we submit what is called a "daily grab", which I assume is when you collect effluent. Our permit says you're supposed to use--

H O W A R D C U R R Y: A four-hour deposit/composite.

MR. HARDT: There is no place on this form to put the four-hour deposit. If we don't do the four-hour deposit test, we're in violation of the permit. If we don't fill out the DMR containing the correct information -- that is, the daily grab -- we are in violation of the DMR regulation. We are about to place a call to the DEPE to ask what do they want us to do, but we have been cited for a violation for not complying with the permit when the DMR reporting requirement is inconsistent with the permit.

SENATOR INVERSO: Excuse me. Is this the first time that that inconsistency has arisen?

MR. HARDT: This is the first time this particular inconsistency has arisen. There are numerous inconsistencies.

SENATOR INVERSO: Have they been resolved to your satisfaction in the past?

MR. HARDT: We have been operating upon a continued expired permit since 1989. To my knowledge, the DEPE is undergoing a review of the regulation and standards to-- Until we know what those new standards are, I can't tell you the extent of the inconsistencies. I can tell you that as you go through this there are a variety of inconsistencies. Between the permit standards and the reporting requirements, you can be violated for either offense.

SENATOR INVERSO: I guess what my question was driving at the heart of whether or not they have been cooperative in working with you when you bring to their attention something that is an inconsistency that has been generated by them, as opposed to anything that you've had in terms of compliance? Have they been resolved satisfactorily?

MR. HARDT: I have to say no in the following context: We were told to report it one way in the DMR's, did that, and have just been recently notified of a violation because we did it that way.

SENATOR INVERSO: Did it that way. It's a real catch-22.

MR. HARDT: Yes, sir.

SENATOR INVERSO: Senator Zane.

SENATOR ZANE: Mr. Chairman, I have a meeting in Salem at one o'clock and I'm going to have to leave, but just one thing I'd like to add to what they're talking about:

There is a county that I'm very familiar with; it's one of the counties within my district. They were requested by a municipality to perform a particular service within that municipality, one that they offered to everybody, and the only activity of the municipality was to request that service. They didn't provide any man-power; they didn't provide any money; they didn't do anything else. They said to this agency, "Would you come in and do such and such?" In fact, as I recall, the county actually offered to do it. Then the municipality said yes, and sometime later the service was performed.

In the opinion of DEPE, the service was not performed properly by this particular county, and because the municipality's total involvement was to request the county agency to do that, they were fined $105,000. That will show you what kind of nonsense the people are putting up with in the State with DEPE. The worst thing that was ever done, in my

opinion, for all of us in this State was for DEPE to be self-funding by 83 percent of its fees, etc. I mean, it's incumbent upon them to harass the hell out of people and drive them nuts. It keeps them gainfully employed for long periods of time. But that is an absolute true story about a municipality.

SENATOR INVERSO: Yes, well that's incredible.

D E N N I S S T A R R: Senator, can I say something?

SENATOR INVERSO: Sure, Mr. Starr.

MR. STARR: Just to let you know a little bit of history about our plant, it's approximately 35 years or older. I've been in this business since March of '91, and I've had three different representatives of the DEPE. Each one of them complimented me on the condition of my plant and the maintaining of it because of the age and everything that we've done. Every time they would come out and they'd request this or that, I had made sure that we had followed their suggestions even before the violations had come out, and done everything possible to meet what they wanted. It seemed every time I turned around, a couple days later, or about a week, two weeks later, I'm getting violation reports sent to me about-- I'm under the impression with them that they're happy with what's going on with our plant.

This is very confusing and stuff on our part. Some of these suggestions, and some of the stuff we had done to meet the violations that were requested-- We spent $28,000 in purchasing equipment; we built a building out there; we alarmed our system. Everything they have suggested, the school district has done. It just seems every time I turn around, I'm getting hit with something different. I have 14 buildings that I have to maintain, which means that I have to pull people off other jobs and other buildings to come into compliance to what they want. I feel partly, with the school board, the

superintendent, and everybody else involved, we had done everything in our power to try to passify them. But it just seems like a no-win situation on my part.

SENATOR INVERSO: Frustration, I suppose.

MR. STARR: Yes, very.

SENATOR INVERSO: Senator Haines.

SENATOR HAINES: I just want to make a comment. I mean, this agency apparently is doing two things. They're chasing business out of the state, and in your case, they're lowering the quality of education in the state. Because the money doesn't come from -- you don't just pick it up out of the air; it comes from somewhere. If they were reasonable with you-- I mean, a 13 day delay in issuing a manual is ridiculous. If they were reasonable, that $17,000 or $27,000 could be spent on teacher's salaries, instead of being spent on something that's totally arbitrary. I think it's disgusting.

SENATOR INVERSO: You'll let us know how you fare in that process.

MR. HARDT: Will do, Senator.

SENATOR INVERSO: Okay. Thank you.

Tom Bates, Huntsman Polypropylene Corporation, and Hal Bozarth.

Are you together? (affirmative response)

Okay, Hal, Chemical Industry Council.

H A L B O Z A R T H: Good morning, Mr. Chairman.

SENATOR INVERSO: Good morning.

MR. BOZARTH: Senators and Assemblyman, it's a pleasure to be here in Burlington County. We've decided to come as a panel because I thought it would be a good idea if I could hit four or five broad, overall points, and then let Mr. Bates talk about his specific situation with regard to his plant in the southern part of the State.

I think what you've heard today is something that, for all of you sitting around the table, is not new. I mean, I

know those people in the Legislature who have been actively involved in this issue. They're all right here. I give you a lot of credit for doing more of this, because frankly, something's got to stop. It's just not that Pemberton can't hire another teacher or part of a teacher for that extra money. It's the people that I represent that can make improvements in environmental protection or stay in business with that money; rather feed the private sector and public education than a bureaucracy that is, frankly, doing nothing positive for either the environment in many cases, or for the public good.

I represent people in the chemical process industry. That's flavors and fragrances, pharmaceutical companies, chemical companies, and precious metal companies, pretty much the Fortune 100 and 200 type of companies that you would all be familiar with. They have in their employ around the State about 115,000 to 119,000 people. That's a significant base to the manufacturing in the State of New Jersey.

Now, those numbers are down significantly from where they were five years ago, or eight years ago, but they are still significant. Without a vibrant manufacturing sector -- and you've all heard us all on this many times -- we run the risk in New Jersey of having continued significant budget problems.

Let me just tell you: In 1992 the chemical process industry lost 6000 jobs, not an insignificant number; not much compared with the general manufacturing sector as a whole, but still significant to those 6000 people.

You all remember that there was a budget deficit in New Jersey in 1992 of $300 million to $400 million at one point. Those 6000 who lost their jobs in that year alone, had they continued to work and pay taxes, would have closed that budget deficit with not one extra thing being done -- totally.

That's the kind of impact we're having here. And I should say at the outset of my little talk here, we try not to be personal about the folks in the DEPE. I know there are good people working in the Department, with good intentions, with good education, trying to work within a system that, for whatever reason, doesn't happen. And there have been good people in the Department in all the 13 years that I have been doing this.

But I watched what happened with the Department, and it just goes on and on and does not get better. I'm not going to get into the business of how many people are in the Department, but I am going to hit on that 83 percent funding mechanism that Senator Zane and others talked about. That's an incredible business. We've testified in front of both Appropriations Committees, for the last two years running, that all of those fees and fines ought to be taken from below the line and put above the line.

You folks who drive the policy in the State of New Jersey ought to have a say in how that money is collected and how it's spent. Right now, you don't. The policy makers in the State of New Jersey have absolutely no input to that, and that's not right.

I have some quick facts that I want to talk about. I'm going to gloss over for a second the job loss. But I want to tell you that it's not-- We shouldn't gloss it over for those individuals involved. We lost $285 million in yearly payroll in 1992, 18,000 jobs in the chemical process alone from '80 to '92. The resulting loss was $855 million less to the State of New Jersey -- to the State of New Jersey, not anybody else, to the State. It goes on and on.

The real interesting thing about manufacturing is that it's such a high-paying occupation for people who are in it. Our average salary including everybody is about $47,000 for some of the chemical processing industry. That's significant.

You can't replace a job, when you lose it at $47,000, with somebody in the service economy. And I don't care whether it's working for somebody in an insurance company, or it's working for a fast-food restaurant, or it's working for practically anybody. Those people cannot find commensurate jobs; $47,000 is a lot of money to people to be put at risk by the kind of things that you heard this morning, and the kind of things that you've heard over the last couple of years. It's incredible.

I won't even tell you much about the fact that the exports from our industry total $2.7 billion. The only industry in the State of New Jersey with that kind of positive export numbers is the chemical process industry -- huge numbers of tax dollars going into the system.

But let's talk about some of the specifics. I know that John Schroeder from Sybron has done that, and he mentioned Right to Know, as Tom Bates will, and he mentioned pollution prevention. Let me just talk for a second about one of my favorites, and I have a lot.

Let me talk about the NJPDES Program, and I've talked to all of you about this. But just to give you some basic facts about the NJPDES process: The NJPDES water program of the Department of Environmental Protection and Energy charges $14 million a year in total fines. It employs 177 people, and in 1992, the last year for which I have figures, they processed exactly 87 permits. That wasn't too bad, except there was a 660 permit backlog as of June of that year.

So that means, if they do 87 a year with 177 people charging $14 million, to reduce the backlog from 660 down to zero, it would take 20 years to eliminate that backlog. And then the question would be: "Well, I guess we need more money to hire more people to do more permits." And you get into that situation where although it sounds good on the surface, what happens is that the Sybrons pay more, the Huntsmans pay more,

the DuPonts pay more, the Hoffman-La Roches pay more, and pretty soon you get to these kind of figures, that I'd like to go down the list real quickly.

The NJPDES budget, again, totally went from $7 million in '88 to $15.3 million in '92 -- about 119 percent increase. Our figures -- and I think they are reflective of what the Department has -- show that close to 31 percent of the NJPDES budget went to indirect charges, and 30 percent for fringe benefits. That's equal to about $5.5 million not directly related to the Program. Those are not insignificant numbers.

It's interesting that the folks in the Department will tell you that their fee structure is based for a simple reason; and that is, to make the polluter pay. So the more pollution you have, the formula theoretically kicks you out a higher fee.

It's just not so. There is a facility here in Burlington County, along the river, that Senator Smith is familiar with, that closed half of its facility down, and its fee doubled the following year. Half of its discharge was eliminated when it closed that facility.

Annual fees and fines collected by the Department have risen totally from $12 million in '82 to $112 million in '92. And the permit backlogs continue, not only in water, but in air. But let me just stick with the NJPDES for a second.

I'll give Commissioner Weiner some credit here. He at least-- After four or five years of this constantly escalating problem, he at least said, "Let's put together a task force and try to figure out what a new formula is that we could put together." That task force has been working for over the last year, and according to the Department's timetable, in two or three years we'll have a new formula.

Meanwhile, one of my members, DuPont, in Senator Zane's district down in Salem County, will pay for its NJPDES permit; for one year of a five-year permit, $750,000; for a total for the whole five years of the permit of $3.2 million.

Now, ironically -- ironically -- directly across the Delaware sits the Chambers Works sister plant. And that sister plant in the State of Delaware which is about the same size, approximately the same discharge, roughly the same number of people and the same products, pays $10,000 a year for each of the five years of the program.

Now, my skeptics would say, "Well, that's because the State of Delaware subsidizes the cost of doing the permit work." And I'll admit, there is probably some truth to that. But the DuPont plant on the Delaware side is not in the same precarious position to have its processes taken elsewhere as the one in New Jersey is. I think the State of New Jersey must recognize that, as it did for 20 years, and find some way in the appropriations process to recreate a balance of what the industry pays -- manufacturers pay -- and what the State pays for the process.

I used to believe that you should pay exactly what it costs to do your permit work within the Department; no more, no less. I still pretty much believe that, with the exception that because of the way the permit fees go through the budget process, there is absolutely no control over that money, and therefore there is no control on the cost of the permit. So I'm not even happy about saying that now, although from a concept point, if somebody was watching costs, I could go for, "You pay for the amount of effort that the Department puts into the permit."

I'm always attacked by my friend, former Commissioner Weiner, when I do this, and he says, "It's all anecdotal information. You're not looking at this in an objective way." Well, he's right. We're not looking at this in an objective way. It may be anecdotal, but I have to tell you, those anecdotal stories impact real people's lives, not folks like me, but real people who are out there working for a living.

I've got a very good example.

SENATOR INVERSO: You just set yourself apart from the rest of us. (laughter)

MR. BOZARTH: I know, I know.

I don't consider this work. It's almost a mission. I've been doing these NJPDES things for I don't know how long, Senator Haines, and you've heard me practically every time. But in this one case with Tom Bates and Huntsman -- right next door, or to my left -- you can see the potential impact of not only the fines and the fees, but the duplication that John Schroeder talked about -- the excesses that he talked about. On and on and on, examples that, yes, individually are all anecdotal, and yet the sum is larger than the addition of all the parts.

It's incredible. I hope you will listen to Mr. Bates with not only an open mind, but an open heart to try to do something about his specific situation, because there are people at risk here.

Tom?

T H O M A S A. B A T E S: Thanks.

Senator, thank you for the opportunity to speak. My name is Tom Bates. I'm Plant Manager of Huntsman Polypropylene Corporation. We're located in Gloucester County, and this is Liz Vanek. She's our Environmental Engineer.

We're a 30-year old plant.

SENATOR HAINES: Excuse me. Where is your plant located in Gloucester? Is it in Pureland? (phonetic spelling)

MR. BATES: No, it's right at Exit 19 on Rte. 295 in West Deptford. And it's a 30-year old plant. It was a Shell Chemical plant originally built in the early '60s. Five years ago it was purchased from Shell by Huntsman Chemical Corporation, a privately held company.

As such, we're one of the oldest polypropylene plants in the country. We've got old technology, and frankly, it's outdated technology. We had to modernize this plant to get it

more efficient to survive. The margins in polypropylene are very small, and new plants are much more efficient than ours, so ours was really a fight for survival.

The initial plan was to expand with new technology on the site, as well as modernize the old. The first thing that happened was our raw material supplier was a refinery in the north end of the State here -- the Exxon Bayway. And when we talked to them about supply and securing a long-term supply -- this was a year-and-a-half or so, or two years ago -- they really couldn't give us any kind of commitment on supply.

We did some-- The second thing was, with the issues on-- We did a rail expansion. It took us about two-and-a-half years, much longer than anybody believed possible because of different types of red tape. Most of the polypropylene plants are located on the Gulf Coast. We also looked at the possibility of the expansion going there, and considered Texas. It was a world of difference in terms of raw material supply, that the industry there was confident they were going to be around. They were willing to make long-term commitments.

We took our preliminary plans down there and met with their environmental--

SENATOR SMITH: Excuse me a second. Is that why you couldn't get a commitment from the supplier in North Jersey, because they weren't sure they were going to be around?

MR. BATES: Right. And the two points I wanted to make on that: First, the Texas Air Quality Board gave us a preliminary permit approval on a major grass-roots expansion -- this is a major grass-roots expansion -- in 30 days. The second thing is the uncertainty that faced Exxon and the Bayway plant at the time. They weren't sure they were going to be running.

There are probably people here that know a lot more about that issue than I do, other than they really couldn't talk to us about any kind of long-term supply. Since then, it

has been resolved with the Kosco purchase, but meanwhile we've gone ahead and made a commitment for that expansion outside the State.

Two states we looked at had talked about and gave us preliminary permits in 30 to 45 days, and almost seemed apologetic that it took that long.

SENATOR SMITH: Well, what would it take here? Do you have an idea?

MR. BATES: I have no idea. We went in--

An example: I was trying to make a small improvement in a plant, to put some improved equipment in that would actually improve our efficiency and reduce pollution, and I was hearing permit times of 12 to 18 months to get approval on doing something that would reduce pollution and improve efficiency. And it was just-- This uncertainty was just paralyzing. You can't make commitments.

So really the second phase of it was, we had to modernize our factory here -- our plant here -- or it no longer was going to compete. So we set about putting those plans together. That's really the critical issue because if we can't get more timely permits, if we can't get more timely decisions--

We're not asking for different standards than any other state. The plant we build here to the best available control technology would be the same plant that we build somewhere else. What we'd like is to get reasonable decisions, in a reasonable amount of time, at a reasonable cost. That's critical.

I would say that we have joined, voluntarily, the new pilot program on the facility-wide permitting, and we are working with the DEPE on streamlining that process. We've just begun that process, so we have volunteered for that as a way to help us through the process.

In our efforts to stay competitive and survive, some of the things that struck me as being real impediments to doing

that: First is the regulation, which to the extent that it is result producing, I don't mind. To the extent that it is absolutely not result producing, it doesn't improve the environment; it doesn't do anything other than just load us up on paperwork and bureaucracy. That I do mind, because I have people who are working on these reports and forms, and diverting my energies there instead of doing what I need to do to redesign my process.

The first example is Right to Know. We appreciate all of-- There are a lot of people here I know who have done a lot to try and reform that, and have made progress. Assemblyman Shinn, I understand, has been a key part of that. But this is just awful. Some examples: I mean, we certainly have some chemicals that deserve to be handled through Right to Know, and who can possibly not be for something called "Right to Know." You just have to be for it; you can't be against it.

But it's taken-- Instead of a few chemicals, it's applied to a 40-page list of chemicals in fine print that is just phenomenal. If you just go to the first page: adhesives, alcoholic beverages, compressed air, aerosol dispensers. We end up just getting tied down in a report that ends up 300 pages; that then has to be distributed to not only the DEPE but local police department, local fire department, the county Right to Know, the local emergency planning committee. They get a stack this thick that-- I'm a degreed chemical engineer, and it makes no sense to me.

Now, when they get a 300-page report that-- I don't know what they do with this. Here's an example of a chemical inventory page listing ammonium hydroxide and butoxyethanol, and this is a form we have to fill out for one of our chemicals that we're required to report. This is Windex. So that's for Windex. (laughter)

SENATOR HAINES: That's toxic.

SENATOR SMITH: It sounds nasty, doesn't it?

MR. BATES: Yes.

And nowhere on it does it say Windex. It's just-- I mean, you read this and you think, "My God, this is awful." This is an example. This would be the required Right to Know label for a container which contained a mixture of toluene, ethyl acetate, butyl acetate, nitrocellulose, and propanol. If we have a container of nail polish in our plant, that's the label that we would have to put on it. And on and on and on.

SENATOR SMITH: How do you do that?

MR. BATES: Well, you don't.

SENATOR INVERSO: You put the nail polish in a larger container.

MR. BATES: And I think, and you've probably heard all these stories-- But the point I want to make on this is, it's not just that I have to have our creative people spending their time doing this each year instead of something more productive. It's that this also has further impediments to business. This is insidious because now once I go through all of this for a chemical, suppose a new supplier wants to come into the State and introduce a new product. What are the chances that for anything but maybe the one or two most significant things that we buy, are we going to consider new materials? I mean, the paperwork alone would prevent us from considering new suppliers. It drives our cost up because we don't look for a competitive material, and discourages people from doing business in New Jersey.

SENATOR SMITH: Are you trying to say that other states don't do it this way?

MR. BATES: I've worked in a number of other states. This is unique.

And if I thought for a minute that this improved anything in my plant; that if it contributed any good, I'd have a different attitude. But it absolutely contributes nothing in my opinion, because when somebody gets a 300-page report of

this, it's actually doing harm because the couple of things that are significant in that are totally obscured.

SENATOR HAINES: Are you trying to say this is the most overregulated state in the nation? (laughter) Because I've said it.

MR. BATES: What I can say is that it's strangling our ability to compete, and it's diverting people who could be doing things that really reduce pollution, that really modernize facilities. If we went ahead with our plans, we would generate less waste, we would be more efficient, and we would have a chance at survival, instead of spending time doing this.

The other example was in the TCPA. And again, I'm very sympathetic. How could anybody be against preventing toxic catastrophes? I mean, that's just -- you've got to be for that. The concept is good, but it's extended far wider than what makes sense.

I think John mentioned some of the examples. If you have a material that applies under the TCPA, that area is not only captured, but anything then around that area. So even though the bill is intended to prevent toxic catastrophes, you may be regulating in that bill in an area where they have parts per million levels that there is absolutely no chance of any kind of toxic catastrophe, but it's been pulled into that regulation. So this thing is expanded far beyond anything that makes any sense. That just drives up the cost, requires more people. More people require more fees, and it just -- you know, the effort just goes on and on.

There are Federal laws that cover these things and do it well, and the duplication would save us a lot in terms of the effort that we put in.

The other thing that has struck me as counterproductive on something like the TCPA is, once you get to that trigger point, and you have to get into that system,

that system is so onerous that a company -- I'm sure if they had a choice -- would rather set up shop outside the State than inside the State. Well, the way it has affected us is, a lot of the chemicals -- not a lot, but we have a chemical that applies under that that we used to have local suppliers, and they're all gone. Those supplies of those chemicals now come from outside the State. We've had to increase our inventory because there is no longer any local suppliers, and the supplies are coming into the State. That puts us-- Then we're in--

SENATOR SMITH: A higher category.

MR. BATES: --into the category, and we fall into the TCPA, so it's a catch-22. And the irony is that in the final analysis, the total inventory of the chemicals in the State probably hasn't changed except for companies have left the State. And it's actually driving us to higher levels because the local suppliers are gone.

Finally, on the-- And I think a lot of these have been touched, but in the areas of fees and fines: The costs are excessive, and they're not in areas that really are significant.

One example is, we had a system that had a pressure gauge mounted in a line. There was a concern because of the location, were we getting an accurate reading on a pressure gauge, so a second pressure gauge was added to that line six inches away from the first one. We did a hazard analysis on that change. Unfortunately, we didn't do a haz-op on that change, and by not following the proper protocol, the haz-op -- that cost us $1000.

SENATOR SMITH: What is a haz-op? What's that?

MR. BATES: Excuse me. That was $5000?

E L I Z A B E T H A. V A N E K: It was originally proposed as $5000 -- first offense fine -- and after we presented our arguments, that did reduce it to $1000. But on the day they reduced it to $1000, they hit us with another fine.

SENATOR SMITH: What is the haz-op? What is that?

MS. VANEK: That's a hazard and operability study. That's a formal hazard analysis that goes above and beyond.

SENATOR SMITH: That you had to do before you put the valve--

MS. VANEK: Yes.

MR. BATES: Put the pressure gauge in. I mean, you have to understand, a pressure gauge is a fairly innocuous type of change.

SENATOR HAINES: Mr. Chairman, I think that you brought up a subject here that we need to consider very, very seriously. You're telling us that your suppliers are leaving because of the same problems that you're having. You know, I've seen this happen before. The DEPE and Health really chased the process industry out of New Jersey -- the food processing industry. And it was, at one time, the biggest industry in the State. You can go down the list of all these plants that have left. And of course, the second thing that left was the glass industry

So we lost the food processing industry and we lost the glass industry. I think what has been said here -- Hal said that you folks are paying a very high salary rate. Maybe you have a little more resistance to this type of thing than maybe the food processing industry did, or the glass industry. But to me, when you see some of your suppliers leave -- and that's one of the things we fear in agriculture. When all of the tractor dealers leave, agriculture is going to be done, because you just can't have a tractor that breaks down and have to drive to another state to get the parts. You don't do it too long. It's not the cost. It's just the aggravation. In the long run, it's the cost.

This thing seems to be multiplying on itself. And that's exactly what you're saying; that it's multiplying on itself.

MR. BATES: Yes.

SENATOR HAINES: And that is a double disaster. It's not a single disaster; it's a double disaster.

I thank you for those comments because I think this is terribly, terribly important.

MR. BATES: We just had a supplier that -- warehousing. It's a distribution operation that was handling a material -- HCL. They were informed that because of the levels they had in the warehouse, it may trigger them into the TCPA level. Their own tale of woe would provide an interesting meeting. But the bottom line, they came to talk to us, and it was a lot easier and less expensive for them to open up a second warehousing operation across the river and just not handle that material than to just even go through the whole process.

SENATOR INVERSO: Assemblyman Shinn?

ASSEMBLYMAN SHINN: The real irony in all this is that when you make the most environmental quality advancement, it is in the best economic times. That's the real paradox. If you look historically back when you had the big Green Acres moneys and etc., etc., you do it on a high point of the economy. The environmental laws in this case-- I don't think it's the laws themselves so much, but the implementation is a large part of this, is really having an effect on the business community and jobs.

The thread that I hear running through this is that you have a chemical industry that has a big investment in New Jersey and they'll be here. But if you're looking for expansions, they're going to go somewhere else. The basic footprint will stay here and they'll do the minimum, but they're going to expand in other areas. With DuPont, the answer to that is to take a pipeline under the Delaware and bring it up in Delaware and discharge over there. I mean,

they're right across the river. They can amortize the cost of that pipeline in five years as the cost of the NJPDES permit. (laughter)

The speaker brought up the Right to Know. I happen to be the sponsor of that in the Assembly. It's probably one of the worst bills that I've ever sponsored since I've been a legislator. I get beat to death routinely that our Right to Know is ridiculous. It's absolutely-- You pointed out a few items that-- You can go on and on.

It's not that business doesn't want to identify the chemicals that are a problem. I'm not talking just about business. I'm talking about schools and government. And the amount of time that you spend talking about Windex and Fantastic and, you know, common things that you're giving a chemical analysis-- And somebody looks and says, "Oh boy, these things are really terrible," until you find out what it is.

SENATOR HAINES: How about Diet Pepsi. I mean, if you had to do a thing on Diet Pepsi, My God.

ASSEMBLYMAN SHINN: I think it just points out that it's really incumbent upon us-- The worst thing a politician can do is sponsor something that appears to be antienvironment on the surface, and have somebody beat you to death on that issue. But these are some of the areas that we're caught up in this process.

You've got a Federal Clean Water Act; you've got a Federal Clean Air Act. They're minimum standards of implementation. I think where we went off the track-- We ought to go back and look at those areas; they're going to be very, very difficult to look at. But I think to rectify some of the problems -- I think, Pete, you're more involved than I am-- But somehow we've got to get those funds back on line. Maybe you won't cut the fees the first year you put them back under the budget, but I think you've got to anticipate those

revenues, bring them back under the budget process. We've just got to get some reasonability, because we're killing the goose that laid the golden egg, really.

MR. BOZARTH: Mr. Chairman, if I can just add to what Assemblyman Shinn said, and give you some specific things that we would suggest you all consider doing, some of which are much easier than the process that you've outlined, but yet start the process going.

There are a couple of bills, some of which you all have sponsored, that I'd like to just note for the record that are extraordinarily important and go to the heart of the matters that John Schroeder and Tom Bates and I have been talking about.

One is Assembly Bill No. 1660, with bipartisan sponsorship. It prohibits the DEPE from increasing permit fees without prior approval by the Joint Budget Oversight Committee -- period, simple. That's something that ought to be done just from a public policy point of view.

The second one, again with bipartisan support -- Doria and Catania -- Assembly Bill No. 1163: The NJPDES fees would reflect only the cost incurred by the DEPE in process and review of the permit.

Another one, Senate Bill No. 1986, Senator Smith's bill: We've dubbed it the Fast Track Compliance Bill. What it would say is, if you have a violation that does not impact on the environment -- it is not an incursion into the environment -- but a violation, obviously, of the regulations and the paperwork involved, you would have 30 days within which to correct that without a fine. If you don't correct it within 30 days, you get a fine. But why hit people with $2000 here, $5000 there, and the $10,000 here, given the fact that in many cases there is no impact on the environment, there is no threat to workers, or safety, or anything? Give the company the chance to make that change.

ASSEMBLYMAN SHINN: And I would submit, Mr. Chairman, with all due respect, that you would have to amend the Clean Water Act in order to-- That last bill that you talked about is in direct opposition to the Water Act.

MR. BOZARTH: You're exactly right, Assemblyman. I'm just trying to give you some easy ones because the Clean Water Enforcement Act will make the battle over the Right to Know reform look like a picnic, although it should be done unless we want to send jobs elsewhere.

Let me leave you with one more.

ASSEMBLYMAN SHINN: But who is really suffering in this if you take this full circle? If you take this full circle, who suffers? The environment suffers from a down economy.

MR. BOZARTH: Sure, because the companies like the Sybrons and the Huntsmans that are trying to do the right thing environmentally aren't going to be here anymore.

Let me leave you with one more, Assembly Bill No. 2013, again bipartisan sponsorship, Doria and Shinn; and then there's a Gaffney/Wright companion, I guess, Assembly Bill 2124: It establishes a payment schedule for permit applications so the companies don't pay until the Department processes their permit. They pay 25 percent of the fee upon filing, 25 percent again goes to the DEPE as the Department finishes its review of the application, and then the final 50 percent of whatever the fee is is not paid until the final determination of the permit has been made.

So, if you get your permit, you pay your money. That's how it works in real life. That's what happens to all of you in your businesses. Why should we be paying up-front, and then at the end, oversight costs on top of that? Let's pay for work that's done. If we're going to pay $745,000 for one year of a five-year permit, then let's pay it when it's done, not when it's three years in arrear, or five years in arrear and you're in your second iteration.

Those are just some easy ones that I would think that this Committee and the other committees that all of you sit on can start to take a look at as we get back from the election cycle, because I think we do have to make some strides and some progress in this area. We've been crying about this and complaining about it for a decent amount of time. We're at a critical junction here. I mean, literally the manufacturing base of the State is at more risk now than ever I've seen it in 13 years.

Thank you, Senator.

SENATOR INVERSO: Well, everything that has been said seems to be right on target. Fortunately, we have this Committee, as I indicated in my opening remarks, to effectuate things that we believe are more appropriate and are truly what the intent of the legislation was. I know I've read articles and read horror stories on the Right to Know. And the list of chemicals covered has been expanded well beyond what was ever imagined, certainly by Bob -- in your case, sponsorship of the bill -- or in any other case. We've let the bureaucracy just kind of add and add and add, and grow and grow and grow as a result of all the--

SENATOR HAINES: Bob, I hope you'll get that Diet Pepsi in there, too. That's pretty--

ASSEMBLYMAN SHINN: If you leave a bottle around, it's in automatically. Quite frankly, if you're doing an audit of a classroom or of a room in this building, then-- Do you have to list the five -- Mary Pat, correct me if I'm wrong -- the five top chemicals, right? The five, and if it's cleaner or it's Diet Pepsi, I mean that's what you list. If it's a case in the refrigerator-- Seriously.

SENATOR INVERSO: It depends on where you get your water from.

With regard to the application of Right to Know and providing information to emergency response people, firemen, etc., do you feel that it's serving that purpose; that they are

alerted to the location and types of chemicals, and therefore can better protect themselves and the people who they are seeking to rescue? Or do you feel that with the filing of reports and the movement of chemicals throughout a plant that it has no pragmatic value anymore once the report is filed?

MR. BATES: I really think-- We conduct annual drills with local emergency response -- full blown drills -- and we have all the fire response and we go through those drills. I really have trouble seeing where they're served by this over the more conventional and standard methods of placarding vessels.

You know, if a fireman comes in and there's a tank, and he's fighting a fire-- I mean, is it important to know that it's butoxyethanol in that tank? He needs to know, is it flammable, is it explosive, is it reactive? This is what he needs to know.

Having this long list of chemicals, I don't see does him any good if he's in fighting a fire.

SENATOR HAINES: That's a very good point, I think.

MR. BATES: And this isn't mine. I mean, you have to talk to them. When we have our drills, we talk to them, and it's a similar kind of discussion. They don't see value in this, at least in my discussions with them, but you ought to talk with them.

Certainly, if you've got a tank of water, if it's not labeled properly with the right kind of registration number and everything else, I mean, so what. He just needs to know it's water.

MS. VANEK: There are some additional errors with that because in-plant, trying to enforce this-- One of the requirements is to label water as water. Well, if you-- We have steam lines, and our steam lines are about 50- to 100-pound steam lines. But if I'm labeling it for Right to Know, I have to put "Water CAS." Now, there is significant

danger to a 600-pound steam line that is not a water line. So we had to fudge around with some of the things to get the right amount of warning to a person that you would not get under the general rule.

SENATOR INVERSO: So there are things that could be done to enhance the safety d lower the risk to people like firemen and emergency response personnel that really isn't being effected with the Right to Know requirements.

MR. BATES: But again, from my standpoint as a businessman, the real issue is that things that I could invest in that would reduce pollution, modernize my plant, reduce waste, and make me more competitive are taking 12 to 18 months to get done, whereas all of this -- this is where all the attention is being spent. I think this is something, in my opinion, that can't be fixed by turning a small dial. This needs more than just trimming around the edges.

SENATOR INVERSO: Well, that NJPDES backlog tells a tale unto itself. Hal, I know you appeared before the Budget Committee prior to us going into the Department and reviewing the budget in detail, and you have been an advocate for us starting to chip away and whittle away at that 83 percent of their budget that is off budget. And I think by us whittling away at the other 17 percent, we were fortunate to bring on budget. But it looks like we have to be a little more proactive in seeking to whittle away at this, because some of the information we've gotten today is just alarming. It's just ridiculous.

Thank you.

MR. BATES: Thank you.

SENATOR INVERSO: John McClain, from Capital Pizza Huts. John?

ASSEMBLYMAN SOSA: Did he bring some with him?

SENATOR INVERSO: It's about lunchtime. (laughter)

J O H N M c C L A I N: Good afternoon Mr. Chairman, and Senators. My name is John McClain, and I am the operator of Capital Pizza Huts at the level of Regional Vice President. We currently operate in New Jersey 27 full-service restaurants and 11 delivery units, for a total of 38 restaurants. Our company operates in the states of Vermont, Maine, and in Tennessee, for a total of 85 units. We're in the top 10 in size of ny of the Pizza Hut franchisees in the system.

Currently, we're employing about 1200 full-time and part-time employees in the southern part of the State. Our counties are Mercer County, Ocean County, and south, so we have approximately half of the State. My payroll this year is approximately $7.8 million.

What I'm going to talk about today is just some inconsistencies and problems that I've had over the last 10 years of development in New Jersey. And it's going from fair to very poor over the last couple of years.

The planning boards: I guess to start the process to go and develop a restaurant or any other business in the State requires you to go to a planning or a zoning board. At that point, you hire an engineer to draw plans. The engineer sits down in committees with the city or county engineer to go over those plans before you go to the planning board. Today it's taking anywhere between three and six trips to the planning board just to get approval -- if you get approval to go to the planning board -- to continue building.

It's my opinion that in the planning board process, the people who sit on these planning boards are appointees from the local townships, and in most cases aren't qualified to be on the planning boards, and have no comprehension of what it takes to own or operate a business or get a business started. You go in and it's just carte blanche. They may say, "Do this, and do this," and it absolutely makes no sense to do that. And having built 27 of these in the last 10 years, I've really got some horror stories.

The next part after this is the bonding procedures, that you go and have to submit a surety bond for 120 percent of what the engineering cost is going to be. And that's anywhere, in our case, on an average of $120,000. On top of that, you have to post a cash escrow to pay forthe engineering department or a representative of the engineer to come out and inspect the property.

Now, he is-- And in most cases, he uses all the money, and it could be anywhere between $7000 and $10,000 that you're paying an outside engineer from the city. It's not in most cases a city engineer, but it's an outside engineering company to come out and inspect the property. He'll drive by. He'll stand on the property, and he'll look at it. It would make sense if he signed some documentation saying that he had actually been there, because in some cases he's billing you time that you don't know if he's been there, or you have no proof that he's been there.

At the end of the process, when you get your certificate of occupancy, he should be required at that point to come out and do a final inspection and return all of your money. In several cases, Absecon being one, it was nine months to a year before he finally released all of our money. He continued to come stand on the property, continued to bill us at the rate of $150 every time he pulled into the parking lot, which makes absolutely no sense to us.

To talk about operating expenses for a few minutes: As I said before, we operate in Maine, Vermont, and Tennessee. The utility costs in New Jersey run approximately 1 percent higher on a P & L statement than they do in Maine. Labor in New Jersey runs approximately 2 percent higher than it does in the other states that we operate in. So we're looking at just total operating expenses of 3 percent greater to operate here -- that's just a rough guess -- than it does to operate in the other states that we operate in.

The next thing I want to talk about is the building permitting process. There is absolutely no consistency between township, city, and county in this whole process. For example, you can go to one township and it may be all in-house. The next town you go to, it may be an outside source where there is a group of inspectors who do eight or ten townships. I understand the reasoning in the costs, but there is no consistency in the process.

The big concern that we have, and just went through doing was one that we opened up in this county in Mt. Laurel, where we applied for a building permit and went through the process that you go through to get a building permit, and they give us our permit back; we go into construction -- and this is a 1200 square-foot delivery unit -- and the Health Department hadn't signed off on the plans. Now, it is our opinion that when we got our permit that the Health Department had fully approved the plans, and we were in a go-forward position. Well, they hadn't approved the plans, so the inspector's attitude, who knew that we were under construction there, "It's not her position to tell us that we need to do this. We should have figured it out ourselves." Now, it is our position that somebody should have told us up-front, when you go hand your packet to the township.

Well, that little fiasco cost us three weeks in operating time before we could get our certificate of occupancy -- before we could open the restaurant. It's totally uncalled-for. It was a personal grudge because we didn't follow the procedure correctly.

Another example would be, townships have 21 days to approve your building permit. If it's an in-house staff, that usually happens and you get your permit within 21 days, or at least you get a written correspondld just as soon not have you there.

One of the other inconsistencies is the new Federal ADA law. I'm not aware, and I don't know if you all are aware, but we have had it brought to our attention that New Jersey doesn't participate in the new Federal ADA law. They still operate under the barrier free laws. I don't know which one is more stringent, but when you're drawing plans and going by the new laws and you go-- In Princeton they held us up for four months just to work out the language on the blueprints between the two laws.

SENATOR SMITH: Mr. McClain, do you have these kinds of problems in the other states that you operate in?

MR. McCLAIN: It's interesting. We can buy property. We can go through the planning board process, start construction, and open the doors in Maine in about nine months. In New Jersey it's up over two years now.

In Lawrenceville we just built, and it took us -- there were some other circumstances, landlord related. He had a list of work to do. But it took us five years to build a Pizza Hut in Lawrence Township.

SENATOR HAINES: I had--

SENATOR INVERSO: I'm glad it's not in my district. (laughter) Your Princeton Pizza Hut, is that the one on Route 1, in the new shopping center there?

MR. McCLAIN: Yes.

SENATOR INVERSO: Okay, that's also West Windsor.

SENATOR HAINES: I had the opportunity to give loans and grants in three states for various projects like hospitals, sewer and water projects, housing, industrial things, in New Jersey, Deleware, and Maryland. In Deleware and Maryland they would assign somebody from the Governor's staff to help you go through the permitting process, and it usually took maybe a month, maybe six weeks. In New Jersey -- here I had loans and grants to give away -- a minimum of two years, and they wouldn't give you the time of day, and you had to fight your way all the way through it.

We've had meetings with New Jersey people where you have the Department of Health there, and they have one guy who is sitting at the end of the table, and he said, "All the hallways have to be so that the doors and the stairs are at the end of the hallway." And the guy sitting on the side said, "No, we have to have it on the side." We had that argument going on for half a day between bureaucrats. So it's not new in New Jersey that we're overregulated. It just continues and gets worse.

Will Rogers said a long time ago -- in the '30s he said: "We've got more government than we need or can afford." I'll tell you right now, it's a heck of a lot worse, and you're pointing it out. This is very true that it just takes longer and longer and longer in New Jersey.

I had to get a permit to do some work in Mt. Laurel myself. It took forever. What you're saying is exactly true. I sent a letter to the engineer and said, "Why did you charge $2000 when you came out and spent 15 minutes at the project"? It took him about a month to get the answer back to me, and he said, "Well, he had to do a lot of research." It's nonsense.

MR. McCLAIN: It's amazing. In part of the process there is a catch-22; that is, to get your certificate of occupancy, you have to have a Health Department approval. Now, the Health Department is out in left field. They are not tied into the process at all, and they ought to be. They ought to have input and they ought to be part of the staff for the process. Well, the construction official will not issue a certificate of occupancy, or even come in and inspect the facility until it's clean, until you're ready to open up.

But you cannot allow any employees into the restaurant. You can't have product in the restaurant. So you have a catch-22. You can't get the things done that the Health Department wants because you can't bring people into the restaurant. And then you can't get your certificate of occupancy until you have your Health Department inspection.

SENATOR HAINES: I've been through this myself, and I know exactly what you say. It's absolutely true. You're right on the money, and it's wrong. It's absolutely wrong.

Do you have any suggestions? I mean, we can't tell the towns down here what to do. Do you have any suggestions in terms of legislation? That's what we're here for, really.

MR. McCLAIN: Well, I think the number one -- the key point -- is to tie it all together. Somebody in every township, or there should be some required township to take the processing permit being processed and be in charge of it. You have nobody who is in charge. You've got construction officials; you've got the building inspector under him, and then they have all the other inspectors who are under him. It's like nobody is in charge. The Health Department, number one, has to be tied into it. You have to take some of the--

I don't know what you take away from the planning board. To go through that process it's just-- You can't imagine. My suggestion for the last two townships I've been to is, you ought to go to the town next door and go through this process, because if you did, you wouldn't do it again. Unfortunately, we're required by our franchise agreement to build "X" number of restaurants in so many years. And fortunately, we've completed our goal this year, and probably won't build another one for another two years.

I don't know how you get to it. It's so overregulated. The key part would be just to have somebody in charge in every township. I don't know if it's the mayor, if it falls under his jurisdiction. But you've got to tie--

SENATOR INVERSO: Kind of a one-stop-shopping situation would get you through all the maze.

MR. McCLAIN: It is. An example would be, I used to have restaurants in Colorado, and we were going to build a delivery unit there. We had our permit in an afternoon. We hired an architect; we drew the plans; we took the permit in.

The guy sat right there, approved it, and signed off, and we were under construction the next day. Here in Mt. Laurel, for example, it took us four months to get our permit.

Something is wrong with the system, and I--

SENATOR HAINES: It took me that long to get a permit -- just about. I agree, and I've seen exactly what you're up against. It's a little bit like down in Deleware, if you drive two miles over the speed limit, there's a guy at the end of the town that picks you up, and there is instant justice. You pay a fine right there, and they support the town on the stupid people who drive through two miles an hour over the speed limit. I've done it myself. (laughter)

It almost comes back to this: It's a way of raising money--

MR. McCLAIN: Sure.

SENATOR HAINES: --by being an obstructionist.

MR. McCLAIN: When we built -- to go back to Mt. Laurel -- the building inspector there, and I don't know his name, after he discovered that we didn't have our Health Department permit, he was calling the restaurant every day. He was coming by the restaurant every day and sticking his head in the door, and he even had the police lookig out for our delivery cars to see if we were going to open without-- Now, if this guy doesn't have anything any better to do than that, then something's wrong with it. Something is wrong with the process.

And then he fined us $150 cash before he would give us our permit.

SENATOR INVERSO: Well, one of the things you touched on with the escrow account--

MR. McCLAIN: Yes.

SENATOR INVERSO: There is an escrow accountability bill that has been introduced. I sponsored on the Senate side, and I think it's been sponsored on the Assembly side, and we're

looking to provide more accountability, and appropriate accountability for the charges that are levied against the escrow accounts.

MR. McCLAIN: Those guys ought to be required to sign on and off the site when they come on site.

SENATOR INVERSO: So that's one where I think we're making some headway, hopefully.

But as Senator Haines said, a lot of this is difficult with home rule, but I think--

SENATOR HAINES: Can I be a co-sponsor of that bill? I didn't know you had it.

SENATOR INVERSO: Yes, absolutely. As long as you-- That's right. We've worked very well together on the S-Corporation bill. The trouble is "H" comes before "I," and he always usurps me.

ASSEMBLYMAN SOSA: Did you say "H" or age?

SENATOR INVERSO: Good point. Let me think about that. (laughter)

We appreciate your input, and we know that your frustrations and experiences have been probably replicated many, many times throughout the State, and it's not right. Hopefully the message will get out there that we're at a crucial juncture in this State. I mean, our economic health is at high risk, and if we don't take some steps to put things in motion that make this State more -- what is it?-- user-friendly, business-friendly, we are in big trouble.

MR. McCLAIN: If not, we were just awarded another franchise for another restaurant chain. You know, my first question was, "Well, will you come to New Jersey?" And the guy who owns our company says, "Why in the world would I want to do that?"

SENATOR INVERSO: See, that's the problem. That's a problem. It's reality and perception, and we've got to deal with both of those.

MR. McCLAIN: We're building 50 of these in five years in Maryland.

SENATOR INVERSO: Staff says that you should have brought some pizza with you. (laughter)

MR. McCLAIN: Thank you.

SENATOR INVERSO: Thank you.

Is Mr. Buckman here? On-Site Agency Association of New Jersey? (affirmative response)

Mr. Buckman, would you have an extra copy we can give to our staff?

C H A R L E S A. B U C K M A N: Yes, I'll give you this copy when I'm done.

SENATOR INVERSO: Super, thank you.

Before you begin, is Mr. Bradley here yet?

UNIDENTIFIED MEMBER OF AUDIENCE: He left.

SENATOR INVERSO: Okay. Well, you'll be the last speaker. I'll stay for that. I have another appointment, and I was going to leave if there were two.

MR. BUCKMAN: Gentlemen, thank you for the hearing this morning. I'll have to apologize in advance for being a little unprepared. I wasn't aware until about 9:00 this morning that I was going to get to see you folks, so I have done what I can and provided you with some information that perhaps might be helpful to my position.

I'm employed as the National Vice President for the National Elevator Inspection Service. We perform elevator inspections across the country, indeed, in the White House. My avocation is that I'm the Chairman of the On-Site Agency Association of the State of New Jersey.

We represent the privatized section of building inspections in the State, and our concerns are as deep as your concerns in so far as the bureaucracy that we have to deal with in getting inspections in people's homes on people's elevators, and perform the permitting process in the various towns.

But our major concern at this point in time, and the reason that I'm here before you this morning is that there has been a bill signed by Governor Florio on February 18, 1993, which is the culmination of Senate Bill No. 1227, which initially was Assembly Bill No. 1838 coming out of Assemblyman Kelly's Housing Committee.

That bill, gentlemen, modified Public Law 1983, c. 338, which mandated that fees charged by on-site inspection agencies in the State of New Jersey be exactly those of the Department of Community Affairs in the State of New Jersey. And in speaking of this being the most overregulated state in the nation, we are the folks who carry that burden because we work under the aegis, and under the control of the Department of Community Affairs.

We took a 36-page manual, which was the Uniform Construction Code, NJAC 5:23-23, and made it into a 356-page manual in 10 years.

The thrust of the bill was to alter the requirement that P.L. 1983, c. 338 established that we charge the same fees as the Departmjob -- basically, those of our companies -- is to apply the various codes that are called reference standards by the Building Code in the nation -- the BOCA Code; that is, we apply the plumbing code, the elevator code, the electrical code -- NEC -- to the buildings that builders erect.

The Uniform Construction Code is merely an administrative code which controls how we do that, and it's kept in place and supported by our firms, who have committed over $3 million in the last 10 years to the support of the Department of Community Affairs.

Our position has been, and shall continue to be that our focus should be on inspecting outlets, plumbing fixtures, and elevators for the compliance of the national codes so that the builder who installs them does it properly, and that it

doesn't provide a hazard to the individual who buys the house or the building. It should not be on trying to make the most dollars we can out of a bidding process.

Public Service Gas, American Telephone and Telegraph, and electrical services are all controlled in this State. We feel that we need to give the control of the fee structure to the State and not let it seek its own level by bidding in individual towns for dollars. Right now what one bids for a contract in a given town, the only criteria is what we can provide to the building owner in the town and to the building department in the town; that is, how good can we do our job is the only criteria, the fees being established by schedule and required by Public Law 1983, c. 338. We maintain it should stay that way.

The reason Public Law 1993, c. 47 came into being was that the Builders' Association in the State of New Jersey was groaning under the high level of fees established by the Department of Community Affairs. We are on record, almost every year since 1985, as objecting to the uncontrolled escalation of fees by the Department of Community Affairs. We don't believe they need to be at the level they're at. By yards, gentlemen, the Department of Community Affairs raises the fees at a whim. What they need is what the schedule states. We don't need those dollars; we have objected to that level of dollars.

But the Building Officials' Association has objected now, and also quite strongly. I'm sorry, the Builders' Association has objected quite strongly to that level of fees, and quite rightly so. I submit to you that the answer to that is not to ignore the requirement of the Legislature of this State that those fees be set in a schedule by the Department of Community Affairs. You have in front of you Senate Bill No. 1227, which has been converted to Public Law 1993, c. 47.

You'll see on the second page, a third of the way down the column, that it continues to require the Department to set the fees, and only says they need not to be identical. That should be so.

Our suggestion and our plea to you is that the Department be required to do as we have asked them to do; that is, establish a panel by which we can evaluate the level that fees should be set at by supporting that with cost documentation, and then go ahead and say, "It's all right, gentlemen. You should, in fact, make a profit. That's important to stay in business." It could perhaps even be cost plus 10 percent, which is very common in the Federal government.nto effect, the Department assumed 3000 elevator units in the State, out of the some 20,000 that there are available. They billed all of those elevator owners in advance to have two inspections performed in the year 1993; that is, July to July -- July '92 to July '93. Eighty percent of those inspections were never performed, yet the State still has the money. The Department of Community Affairs still has the money.

Those owners paid for something, gentlemen, they didn't get. And the people they paid it to were the Department of Community Affairs of the State of New Jersey. So they have since hired 11 more inspectors, and have said, "Well, our inspectors are only going to perform three inspections a day." Well, I have to tell you that three inspections a day is ridiculous. We do this across the United States, and we do 10 a day. You're going to pay more for less.

In the meantime, the private sector, which would like to eliminate all this nonsense, would like to speed up the time in which you get your permits, reduce the prices involved here, i being pushed into a position where our only focus has to be on making a dollar from every inspection that we perform. And we don't believe that that's where the focus should be. We think that we need to be regulated just like the other public service industries.

Yes, Senator?

SENATOR SMITH: I have a question on S-1227. I think the intent behind that was to allow private inspection agencies to charge less--

MR. BUCKMAN: That's correct.

SENATOR SMITH: --than the State was requiring that they charge.

MR. BUCKMAN: Exactly so.

SENATOR SMITH: Now, what you're saying is that the provision in there that still allows the Department to set the fees is still causing a problem?

MR. BUCKMAN: What I'm saying, Senator-- You're talking about line 40 on page 2, paragraph 2. "That the setting of the amounts of fees to be charged by a private agency for inspection and plan review services, provided, however, that such fees shall be," and eliminate "identical to," and insert, "not more than."

SENATOR SMITH: Right. That was the change, right.

MR. BUCKMAN: But you see, it says, "set"; "the setting of the amounts of fees," is still requisite.

SENATOR INVERSO: Sir, your argument is that they are now utilizing a percentage, saying that the fees cannot be greater than a certain percent of the fees that DCA charges?

MR. BUCKMAN: The regulatory amendment which they have put in place, or have proposed to put in place -- and there was a hearing on that at which I spoke on July 23, 1993 -- was that the individual on-site agencies charged a percentage of the State schedule of fees, and that percentage is to be determined town by town, agency against agency, on a bidding process. My position, and our Agency Association's position is that that is an uncontrollable process which will strongly denigrate the quality of the inspections that are being performed, and that we instead request that the Department continue, as it is required here, to set a schedule of fees, but less than that set by the -- charged by the Department of Community Affairs.

You see, it's not generally known, but the epartment performs inspections, too.

SENATOR INVERSO: So we understand, you would like, for instance-- You mentioned elevator inspections. You would like DCA to develop a specified fee that would apply to all elevator inspections done in the State of New Jersey by a private agency?

MR. BUCKMAN: That's correct.

SENATOR INVERSO: As opposed to what DCA is proposing now, and that is, to establish on a percent of their fee or scale that would be different from municipality to municipality in New Jersey, based upon some criteria or rationale that they haven't made known to you or to anyone else?

MR. BUCKMAN: That's correct.

SENATOR INVERSO: Okay. I'm just trying to understand what you're talking about.

MR. BUCKMAN: So we would like to establish--

I'm sorry, sir?

SENATOR SMITH: So your problem is not necessarily with the wording of the statute, but how the DCA is implementing it through regulation?

MR. BUCKMAN: That's correct. Our problem is that--

I'm sorry.

SENATOR HAINES: I would like to get rid of the Department of Community Affairs.

MR. BUCKMAN: You're speaking very close to my heart.

SENATOR HAINES: Why can't we turn that over to the counties? I mean, you know, really, I don't think we need a Department.

MR. BUCKMAN: Well, here's a very good question for you, Senator: Why is the Department of Community Affairs, in competition with the privatized sector, performing elevator inspections or any other kind of inspections? How is it that the agency that regulates us is in competition with us?

SENATOR HAINES: Well, the reason the Department is there, it gives the Governor a chance to appoint one of his buddies to run the Department. I think it's a waste of taxpayers' money.

MR. BUCKMAN: Well, I've been a private businessman for 40 years, and I'm a strong believer in the capitalistic philosophy of this society. I believe that private industry can do it less expensively and more better, gentlemen, than the bureaucracy can.

SENATOR HAINES: I agree 100 percent.

MR. BUCKMAN: What is going to happen here if this is permitted -- and the Legislature's sense of setting the fees is not required by the Legislature -- is that our agencies are going to go out of business. We have been this route before. It's not news; it was before 1983. This was exactly the climate in which we operated, and it destroyed a lot of--

You see, there are some agencies that operate out of the trunk of their car, out of the basement of their home. There are others that have -- as mine does -- four offices in the State of New Jersey that employ inspectors which they send out of the State to have lectures and seminars performed throughout the year. There is a vast spectrum of available services. Those available services are what should be emphasized, not the dollars. The dollars should be controlled.

I have a little thing from Senator Kelly (sic) I'd like to read to you, if I may, just for a second. It's in your brochure, but I'll hit just a couple of high spots. Senator Kelly is the Assemblyman from whose Committee S-1227 eventually became law. In other words, it was Assembly Bill No. 1838, then 1227 on the Senate side, and then it became Public Law 1993, c. 47.

He says, "With the enactment of 1227, A-1838, Public Law 1993, c. 47, the Legislature intended to eliminate the past requirement that the private agency fees be identical to DCA's

as it relates to inspection and plan review services. In so doing, we take into consideration the fact that the costs incurred by the private inspection agency and the DCA are not the same. Thus, this healthy competition uld potentially lower costs in many instances. We are writing you to inform you that many members of the Legislature received correspondence, and/or have been contacted by a regulated public with concerns over the proposed regulation the Department of Community Affairs issued in the 'New Jersey Register,' on June 7, 1993 -- that's PRN 296.

"In our own review of the proposal, we're concerned with the many new requirements imposed on these private agencies performing inspections and plan review services such as the detailed information requested for monthly reports. There are also concerns with other requirements that appear to be regulatorily overburdensome, costly to business operation, and an attempt to micromanage private businesses performing these services.

"We believe that some of the provisions of NJAC 5:23-4.4 et al. go far beyond the law's intent, and amplify the recurring problems of overexpansive regulatory discretion into areas not necessarily essential, in order to implement the law's provision.

"At this juncture, we are more concerned with the ability of the Department to account for its own productivity and efficiency in procedures and inspections, rather than myopic management of private businesses whose natural inclination is to keep its costs down in order to survive in today's economy."

Gentlemen, I think that if we were to do it as the Legislature requested it be done, establish a schedule of fees that evolved from a task force created by one of your Committees whose sole purpose was to determine what the fair value of an inspection of anything -- an electrical outlet or

an elevator -- is concerned, and apply that to the using public, we would vastly improve the quality of services in this State.

SENATOR SMITH: I think it's ironic what you're telling us here, because I was a sponsor of this 1227. You know, the intent was to create lower fees, more competition in the private sector -- boost the private sector -- take it out of the public sector. And what you're telling me is that the way the agency has handled it with their regulations is threatening the very existence of the private sector.

MR. BUCKMAN: The agency that I support, Middle Department Inspection Agency -- and by the way, there's a letter in here for you gentlemen to read from their vice president -- has been in this business 110 years in the State of New Jersey. In fact, the regulations initially created by the Uniform Construction Code evolved in a great degree from the manner in which Middle Department Inspection Agency performed its inspections.

Middle Department Inspection Agency has no intention to continue in business in New Jersey if PRN 296 is allowed to go into place. And the rest of the agencies, with one exception, have the same position. They cannot continue to exist at a driven-down income and an increased cost according to regulation.

We have 500 employees and we will be no more. The bureaucracy will totally control the inspection business in this State if this continues. We can start with establishing a schedule of fees, and the rest of the new regulations will not be necessary because the rest of the regulations revolve around whether or not you charge too little, and therefore have to give too little.

Sir?

SENATOR INVERSO: Mr. Buckman, maybe I'm still a trifle confused. What you would like to see established is a standard fee--

MR. BUCKMAN: Yes.

SENATOR INVERSO: --for the various inspections that applies throughout the State, so long as that fee, according the the legislation -- 1227 -- is less than the fee charged by DCA?

MR. BUCKMAN: Precisely.

SENATOR INVERSO: Fine. But what you don't want is, you don't want the condition where there would be competitive bidding for that service?

MR. BUCKMAN: That's true. Now, that sounds odd.

SENATOR INVERSO: Well, to me it does on the surface of it.

MR. BUCKMAN: Sir, why don't we have a lot of electrical companies that bid competitively? Why don't we have a lot of telephone companies that bid competitively? It drives down the quality of the service.

SENATOR HAINES: I understand what you're saying.

MR. BUCKMAN: We are not a producer. Our job is simply to apply building codes to a builder who installed equipment in the house or in the building. And we feel that it should be quite obvious -- it's not rocket science -- to evolve what that should cost.

SENATOR INVERSO: But would you concede that the cost to do the service in Hudson County, for instance, might be less than to do it in Salem County?

MR. BUCKMAN: I certainly do.

SENATOR INVERSO: Okay. Doesn't that put Salem County at a disadvantage if the fee were to be one that doesn't recognize the economic differences from one area of the State to another area of the State?

MR. BUCKMAN: I don't think I offered the perception that it should be generic. I don't see why the Department shouldn't work at it a little bit and say what should the fees be in Cumberland County, or what they should be in Union County?

SENATOR INVERSO: Okay. So you don't have a problem, then, if there were a differentiation among counties or sectors?

MR. BUCKMAN: Certainly not. I'd very much agree with it.

SENATOR INVERSO: Okay. That's something we have to pursue a little more. We will keep this on the agenda for staff, and we'll discuss this with the Chairperson. But initially when you were speaking, I was saying, "Wait. This is, in my way of thinking, going contrary to what I would perceive to be the direction we should go in." You know, the legislation said, "You can't charge any more." Now you're saying, "I want the fee to be locked in so that competitive bidding won't take place," which I think is contrary -- not in every instance, but generally competitive bidding is supposed to be good for the public interest. We know that it isn't always that way.

But if we can develop this a little more, I would need a little more input from you on this.

MR. BUCKMAN: I would like to-- I have a construction official, if I might, Senator -- a construction official from the Town of Seacaucus who was terribly hurt by the situation prior to 1983, and who has been fighting with us to see that it doesn't ever happen again. Prior to 1983, it was a cost-based bidding process. You see, you'll be exchanging quality bidding for quantity bidding for dollars.

Personally, our-- Don't get me wrong, we're businesses; we're businesspeople. But we're also in the business of applying something that should be sacrosanct. Now, we recognize the inequities of our humanness amongst our agencies, and we don't feel that that should be applied to the public.

SENATOR SMITH: You know, this is odd. I think you talk about a system that was charging -- the fees were escalating too much under the DCA. They were too high. They were higher than you needed to charge.

MR. BUCKMAN: Exactly, sir, and we complained about that.

SENATOR SMITH: So we changed the law to say that, "Okay, you're not going to have to charge us as high as the State." The State didn't like that, so they turn around and they introduce a system of regulations designed effectively to put you out of business.

MR. BUCKMAN: That's exactly so, sir. That's exactly our position and that of our attorneys.

SENATOR SMITH: So it's precisely contrary to the intent of what the Legislature wanted when we changed the law.

MR. BUCKMAN: It's very simple. The Legislature said, "Set the fees at a lower rate." It's not rocket science. That's all it said.

SENATOR SMITH: But the DCA didn't like that?

MR. BUCKMAN: No.

SENATOR INVERSO: So I understand, are you saying that the competition will put you out of business?

MR. BUCKMAN: The history of this prior to 1983 was that people were bidding for -- at cost or below cost, just to get the town.

SENATOR INVERSO: Sure. Everybody has a loss leader situation, professionals, accountants, attorneys do it. I understand that.

MR. BUCKMAN: Absolutely. But in order to stay in business, these people who are making those offers have to decrease the services they can apply; that is, "We'll have to accumulate 10, 12, 14 inspections in a given town in order to go there."

SENATOR INVERSO: I hear what you're saying.

SENATOR HAINES: It's an inspection service, which is a little bit different than construction because, basically, if they don't do a good job of inspection, somebody can get killed. I think this is what we're after.

You wouldn't want your electrical -- the guy that inspects your electrical work to be done on a bid basis, I don't think -- the guy that inspects what the electrical contractor does. I think you want that guy to be-- You might want to set his fees, but you don't necessarily want him to be the lowest bidder.

SENATOR INVERSO: The problem is, we just heard about DEPE being an overgrown bundle of cost. DCA, in my opinion -- and I think you would support that -- is similar.

SENATOR HAINES: Sure.

SENATOR INVERSO: So now we're saying that the fee should be set at a percentage of DCA's cost. I don't know if DCA's cost is representative of real cost.

MR. BUCKMAN: It's not representative of anything.

SENATOR SMITH: The intent of the legislation was to get away from that.

SENATOR INVERSO: I understand that. But what they are addressing is that they want the fee to be set, so long as it's below DCA's. I can't make judgment now as to what level that percent should be set at, because I have no comfort in dealing with DCA as an appropriate accumulator of costs that are reasonable costs. I mean, as far as I know, DCA has been a political dumping ground for years. We probably could whittle away a lot of costs out of DCA.

What I'm saying is, maybe I don't know enough about the nature of the business, nor about the relative value scale of the service and costs, and that cost compared to what DCA would be paying. So I think we have to pursue it a little further.

SENATOR HAINES: That's why I say, Peter, if you did away with the agency up there, assign the duties to the county, you'd probably get it done for a quarter of what the State is doing it for.

That's my feeling. I think that's something that should be looked at.

SENATOR INVERSO: Yes, I agree.

MR. BUCKMAN: Don't you think it's odd that I'm sitting here telling you gentlemen I'd like to work for less money?

SENATOR INVERSO: Yes.

MR. BUCKMAN: But I want you to control me so I can't denigrate the product. Isn't that strange?

SENATOR HAINES: If it were assigned to the counties, the counties could set the rates. You would probably go to Salem County, and because they only have one elevator, it would have to be a higher rate than it would in some other county that has a whole bunch of elevators, right?

MR. BUCKMAN: No. In fact, the smaller county-- Perhaps elevators is a poor example, but electrical circuits and electrical outlets-- It would cost me less, perhaps, to house somebody there.

SENATOR HAINES: I'm saying that some counties -- that's not a good example. Some counties might be less than others.

MR. BUCKMAN: It would rise and fall. And I don't see anything wrong with that, saying, "In this county it should be this, and in that county it should be that." It's just a matter of getting us all together and saying what should it be.

SENATOR HAINES: But the county would say, "We want you to do the work because you've got a good record." And another county might say they want somebody else to do the work. But that would be their prerogative.

MR. BUCKMAN: That's track records as judgments, and that's how it should be.

ASSEMBLYMAN SHINN: Mr. Speaker?

SENATOR INVERSO: Yes.

ASSEMBLYMAN SHINN: One brief item that I'd just like to put on the record that's aside from this particular issue, but I think it's significant statewide.

It happened, I guess, about a month ago, and I don't think a lot of people paid much attention to it. But the State has been trying to locate hazardous waste facilities. It has a Hazardous Waste Facility Siting Committee, etc., etc., and also there is a Radioactive Waste Siting Committee. (sic) DuPont has been a significant participant in siting and implementing a hazardous waste facility at the Deepwater facility for the past half-a-dozen years, I guess, in planning and permitting.

The day following the announcement that New Jersey, I guess, from a regulatory standpoint, adopted the most stringent mercury standards in the nation -- the following day, DuPont threw in the towel on its hazardous waste facility. I forget the exact investment DuPont had in that -- between $30 million and $40 million -- but they invested private money in that facility. I think it was the straw that broke the camel's back that it was a significant loss to the State of New Jersey. We generate a tremendous amount of hazardous waste.

That was one of three facilities: Rawlins is existing; the Linden facility is in permitting; DuPont was on the horizon. DuPont has called it a day, and I think it's strictly the result of that regulatory action that took away that facility which would have meant New Jersey would have been closer to self-sufficiency in that waste area, and I think that was a significant regulatory result.

I just want to put it on the record, because I think it is larger than it got credit for being.

SENATOR INVERSO: Good.

Mr. Buckman, thank you very much. We appreciate you coming out.

MR. BUCKMAN: My pleasure. If any of you gentlemen would like to talk to me one-on-one, I'd be glad to. My telephone number is on the On-Site Agency Association letterhead.

SENATOR INVERSO: Right. We may have staff reach out to you also.

MR. BUCKMAN: I'd like to have that happen.

SENATOR INVERSO: Because this was slightly different than some of the other information that we got today.

MR. BUCKMAN: It's kind of a unique situation.

SENATOR INVERSO: Yes, very much so. Thank you, sir.

MR. BUCKMAN: Thank you for hearing me, gentlemen.

SENATOR INVERSO: Does anyone else wish to be heard on any matter? (no response) If not, the meeting is adjourned. Thank you.

(MEETING CONCLUDED)

APPENDIX

FEDERAL VERSUS NJ REGULATORY REQUIREMENTS

PROGRAM COMPARISONS

Premise: New Jersey environmental regulations, as adopted by NJDEPE, impose significantly more prescriptive requirements on NJ-industry than do corresponding Federal regulations, and at a substantial cost of time and capital. What is really important is to reduce pollution in an enlightened manner, fairly to NJ industry, and cost effectively, and to avoid all needless paperwork and bureaucracy.

Background: Federal agencies can delegate to a state the authority to administer regulatory programs. The state must demonstrate:

- o Implementing legislation
- o An administrative agency staffed by appropriately qualified personnel
- o A source of funding (General Fund, Fees or Fines)

Regulations adopted by a state may be no less stringent than the federal rules. However, nothing in the delegation procedure mandates the state agency to adopt more stringent requirements.

In New Jersey, the Department of Health has chosen not to administer programs developed by the Occupational Safety and Health Administration; the Department of Environmental Protection and Energy has sought/received delegation for most of EPA's programs.

1. Air Pollution

Federal	New Jersey
The Clean Air Act as amended	The Air Pollution Control Act, as amended
Title V: Hazardous Air Pollutants, Operating Permits, Leak Detection	Subchapters 16 and 17 of the Air Pollution Control Code
EPA must regulate those facilities which emit Congressionally defined hazardous air pollutants (the approximately 180 MACT chemicals).	Subchapter 16 and 17 impose specific requirements for emissions of VOC's (volatile organics and TVOC's, (Toxic Volatile Organics) respectively. There exist thousands of such chemicals.
Draft rules relating to control of fugitive emissions have been published. EPA will require Leak Detection and Repair (LDAR) programs to be implemented only by the facilities which manufacture SOCMI (a list of more than 400) chemicals.	In its current draft regulations to amend Subchapter 16, NJDEPE adopts EPA's limitations for SOCMI chemicals, but has added "chemical plants emitting 25 tons per year of any volatile organic or more" to the list of facilities for which LDAR programs will be required. In its own words, NJDEPE is adding at least 1000 facilities to the regulated community beyond EPA's mandate. This involves at a minimum, for example, annual testing of the thousands of valves in the typical batch chemical plant, and the concomitant recordkeeping to prove it was done.
	The penalty matrix covers 8 pages in the draft regulation.

Federal	New Jersey
OSHA PSM Standard	The Toxic Catastrophe Prevention Act
Length of regulation: 6 pages in Federal Register (13 columns)	Length of regulation: 101 typed pages (amended document not yet published in NJ Register)
Program focuses on prevention of release through administrative and procedural changes to minimize the risk to employees.	Program focusses on prevention of release of 104 legislatively-defined Extraordinarily Hazardous Substances (EHS's).
Regulation presents general statement of requirements, leaving most of the detail to the facility. Company need to provide an audit of compliance every 3 years.	Regulation lays out detailed technical and administrative requirements. Incredible amounts of paperwork - the "Annual Report" includes a audit checklist 15 pages long. Thousands of pages of backup required to be able to prove compliance during an audit. As an example, OSHA requires the site have an emergency response plan, including drills. DEPE requires this, plus written assessments of the drill for a list of specific items; 3 1/2 pages of the regulation spells out even more paperwork required to be in the plan. OSHA requires a review of the hazards of a process every 5 years, with a qualified team addressing hazards as it deems necessary. TCPA requires, in addition, expensive computer modeling for an undetermined number of release scenarios, "state-of-the-art" analyses to determine a list of potential hazard reduction items, and justification to DEPE for anything on the list not done. Just one sentence of TCPA regulation requires a system to maintain "accurate" record of all breakdowns and repairs, to allow studies of these later. Considering the need to build data files, etc., for piping, valves, and similar items, this is a massive task.

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Facility will presumably be required to demonstrate the effectiveness of its program during an OSHA audit at some point.	Facility is inspected on a schedule determined by NJDEPE. (current annually; might be reduced) These might typically be 4-5 day (or longer) inspections and involve 3-5 inspectors. The review is designed to uncover minute deficiencies with respect to provisions of the written regulation without particular regard to whether these may or may not actually impact the environment in any significant way.
	Regulation provides a penalty matrix (8 pages) corresponding to each section of the regulation.

3. Spill Control

Federal	New Jersey
Clean Water Act (Sect. 311)	The Spill Compensation and Control Act
List of approximately 400 hazardous substances.	List of approximately 1700 hazardous substances.
Definition of discharge reflects release to navigable waters of the United States.	Definition of discharge reflects release to waters, including groundwater, and to the lands of the state.
Current implementation federal regulations (OPA-92) set forth minimum facility size of 1 million gallons.	Regulation affects facilities storing 20,000 gallons or more of hazardous substances, in tanks or drums.
Requires preparation of the Spill Prevention Control and Countermeasure Plan. Guidelines for plan preparation for all kinds of facilities, including off-shore oil drilling rigs, are contained in 4 pages of the Federal Register.	Requires preparation of a Discharge Prevention Control and Countermeasure Plan, a Discharge Cleanup and Removal Plan and the Environmentally Sensitive Areas Plan. The contents required for each of these Plans are presented in 20 pages of regulations. Requirements include administrative issues such as training, standard operating procedures, etc., that are exactly the same as those under TCPA, thereby effectively "elevating" administrative procedures for handling the 1700 substances to the level required for the 104 TCPA "Extraordinarily Hazardous Substances". Also requires very expensive mapping of "environmentally sensitive areas". Also, daily, weekly, and as used inspections, with documentation of such inspections, for all valves, pipes, equipment, etc. (which could be hundreds if not thousands of items).

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Federal	New Jersey
The Pollution Prevention Act (U.S.)	The Pollution Prevention Act (N.J.)
Addresses the reduction in the release of hazardous substances to the environment. No specific regulations.	Addresses the reduction in the use of or generation as nonproduct output of 329 SARA 313 hazardous substances. The Act does not specifically address reduction of releases to the environment. 77 pages of regulations.
	The Act and NJDEPE regulations require submission of extremely detailed process information which industry has demonstrated is unnecessary for the identification of pollution prevention opportunities. For example, several companies have gone on public record as suggesting that to follow the regulations exactly, would require over $500,000 of manpower just to acquire data and information, anywhere from 2 to 10 times as much as should be needed to arrive at an effective plan. This includes inventory data, production data, expensive financial data, etc., by the plant as a whole and by each process, no matter how insignificant a plant wide usage level is met.
	Submission of annual process report is required; regulations also require the annual revision of the process data developed initially as supplemental to the Pollution Prevention Plan, information which, by statute, was to remain on site.

State of New Jersey
Department of Environmental Protection and Energy
Enforcement

Scott A. Weiner
Commissioner

Edward M. Nealsey
Assistant Commissioner

IN THE MATTER OF THE	:	ADMINISTRATIVE ORDER
PEMBERTON TOWNSHIP	:	AND
BOARD OF EDUCATION	:	NOTICE OF CIVIL ADMINISTRATIVE
PEMBERTON TOWNSHIP,	:	PENALTY ASSESSMENT
BURLINGTON COUNTY	:	

This Administrative Order and Notice of Civil Administrative Penalty Assessment is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection and Energy (hereinafter "NJDEPE" or the "Department") by N.J.S.A. 13:1D-1 et seq. and the Water Pollution Control Act, ("the Act") N.J.S.A. 58:10A-1 et seq., and duly delegated to the Bureau Chief of the Central Bureau of Water and Hazardous Waste Enforcement, Division of Facility Wide Enforcement pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. Pemberton Township Board of Education (hereinafter "Pemberton"), owns and operates a wastewater treatment facility (hereinafter "Facility") located at the Helen Fort Middle School, Block 944, lot 2, Fort Dix - Pemberton Road, Pemberton Township, Burlington County, New Jersey.

2. The Department issued a New Jersey Pollutant Discharge Elimination System (hereinafter "NJPDES") Discharge to Surface Water (hereinafter "DSW") Permit No. NJ0022438 hereinafter ("the Permit") to Pemberton on May 9, 1984. The effective date of the Permit was June 15, 1984, and the expiration date was June 14, 1989. The Bureau of Information Systems received a NJPDES permit renewal application for the Permit on February 9, 1989.

3. Pursuant to the Permit, Pemberton discharges pollutants, as defined by N.J.A.C. 7:14A-1.9, into the surface water of the State of New Jersey. The Permit governs one discharge, DSN 001, consisting of treated effluent which is discharged into an unnamed tributary to North Branch, Rancocas Creek.

4. No person shall discharge any pollutant except in conformity with a valid NJPDES Permit issued pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

5. Part I, Page 9 of 20 of the Permit requires that discharge monitoring results obtained during the previous reporting period shall be summarized and reported to the Department on Discharge Monitoring Report (hereinafter "DMR") forms. DMRs are to be postmarked and submitted to the Department no later than the 28th of the month following the completed reporting period.

6. Part I, Pages 2 and 3 of 20 of the Permit sets forth limits on specific parameters at DSN001.

7. Part I, Page 8 of 20 of the Permit requires that Pemberton monitor the discharge at DSN001 for specific parameters, and sets forth the monitoring frequencies for these parameters.

8. Pemberton has submitted DMRs to the Department for the period of October 1, 1991 to December 31, 1991. The DMRs demonstrate that Pemberton has violated the effluent limitations of the Permit. Listed below are the effluent limitations which were violated during the specified monitoring periods.

Abbreviation Table

%E	=	percent excursion
Ser Fac	=	seriousness factor
pH	=	hydrogen ion concentration
su min	=	standard units minimum
su	=	standard units
%	=	percent
Mi	=	minor
FC	=	fecal coliform
ml	=	milliliters
Mo	=	moderate
Mo Avg	=	monthly average
Ma	=	major
Wkly Avg	=	weekly average

Monitoring Period	Discharge Parameter	Permit Limit	Reported Results	%E	Ser Fac
10/91	pH	6 su min	5.55 su	8%	Mi
10/91	FC	200/100 ml Mo Avg	316	*58%	Mo
11/91	pH	6 su min	4.4 su	27%	Mi

8 X

12/91	pH	6 su min	5.89 su	2%	Mi
12/91	FC	1000/100 ml Wkly Avg	6850	585%	Ma
12/91	FC	200/100 ml Mo Avg	907	**353.5%	Ma

* Denotes that Pemberton has incurred a serious violation as defined by N.J.S.A. 58:10A-3(v) and N.J.A.C. 7:14-8.2.

** Denotes that Pemberton has incurred a serious violation which has caused Pemberton to become a significant noncomplier as defined by N.J.S.A. 58:10A-3(w) and N.J.A.C. 7:14-8.2.

9. Based on the facts set forth in these FINDINGS, the Department has determined that Pemberton has violated the Permit, the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., specifically N.J.S.A. 58:10A-6, and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq., specifically N.J.A.C. 7:14A-1.2.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

10. Pemberton shall discharge pollutants only in conformity with NJPDES Permit No. NJ0022438, the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the regulations promulgated pursuant thereto, N.J.A.C. 7:14A-1.1 et seq.

11. The Permit remains in full force and effect pursuant to N.J.A.C. 7:14A-2.3(d) until the effective date of the new permit.

12. This Order shall be effective upon receipt.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT

13. Pursuant to N.J.S.A. 58:10A-10d and N.J.A.C. 7:14-8.1 et seq., and based upon the above FINDINGS, NJDEPE has determined that a civil administrative penalty should be assessed against Pemberton in the amount of $50,250. NJDEPE's rationale for this Civil Administrative Penalty is set forth in Appendix A which is attached hereto and incorporated herein.

9x

JUL 14 1993

State of New Jersey
Department of Environmental Protection and Energy
Enforcement

JUN 21 1993

Scott A. Weiner
Commissioner

Diane K. Weeks
Assistant Commissioner

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert D. Elder, Ed.D., Superintendent
Public Schools of Pemberton Township
P.O. Box 98
Browns Mills, New Jersey 08015

RE: Administrative Consent Order dated January 13, 1993
Pemberton Township High School #1 - STP O&M Manual
NJPDES No. NJ0022438 - DSW
Pemberton Township, Burlington County

Dear Dr. Elder:

This letter serves to respond to the draft Operation and Maintenance manual ("O&M") with cover letter dated April 13, 1993.

By execution of the above referenced Administrative Consent Order ("ACO") Pemberton Township Board of Education ("PTBE") accepted the responsibility for meeting all requirements in the ACO including the enforcement compliance schedule specified in paragraph 12.

Based on the cover letter submittal date of April 13, 1993 received by the Division of Law's Environmental Enforcement Section on April 19, 1993 (see attached letter), PTBE submitted its draft O&M manual 12 calendar days late. Pursuant to paragraph 17 of the ACO, the Department has determined that PTBE violated its ACO's enforcement schedule as outlined below:

1 - 7 days at $1,000.00 per calendar days =	$ 7,000.00
8 - 14 days at $2,000.00 per calendar days =	$10,000.00
TOTAL PENALTY	$17,000.00

Therefore, PTBE's failure to comply with the enforcement compliance schedule of the ACO subjects PTBE a stipulated penalty of $17,000.00. This amount is now due and payable to the Department.

Accordingly, the Department directs PTBE to submit to the Bureau of Revenue, New Jersey Department of Environmental Protection and Energy, CN 417, Trenton, New Jersey 08625-0417 a certified or cashier's check made payable to the "Treasurer, State of New Jersey" for $17,000.00 with the white copy of the Form DEPE-062A (copy enclosed) within 14 calendar days after receipt of this written demand letter.

Please Respond To: Tel.#

Please be advised that payment of these stipulated penalties shall not be construed as a waiver of the Department's right to compel PTBE to specifically perform its obligations under the ACO.

In addition, the Department has reviewed your O&M Manual and requires the following modifications:

1. On page 16, paragraph 3, The operator shall notify the Department and the PTBE of an upset, bypass or laboratory error within 24 hours of the occurrence, or becoming aware of the occurrence, and, within 5 calendar days thereof, PTBE shall submit written documentation, including copies of properly signed operating logs, or other relevant evidence, on the circumstances of the NJPDES permit violation.

2. On page 16, paragraph 4, PTBE should incorporate NJDEPE's ENVIRONMENTAL HOTLINE NOTIFICATION LINE at (609) 292-7172 and the Central Bureau of Water and Hazardous Waste Enforcement at (609) 584-4200. Furthermore, enclosed please find, post and incorporate the Department's communication "NOTICE".

3. On page 16, paragraph 7, PTBE shall maintain the Chain of Custody with its certified laboratory analysis reports. Furthermore, if the certified laboratory advises PTBE of an invalid, improper or other sampling deficiency, and if the sampling period has not elapsed, PTBE shall immediately collected additional samples in an effort to comply with the NJPDES permit's sampling schedule.

4. On page 19, paragraphs 4 and 5, the operator shall instruct all pertinent PTBE employees in emergency cases with the proper methods of contact, specifically in the absence of the operator of license. These notices and procedure will be clearly posted at the site and other PTBE administrative facilities.

To prevent the possibility of injury, or loss of life, all qualified persons entering confined spaces must have up to date confined space entry training that outlines the permit entry process, the spaces atmosphere monitoring, emergency retrieval equipment, first aid assistance and mechanisms for lock out & tag out processes, as a minimum. All PTBE confined spaces must be clearly posted, identifying the hazardous space and area.

In conclusion, failure to comply with the above will subject PTBE to civil administrative penalties for violations of the ACO's conditions. The Department reserves the right to assess the maximum civil administrative penalty amounts allowed by the New Jersey Water Pollution Control Act, N.J.A.C. 58:10A-1 et seq. if stipulated penalties are not paid in accordance with the ACO provisions.

If you should have any questions, please contact Michael Abramowicz, of my staff, at (609) 584-4200 or by letter through this office.

Very truly yours,

Charles L. Maack

Charles L. Maack, Chief
Central Bureau of Water and
Hazardous Waste Enforcement

ENCLOSURES

c: Robert J. Genatt, Deputy Attorney General
Frederick W. Hardt, Esq.
Howard E. Curry, Licensed Operator

12X

PERMITTEE NAME/ADDRESS (*Include Facility Name/Location if different*)
NAME PEMBERTON TOWNSHIP BD OF ED
ADDRESS ATTN: DENNIS STARR
P.O BOX 98, TRENTON ROAD
BROWNS MILLS,NJ 08015
FACILITY PEMBERTON TWP HIGH SCHOOL #1
LOCATION PEMBERTON,NJ 08015
DMR NUMBER: 93090325

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (*NPDES*)
DISCHARGE MONITORING REPORT (*DMR*)
(2-16) NJ0022438 PERMIT NUMBER
(17-19) 001A DISCHARGE NUMBER

Form Approved.
OMB No. 2040-0004
Approval expires 10-31-94

MONITORING PERIOD

	YEAR	MO	DAY		YEAR	MO	DAY
FROM	93	09	01	TO	93	09	30
	(20-21)	(22-23)	(24-25)		(26-27)	(28-29)	(30-31)

MINOR BURLINGTON
CENTRAL REGION
NOTE: Read instructions before completing this form.

PARAMETER (32-37)		(3 Card Only) QUANTITY OR LOADING (46-53)	(54-61)	UNITS	(4 Card Only) QUALITY OR CONCENTRATION (38-45)	(46-53)	(54-61)	UNITS	NO. EX (62-63)	FREQUENCY OF ANALYSIS (64-68)	SAMPLE TYPE (69-70)
SOLIDS, TOTAL SUSPENDED	SAMPLE MEASUREMENT				******						
00530 1 0 EFFLUENT GROSS VALUE	PERMIT REQUIREMENT	5.70000 MONTH AV	8.50000 WKLY AV	KG/ DAY	******	30.00000 MONTH AV	45.00000 WKLY AV	MG/L		ONCE/ MONTH	GRAB
SOLIDS, SETTLEABLE	SAMPLE MEASUREMENT	******	******		******						
00545 G 0 RAW SEW/INFLUENT	PERMIT REQUIREMENT	******	******	**** ****	******	REPORT MONTH AV	REPORT WKLY AV	ML/L		DAILY	GRAB
SOLIDS, SETTLEABLE	SAMPLE MEASUREMENT	******	******		******						
00545 1 0 EFFLUENT GROSS VALUE	PERMIT REQUIREMENT	******	******	**** ****	******	REPORT MONTH AV	REPORT WKLY AV	ML/L		DAILY	GRAB
CHLORINE, FREE AVAILABLE	SAMPLE MEASUREMENT										
50064 1 0 EFFLUENT GROSS VALUE	PERMIT REQUIREMENT	REPORT MONTH AV	REPORT WKLY AV	KG/ DAY	1.00000 MINIMUM	REPORT MONTH AV	REPORT WKLY AV	MG/L		DAILY	GRAB
COLIFORM, FECAL GENERAL	SAMPLE MEASUREMENT	******	******		******						
74055 1 0 EFFLUENT GROSS VALUE	PERMIT REQUIREMENT	******	******	**** ****	******	200.00000 MONTHGEO	1000.0000 WKLY GEO	#/100 ML		ONCE/ MONTH	GRAB
BOD, 5-DAY PERCENT REMOVAL	SAMPLE MEASUREMENT	******	******			******	******				
81010 K 1 PERCENTREMOVAL	PERMIT REQUIREMENT	******	******	**** ****	90.00000 MONAVMIN	******	******	PERCE NT		ONCE/ MONTH	CALCTD
	SAMPLE MEASUREMENT										
	PERMIT REQUIREMENT										

NAME/TITLE PRINCIPAL EXECUTIVE OFFICER			TELEPHONE		DATE		
	I CERTIFY UNDER PENALTY OF LAW THAT I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED HEREIN AND BASED ON MY INQUIRY OF THOSE INDIVIDUALS IMMEDIATELY RESPONSIBLE FOR OBTAINING THE INFORMATION I BELIEVE THE SUBMITTED INFORMATION IS TRUE, ACCURATE AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT. SEE 18 USC § 1001 AND 33 USC § 1319. (*Penalties under these statutes may include fines up to $10,000 and/or maximum imprisonment of between 6 months and 5 years.*)		AREA CODE	NUMBER	YEAR	MO	DAY
TYPED OR PRINTED		SIGNATURE OF PRINCIPAL EXECUTIVE OFFICER OR AUTHORIZED AGENT					

COMMENT AND EXPLANATION OF ANY VIOLATIONS (*Reference all attachments here*)
MASS MOD 12/1/92

13 X

PERMITTEE NAME/ADDRESS (*Include Facility Name/Location if different*)
NAME PEMBERTON TOWNSHIP BD OF ED
ADDRESS ATTN: DENNIS STARR
P.O BOX 94, TRENTON ROAD
BROWNS MILLS,NJ 08015
FACILITY PEMBERTON TWP HIGH SCHOOL #1
LOCATION PEMBERTON,NJ 08015
DMR NUMBER: 93090325

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (*NPDES*)
DISCHARGE MONITORING REPORT (*DMR*)

(2-16)	(17-19)
NJ0022438 PERMIT NUMBER	001A DISCHARGE NUMBER

MONITORING PERIOD	YEAR	MO	DAY		YEAR	MO	DAY
FROM	93	09	01	TO	93	09	30
	(20-21)	(22-23)	(24-25)		(26-27)	(28-29)	(30-31)

Form Approved.
OMB No. 2040-0004
Approval expires 10-31-94

MINOR
CENTRAL REGION
BURLINGTON
NOTE: Read instructions before completing this form.

PARAMETER (32-37)		(3 Card Only) QUANTITY OR LOADING (46-53)	(54-61)	UNITS	(4 Card Only) QUALITY OR CONCENTRATION (38-45)	(46-53)	(54-61)	UNITS	NO. EX (62-61)	FREQUENCY OF ANALYSIS (64-68)	SAMPLE TYPE (69-70)
TEMPERATURE, WATER DEG. CENTIGRADE	SAMPLE MEASUREMENT	******	******								
00010 1 0 EFFLUENT GROSS VALUE	PERMIT REQUIREMENT	******	******	**** ****	REPORT MINIMUM	REPORT MONTH AV	REPORT WKLY AV	DEG.C		DAILY	GRAB
FLOW RATE	SAMPLE MEASUREMENT				******	******	******				
00056 1 0 EFFLUENT GROSS VALUE	PERMIT REQUIREMENT	50000.000 MONTH AV	REPORT WKLY AV	GPD	******	******	******	**** ***		DAILY	
BOD, 5-DAY (20 DEG. C)	SAMPLE MEASUREMENT				******						
00310 6 0 RAW SEW/INFLUENT	PERMIT REQUIREMENT	REPORT MONTH AV	REPORT WKLY AV	KG/ DAY	******	REPORT MONTH AV	REPORT WKLY AV	MG/L		ONCE/ MONTH	GRAB
BOD, 5-DAY (20 DEG. C)	SAMPLE MEASUREMENT				******						
00310 1 0 EFFLUENT GROSS VALUE	PERMIT REQUIREMENT	5.70000 MONTH AV	8.50000 WKLY AV	KG/ DAY	******	30.00000 MONTH AV	45.00000 WKLY AV	MG/L		ONCE/ MONTH	GRAB
PH	SAMPLE MEASUREMENT	******	******			******					
00400 6 0 RAW SEW/INFLUENT	PERMIT REQUIREMENT	******	******	**** ****	REPORT MINIMUM	******	REPORT MAXIMUM	SU		DAILY	GRAB
PH	SAMPLE MEASUREMENT	******	******			******					
00400 1 0 EFFLUENT GROSS VALUE	PERMIT REQUIREMENT	******	******	**** ****	6.00000 MINIMUM	******	9.00000 MAXIMUM	SU		DAILY	GRAB
SOLIDS, TOTAL SUSPENDED	SAMPLE MEASUREMENT				******						
00530 6 0 RAW SEW/INFLUENT	PERMIT REQUIREMENT	REPORT MONTH AV	REPORT WKLY AV	KG/ DAY	******	REPORT MONTH AV	REPORT WKLY AV	MG/L		ONCE/ MONTH	GRAB

NAME/TITLE PRINCIPAL EXECUTIVE OFFICER		TELEPHONE			DATE		
	I CERTIFY UNDER PENALTY OF LAW THAT I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED HEREIN AND BASED ON MY INQUIRY OF THOSE INDIVIDUALS IMMEDIATELY RESPONSIBLE FOR OBTAINING THE INFORMATION I BELIEVE THE SUBMITTED INFORMATION IS TRUE, ACCURATE AND COMPLETE. I AM AWARE THAT THERE ARE SIGNIFICANT PENALTIES FOR SUBMITTING FALSE INFORMATION, INCLUDING THE POSSIBILITY OF FINE AND IMPRISONMENT. SEE 18 U.S.C. § 1001 AND 33 U.S.C. § 1319. (*Penalties under these statutes may include fines up to $10,000 and/or maximum imprisonment of between 6 months and 5 years.*)		AREA CODE	NUMBER	YEAR	MO	DAY
TYPED OR PRINTED	SIGNATURE OF PRINCIPAL EXECUTIVE OFFICER OR AUTHORIZED AGENT						

COMMENT AND EXPLANATION OF ANY VIOLATIONS (*Reference all attachments here*)

MASS MOD 12/1/92

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DEFINITIONS

Section 1

LISTED BELOW ARE DEFINITIONS USED IN THIS MANUAL, WHICH ARE SPECIFIED IN N.J.A.C. 7:14A-1.9.

"Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all daily discharges measured during a calendar month, divided by the number of daily discharges measured during that month (DMRs shall be calculated based on a calendar month basis).

"Average weekly discharge limitation" means the highest allowable average of "daily discharges" over any seven consecutive days, calculated as the sum of all daily discharges measured during any seven consecutive days, divided by the number of daily discharges measured during that week.

"Daily discharge" means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day (For purposes of sampling, "day" means an operating day or 24-hour period).

"Maximum daily discharge limitation" means the highest allowable "daily discharge" during the monitoring period.

"MGD" means million gallons per day.

Section 2

LISTED BELOW ARE DEFINITIONS USED IN THIS MANUAL WHICH ARE NOT CURRENTLY COVERED IN ANY REGULATIONS.

"Aliquot" means an individual sample of specified volume used to make up a total composite sample.

"col/100 ml" means the coliform colonies per 100 milliliters.

"Composite sample" means a combination of individual (or continuously taken) samples (aliquots) of at least 100 milliliters, collected at periodic intervals over a specified time period. The composite should be flow proportional; either the time interval between each aliquot or the volume of each aliquot should be proportional to either the flow at the time of sampling or the total flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically.

"EDP" means Effective Date of Permit.

"Grab" means an individual sample of at least 100 milliliters collected over a period not exceeding 15 minutes.

"kg/day" means kilograms per day.

"Maximum Value" means the highest value measured during the monitoring period.

"MF" means the membrane filter technique, used to analyze for members of the coliform bacteria group.

"mg/l" means milligrams per liter.

"Minimum value" means the lowest value measured during the monitoring period.

"ml/l" means milliliters per liter.

"Monthly minimum BOD_5 percent removal" means the lowest percentage obtained for any single sampling event performed during the calendar month (minimum percent removal limitation).

"MPN" means most probable number. This term is used for reporting results from the multiple-tube fermentation technique, a technique to analyze for members of the coliform bacteria group.

"Seven day average value" means the greatest sum of all daily discharges measured during any seven consecutive days, divided by the number of daily discharges measured during that week. Results may be expressed in loading (kg/day) and/or concentration (mg/l).

"Six hour composite sample" means a combination of individual aliquots obtained at a minimum frequency of one aliquot at 30-minute intervals over a 6-hour period.

"Thirty day average value" or **"Monthly average value"** means the sum of all daily discharges measured during a calendar month, divided by the number of daily discharges measured during that month. Results may be expressed in loading (kg/day) and/or concentration (mg/l).

"Twenty-four hour composite sample" means a combination of individual aliquots obtained at a minimum frequency of one aliquot at hourly intervals over a 24-hour period.

"ug/l" means micrograms per liter.

the
On-Site Agency Association of N.J.
P.O. Box 568 • Cedar Knolls, N.J. 07927 • 800-886-8558

Chairman: Charles A. Buckman
Vice Chairman: Patricia M. Daub
Treasurer: Melvin Firth
Secretary: Richard Acosta
Recording Secretary: Maureen Castelone

22 June, 1993

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, N.J. 08625

Subj: Proposed Amendment to N.J.A.C. 5:23: PRN 1993-296

Dear Mr. Ticktin;

The proposed amendment shall put our 12 member firms out of business placing our 2,000 plus employees on the unemployment rolls, and killing another New Jersey cottage industry. It would appear that the Department of Community affairs herein is usurping the powers of the State Legislature, "inter alia" to micro managing the On-site Agencies.

We are appalled to note that in the Proposed Amendment the Department has blatantly ignored the first portion of P.L. 1993 c.47 Section 6i(2) wherein the Department continues to be admonished to <u>set</u> fees, not, as the Department proposes, to require all offerings be expressed as a percentage of the DCA fee schedule, thus doing away with Quality based contract offerings in direct contravention of the "Local Public Contracts Law," P.L. 1971, c.198 (C. 40A:11-1 et seq.) and of (P.L. 1983, c.338). This is "free wheeling", not <u>setting</u>, fees, exactly the opposite of the legislative requirements, which our members have enthusiastically endorsed.

We believe that the legislature was quite clear, when passing Senate Bill 1227, in modifying only that portion of P.L. 1983, c.338 which required agencies to charge fees at a rate which reflected the needs of the Department, not the business community. The <u>only</u> modification permits On-site Agencies to charge fees at a more equitable level than those

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charged by the Department, a change most agencies have encouraged for some time.

If the Department were to comply with the law, it would avoid the major threats to public safety posed by the cost based contracts extant prior to 1983 which resulted in the emplacement of many hidden, irreversible, code violations indigenous to hurried inspections which shall eventually harm the building users and which, we fear, would revisit the industry as a consequence of the plan offered by the Department in the Proposed Amendment.

In 1983 the legislature moved to correct the harm done by such cost based contracts by enacting A619 (P.L. 1983, c.338) which removed bidding for dollars from the contract equation and substituted bidding for quality code inspections. The On-site Agency Association believes strongly that this is the only method by which the public might be assured of safe dwellings and public facilities when inspected by On-site agencies and have commended the Legislature in the past for its' perception in this regard. In the summary of A619 (P.L. 1983, c.338) legislators put it most succinctly:

Economic Impact

> "The establishment of the uniform fee schedule will prevent abuses such as bidding below cost to drive out competition and overcharging in municipalities for whose business there is little or no competition." A619 (P.L. 1983, c.338) (Summary)

In other words, the last time the Department of Community Affairs tried "cost based bidding", the legislature discovered it contravened the very purpose of the existence of the Department. It is inconceivable that the Department would be so misguided as to try again, this time by ignoring the clearly stated intentions of the legislature.

It is interesting to note that in the summary portion of Proposed Amendment the Department of Community Affairs makes the following statements:

> "the Department is authorized to adopt rules setting the amounts of fees to be charged by the private agencies, ...Page 2 Lines 5-7

> "the proposed rule requires that the bid be expressed in terms of a percentage of the fees charged by the Department as enforcing agency." Page 2 Lines 17-19

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"The Department recognizes that competitive pressures could conceivably result in excessive cost-cutting by private agencies, with consequent harm to the health, safety and welfare of the public" Page 2 Lines 26-29

It would seem that these statements indicate that the Department is:

A. Aware of its responsibility as imposed by the legislature;
B. Has its' own agenda;
C. Is aware of the consequences of its actions for the public.

In lieu of the "wheel of fortune" proposed by the Department we would encourage the establishment of a task force comprised of On-site agencies, members of the various sub-codes and knowledgeable members of the public for the express purpose of establishing a private agency fee schedule of lesser cost to the public in compliance with P.L. 1993 c.47.

In other issues, we believe the change in rule 4.14, adding the word general to the liability insurance protection provided the consumer, runs contrary to public interest. General liability insurance provides protection against loss only during the performance of the inspection. It has no value once the inspector has left the premises. The DCA is creating a condition where the claimant would have to recover from the assets of the agency. The code, as originally interpreted, required Professional Liability insurance, commonly known as Errors and Omissions. The comment made by the Department that this change would ease costs for the On-site Agency is both incorrect and irresponsible in that responsible agencies would continue to provide Professional Liability protection to their consumers as they have in the past while irresponsible agencies would continue to gamble. Agencies should be encouraged to provide this essential coverage.

The requirement stipulated in 4.5A (j)5., wherein the agency shall be paid within 30 days of billing elevator inspection charges (which shall be) due on issuance of certificates of compliance or notice of unsafe structure, penalizes the agency and encourages liberal issuance of certificates of compliance. The Agency must compensate the inspector during the week of the inspection, it is conceivable that violations exist which prompt the issuance of a temporary certificate of compliance pending abatement. It is also conceivable that abatement would take six months as provided by code. It would therefore seem logical that this requirement would extend the cost of the inspection by seven months while the company waits for payment. An additional concern is that the agency has no control over whether the Construction Official ever issues a notice of unsafe structure.

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Payments should be due the agency 30 days subsequent to the inspection billing date.

Much of the remainder of the Proposed Amendment is given to unwarranted and, we believe, in some cases illegal intrusions on the rights of the private agency as well as the ability to perform and continue to make a profit.

The perception, by the Department, that there is something wrong with a private enforcing agency profiting through the temporary appointment of an employee as an acting subcode official as the DCA comments in the Economic Impact section, is frightening. Despite some perceptions to the contrary, in this country making a profit is a requisite to the American way of life. If there is concern for the term of the appointment, say so and limit it. Anything else limits the town's facilities and punishes the agency.

We believe the change in paragraph 4.5A(d)6. to be illegal. Government cannot regulate the manner in which a business compensates its employees as a means to resolve an issue which is properly the responsibility of the governing agency. If there is a concern for the number of inspections required of an inspector by an agency, freewheeling the chargeable fees will exacerbate it. The Department is supposed to be the regulator here, not private industry.

In summation, one cannot force the agencies to dramatically decrease their income while mandating increased administrative cost and expect the agencies to stay in business. Considering that the Department performs the same functions as an On-site agency and that self-perpetuation seems to us to be its major goal, it occurs to us that it is possible the Department's intention is to "drive out competition in municipalities for whose business there is little or no competition" A619 (P.L. 1983, c.338) Economic Impact

We resent being treated as second class citizens Several of our agencies predated the Department, in one case by 95 years. We have been active in all phases of the development of N.J. Building Codes.

Very truly yours,

Charles A. Buckman
Chairman

21 X

the
On-Site Agency Association of N.J.

P.O. Box 568 • Cedar Knolls, N.J. 07927 • 800-886-8558

Chairman: Charles A. Buckman
Vice Chairman: Patricia M. Daub
Treasurer: Melvin Firth
Secretary: Richard Acosta
Recording Secretary: Constantine DelGrasso

17 October, 1993

Senator John O. Bennett, Chairman
Senate Legislative Oversight Committee
Eatontown, NJ

Re: Proposed Regulatory Amendment
PRN 1993-296

Dear Senator Bennett:

Both Mrs. Daub and myself are deeply grateful to you for your interest in our concern for the usurpation of the powers of the New Jersey Legislature by the Department of Community Affairs.

As we have discussed the Department of Community Affairs has proposed a Regulatory Amendment (PRN 1993-296) to the Uniform Construction Code of the State of New Jersey (N.J.A.C. 5:23 et seq.) which, it would have the legislature believe, is the implementation of P.L.1993-c.47 (S1227/A1838). In fact it runs counter to the express intention of the statute by failing to set a schedule of fees for private inspection agencies to follow, thus placing the focus of the On-Site Inspection Agency on successful competitive bidding and all of the maneuvering inherent in that process rather than where it properly belongs, on the proper performance of inspections for building code compliance as established by P.L.1983 c.338 (S619).

Our members have enthusiastically supported the passage of Senate Bill number 1227 (P.L. 1993, c.47) which revises Legislation enacted in 1983 as A619 (P.L. 1983, c.338) as follows:

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"(2) The setting of the amounts of fees to be charged by a private agency for inspection and plan review services; provided, however, that such fees shall (be identical to) not be more than those charged by the department."

We believe that the legislature made it's intentions quite clear: to make it requisite for the DCA to establish a reduced fee schedule for private inspection agencies so as to reduce costs for the building industry and the general public by establishing a fee schedule chargeable by the private agencies at a more equitable level while avoiding the major threats to public safety posed by the cost based contracts extant prior to 1983. The Department Amendment proposes, instead, to require all offerings be expressed as a percentage of the DCA fee schedule, thus doing away with Quality based contract offerings in direct contravention of the "Local Public Contracts Law," P.L. 1971, c.198 (C. 40A:11-1 et seq.) and of (P.L. 1983, c.338). This is "free wheeling", not setting, fees.

In 1983 the legislature moved to correct the harm done by such cost based contracts by enacting A619 (P.L. 1983, c.338) which removed bidding for dollars (read bidding for cash flow while driving out competition) from the equation and substituted bidding for quality code inspections. The On-site Agency Association believes strongly that this is the only method by which the public might be assured of safe dwellings and public facilities when inspected by On-site agencies and have commended the Legislature in the past for its' perception in this regard. In the summary of A619 (P.L. 1983, c.338) legislators put it most succinctly:

Economic Impact

"The establishment of the uniform fee schedule will prevent abuses such as bidding below cost to drive out competition and overcharging in municipalities for whose business there is little or no competition." A619 (P.L. 1983, c.338) (Summary)

In 1983 the DCA's sense of the requirement of P.L. 1983, c.338 to set fees was that it was mandatory to establish a fee schedule, why is it not now when the only modification P.L. 1993, c.47 made to P.L. 1983, c.338 was that such fees no longer needed to equal that of the DCA.

Our On-Site Agencies have the benefit of decades of experience in the administration of the various building codes. We have no desire to revert to a business climate where the focus was on survival, not, more properly, on the administration of the Uniform Construction Code, nor an atmosphere where the larger of us would survive the impact of this regulatory

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amendment, outlasting the smaller of us in the inevitable price war which would result from the implementation of the cost based bidding section of this amendment (5:23-4.5A (b)3. We remember the days when agencies would seek to acquire large towns and then "low ball" the surrounding communities to create a low cost revenue base. On the occasion that the key town was lost to a lower bid, the agency could no longer afford to perform in the surrounding towns resulting in delays, general chaos and the eventual death of the agency.

We would encourage the Legislature to require the DCA to consider an alternative to the proposed percentage system of creating fees responsible for the majority of the remainder of the proposed regulatory amendment. The simple act of impaneling a task force charged with the creation of an equitable fee schedule would save our industry and resolve the commissioners problem of complying with P.L. 1993 c.47 section 6i(2). The task force should consist of those with "real world" experience in enforcing the building codes as a private industry, together with members of the Department staff.

We cannot be certain of the cost to our small businesses to do it the DCA way rather than that of the Legislature because the DCA has not supplied the following information as is required by the Administrative Procedures Act:

> The kinds of professional services needed to comply with the requirements (1:30-3.1(f)4 iv(2)
>
> An estimate of the initial capital costs, and an estimate of the annual compliance costs with variations according to types and sizes of small businesses (1:30-3.1(f)4 iv(3)
>
> How the rule is designed to minimize any adverse economic impact on small businesses (1:30-3.1(f)4 iv(4)

This information is important to our small businesses and in particular to our minority owners. We cannot afford, however, to perform an evaluation of this type to find out how badly they are going to hurt us and how to minimize the impact.

In summation we believe the Department has made a poor decision to ignore the intentions of the legislature and to require agencies to revert to bidding for dollars and have then had to construct an elaborate system of additional regulations to protect against the inevitable consequences of their decision to public health, safety and welfare. Unfortunately those

private agencies who have been there before must bear the burden of this error in judgment again, but many shall not survive this time.

Our agencies have long been reeling under a massive regulatory and reportive structure unprecedented in American industry. During a time in our history when Privatization has become the answer to government waste and mismanagement, the Department of Community Affairs has elected to massively increase the bureaucracy at the expense of those who have contributed more than 3 million dollars to their budget in the last ten years. It is obvious that the Department shall require significant more funds for staffing at a time when the very regulatory amendment creating the need shall cause its 5% private agency contribution to shrink. Where shall these additional moneys come from. Who shall pay the DCA costs when we're gone?

Several of our members have often petitioned the DCA in the past for relief from the unsubstantiated and baseless inspection fee increases. The level of fees to which the Builders Association objects is a consequence of the Department wanting the money, not of the private agencies asking for it. There would have been no need for the amendment of P.L 1983 c.338 had the Department maintained a reasonable fee schedule.

The consequence of this proposed regulatory amendment shall be to set us one against the other to the detriment of the administration of the system of codes we apply. It would provide a vehicle for one or two large agencies to eliminate all competition. The load imposed by the Department would become so onerous as to result in the final destruction of the remaining agencies and shall put our 500 workers on the street.

Very truly yours,

Charles A. Buckman
Chairman

Patricia M. Daub
Vice Chairman

25X

Middle Department Inspection Agency, Inc.
1337 West Chester Pike
West Chester, Pennsylvania 19380
(215) 696-3900

VICE PRESIDENT/CONTROLLER
GLENN G. BEAVER

July 2, 1993

Mr. Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

Re: Proposed Amendments - N.J.A.C. 5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18 and 4.20

Dear Mr. Ticktin:

The following comments represent MDIA's position regarding the above captioned proposed regulatory amendments as published in the "New Jersey Register" on May 31, 1993.

The Proposed Regulations Fail to Comply with a Specific Legislative Directive and Ignores Legislative Intent

The legislative intent of S-1227 is not met by the proposal of the Department of Community Affairs. S-1227 repealed the requirement that fees charged by private enforcing agencies be identical to those charged by the Department of Community Affairs when the private enforcing agency serves as a local enforcing agency. The only stipulation is that the fees charged shall "NOT BE MORE" than the current schedule. The Legislature continues its direction to the Commissioner to "adopt rules setting the amounts of fees to be charged by a private agency". The original Legislative requirement that private enforcing agency fees be established by and equivalent to the Department fees was enacted of P.L. 1983, c.338 (Assembly Bill 619). The underlying requirement of the Legislature to "(set) the amount of fees" has not changed. Creating a rule whereby any percentage may be charged, does not fulfill the responsibility of the Commissioner. The Regulatory Flexibility Analysis states "the fees will be allowed to be set by each municipality". The Uniform Construction Code Act clearly specifies the Commissioner is the only responsible party for setting agency fees.

As outlined in the Social and Economic Impact statements which accompanied the proposed amendments published in the January 3, 1984 New Jersey Register, for the implementation of A-619, the rationale was concisely set forth. A-619 clearly recognized that cost based bidding for subcode inspection services ran counter to the public good. Enactment of S-1227 does not alter or repudiate these findings of the Legislature. One could discern a sole negative in this legislation which is the establishment of a ceiling for private agency fees, while creating no floor. S-1227 recognizes the economies of scale inherent to private enforcing agencies and their abilities to serve the public good. It is inconceivable that the Legislature would open the process to "free-wheeling" bidding for critical safety inspections, a dangerous practice eliminated by the Legislature almost a decade ago.

S-1227 continues the requirement of the establishment of a separate fee schedule by the Department for use by a private inspection agency when serving as a local enforcing agency. Reversion to the environment remedied by A-619 is not in the best interest of the citizens of the State and is not permitted nor authorized by law.

When the regulations promulgated by the enactment of A-619 went into effect, the primary motivation was to improve the quality of inspection services. The legislature then found that if a uniform but reasonable fee basis was established, the quality of subcode inspection service would be the primary consideration in the selection process. MDIA believes that a standard fee schedule for private inspection agencies is required under S-1227 to ensure that the quality of inspections is maintained. Using a standard private enforcing agency fee schedule together with the currently established guidelines in use by local government for selection of third party agencies, the public good will continue to be served.

There are options for establishing a fee schedule, other than a free falling percentage bid. A primary one would be to establish a panel of on-site agency and Department representatives to create a cost effective fee schedule. Establishing an arbitrary percentage, without public input, would not be a solution. We believe it is of paramount importance to have a consensus of involved parties, with the expertise gleaned from years of working in the field of code enforcement, to produce an equitable schedule. Given that the proposal requires that competitive cost based bidding be reinstituted, there can and most probably will be a serious detrimental long term impact on the citizenry of New Jersey.

Code enforcement is not analogous to sales of tangible goods where firms who bid for cash flow shortly go out of business with no impact on the public. When revenue becomes the controlling factor, deficiently performed inspections inevitably result and

continue in place like ticking bombs waiting for the unwary public. MDIA believes that our primary goal is to preserve the health, safety and welfare of the people. To do so, an adequate amount of revenue is necessary to ensure that sufficient time and resources are committed to the achievement of that goal. The enactment of S-1227 guarantees that revenue available to third party agencies will decrease. Due to the competitive nature of the business, the lack of a standardized pricing mechanism could negatively impact on the quality of service since the potential for serious cost cutting for the purpose of revenue generation would result.

Another consideration is the impact of the Department's proposed regulations on other statutes. Prior to the passage of A-619, the bidding for onsite construction code inspection services was subject to the requirements of the Local Public Contracts Law. Subsequent to the implementation of the regulations precipitated by A-619, the Local Public Contracts Law was amended to except contracts for certain onsite construction code inspection services from the public bidding requirements contained therein. The rationale for the exception was that the Department of Community Affairs was required to adopt regulations setting private enforcing agency inspection fees. Since pricing was removed from the private inspection agency selection process the Local Public Contracts Law was no longer germane. The Uniform Construction Code Act is intended to govern the fee structure of private enforcing agencies by the establishment of a uniform fee schedule by the Commissioner. MDIA believes that the Legislature intends to maintain a uniform fee schedule for private inspection agencies, albeit on a reduced level as compared to the structure maintained by the Department.

Private enforcing agencies are profit making organizations in the business of providing community service. They provide significant employment for qualified code enforcement professionals in the State, which makes it possible for small to medium sized municipalities to acquire the necessary personnel to accomplish their code enforcement goals in a cost effective manner. The Department, by way of this proposal, apparently wishes to eliminate private enterprise from code enforcement by decreasing revenue and increasing cost, thereby squeezing the profit margin to something less than zero. The DCA is a regulatory office for oversight of the UCC; not meant to be competitive nor sole proprietor.

Additional Reporting Requirements Unreasonable

Stated in this proposal, is the Department's concurrence that the health, safety and welfare of the citizens of New Jersey may be placed in jeopardy should these amendments stand. To compensate for this threat to the public, the Department looks to further constrain the agencies by increasing reporting requirements which

will certainly escalate the expenses of third party inspection agencies causing additional unwarranted administrative hardships both logistically and financially. It is acknowledged, at least legislatively, that private industry can accomplish the code enforcement task at a lesser expense than can the state agency while maintaining the health, safety and welfare of the people. These directives malign the integrity of private agencies.

The extraordinary DCA oversight and monitoring efforts required as a consequence of the proposed amendments, will become so inflated as to incur additional cost to the citizens of New Jersey through the need for increased staffing and its attendant costs. At present the Department has neither the funding nor the personnel requisite to fulfill the additional obligations which would be created by this action. Increasing staff by the DCA is in direct contravention of legislative edicts to divest itself of excess staff.

Not only will there be a need to increase the Department's staff, but private enforcing agencies will find it necessary to employ additional staff and incur additional capital outlays to accumulate and report the plethora of data required by the proposed regulations. It is not reasonable for the Department to impose requirements which place an undue financial burden on private enterprise for additional reporting and statistical gathering. It seems that the imposition of such requirements is designed to create more "busy work" to hinder the business operations of private enforcing agencies. Furthermore, the cavalier nature of proposal's economic impact statement and regulatory flexibility statement in this regard is indicative of the Department's desire to maximize any adverse economic impact on private industry to ensure its ultimate demise.

<u>Payment of Fees for Services Rendered Should be Uniform</u>

The Department is proposing that third party inspection agencies be paid for inspections even if the municipality in which the agency is acting as the subcode official has not received any inspection fees. While MDIA believes that payment should be received for services rendered, from a competitive standpoint the Department waives these fees which should otherwise be paid, placing private industry at a disadvantage. Any inspection performed should be funded by the applicant, whomever it may be.

The Department is further imposing itself into the financial operations of municipal government. Over the course of time, practices and procedures have been developed to serve the municipalities and third party agencies. The regulations already provide for the requirement that a third party agency shall be responsible for and receive all fees for permits initiated during

the contract period. MDIA sees no reason for further Department tampering with, perhaps tortiously, the contractual arrangements currently in place and arrangements made in the future.

Proposed Insurance Requirements are Deficient

Another serious situation that the Department's proposal would perpetuate and exacerbate is the deficiency of insurance requirements for private enforcing agencies. The Department proposed a precisely contrary change to the Uniform Construction Code relative to insurance requirements in the New Jersey Register on July 1, 1991. The pre-proposal required finite limits of coverage for general liability as well as professional (errors and omissions) liability insurance.

The 1991 text of the pre-proposal was not necessarily on target as to what type of insurance should be required to respond to professional liability exposure, however, MDIA indicated that the direction in which Department was heading was a positive one. The pre-proposal placed emphasis on the wrong type of policy to cover the professional exposure and MDIA suggested alternative requirements to correct the intent. On October 7, 1991 the Department published a notice indicating that the Department "has concluded that it is not necessary as a matter of public interest at this time to establish <u>additional</u> insurance requirements for the various types of private enforcing agencies" (emphasis added). The pre-proposal did contain additional insurance requirements. Had the Department considered the alternative provisions suggested by MDIA the Department would have discovered that there was a restatement of the insurance requirements already in place.

The Department misinterpreted the input received and came to an improper conclusion resulting in non-publication of even an adjusted regulation.

The primary rationale for not publishing a regulation with teeth in it was the perception that the cost of appropriate insurance (professional liability) would be prohibitive, whereby small firms would not be able to either to continue to operate or to enter the market in the first place thereby diminishing competition. The Department further implied that insurance to cover the professional liability exposure was not available. The type of insurance coverage necessary is available, with the cost for same being relative to the size of the operation being insured. Healthy competition in the market place should be a concern to the Department, but when the protection of the health, safety and welfare of the people is the primary focus, the rules governing the competition should be uniformly applied.

Rather than emasculate the insurance requirements which

protect the public, the Department should enforce the current regulations with respect to the maintenance of appropriate insurance. Despite receipt of advice that coverage for professional acts, errors or omissions is excluded from General Liability insurance contracts and that specific coverage for such exposure should be maintained, the Department being fully aware of this requirement continued with its posture of non-enforcement of a clearly written regulation. MDIA has always believed that the Uniform Construction Code required that not only General Liability insurance be maintained, but also, that Professional Liability (Errors and Omissions) insurance be provided by an authorized private enforcing agency. To further dilute the regulation will not be in the best interest of the people of New Jersey.

Administrative Fee Limitation Unauthorized and Improper

Another unwarranted intervention by the Department is the limitation placed on municipalities relative to the administrative charges permitted. Under the current regulations, a municipality is only permitted to charge an administrative fee up to fifteen percent (15%) of the permit fee to cover the operating cost of the construction code enforcement department when a third party onsite inspection agency is employed. The imposition of such a limitation on a municipality wrongly assumes that the Department has a complete understanding of the financial requirements of municipal construction code enforcement offices and implies that all municipalities have identical overhead. To reach such a conclusion is certainly presumptuous, if not preposterous. Municipal governments are in place to serve their constituents and no two municipalities have the same geographic nor the same demographic characteristics. The financial needs of municipalities administering the requirements of the UCC are not universal. Local government should be permitted to determine revenue requirements and establish appropriate fee structures. A municipality should not be subjected to an arbitrary limitation on its ability to fund its code enforcement functions and obligations. To impose such limitations serves only to increase the degree of difficulty in achieving the goal of ensuring the health, safety and welfare of the people.

The Department, by perpetuating the municipal administrative fee limitation is furthering its desire to eliminate private enforcing agencies from the State. Since private enforcing agency fees will almost always be less that the State's fee, this administrative fee limitation would result in lower revenue to the municipality. The real outcome, if not the Department's actual goal is to make municipal employment of private enforcing agencies so financially unattractive that the only remaining options would to be employ their own subcode officials or to cede enforcement activities to the State.

The imposition of any limitations on municipalities by rule should not continue inasmuch as by statute (52:27D-126a) a municipal governing body shall establish fees by ordinance. This section of the Uniform Construction Code Act indicates that such establishment shall be done in accordance with standards established by the Commissioner of Community Affairs. The standards should be working parameters to assist a municipality in the establishment of an appropriate municipal fee structure, not a mandated restriction. Such a limitation should be removed from the regulations to permit municipal governing bodies to comply with statutory requirements and establish fee structures based on individual revenue and expense allocations.

Municipal Enforcing Agencies are Denied Necessary Flexibility

By making private enforcing agencies ineligible to serve as acting subcode officials, a further disservice to the public is being perpetrated. The elimination of private enforcing agencies from providing interim inspection services limits the ability of a municipal code enforcement department to ensure the public health, safety and welfare. Code enforcement activities are dynamic to the extent that inspections must be performed on working permits. If a municipality finds itself in need of a subcode official, for whatever the reason, the elimination of private enforcing agencies from filling the gap further solidifies the competitive position of the Department of Community Affairs. If private enforcing agencies are prohibited from acting assignments, municipal options will be limited to hiring the Department outright or hiring subcode officials not employed by private agencies.

Unreasonable Time Constraints Proposed

A further issue in the proposal addresses the execution of contracts between municipalities and private enforcing agencies. The proposal requires executed contracts provided to the Department ten (10) days prior to the effective date by the construction official as well as the private enforcing agency. This is virtually impossible. Neither a construction official nor a private enforcing agency is empowered to authorize the award of a contract to any party. The elected officials, however, are authorized to make such awards after an appropriately conducted public meeting. Depending upon the time constraints existing at the time of the award of a contract and the needs of the municipality, there may not be the 10 day window seemingly prescribed by the Department. If a requirement is imposed on a construction official to provide copies of executed contracts to the Department, the requirement should be "as soon as practicable after the award of a contract is made by the governing body of the municipality."

Compensation Requirements for Employees of Private Enforcing Agencies Not Authorized

The Department is overstepping the legislative authority granted by the legislature by imposing specific requirements regarding compensation of employees of private enforcing agencies. As a matter of fact, nowhere in the Uniform Construction Code Act is there authority granted to the Department to regulate the wages of subcode officials. The manner in which employees of private enforcing agencies are compensated should not be a concern of the Department. Quality of the subcode inspection services is what should be paramount in the eyes of the Department. What a private enforcing agency expends to make a subcode official available is properly within the purview of the private enforcing agency and not the Department of Community Affairs.

The Department of Community Affairs is charged with the responsibility of ensuring the health, safety and welfare of the people in the State of New Jersey. The Department must not use its authority to regulate private industry to the point of extinction.

The Department has taken the legislation and its intent and defined it in its own interest, thereby ensuring its continued proliferation. In light of previous and current judicial issues, the Department used the legislation as an impetus, via these proposed amendments, to shore up regulatory areas in which it found itself wanting.

This proposal oversteps the bounds of Interstate Commerce. It is non-compliant with the Administrative Procedures Act. It is an invasion of privacy, not balanced by need to know. It exceeds regulatory and statutory authority. It denigrates the Construction Official's authority and municipal authority.

We hereby petition that PRN 1993-296 be withdrawn, rewritten and republished.

Sincerely,

Glenn G. Beaver

NEW JERSEY GENERAL ASSEMBLY

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 2
To Deb Smith	From Kathy
Co.	Co.
Dept.	Phone #
Fax #	Fax #

July 1, 1993

Commissioner Stephanie Bush
Department of Community Affairs
William Ashby Building
101 South Broad Street
Trenton, New Jersey 08625

Dear Commissioner Bush:

With the enactment of S-1227 (A-1838) P.L. 1993 c. 47, the Legislature intended to eliminate the past requirement that private agency fees be identical to DCA's as it relates to inspection and plan review services. In so doing, we take into consideration the fact that the costs incurred by private inspection agencies and DCA are not the same. Thus, this healthy competition could potentially lower costs in many instances.

We are writing to inform you that many members of the Legislature have received correspondence and/or have been contacted by the regulated public with concerns over the proposed regulations the Department of Community Affairs issued in the New Jersey Register on June 7, 1993. In our own review of the proposal, we are concerned with the many new requirements imposed on those private agencies performing inspection and plan review services such as the detailed information requested for monthly reports. We are also concerned with other requirements that appear to be regulatorily overburdensome, costly to business operations, and an attempt to micro-manage private businesses performing these services. We believe that some of the provisions of NJAC 5:23-4.4 et al. go far beyond the law's intent and amplify the recurring problem (across departments) of overexpansive regulatory discretion into areas not necessarily essential in order to implement the law's provisions.

34X

(2)

At this juncture, we are more concerned with the ability of the Department to account for its own productivity and efficient procedures in its inspections rather than myopic management of private businesses -- whose natural inclination is to keep its costs down (without impairing service delivery) in order to survive in today's economy.

We urge you to take the time to weigh all the factors that are being provided to you during the public comment period under the Administrative Procedures Act. We also recommend that the Department be slow and deliberative in its review of all submitted statements so that the necessary modifications to the rules address the concerns expressed by the regulated public. We will be monitoring this issue closely. We appreciate your attention to this matter and hope that we can keep the communication open concerning the status and direction of these proposed rules.

Sincerely,

John V. Kelly
Assemblyman 36th District

Steve Corodemus
Assemblyman 11th District

JK;SC/knb
cc: Speaker Chuck Haytaian
Michael Ticktin, DCA

shall be no separate fee charged for a certificate of compliance issued after a successful periodic inspection.

viii.-ix. (No change.)

4.-9. (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

POLICY AND PLANNING

Environmental Hazardous Substances List and Industrial Survey List

Proposed Amendments: N.J.A.C. 7:1F-2.2 and Appendix A, and 7:1G-2.1 and 6.4

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1D-9, 34:5A-1 et seq. and 26:2C-1 et seq.

DEPE Docket Number: 33-93-04.

Proposal Number: PRN 1993-311.

Submit written comments by July 7, 1993 to:

Janis E. Hoagland, Esq.
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) is proposing to delete three copper compounds from the reporting requirements of the Worker and Community Right to Know Regulations. N.J.A.C. 7:1G. These rules specify reporting requirements for inventories, transfers or releases of certain hazardous substances designated as Environmental Hazardous Substances (EHSs) in N.J.A.C. 7:1G-2.1. These reporting requirements apply to New Jersey businesses having Standard Industrial Classification codes specified in the Worker and Community Right to Know Act (hereafter, the Act), N.J.S.A. 34:5A-1 et seq.

On June 25, 1992, the Department received a petition from the Dry Color Manufacturers Association (DCMA), now known as the Color Pigments Manufacturers Association, to amend N.J.A.C. 7:1G-2.1 to delete three copper phthalocyanine compounds from the EHS list under the category "Copper and compounds." See 24 N.J.R. 2636(a). This exemption would eliminate the reporting requirements for these copper compounds under the Act. N.J.S.A. 34:5A-4.

The petition was sent to the Department in response to a June 24, 1991 decision by the United States Environmental Protection Agency (EPA) to delete these three copper compounds from the "Copper compounds" category list of toxic chemicals published pursuant to Title III of the Federal Superfund Amendments and Reauthorization Act (SARA) of 1986 because they were found to pose no threat to human health or the environment. The three compounds are: C.I. Pigment Blue 15, Phthalocyanine Blue, CAS No. 147-14-8; C.I. Pigment Green 7, Phthalocyanine Green, CAS No. 1328-53-6; and C.I. Pigment Green 36, Phthalocyanine Green CAS No. 14302-13-7.

The decision to delete the three copper compounds, published in the Federal Register at 56 Fed. Reg. 23,650, was based upon EPA's investigation that concluded that the copper ion cannot reasonably be anticipated to become available from any of the pigments at a level which induces toxicity. EPA also determined that there is no evidence that the three copper pigments cause or can reasonably be anticipated to cause environmental effects as specified under Section 313(d) of the Federal SARA. The EPA based its decision on the evaluation of all chemical and biological transformation processes that may generate copper ion from the phthalocyanine pigments. These included, but were not limited to hydrolysis, photolysis, abiotic and biotic degradations, abiotic and biotic anaerobic degradations, bioavailability of the ion when the compounds are ingested or inhaled, and bioaccumulation.

The Department reviewed the information submitted by the DCMA and applied the EPA's analysis indicating that the levels at which copper ion exhibits toxicity far exceed the expected limited availability of copper ion for the phthalocyanine pigments, and thus warranting, as EPA concluded, a low level of concern about the pigments' potential toxicity. With the removal of these compounds from the SARA Section 313 list, the Department has decided that the three phthalocyanine pigments should be expressly exempted under the category "Copper and compounds" from the EHS list. Amendments to the New Jersey Worker and Community Right to Know Act were passed in August 1991 (see N.J.S.A. 34:5A-4(a)) to incorporate the Federal SARA 313 list into the State's EHS list. At the same time, the Act was amended to require that the EHS list include all substances on the list developed and used by the Department in connection with the Industrial Survey Project. (See N.J.A.C. 7:1F, Appendix A.) This list includes copper and all chemical compounds and/or complexes containing copper. Therefore, in order to delete the phthalocyanine pigments from the EHS list, the Department is also proposing to delete these pigments from the Industrial Survey Project list.

On September 21, 1992, at 24 N.J.R. 3440(c), the Department published a notice in the New Jersey Register acknowledging its decision to grant DCMA's petition for rulemaking to delete the three copper pigments from the EHS list of chemicals subject to Right to Know reporting requirements. To reflect the August 1991 amendments to the Act concerning the EHS list, the Department is proposing to delete the three copper compounds from both the list of EHSs at N.J.A.C. 7:1G-2.1 and from the Industrial Survey list found in Appendix A of N.J.A.C. 7:1F. The Department is proposing to amend N.J.A.C. 7:1F-2.2 to clarify that if a substance is deleted from Appendix A, all confidential information pertaining to that substance that has been submitted to the Department shall continue to remain subject to the confidentiality rules at N.J.A.C. 7:1F-2. The Department is also proposing to add a similar requirement to N.J.A.C. 7:1G-6.4(a) to continue the confidentiality of Right to Know information submitted for substances which have been deleted from the EHS list.

Social Impact

The proposed amendments will have a negligible social impact. The elimination of reporting requirements for these pigments will not affect the general public since the three copper pigments pose no risk to human health or the environment.

Economic Impact

The proposed amendments will have a positive economic impact for companies using, storing or manufacturing these three compounds. These businesses will benefit from the reduction in costs associated with completing the reporting forms required by the Department. The public may benefit if these businesses pass on any such cost savings in the final cost to consumers of end-products.

Environmental Impact

The proposed amendments are expected to have neither beneficial nor adverse environmental impacts. Due to the nature of the three phthalocyanine compounds, there is no evidence of adverse effects to human health or to the environment. Therefore, the Department concludes that exempting the three compounds from the Department's reporting requirements will have no environmental impact.

Regulatory Flexibility Analysis

The proposed amendments will apply to all businesses covered under the Worker and Community Right to Know Act, many of which are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will decrease reporting and recordkeeping requirements for companies using these compounds. Because these amendments will reduce recordkeeping and reporting requirements for all businesses using these compounds, less stringent requirements for small businesses are not necessary.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:1F-2.2 Access to information; non-disclosure; hearing before disclosure

(a) (No change.)

(b) Information for which a confidentiality claim has been asserted shall remain subject to the confidentiality requirements of this subchapter if the substance for which the claim was asserted is subsequently deleted from Appendix A of this chapter.

36X

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Private Enforcing Agencies
Proposed Amendments: N.J.A.C. 5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18 and 4.20

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1993-296.

A public hearing on this proposal will be held on Tuesday, June 22, 1993, at 10:00 A.M., at:

William Ashby Department of Community Affairs Building
101 South Broad Street
Trenton, New Jersey

Submit written comments by July 7, 1993 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
Fax No. (609) 633-6729

The agency proposal follows:

Summary

On February 18, 1993, Governor Florio signed P.L. 1993, c.47, which repealed the statutory requirement that fees charged by private on-site inspection agencies be identical to those charged by the Department of Community Affairs when it serves as a local enforcing agency. Instead, the Department is authorized to adopt rules setting the amounts of fees to be charged by the private agencies, subject only to the condition that such fees not be more than those charged by the Department.

These proposed amendments, which are intended, *inter alia*, to implement P.L. 1993, c.47, reintroduce the practice of having municipalities select private on-site inspection agencies by competitive bidding, subject only to determination by the governing body, after consultation with the construction official, that the agency would be able to effectively enforce the subcode(s) in the municipality. To make it possible for a municipality to determine which of several bidders is the low bidder, the proposed amendments require that the bid be expressed in terms of a percentage of the fees charged by the Department as enforcing agency. Since the statute requires that the private on-site agencies not charge higher fees than the Department, the percentage bid may not exceed 100 percent.

It should be noted that these proposed amendments, if adopted, will be prospective only, and that existing contracts will continue in effect, with fees the same as those charged by the Department, until the expiration date of the contract.

The Department recognizes that competitive pressures could conceivably result in excessive cost-cutting by private agencies, with consequent harm to the health, safety and welfare of the public. Accordingly, new workload, staffing and operational reporting requirements for private agencies are established at N.J.A.C. 5:23-4.12(f) and 4.14, so that the Department can ensure that the health, safety and welfare of the public are adequately protected.

In addition, the proposed amendments:

1. Make it clear that contracts between municipalities and private enforcing agencies may be for one, two or three years, at the option of the municipality.
2. Make it clear that municipalities must pay for inspections performed by private enforcing agencies, even if no inspection fee is received by the municipality.
3. Establish a uniform procedure for municipalities to make payments to private enforcing agencies;
4. Make it clear that the "designated representatives" of a private enforcing agency in a municipality must be the persons actually serving as subcode officials there;
5. Require monthly reports on an agency's average response time after inspection requests are made, workload per inspector, payments received from each municipality and the total amount billed to each municipality, as well as annual reports pertaining to the finances and organization of the agency;
6. Make it clear that the liability insurance that private enforcing agencies are required to carry must be general liability insurance;
7. Eliminate seemingly redundant language concerning administrative charges of municipalities;
8. Make employees of private enforcing agencies ineligible to serve as acting subcode officials;
9. Make explicit the requirement, which the Department believes to be implicit in the current rules, that no separate charge is to be made for a certificate of compliance after a successful periodic inspection. The main relevance of this is to elevator inspections;
10. Require construction officials to file copies of executed contracts between private enforcing agencies and their municipalities with the Department at least 10 days prior to the effective date of the contract;
11. Establish procedures and requirements for soliciting bids from, and awarding contracts to, private enforcing agencies;
12. Permit compensation of employees of private enforcing agencies, whether full-time or part-time, only on a salaried or hourly basis;
13. Prohibit all payments to private agencies other than the fees set forth in N.J.A.C. 5:23-4.20, multiplied by the percentage established by contract;
14. Allow municipalities that use private agencies to include in their fees, for the purpose of covering their administrative expenses, an amount not exceeding 15 percent of the amounts paid to the private agencies; and
15. Establish a procedure for allocation of revenue from minimum fees and fees for certificates of occupancy and approval among officials (including private agencies) enforcing the building, fire protection, plumbing and electrical subcodes.

Social Impact

By allowing private on-site agencies to charge lower fees than those charged by the Department, the proposed amendments will allow those agencies to compete more effectively for the business of municipalities that might otherwise hire subcode officials or have the Department serve as the enforcing agency.

The other amendments are intended to further uniformity in adherence to the rules, facilitate Department monitoring of private enforcing agencies, and otherwise ensure that procedures are followed that are in the public interest.

The elimination of the practice of compensating employees of private enforcing agencies on a piece-work basis will be particularly beneficial, since it will eliminate an obvious incentive to the inspector to do as many inspections as possible in the least amount of time. If inspections are rushed, they cannot be as thorough as is necessary in the interest of public safety.

Economic Impact

Property owners who undertake construction in municipalities that contract with private on-site agencies may pay reduced fees for construction code services, if the private agencies see fit to compete for the right to provide subcode services in those municipalities.

Private enforcing agencies will no longer be able to profit through the appointment, outside of the prescribed contract procedure, of their employees as acting subcode officials.

To the extent that private enforcing agencies may have been acting in the mistaken belief that it was necessary for them to obtain more expensive forms of insurance, they may now be able to reduce their insurance costs, in accordance with N.J.A.C. 5:23-4.14(e)5.

Since private enforcing agencies are required to use the Department's fee schedule, whether at 100 percent or at some lesser percentage, any separate charging for certificates of compliance after successful periodic inspections that they may be doing, without authorization under existing rules, will have to be discontinued.

Private enforcing agencies are likely to have to incur additional costs in order to comply with Department reporting requirements. The extent of such additional costs will depend on whether or not the agency already prepares reports for its own purposes that contain the required information.

Regulatory Flexibility Analysis

Private on-site agencies, which may or may not be "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., will be able to compete more effectively for business than they would be if their fees were the same as those of the Department, either by statute or by rule. The fees will be allowed to be set by each municipality, so long as the fees are less than those charged by the Department. Both small businesses and others will benefit from

this change, which will allow private on-site inspection agencies to be selected by competitive bidding. The new filing, bidding, reporting, recordkeeping and other obligations that are imposed on private on-site agencies are necessary in order to protect the public interest in the integrity of the code enforcement system, a matter directly related to public health, safety and welfare. The Department has determined that it is appropriate that these requirements be imposed uniformly, regardless of size or form of organization of the individual private enforcing agencies, and that no differentiation based upon business size be provided in these rules.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:23-4.4 Municipal enforcing agencies—organization

(a) The municipality shall organize its enforcing agency in accordance with the ordinance adopted pursuant to N.J.A.C. 5:23-4.3 and to meet the following additional requirements:

1.-5. (No change.)

6. Acting appointments: A municipality shall appoint an acting construction official or subcode official any time the absence of such official [will] **would** impede orderly administration of the Uniform Construction Code and other duties mandated by the municipality[; but in no event may the time period exceed the statutory period of 20 business days]. Acting appointments shall be accomplished by any mechanism acceptable to the municipality; providing, however, that a written record shall be kept. Notice to the Department shall be provided within seven days any time an appointment is made for more than 30 days. Acting appointments may not be made for longer than 60 days, nor may they be extended or renewed beyond 60 days unless specific authority to do so is granted in writing by the [department] **Department**.

i. Only an individual licensed as a construction official may be appointed as an acting construction official and only an individual licensed as a subcode official in a particular subcode may be appointed as an acting subcode official for that subcode. The technical license level of an acting construction or subcode official shall be superior or parallel to the enforcing agency classification of the municipality or such municipal classification shall be downgraded to the technical license level of the acting official for the period of time in the position. Employees of private on-site inspection agencies shall not serve as acting construction officials **or acting subcode officials**.

ii.-iv. (No change.)

7.-8. (No change.)

(b)-(d) (No change.)

5:23-4.5 Municipal enforcing agencies; administration and enforcement

(a)-(g) (No change.)

(h) Duties of construction officials:

1. The construction official shall enforce the regulations and:

i.-xix. (No change.)

xx. Comply with any local procedures which may be established by the governing body to provide the municipal search officer with information concerning construction permits and certificates of occupancy[.]; **and**

xxi. File with the Department any executed contract with a private on-site inspection agency at least 10 days prior to the effective date of the contract.

2. (No change.)

(i)-(j) (No change.)

5:23-4.5A Selection of private on-site inspection and plan review agencies

(a) (No change.)

(b) Prior to the selection of an [onsite] **on-site** inspection agency, the local enforcing agency shall notify each private [onsite] **on-site** agency authorized by the Department to serve as a subcode official for the subcode(s) to be contracted. The notification, **which shall specify the term of the proposed contract**, shall be **delivered** by certified mail, return receipt requested. No other notice shall be required.

1. The notice shall specify that a written, sealed [proposal] bid is requested, [in accordance with] together with a qualification statement containing the information set forth in N.J.A.C. 5:23-4.5A(d), shall identify the subcode(s) for which a [proposal] bid is requested, shall state the date and time by which [proposals] bids and accompanying qualification statements must be submitted, which shall not be less than 30 days following the date of mailing of the request for [proposals] bids, and shall state the name and address of the person to whom [proposals] bids and accompanying qualification statements shall be mailed or delivered.

2. All bids shall set forth the fees which the private on-site agency proposes to charge for work done by it in the municipality. Such fees shall be expressed as a uniform percentage, by subcode, which shall not exceed 100 percent, of the fees charged, as of the date on which the bids are opened, by the Department when it serves as an enforcing agency, which fees are set forth at N.J.A.C. 5:23-4.20.

3. The contract shall be awarded to the bidder that offers to charge the lowest percentage of the Department's fees and is determined by the governing body, after consultation with the construction official, to be able to effectively enforce the subcode(s) for which the bid was submitted.

4. The amounts to be charged by a private on-site agency awarded a contract pursuant to this section shall be the amounts set forth in N.J.A.C. 5:23-4.20 and/or 5:23-12.6(a) and (b) as of the date of the opening of the bids, multiplied by the percentage set forth in the bid. Such amounts shall be in effect for the entire contract period and shall not be affected by any subsequent increase in the fees set forth in N.J.A C. 5:23-4.20 or 5:23-12.6(a) and (b).

(c) Written, sealed [proposals] bids, together with separately sealed qualification statements containing the information required by (d) below, shall be submitted to the municipal officer responsible for receiving bids at or before the date and time established in the original notice of request for proposals. The said municipal officer shall forward all such [proposals] qualification statements received to the construction official, who shall evaluate each qualification statement and advise the governing body, in writing, as to whether, in the construction official's judgment, each private agency submitting a proposal would be able to effectively enforce the subcode(s) for which the proposal is being submitted in the municipality.

(d) All [proposals] **qualification statements** submitted by private [onsite] **on-site** inspection agencies to serve as subcode officials shall be in writing and shall contain all of the information required by this subsection. Any omission of required information shall allow the local governing body the option to automatically disqualify the proposal. No additional information shall be required. The required information is as follows:

1.-5. (No change.)

6. The manner in which the agency compensates each class of employees [(for example,], **which shall be one of the following only:** full-time salaried, part-time salaried, full-time hourly[,] or part-time hourly[, piece work]). Where employees of a given class are compensated in more than one way, a percentage breakdown shall be provided;

7.-13. (No change.)

(e) When considering [proposals] **qualification statements** submitted by authorized [onsite] **on-site** inspection agencies **seeking** to act as a subcode official, [local enforcing agencies] **construction officials** and governing bodies shall base their [selection] **determination as to whether an authorized on-site inspection agency would be able to effectively enforce the subcode** on the following criteria:

1.-6. (No change.)

(f) [It is recognized that the criteria set forth in (e) above are subjective and cannot be readily quantified. Inspection services being essentially technical and professional in nature, an agency cannot be chosen on a quantitative basis. These criteria are intended to set forth a framework within which the construction official can exercise his professional judgment and determine which among several agencies is most likely to provide the highest quality, and most responsive, code enforcement services.] **After the governing body, having consulted with the construction official, determines whether each private agency that has submitted a bid and qualifica-**

tion statement would be able to effectively enforce the subcode(s) for which code enforcement services are required in the municipality, it shall, at a regularly scheduled or special meeting, unseal and receive the bids of the private agencies that have been found to be able to effectively enforce such subcodes and shall accept the bid among such bids that sets forth the lowest percentage of the fees charged by the Department.

(g) [The construction official shall, within 15 days of receipt of the proposals, recommend to the governing body having jurisdiction the acceptance of one of the proposals. The recommendation shall be in writing.] **The governing body shall accept the successful low bid, or reject all bids, within 30 days of the bid opening and shall enter into a contract with any successful bidder not less than 30 days prior to the beginning of the contract period.**

(h) [If the governing body accepts the recommendation of the construction official, it shall enter into a contract with the agency that submitted the recommended proposal in the manner prescribed by law.] **The municipality shall have the option of entering into a contract for one year, two years or three years.**

(i) [If the governing body does not accept the recommendation of the construction official and decides instead to award the contract to another agency, then the governing body shall advise each agency that submitted a proposal of this decision and of the reasons for rejecting the construction official's recommendation. Each agency shall be given an opportunity to comment before the governing body at a public hearing. At least seven days' prior notice of this public hearing shall be given to each agency by certified mail. After the conclusion of the hearing, the governing body, if it does not choose to reconsider the matter, shall enter into a contract with the agency which it has selected in the manner prescribed by law.] **The contract shall set forth the specific amounts to be paid by the municipality to the private enforcing agency for each code enforcement service. Such amounts shall, in all cases, be the amounts set forth in N.J.A.C. 5:23-4.20, as of the date of the opening of the bids, times the percentage bid by the private agency. Such amounts shall continue in effect, without any change, for the duration of the contract.**

(j) The contract shall provide that amounts due to the private agency shall be paid as follows, if applicable, and shall be billed within 30 days of coming due and paid within 30 days of billing:

1. Twenty percent due upon issuance of the construction permit;

2. Sixty percent due within 30 days thereafter;

3. Twenty percent due upon completion, as evidenced by issuance of inspection sticker approval for the subcode;

4. Certificate of occupancy or certificate of approval charges due on issuance of the certificate; and

5. Elevator inspection charges due on issuance of certificate of compliance or notice of unsafe structure.

5:23-4.12 Private on-site inspection and plan review agencies; establishment

(a)-(e) (No change.)

(f) Applications for reauthorization shall be filed with the Department at least 60 days prior to the scheduled expiration [for] of the current authorization from the Department.

1. The on-site inspection agency shall make current the information previously submitted to the Department.

2. The on-site inspection agency shall provide such additional information as the Department may request, **and in such detail as the Department may require in order to have a complete understanding of the operations of the agency and any related companies, including, without limitation, an audited financial statement for the preceding fiscal year of the agency, prepared and attested to by a New Jersey-licensed certified public accountant, including the following:**

i. A detailed income and expense statement, including, without limitation, a profit and loss statement, for all operations in New Jersey, with those operations subject to the Uniform Construction Code and those operations not so subject broken out separately;

ii. A detailed income and expense statement, including, without limitation, a profit and loss statement, for the entire operations of the company, both in and out of New Jersey;

iii. The same information as required in (f)2i and ii above f any subsidiary or parent company or any company in which officer, partner or person with at least a 10 percent ownersh interest in the agency is an officer, partner or holder of at lea a 10 percent ownership interest;

iv. Detailed information on any distribution of profits, stoc dividend or other removal of assets from the agency or from ar subsidiary or parent company or any company in which an office partner or person with at least a 10 percent ownership interest i the agency is an officer, partner or holder of at least a 10 percer ownership interest;

v. Detailed information on any outstanding secured or unsecure debt of the agency or of any subsidiary or parent company or an company in which an officer, partner or person with at least a 1 percent ownership interest in the agency is an officer, partner o holder of at least a 10 percent ownership interest; and

vi. Detailed information on any outstanding loans or investment made by the agency or by any subsidiary or parent company or b any company in which an officer, partner or person with at leas a 10 percent ownership interest in the agency is an officer, partne or holder of at least a 10 percent ownership interest.

3. The application shall be acccompanied by the fee establishe by [this chapter] **N.J.A.C. 5:23-4.21.**

4. The Department may conduct such additional investigations o the applicant as it may deem necessary.

Recodify existing 1. and 2. as **5. and 6.** (No change in text.)

5:23-4.14 Private enforcing agencies—administration and enforcement

(a) (No change.)

(b) The on-site inspection agency shall provide the Department with the following:

1. A copy of each executed contract and all amendments [pursuant to subparagraph iii of this paragraph.] **thereto, to be submitted at least 10 days prior to their effective date;**

2. A list of the municipalities served, and a current list of names, addresses and telephone numbers of the [agencies.] **agency's** designated representatives **actually serving as subcode officials** in each municipality, who may be contacted in connection with routine matters during normal working hours[;] and, in the event of emergency, during other than normal working hours[.];

3. A list of names, certification numbers, addresses and telephone numbers of all technical personnel employed[.]; **and**

4. Monthly reports, due on the 15th of every month covering the period of the previous month, setting forth the following:

i. The agency's median response time, defined as the elapsed time between the receipt of an inspection request by the construction official or subcode official, whichever occurs first, and the time at which the inspection is performed, expressed to the nearest whole hour. For purposes of this report, the 24 hour periods of Saturday, Sunday or any official holiday shall not be counted as elapsed time, but all other time shall be counted;

ii. The number of inspections performed in each municipality, and the number of inspections performed in each municipality more than 72 hours after the receipt of an inspection request by the construction official or the subcode official, whichever occurs first;

iii. The total number of inspections, broken down by subcode discipline, performed by the private agency during the reporting period and the total number of subcode officials and inspectors available during the reporting period, expressed as full-time equivalent (FTE). For purposes of this report, one FTE shall be the total number of subcode official and inspector hours worked during the reporting period divided by eight, times the number of working days in the reporting period. All days other than Saturdays, Sundays and official holidays shall be considered working days;

iv. The total payments received from each municipality during the reporting period; and

v. The total amount billed to each municipality during the reporting period.

(c)-(d) (No change.)

(e) Each on-site inspection agency shall have the following responsibilities:

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1.-4. (No change.)

5. To carry general liability insurance, at least in the amount of $1,000,000 for each person and each occurrence, to satisfy claims or judgments for property damage and/or personal injury arising out of the failure of its employees to properly discharge their duties and responsibilities.

6.-15. (No change.)

(f) (No change.)

(g) The amount charged to a municipality by a private agency for work subject to a minimum fee under N.J.A.C. 5:23-4.20(c)2 or for certificates of occupancy, certificates of approval and certificates of continued occupancy shall be the percentage set forth in a contract entered into in accordance with N.J.A.C. 5:23-4.5A, times the amount of the minimum fee or fee for a certificate of occupancy or certificate of approval, times the amount determined in accordance with this subsection.

1. In the case of work requiring inspections by four subcode officials or their designees, the allocation of the fee revenue shall be as follows:

i. Building subcode: 40 percent;

ii. Fire protection subcode: 20 percent;

iii. Plumbing subcode: 20 percent; and

iv. Electrical subcode: 20 percent.

2. In the case of work requiring inspections by fewer than four subcode officials or their designees, the allocation shall be among or between the subcodes involved in the proportions set forth in (g)1 above. (Thus, for example, in work involving only the building and plumbing subcodes, two-thirds of the fee (40/60) would be allocated to the building subcode and one-third of the fee (20/60) to the plumbing subcode.)

(h) Where plan review is performed more than one month before the construction permit is issued, or where a project does not go forward after a private on-site agency has performed plan review, then the municipality shall pay to the private agency 20 percent of the amount that would otherwise be due, which amount shall be determined by multiplying the relevant fee set forth in N.J.A.C. 5:23-4.20 by the percentage set forth in the contract between the municipality and the private agency entered into in accordance with N.J.A.C. 5:23-4.5A.

(i) Private on-site agencies shall bill for their services at least once monthly. Each bill shall specify the billing period and the amount currently due, amounts already paid, and any remaining balances, identified by permit number and totalled for the billing period.

(j) The private agency shall be paid for work performed even if the municipality receives no inspection fee for such work.

(k) Private enforcing agencies shall charge no fees other than the fees set forth in N.J.A.C. 5:23-4.20 multiplied by the percentage set forth in the contract between the private agency and the municipality. Private enforcing agencies shall furnish no services other than subcode enforcement services to municipalities and shall not receive any payments from municipalities for any other goods or services whatsoever.

5:23-4.18 Standards for municipal fees

(a)-(j) (No change.)

(k) Fees to be charged [to] by municipalities [by] **where** private [onsite] **on-site** inspection and plan review agencies [are as follows:

1. Where the local enforcing agency uses the services of a private onsite inspection and plan review agency to enforce one or more subcodes, then the fees charged to the municipality by the private onsite agency shall be identical to those charged by the Department pursuant to N.J.A.C. 5:23-4.20 and as provided in this paragraph.

i. Building subcode: Where a private onsite agency performs building subcode services, the fees charged to the municipality by the private agency shall be either the volume-based or cost-based fee, whichever type is appropriate, which are charged by the Department as set forth at N.J.A.C. 5:23-4.20.

ii. Plumbing subcode: Where a private onsite agency performs plumbing subcode services, the fees charged to the municipality by the private agency shall be the fees for plumbing fixtures and stacks which are charged by the Department as set forth at N.J.A.C. 5:23-4.20.

iii. Electrical subcode: Where a private onsite agency performs electrical subcode services, the fees charged to the municipality by the private agency shall be the fees for electrical fixtures and devices which are charged by the Department set forth at N.J.A.C. 5:23-4.20.

iv. Fire subcode: Where a private onsite agency performs fire subcode services, the fees charged to the municipality by the private agency shall be the sprinkler, standpipe, fire detector (smoke and heat), premanufactured fire suppression system, gas or oil fired appliances not connected to the plumbing system, kitchen exhaust system, incinerator and crematorium fees which are charged by the Department as set forth at N.J.A.C. 5:23-4.20.

v. Elevator safety subcode: Fees charged to the municipality when a private on-site agency performs inspections and witnesses tests shall be identical to the fees established by the Department at N.J.A.C. 5:23-12.6(a) and (b).

vi. Administrative surcharge: Municipalities using private onsite inspection and plan review agencies may add to the above fees an administrative surcharge of up to 15 percent of the relevant subcode(s) permit fee(s). The surcharge shall apply only to subcode areas for which the municipality has a contract with an onsite agency. In lieu of an administrative surcharge to fees charged by an onsite agency, a municipality may adjust its fee schedule up to 15 percent higher for this purpose.

2. Demolition and removal fees shall be charged as follows:

i. Where a private onsite agency performs one or more subcode services for demolitions or removals, the amount charged to the municipality by the private agency shall be a portion of the demolition or removal fees which are set forth at N.J.A.C. 5:23-4.20 as Departmental fees and which shall be as follows:

(1) Building subcode: 40 percent

(2) Fire subcode: 20 percent

(3) Plumbing subcode: 20 percent

(4) Electrical subcode: 20 percent

3. Sign fees shall be charged as follows:

i. Where a private onsite agency performs one or more subcode services for signs or billboards, the amount charged to the municipality by the private agency shall be as follows:

(1) Building subcode: The sign fees set forth at N.J.A.C. 5:23-4.20 as Departmental fees.

(2) Electrial subcode: The fees for electrical fixtures and devices set forth at N.J.A.C. 5:23-4.20 as Departmental fees.

4. Fees for certificates of occupancy and certificates of continued occupancy charged to the municipality by the private agency shall be the following portions of the fees for a certificate of occupancy and certificate of continued occupancy set forth at N.J.A.C. 5:23-4.20 as Departmental fees:

i. Building subcode: 40 percent;

ii. Fire subcode: 20 percent;

iii. Plumbing subcode: 20 percent; and

iv. Electrical subcode: 20 percent.

5. Where plan review is performed more than one month before the construction permit is issued, or where a project does not go forward after a private onsite inspection and plan review agency has performed plan review, then the municipality shall pay to the private agency 20 percent of the amount that would otherwise be due pursuant to this section.] **carry out subcode official responsibilities shall not exceed the amounts to be paid to those private agencies for those services, pursuant to the contract between the private agency and the municipality, by more than 15 percent.**

5:23-4.20 Departmental fees

(a)-(b) (No change.)

(c) Departmental (enforcing agency) fees shall be as follows:

1.-2. (No change.)

3. [Certificates] **Fees for certificates** and other permits[: The fees] are as follows:

i.-vi. (No change.)

vii. The fee for a certificate of approval or certificate of compliance certifying **that** the work done under a construction permit has been satisfactorily completed shall be $28.00, **except that there**

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shall be no separate fee charged for a certificate of compliance issued after a successful periodic inspection.

viii.-ix. (No change.)

4.-9. (No change.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

POLICY AND PLANNING

Environmental Hazardous Substances List and Industrial Survey List

Proposed Amendments: N.J.A.C. 7:1F-2.2 and Appendix A, and 7:1G-2.1 and 6.4

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1D-9, 34:5A-1 et seq. and 26:2C-1 et seq.

DEPE Docket Number: 33-93-04.

Proposal Number: PRN 1993-311.

Submit written comments by July 7, 1993 to:

Janis E. Hoagland, Esq.
Office of Legal Affairs
New Jersey Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402

The agency proposal follows:

Summary

The Department of Environmental Protection and Energy (Department) is proposing to delete three copper compounds from the reporting requirements of the Worker and Community Right to Know Regulations. N.J.A.C. 7:1G. These rules specify reporting requirements for inventories, transfers or releases of certain hazardous substances designated as Environmental Hazardous Substances (EHSs) in N.J.A.C. 7:1G-2.1. These reporting requirements apply to New Jersey businesses having Standard Industrial Classification codes specified in the Worker and Community Right to Know Act (hereafter, the Act), N.J.S.A. 34:5A-1 et seq.

On June 25, 1992, the Department received a petition from the Dry Color Manufacturers Association (DCMA), now known as the Color Pigments Manufacturers Association, to amend N.J.A.C. 7:1G-2.1 to delete three copper phthalocyanine compounds from the EHS list under the category "Copper and compounds." See 24 N.J.R. 2636(a). This exemption would eliminate the reporting requirements for these copper compounds under the Act. N.J.S.A. 34:5A-4.

The petition was sent to the Department in response to a June 24, 1991 decision by the United States Environmental Protection Agency (EPA) to delete these three copper compounds from the "Copper compounds" category list of toxic chemicals published pursuant to Title III of the Federal Superfund Amendments and Reauthorization Act (SARA) of 1986 because they were found to pose no threat to human health or the environment. The three compounds are: C.I. Pigment Blue 15, Phthalocyanine Blue, CAS No. 147-14-8; C.I. Pigment Green 7, Phthalocyanine Green, CAS No. 1328-53-6; and C.I. Pigment Green 36, Phthalocyanine Green CAS No. 14302-13-7.

The decision to delete the three copper compounds, published in the Federal Register at 56 Fed. Reg. 23,650, was based upon EPA's investigation that concluded that the copper ion cannot reasonably be anticipated to become available from any of the pigments at a level which induces toxicity. EPA also determined that there is no evidence that the three copper pigments cause or can reasonably be anticipated to cause environmental effects as specified under Section 313(d) of the Federal SARA. The EPA based its decision on the evaluation of all chemical and biological transformation processes that may generate copper ion from the phthalocyanine pigments. These included, but were not limited to hydrolysis, photolysis, abiotic and biotic degradations, abiotic and biotic anaerobic degradations, bioavailability of the ion when the compounds are ingested or inhaled, and bioaccumulation.

The Department reviewed the information submitted by the DCM and applied the EPA's analysis indicating that the levels at which copp ion exhibits toxicity far exceed the expected limited availability of copp ion for the phthalocyanine pigments, and thus warranting, as EI concluded, a low level of concern about the pigments' potential toxici With the removal of these compounds from the SARA Section 313 li the Department has decided that the three phthalocyanine pigmer should be expressly exempted under the category "Copper and co pounds" from the EHS list. Amendments to the New Jersey Work and Community Right to Know Act were passed in August 1991 (s N.J.S.A. 34:5A-4(a)) to incorporate the Federal SARA 313 list into t State's EHS list. At the same time, the Act was amended to requi that the EHS list include all substances on the list developed and us by the Department in connection with the Industrial Survey Project. (S N.J.A.C. 7:1F, Appendix A.) This list includes copper and all chemic compounds and/or complexes containing copper. Therefore, in order delete the phthalocyanine pigments from the EHS list, the Departme is also proposing to delete these pigments from the Industrial Surv Project list.

On September 21, 1992, at 24 N.J.R. 3440(c), the Departme published a notice in the New Jersey Register acknowledging its decisic to grant DCMA's petition for rulemaking to delete the three copp pigments from the EHS list of chemicals subject to Right to Kno reporting requirements. To reflect the August 1991 amendments to t Act concerning the EHS list, the Department is proposing to delete t three copper compounds from both the list of EHSs at N.J.A.C. 7:1G-2 and from the Industrial Survey list found in Appendix A of N.J.A.(7:1F. The Department is proposing to amend N.J.A.C. 7:1F-2.2 to clari that if a substance is deleted from Appendix A, all confidential inform tion pertaining to that substance that has been submitted to the Depar ment shall continue to remain subject to the confidentiality rules N.J.A.C. 7:1F-2. The Department is also proposing to add a simil requirement to N.J.A.C. 7:1G-6.4(a) to continue the confidentiality Right to Know information submitted for substances which have bee deleted from the EHS list.

Social Impact

The proposed amendments will have a negligible social impact. Th elimination of reporting requirements for these pigments will not affec the general public since the three copper pigments pose no risk to huma health or the environment.

Economic Impact

The proposed amendments will have a positive economic impact f companies using, storing or manufacturing these three compounds. Thes businesses will benefit from the reduction in costs associated with com pleting the reporting forms required by the Department. The public ma benefit if these businesses pass on any such cost savings in the final co to consumers of end-products.

Environmental Impact

The proposed amendments are expected to have neither beneficia nor adverse environmental impacts. Due to the nature of the thre phthalocyanine compounds, there is no evidence of adverse effects t human health or to the environment. Therefore, the Department con cludes that exempting the three compounds from the Department' reporting requirements will have no environmental impact.

Regulatory Flexibility Analysis

The proposed amendments will apply to all businesses covered unde the Worker and Community Right to Know Act, many of which are smal businesses as defined under the Regulatory Flexibility Act, N.J.S.A 52:14B-16 et seq. The proposed amendments will decrease reporting an recordkeeping requirements for companies using these compounds. Be cause these amendments will reduce recordkeeping and reporting re quirements for all businesses using these compounds, less stringen requirements for small businesses are not necessary.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

7:1F-2.2 Access to information; non-disclosure; hearing before disclosure

(a) (No change.)

(b) Information for which a confidentiality claim has been asserted shall remain subject to the confidentiality requirements of this subchapter if the substance for which the claim was asserted is subsequently deleted from Appendix A of this chapter.

10/18/93 SCO

P.L.1993, CHAPTER 47, *approved February 18, 1993*

1992 Senate No. 1227

AN ACT concerning inspection and plan review fees charged by private inspection agencies and amending P.L.1975, c.217.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 6 of P.L.1975, c.217 (C.52:27D-124) is amended to read as follows:

6. The commissioner shall have all the powers necessary or convenient to effectuate the purposes of this act, including, but not limited to, the following powers in addition to all others granted by this act:

a. To adopt, amend and repeal, after consultation with the code advisory board, rules: (1) relating to the administration and enforcement of this act and (2) the qualifications or licensing, or both, of all persons employed by enforcing agencies of the State to enforce this act or the code, except that, plumbing inspectors shall be subject to the rules adopted by the commissioner only insofar as such rules are compatible with such rules and regulations, regarding health and plumbing for public and private buildings, as may be promulgated by the Public Health Council in accordance with Title 26 of the Revised Statutes.

b. To enter into agreements with federal and State of New Jersey agencies, after consultation with the code advisory board, to provide insofar as practicable (1) single-agency review of construction plans and inspection of construction and (2) intergovernmental acceptance of such review and inspection to avoid unnecessary duplication of effort and fees. The commissioner shall have the power to enter into such agreements although the federal standards are not identical with State standards; provided that the same basic objectives are met. The commissioner shall have the power through such agreements to bind the State of New Jersey and all governmental entities deriving authority therefrom.

c. To take testimony and hold hearings relating to any aspect of or matter relating to the administration or enforcement of this act, including but not limited to prospective interpretation of the code so as to resolve inconsistent or conflicting code interpretations, and, in connection therewith, issue subpenas to compel the attendance of witnesses and the production of evidence. The commissioner may designate one or more hearing examiners to hold public hearings and report on such hearings to the commissioner.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

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d. To encourage, support or conduct, after consultation with the code advisory board, educational and training programs for employees, agents and inspectors of enforcing agencies, either through the Department of Community Affairs or in cooperation with other departments of State government, enforcing agencies, educational institutions, or associations of code officials.

e. To study the effect of this act and the code to ascertain their effect upon the cost of building construction and maintenance, and the effectiveness of their provisions for insuring the health, safety, and welfare of the people of the State of New Jersey.

f. To make, establish and amend, after consultation with the code advisory board, such rules as may be necessary, desirable or proper to carry out his powers and duties under this act.

g. To adopt, amend, and repeal rules and regulations providing for the charging of and setting the amount of fees for the following code enforcement services, licenses or approvals performed or issued by the department, pursuant to the "State Uniform Construction Code Act:"

(1) Plan review, construction permits, certificates of occupancy, demolition permits, moving of building permits, elevator permits and sign permits; and

(2) Review of applications for and the issuance of licenses certifying an individual's qualifications to act as a construction code official, subcode official or assistant under this act.

(3) (Deleted by amendment, P.L.1983, c.338).

h. To adopt, amend and repeal rules and regulations providing for the charging of and setting the amount of construction permit surcharge fees to be collected by the enforcing agency and remitted to the department to support those activities which may be undertaken with moneys credited to the Uniform Construction Code Revolving Fund.

i. To adopt, amend and repeal rules and regulations providing for:

(1) Setting the amount of and the charging of fees to be paid to the department by a private agency for the review of applications for and the issuance of approvals authorizing a private agency to act as an on-site inspection and plan review agency or an in-plant inspection agency;

(2) The setting of the amounts of fees to be charged by a private agency for inspection and plan review services; provided, however, that such fees shall [be identical to] not be more than those adopted and charged by the department when it serves as a local enforcement agency pursuant to section 10 of P.L.1975, c.217 (C.52:27D-128); and

(3) The formulation of standards to be observed by a municipality in the evaluation of a proposal submitted by a private agency to provide inspection or plan review services within a municipality.

j. To enforce and administer the provisions of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and the code promulgated thereunder, and to prosecute or cause to be prosecuted violators of the provisions of that act or the code promulgated thereunder in administrative hearings and in civil proceedings in State and local courts.

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k. To monitor the compliance of local enforcing agencies with the provisions of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.), to order corrective action as may be necessary where a local enforcing agency is found to be failing to carry out its responsibilities under that act, to supplant or replace the local enforcing agency for a specific project, and to order it dissolved and replaced by the department where the local enforcing agency repeatedly or habitually fails to enforce the provisions of the "State Uniform Construction Code Act."

(cf: P.L.1985, c.21, s.1)

2. This act shall take effect immediately.

STATEMENT

This bill amends the State Uniform Construction Code Act to eliminate the requirement that fees charged by private inspection agencies be identical to those charged by the Department of Community Affairs (DCA) when it is the enforcing agency. The bill limits the fees at the level charged by DCA.

Costs incurred by private inspection agencies and DCA are not the same. Therefore, private inspection agencies should be permitted to compete with DCA by charging lower fees. In addition, the higher fees for private inspection agencies have not necessarily benefitted the private agencies because of the lack of competition.

While private agency fees should be subject to regulation in order to prevent price-cutting at the expense of quality, the determination of fair and reasonable rates for private agencies should be a matter separate from the charging of fees necessary to cover the department's costs.

Eliminates requirement that private agency inspection and plan review fees be identical to DCA's under Uniform Construction Code.

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[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 619

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1982

By Assemblyman PELLECCHIA

Referred to Committee on Municipal Government

AN ACT to amend the "State Uniform Construction Code Act," approved October 7, 1975 (P. L. 1975, c. 217).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 6 of P. L. 1975, c. 217 (C. 52:27D-124) is amended to read as follows:

6. Powers of the commissioner. The commissioner shall have all the powers necessary or convenient to effectuate the purposes of this act, including, but not limited to, the following powers in addition to all others granted by this act:

a. To adopt, amend and repeal, after consultation with the code advisory board, rules: (1) relating to the administration and enforcement of this act and (2) the qualifications or licensing, or both, of all persons employed by enforcing agencies of the State to enforce this act or the code, except that, plumbing inspectors shall be subject to the rules adopted by the commissioner only insofar as such rules are compatible with such rules and regulations, regarding health and plumbing for public and private buildings, as may be promulgated by the Public Health Council in accordance with Title 26 of the Revised Statutes.

b. To enter into agreements with federal and State of New Jersey agencies, after consultation with the code advisory board, to provide insofar as practicable (1) single-agency review of construction plans and inspection of construction and (2) intergovernmental acceptance of such review and inspection to avoid unnecessary duplication of effort and fees. The commissioner shall have

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendment adopted December 13, 1982.

the power to enter into such agreements although the federal standards are not identical with State standards; provided that the same basic objectives are met. The commissioner shall have the power through such agreements to bind the State of New Jersey and all governmental entities deriving authority therefrom.

c. To take testimony and hold hearings relating to any aspect of or matter relating to the administration or enforcement of this act, including but not limited to prospective interpretation of the code so as to resolve inconsistent or conflicting code interpretations, and, in connection therewith, issue subpenas to compel the attendance of witnesses and the production of evidence. The commissioner may designate one or more hearing examiners to hold public hearings and report on such hearings to the commissioner.

d. To encourage, support or conduct, after consultation with the code advisory board, educational and training programs for employees, agents and inspectors of enforcing agencies, either through the Department of Community Affairs or in cooperation with other departments of State Government, enforcing agencies, educational institutions, or associations of code officials.

e. To study the effect of this act and the code to ascertain their effect upon the cost of building construction and maintenance, and the effectiveness of their provisions for insuring the health, safety, and welfare of the people of the State of New Jersey.

f. To make, establish and amend, after consultation with the code advisory board, such rules as may be necessary, desirable or proper to carry out his powers and duties under this act.

g. To adopt, amend, and repeal rules and regulations providing for the charging of and setting the amount of fees for the following code enforcement services, licenses or approvals performed or issued by the department, pursuant to the "State Uniform Construction Code Act":

(1) Plan review, construction permits, certificates of occupancy, demolition permits, moving of building permits, elevator permits and sign permits; *and,*

(2) Review of applications for and the issuance of licenses certifying an individual's qualifications to act as a construction code official, subcode official or assistant under this act[; and].

(3) [Review of applications for and the issuance of approvals authorizing a private agency to act as an onsite inspection and plan review agency or as an inplant inspection agency under this act] *(Deleted by amendment P. L. 1982, c. . .).*

h. To adopt, amend and repeal rules and regulations providing for the charging of and setting the amount of construction permit

surcharge fees to be collected by the enforcing agency and remitted to the department to support those activities which may be undertaken with moneys credited to the Uniform Construction Code Revolving Fund.

i. To adopt, amend and repeal rules and regulations providing for:

(1) setting the amount of and the charging of fees to be paid to the department by a private agency for the review of applications for and the issuance of approvals authorizing a private agency to act as an onsite inspection and plan review agency or an inplant inspection agency;

(2) the setting of the amounts of fees to be charged by a private agency for inspection and plan review services; provided, however, that such fees shall be identical to those adopted and charged by the department when it serves as a local enforcement agency pursuant to section 10 of P. L. 1975, c. 217 (C. 52:27D-128)*; and,*

(3) the formulation of standards to be observed by a municipality in the evaluation of a proposal submitted by a private agency to provide inspection or plan review services within a municipality.

2. This act shall take effect immediately.