

PUBLIC HEARING

before

SENATE ENERGY AND ENVIRONMENT COMMITTEE

and

ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE

on

SENATE BILL 1791

(Limits the Department of Environmental Protection's use of moneys from the Spill Compensation Fund for administrative and personnel costs to \$750,000)

Held:
June 13, 1984
Room 114
State House Annex
Trenton, New Jersey

MEMBERS OF SENATE COMMITTEE PRESENT:

Senator Daniel J. Dalton, Chairman
Senator Catherine A. Costa, Vice Chairman

MEMBERS OF ASSEMBLY COMMITTEE PRESENT:

Assemblyman Robert P. Hollenbeck, Chairman
Assemblyman Stephen Adubato, Jr., Vice Chairman
Assemblyman Thomas A. Pankok
Assemblyman John O. Bennett
Assemblyman C. William Haines

ALSO PRESENT:

Mark T. Connelly, Research Associate
Office of Legislative Services
Aide, Senate Energy and Environment Committee

Mark O. Smith, Research Associate
Office of Legislative Services
Aide, Assembly Agriculture and Environment Committee

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New Jersey State Library

SENATE, No. 1791

STATE OF NEW JERSEY

INTRODUCED MAY 14, 1984

By Senator DALTON

Referred to Committee on Energy and Environment

AN ACT concerning the disbursement of moneys in the "New Jersey Spill Compensation Fund," and amending P. L. 1976, c. 141.

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. Section 16 of P. L. 1976, c. 141 (C. 58:10-23.11b) is amended to
2 read as follows:

3 16. Moneys in the New Jersey Spill Compensation Fund shall be
4 disbursed by the administrator for the following purposes and no
5 others:

6 (1) Costs incurred under section 7 of this act:

7 (2) Damages as defined in section 8 of this act:

8 (3) Such sums as may be necessary for research on the preven-
9 tion and the effects of spills of hazardous substances on the marine
10 environment and on the development of improved cleanup and
11 removal operations as may be appropriated by the Legislature;
12 provided, however, that such sums shall not exceed the amount of
13 interest which is credited to the fund;

14 (4) Such sums as may be necessary for the boards, general ad-
15 ministration of the fund, equipment, *administrative* and personnel
16 costs of the department, *up to a limit of \$750,000.00 per year*, and
17 any other State agency related to the enforcement of this act as
18 may be appropriated by the Legislature;

19 (5) Such sums as may be appropriated by the Legislature for
20 research and demonstration programs concerning the causes and
21 abatement of ocean pollution: provided, however, that such sums
22 shall not exceed the amount of interest which is credited to the fund:

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.

23 (6) Such sums as may be requested by the commissioner, up to a
24 limit of \$400,000.00 per year, to cover the costs associated with the
25 administration of the "Environmental Cleanup Responsibility Act,"
26 P. L. 1983, c. 330 (C. 13:1K-6 et seq.) [(now pending before the
27 Legislature as Assembly Committee Substitute for Assembly Bill
28 No. 1231 of 1982.)].

29 The Treasurer may invest and reinvest any moneys in said fund
30 in legal obligations of the United States, this State or any of its
31 political subdivisions. Any income or interest derived from such
32 investment shall be included in the fund.

1 2. This act shall take effect immediately.

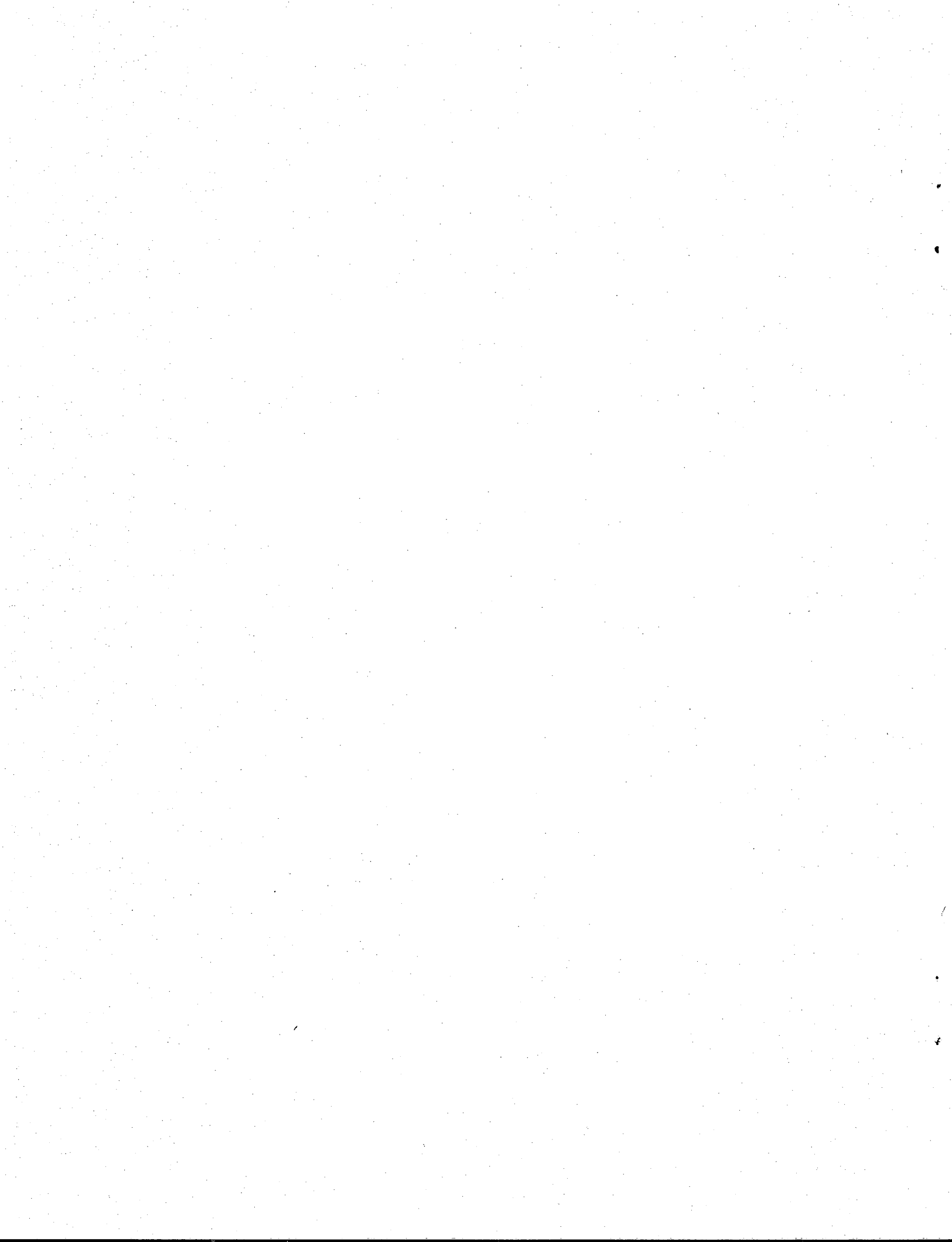
STATEMENT

This act would limit the Department of Environmental Protec-
tion's use of moneys from the New Jersey Spill Compensation Fund
for administrative, personnel, and equipment costs to \$750,000.00
per year.

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SENATOR DANIEL J. DALTON (Chairman, Senate Energy and Environment Committee): We would like to get the hearing started now. This is a joint hearing before the Senate Energy and Environment Committee and the Assembly Agriculture and Environment Committee on expenditures for administrative purposes from the Spill Compensation and Control Fund. Although this is a public hearing today, we want to hear from the Executive Branch only. If there are people out in the audience who would like to provide testimony, we would be willing to accept that testimony in writing and make it a part of the record of this hearing.

I have a brief statement to make, and I'm sure then that Chairman Hollenbeck will have a brief statement to make.

The subject of today's hearing is the funding of the administrative and personnel costs associated with the Department of Environmental Protection's Hazardous Waste Cleanup Program. Both the Senate Energy and Environment Committee and the Assembly Agriculture and Environment Committee have been involved with the many issues surrounding the State's Hazardous Waste Cleanup Program over the past year, and often the focus of our interest has been on the funding of the large task which will confront us during the next decade. The subject of today's hearing -- administrative costs -- may at first blush seem a subject more suitable to the green-eyeshade people than to two legislative Committees interested in the broad public policy issues associated with the cleanup of hazardous waste. A closer look at the subject, however, reveals an issue of great importance.

During the last 18 months, we have seen the balance in the Spill Fund steadily increasing, even, ironically, as estimates of the threat which abandoned waste sites posed to public health and environment grew. The increase in the balance of the Spill Fund reached a point where, last year, the Fund earned more in interest than was spent on actual cleanup costs. I, and other legislators, found this to be an astonishing state of affairs.

When asked about the steadily increasing balance in the Spill Fund over the last two years, the Department responded that the Spill Fund was remaining relatively untapped because: (1) the Department was

advised by the Attorney General that the Spill Fund should not be used on Superfund sites until the "preemption" legal issue is resolved in the courts, and (2), major expenditures of Spill Fund moneys would be made when the Department moved into the "construction" phase of the Cleanup Program sometime in 1985.

Both of these Committees have at various times expressed concern over the failure of the Department to either spend or commit moneys in the Spill Fund for cleanup, because by not doing so, the accelerators in the Spill Fund tax were not triggered, resulting in the State losing millions of dollars in revenue which could be used to pay what everyone admits will be a staggering cleanup bill during the next ten years. The petrochemical industry, I am sure, has enjoyed not paying the tax at the higher rate, but the welfare of the State of New Jersey has been the loser.

The subject of today's hearing, legislation which would impose limits on the use of the Spill Fund for the Department's administration of the State's Cleanup Program, adds a new twist to the ongoing story of cleanup financing. Just so there is no misunderstanding, I want to emphasize that I am not criticizing the Department for establishing and running a \$6 million Cleanup Program. Quite to the contrary, I, as well as many of the members here, have been urging the Department to act more quickly, and to spend what it takes to address this problem. I am criticizing the Department, however, for not making such a large item in their budget -- an item which will rightly increase over the years -- part of their normal request for appropriations from the General Fund.

We are drawing a fine distinction here, but it is, I believe, an important distinction. Surely the Department must be allowed certain administrative costs in the utilization of the various funds under its control. We allow this even for the use of bond funds, and the Spill Fund has been used for administrative costs at least since 1980.

But, there comes a point when the use of a fund for administrative costs increases to where what we have are not administrative costs, but costs necessary for running and financing a

major program. We are now at the point where the Department is contemplating spending more than 50% of the Spill Fund's annual revenues for administrative costs. This Program will be around for most of the next decade. It is one of the most important -- if not the most important -- programs which the Department is charged with. It is time we recognize the cost of running the Program as one of the Department's basic expenses and, therefore, fund these costs from the General Fund. In light of the Department's own projection of a \$138 million shortfall in its cleanup budget for Fiscal Year 1986, we should make these administrative costs a normal General Fund appropriation item as soon as possible.

By urging these changes in the cleanup funding source, I do not mean that the balance in the Fund should sit idle. On the contrary, given the looming cleanup expenses facing us in the fiscal out-years, I believe the Department should very soon commit the existing balance in the Spill Fund to the cleanup costs which we know we will be facing in 1986, so that the accelerators in the Fund will be triggered, and the Spill Fund tax will generate maximum revenues.

I should note, before turning to Chairman Hollenbeck, that I am joined today by Senator Catherine Costa, who is Vice Chairman of the Senate Energy and Environment Committee. Chairman Hollenbeck?

ASSEMBLYMAN ROBERT P. HOLLENBECK (Chairman, Assembly Agriculture and Environment Committee): As explained by Senator Dalton in reference to the purpose of the hearing and some of the concerns of this Joint Committee, it is only dealing with the administrative costs being charged against the Fund, and whether these administrative costs -- and there are necessary administrative costs, obviously -- must ultimately come out of the General Fund.

When we looked at the figures for last year and the \$2.775 million that was used for cleanup, we found out we had a \$4.476 million administrative cost. That would seem to be out of place. Possibly preparation for some other work to be done in the future is causing these costs to rise. That is what we are trying to find out.

I would like to thank the Commissioner and the members of his staff for coming before the Joint Committee today. Also, I would like

to introduce the Vice Chairman of the Assembly Agriculture and Environment Committee, Assemblyman Stephen Adubato, and Assemblyman Thomas Pankok. I saw Assemblyman Bill Haines here, also from my Committee.

SENATOR DALTON: Commissioner, welcome. We will be happy to receive your testimony.

COMMISSIONER ROBERT E. HUGHEY: Thank you very much. Let me first tell you who I have with me today because I think we may want to use all these people during questioning. First, George Berkowitz, who runs the Hazardous Waste Program; George Tyler, who has that Division within his area of responsibility within the Department; Paul Arbesman, who is my Deputy and who, I think, adds a historical perspective to this Program; and, Richard Keevey from the Treasurer's office. I think there have been a series of misunderstandings with regard to what has gone on in the past, and I think it is important that you know so that those references are not constantly misrepresented.

Good morning, Senator Dalton, Assemblyman Hollenbeck, and members of the Senate Committee on Energy and Environment and the Assembly Committee on Agriculture and Environment. I am here this morning in response to your invitation to discuss two different proposed bills to amend the Spill Compensation and Control Act. I have responded with a breakdown in writing of the costs of my Department relative to carrying out this Program. I think both Chairmen have a copy of this breakdown. Both bills deal with the so-called administrative costs drawn from the Spill Fund to support our Hazardous Site Mitigation Program. Both bills, for reasons I will be explaining, are, in my opinion, ill-advised and unrealistic.

In fact, most of what we can discuss here today is academic. Because recent JAC action assumed Senator Dalton's bill, in reality, this bill is law before it becomes a law.

The first bill I would like to direct my comments to is Senator Dalton's bill, which imposes a stringent limit of \$750,000 a year on operating costs needed by my Department to run our Cleanup Program. The current level of funding for our Hazardous Substance Cleanup Program is \$5.4 million per year. While the Dalton proposal is

silent on how we would close the gap, it is my understanding that action by the JAC would add the difference to our budget out of general appropriations. In fact, a resolution to that effect was voted out of the Committee. This, in effect, would "cap" the Program at its current level, allowing no growth in a Program that is scheduled -- which I will show you today, and which I have shown you in the past -- for dramatic growth in cleanup activity in the next two years. It would also shift the philosophy from one where the polluter pays to one where the general taxpayer pays. The first situation could well be attributable to a lack of knowledge about the Cleanup Program, but if so, it is because no one asked for the information. The second situation may be attributable to a simple difference of philosophy, but if so, it represents a recent shift of position.

The second bill, sponsored by Assemblyman John Bennett, would specifically limit administrative expenses to those directly related to cleanup operations. We should understand -- and I hope we will by the end of today -- what direct costs are, versus something else. I intend to lay out for you the nature of the costs we are currently covering from the Spill Fund.

The budget process for the State's Cleanup Program now being questioned has been functioning virtually unchanged for the past seven years, since the inception of the Spill Control Program in New Jersey.

The legislative direction has been to draw all Program costs from the Spill Compensation Fund, and that is precisely what has been done. I think the Legislature was right. It is good public policy to have the industry, which profits by commercial transactions involving hazardous substances, pay to support a cleanup Fund for those very same substances in the event they are spilled or discharged. To lessen any alleged inequity that might result from other parties, i.e., non-taxpayers who cause spills or discharges, the law has a cost recovery component.

My Department, within the last 17 or 18 months, has developed a very sophisticated cost-accounting system which tracks our administrative costs insofar as they are directly attributable to specific sites. These cost-accounting reports are provided to the

Spill Fund Administrator in the Department of the Treasury for his use in recovering expenses from dischargers. As he will tell you -- and Bob Hunt is here today -- it is difficult to recover against dischargers because dischargers are often bankrupt or untraceable for a given spill. But, as he will also tell you, all or most of the costs which are recoverable in the process are being recovered at the present time.

I submit that past Legislatures have considered this eventuality and that the law in this case is extremely clear. Furthermore, the fact that these costs are all appropriated from the Spill Compensation Fund should not surprise you or any member of your Committees, since, as Deputy Budget Director Richard Keevey will tell you, this budgetary approval process has been followed for the past seven years and has been carried out with the full knowledge of the Legislature. So, I cannot understand this legislative proposal to "cap" our Cleanup Program at a budget of \$750,000. It seems to me the one sure way to prevent what the Spill Compensation and Control Act intended to accomplish; namely, the speedy cleanup of hazardous waste in New Jersey.

I think the bills before you today grew out of several misunderstandings. Therefore, I would first like to define our legitimate operating costs and then put them in the context of our total Program.

Let me explain what our administrative costs are, and I can submit detailed descriptions to you. First, I must restate that all costs drawn from the Spill Fund under the term "Administrative Expenses" have been in direct support of New Jersey's Cleanup Program. The operating costs we draw from the Fund are, to a great extent, the salary costs for our scientists, engineers, contract managers, on-scene coordinators, site-managers, sample technicians, clericals, and other support staff. They also include our accountants, auditors, and the Spill Fund Administrator's financial control staff. Again, all of these costs are properly drawn from the Spill Fund. If you want to have a Cleanup Program, you are going to have to incur these costs.

I have a bar-chart with me today which shows, I think fairly clearly, where these administrative costs in a broad category -- which I disagree with -- happen to fall. The yellow category you see is for salary and fringe benefits for technical and professional people in my Department related to the Hazardous Waste Program. "Administrative costs" is a misnomer. That yellow category is salaries for professionals, and I have a graph which will break down those professionals for you. The green category is legislative responsibilities which are directly tied to the Spill Compensation Act, and there is no control by my Department about where we get those expenses.

So, what we are talking about is, in each one of the years which has been described here -- 1983 being the first year, to 1984, which is our expenditures -- there is this little category in-between. That is a category that you may, in some way, attribute to administrative costs. The pink category is services, contracts to professionals, and auditing, which I do not think anyone in this room would think a program could move without. The rest is mostly for materials.

I would submit to you that there is not a person at your table today who runs a business, or runs a law firm, who doesn't charge 100% to 150% for administrative costs. I'm talking about a Program where the true administrative costs are probably less than 1%. No one here could run it the way you would ask me to run it.

The second chart shows you a breakdown of the personnel charged to this account. The blue category is professionals -- professionals which we can itemize by project. They are paid out of the Spill Fund. The red category is paraprofessionals, and clerical personnel makes up 16%, which I do not think is unusual support. As I said, most of the costs termed "administrative" are, in fact, salaries for personnel necessary to run a cleanup program. However, whenever our people initially funded out of the administrative cost account actually work on a project related to a particular cleanup project, the portion of their time devoted to the site is, in fact, charged back against that site. Thus, while we might start the year with an

administrative account of \$4 million, for example, much of that expenditure will eventually be directly associated with specific sites and will eventually be charged back against those sites.

I would like to give you one case example to show you how it works. The State negotiated a cooperative agreement with EPA for the removal of drums at the SYNCON site -- 12,000 drums. A total of \$107,941 was allocated to the State to cover its estimated salary and other expenses in administering and managing the cleanup. The technical and engineering staffs which manage individual jobs such as SYNCON are paid for by the Spill Fund. Their salaries show up as general administrative costs; however, the staff assigned to SYNCON's initial remedial action coded their time sheets, so that at the end of that phase of the work, the State could provide documentation for receipt of \$107,941 in administrative costs due from EPA. These funds will then be returned to the Spill Fund for use on other sites.

To date, the cost-accounting system indicates that the State will be able to fully document the entire amount due back from EPA. The breakdown of staff effort for the job is as follows: At SYNCON, part of the administrative budget, 20%, went for the development of a request for a proposal for cleanup of the contract award, 25% went for engineering and an environmental analysis to support technical decisions, 47% went for field supervision of contractor performance, and 8% went for contract administration.

Thus, the Spill Fund will recover from EPA the entire amount needed by DEP to manage the SYNCON Cleanup. While the moneys are advanced from the Spill Fund under DEP's administrative budget, they are later recovered for the Spill Fund. The term "administrative costs" is, therefore, somewhat of a misnomer, since the functions involved in managing the cleanups are primarily of a technical nature and are specifically attributable to individual projects.

In addition, any costs we can account for, as associated with specific sites, are legally eligible for cost recovery and are made available by my Department for inclusion in all cost-recovery actions that the State of New Jersey files. Also, there are indirect costs required to run a cleanup program which are not necessarily

site-specific. Whether these indirect costs can be recovered is a legal question that the Administrator has taken up with the Attorney General. Frankly, I would like to see an indirect cost factor included in all cost-recovery actions, since these indirect costs, such as fiscal integrity accounting, are essential to the comprehensive management of a professional cleanup program and are, in fact, lawfully drawn from the Spill Fund.

I would also like to make it very clear that the administrative costs shown as a line item from the Spill Fund are, in fact, the administrative costs which support New Jersey's entire Hazardous Site Mitigation Program, not just the Mitigation Program carried out exclusively under the Spill Fund. In other words, the salary expenses drawn from the Spill Fund support our Superfund Program as well. The chart I have with me gives you some idea how relative this is to the Program we have been building in this State.

I would like to take you through a series of charts now. For some of you this is not the first time you have seen these charts, but I think it would help you to have some understanding of what we are building in this State, how we are building it, and how we might stop it.

This is a summary of accumulative projects being done under both the Spill Fund and the Superfund since we started this aggressive Program two years ago. You can see where we picked up the Program in 1982, where we were in 1983, where we are in 1984, where we plan to be in 1985, and where we may be in 1986. These are the building blocks of an effective cleanup program. They are the ones I shared with you in the four-year Cleanup Program last year about this time.

Now, let me translate projects to budget. Not surprisingly, the curves look pretty much the same. What we are trying to show you is how the budget builds from feasibility studies to the design phase, and to removal actions on sites. We have been saying for a year and a half that this is a cumulative process. You have to go through feasibility before you get to design; you have to go through design before you get to construction. We now have a whole series of projects in the mill.

Let me show you what I have been trying to tell these two Committees for two years -- without a whole lot of success, it would appear. The costs of this Program are going to progressively grow; we need every fund at our disposal, and everyone should stop being concerned about when we are going to tap out the Spill Fund, because, in fact, it is a part of the four-year Cleanup Program. Let me show you that graphically.

This is the Cleanup Program for 1984. As a matter of fact, this is the figure, the \$50 million figure, that you have now tapped by the actions of both the legislation and the presumption of the legislation by the action of the JAC. This is the Program for 1985. Assuming we get \$20 million from Superfund, we are going to have to go to the Bond Fund. We have been saying all along, "That is our backup." This is whether there is an extension or not. We are going to have to tap that Bond Fund for \$76 million. We made that presentation to the Capital Planning Commission. I have a copy of that testimony here for you today. In addition to that, we are going to have to tap the Spill Fund next year for a total of \$33.5 million, in order to keep the Program on line.

In 1986, when I think everyone here recognizes we are going to have a problem if there is not reauthorization of the Superfund -- again, something that we have said, something that we have shared with our Congressional delegation, and something that we have been working on through the amendment process, both for RCRA and for Superfund authorization -- we are going to have a shortfall in 1986. Having used up all of the Spill Fund and having triggered any additional money we could get from the Spill Fund, we will have a deficit, without the extension of the Superfund, of \$138 million.

Now, this next chart is done a little differently, but I want to bring it on at the end of my testimony.

New Jersey expects to obligate \$45 million to \$50 million in Fiscal Year 1984, \$129 million in Fiscal Year 1985, and \$174 million in Fiscal Year 1986. Our administrative expenses must be viewed in this context, not compared with the cleanup expenditure drawn exclusively from the Spill Fund.

This is totally proper and appropriate, since moneys used in this fashion are completely recovered for Spill Fund purposes from the Federal Superfund. This is an effective and very expedient way of doing business. In fact, the way we have been able to use our Funds in this State is the single most important factor in New Jersey's dominance of the national Superfund Program. Our great flexibility in negotiating with the Federal government has led to our ability to list and sign agreements on more sites than any other state in the nation.

Furthermore, before critics suggest that administrative costs used to support Superfund should be paid for in the same fashion as Superfund cleanup, namely 90% by the Federal government, let me say that they are. Our 10% is drawn from the Spill Fund. Our administrative or operating costs are again accumulated by our cost-accounting system and are charged back to the actual cost of a cleanup of a site.

Thus far, we have signed 15 cooperative agreements and 14 contracts with the Federal government. Cooperative agreements are used when my Department is the lead agency managing the cleanup project. Contracts are used when the Federal government has the lead. The financing terms associated with these funding vehicles are standard for all forms of cooperative Federal and State programs. Under the terms of the standard cooperative agreement, we have claimed our costs associated with the cleanup of specific sites. Of the 15 agreements signed thus far, we have included a total of \$595,215 for State operating expenses as a first installment, depending on the stage of the project. These funds can be recovered by the State in the form of cash drawdowns which would be deposited back in the Spill Fund. We also have the option, under a cooperative agreement, of using those operating expenses as a credit against our 10% share of the final cleanup.

Under the terms of the contract used for Federal lead sites, no cash reimbursement is possible. However, we receive credit for all of our operating expenses against our 10% share of the cleanup. In the sense that the Spill Fund does not have to provide a full 10% share, it is, in effect, being reimbursed for these administrative expenses. For

example, on one site, the Lipari landfill, the State's accumulated expenditures in reviewing Federal activity amounted to \$60,000 during the feasibility study stage. We have received a credit for \$60,000 against our administrative 10% share of the final cleanup.

Finally, as members of my staff promised you at our last hearing on our Cleanup Program, I am submitting today a list of the smaller sites which will be, or which have been, cleaned up this year. These sites are not on the national priority list. My list includes small drum dumps, as well as somewhat larger sites on which we have requested EPA's help. In addition, it includes sites where we are moving toward cleanup unilaterally, which will be exclusively financed from the Spill Fund.

In summary, what I have been saying is that using the Spill Fund as a source of funding for all of our administrative expenses -- and I do not think they literally fit that category -- is efficient, effective, expedient, proper, and one of the most important tools in New Jersey's Program. Use of the Spill Fund in this manner facilitates the cleanup of hazardous materials by supplying staff support to get the projects moving. The legislation under consideration is inappropriate for the reasons I have cited.

Perhaps more important, the attempt to match these bills in advance with the recent JAC resolution is, in my opinion, not a responsible legislative action. You have dramatically altered a working Program without asking one question about the impact and, in doing so, you have given the Governor no alternatives. To have a Program, he has to approve a change of philosophy with which we do not agree. To have a Program, we have to agree to run a Program which is knowingly inadequate, and yet, when it doesn't work next year, you'll say the Administration is responsible. It won't be.

Last year at a similar hearing, I had to defend a strategy to push this Program ahead in 1983 and 1984. That strategy placed an immediate emphasis on the capture of a significant portion of the Federal Superfund Program, and it was called optimistic -- and worse. I sit here a year later to say, "It worked." It worked because we had the tools and we had them when we needed them. The type of legislation

being discussed here today and the recent action by the JAC are major steps backward, and I don't have to wait a year to forecast the consequences.

Let me show you one more chart, and then I have one more paragraph. This chart is just a model of the one you saw citing our Cleanup Program for 1984, 1985, and 1986. The little line at the bottom fits in the category of what we call administrative costs. This year the number was \$5.4 million. Next year we have projected \$8.4 million, so the recent action put us at least \$3 million in the hole. The following year it is over \$9 million. Now, I want you to compare that with your day-to-day business dealings and, even if they were true administrative expenses -- which I do not think they were -- I want you to decide for yourselves, individually, whether you could run an office on that kind of administrative expenditure for this kind of a program. I think clearly the answer has to be "no."

You mentioned in your opening statement, Senator Dalton, that the petrochemical industry has enjoyed not having the trigger pulled for additional costs. I would submit to you that this hearing, and your intent already implemented without administrative or public input because of the JAC resolution, is making them feel far better. Thank you.

SENATOR DALTON: Thank you, Commissioner. Does the Administrator have a statement to make? Mr. Hunt?

ROBERT HUNT: Thank you. I am here primarily at your request to answer questions; however, I think I can make some comments which may help you to understand some of the issues with regard to administrative costs.

Administrative costs are being interpreted two ways here, one by the Department of Environmental Protection for the purpose of matching funds in getting Superfund grants. That has been in effect and is working as the Commissioner has described to you. The second way, which I am probably more involved in, is the ability to recover. The subject of the interpretation of administrative costs for recovery under the statute has been submitted to the Attorney General, and as of yesterday I was informed that we will be receiving a written report on that. Nevertheless, I think that is something which should be kept in mind, even with regard to the ability to recover.

The sites that we address fall into four categories: sites where the discharger is undetermined; sites where the discharger is known but is essentially insolvent; sites where the discharger is known but is contesting his liability for responsibility; and, finally, sites where the discharger is known and is willing to cooperate. However, even in that last category, although willing, he is not always able. Of the total amount we have spent in terms of contracted cleanup costs, less than 5% falls into the category where we have willing dischargers who are ready to pay. I think that should be noted, because in the event we do get a ruling from the Attorney General on our ability to recover costs, it is going to take quite a while before we are successful, and it may be a little more than just a change on the balance sheet.

I have here with me -- and I think the Commissioner has indicated this -- a Deputy Director from the Division of Budget and Accounting, Richard Keevey, who can address the procedure with regard to obtaining approval for administrative costs. If you have any questions in that regard, he is here to speak to you on that.

I think, as I indicated to you in my letter to Mr. Connelly, that the process for getting approval goes through the Office of Management and Budget, the same as any other program in the State, and is subject to all of the reviews.

That is all I have to say in terms of a statement. If you have any questions, I will be glad to answer them.

SENATOR DALTON: Thank you very much, Mr. Hunt. Chairman Hollenbeck?

ASSEMBLYMAN HOLLENBECK: I think, Commissioner, with reference to the legislation proposed-- I do not think anyone was trying to say there was an attempt to cut down on your administrative expenses through the legislation or through the action of the Joint Appropriations Committee. I do not think there was any "cap" placed upon it, only a "cap" on how much came out of the Fund. The rest was out of the General Fund. I think that was the bill that was before you.

COMMISSIONER HUGHEY: On the contrary, Mr. Chairman, this is exactly what the action of the JAC, in combination with this bill, does. It had to assume this bill because the JAC resolution substitutes -- after you take out landfill closure -- an amount equal to bring us up to \$5.4 million, if you add on the amount called for in Senator Dalton's bill. What you have done is, you have reversed the policy. In the past, the language in the Spill Fund under the budget provided a minimum. We set a target; it was a minimum. We had the ability to exceed that minimum. This year what you did in the resolution-- It was a resolution -- I'm not even sure whose name was on it -- that provided a "cap." So, in past years we had a target. This year we have a limit. The fact is, we are already, and clearly show, \$3 million over that limit going into the year. So, the joint action of the JAC, which had to-- I never said for a minute, and wouldn't say because I have worked with Dan Dalton too long, that he did it, but they tied it to his legislation. There is no other explanation for where they got their figure in the joint appropriations process. We are now living under a "cap" and a change in philosophy which were imposed without discussion at all. That is exactly what happened.

SENATOR DALTON: The "cap," as I understand it, Commissioner, is on the Spill Compensation Fund. Correct?

COMMISSIONER HUGHEY: That's right.

SENATOR DALTON: Okay. Did anyone indicate to you that those moneys for administrative costs could not be available through the General Fund?

COMMISSIONER HUGHEY: Well, Dan, the General Fund is-- Let's be practical about this; I do not want to mislead anyone. I could come to you, and will have to this year, for a supplemental. Okay? Let me tell you about one bill I have that is also an emergent project. Let's be honest with each other. I have a bill in for the Delaware and Raritan Canal project which is a \$5 million bill. This is an ongoing project with which the Chairman is very familiar because he proposed the first legislation, which is short-term financing. This bill hasn't been able to work its way out of Committee in four months; it is an

ongoing project. So, sometime this year, I can come to you with a supplemental for \$3 million. If I am lucky, if I get out of Committee, and if there is a session, you can approve it. If you do all that, then I can go to Civil Service and negotiate my positions.

So, what we are talking about is six months. Six months on a one-year program is a loss of a half of a year, at least. When you work in the change in the fiscal years of the Federal government, it is a totally, absolutely, irresponsible action, and it was done without any public comment, Dan. All the JAC had to do -- and Steve Adubato serves on that Committee and he knows, I testified before him for two days -- all I needed was one call to say, "What are the implications of this language we are working into this piece of legislation?" Now, I have to presume that there is a connection between the two. If there is a connection between the two, they presume your law. If there isn't, then I am stuck with your money.

SENATOR DALTON: Commissioner, the reason we are concerned about the implications is why you are here today. That is why you are here today.

COMMISSIONER HUGHEY: No, Dan, that is not true.

SENATOR DALTON: This is the Senate Energy and Environment Committee. That is the Joint Appropriations Committee. Okay?

COMMISSIONER HUGHEY: Dan, a joint action has been taken, and if you were worried about it you would have asked me before you took the action.

SENATOR DALTON: Commissioner, I introduced a bill and I invited you here to testify today to discuss the implications of the bill.

COMMISSIONER HUGHEY: Dan, do you realize that if you don't have this bill now it means that I have a deficit of another \$700,000? I have to have your bill. I have to have your bill. The JAC presumed the passage of this bill, and they filled the gap with what would exactly take me up to \$5.4 million. Now, let's not treat them as separate entities. They are directly related. They were done without public comment. They were done without input from its Administration, and they presumed the passage of your bill. Now, when you presume that a bill is going to become law, I think you make a mistake.

SENATOR DALTON: I have you here today -- and your staff and Mr. Hunt -- to determine the implications of this proposed legislation. That is why you are here. Okay? I'm very willing to discuss this legislation ad infinitum with you.

COMMISSIONER HUGHEY: Dan, we've worked together for a long time. This legislation is academic. What the JAC did wrecked my Program.

SENATOR DALTON: How did they wreck your Program?

COMMISSIONER HUGHEY: They wrecked my Program; they put a "cap" on it. I just showed you a chart that said we are \$3 million in the hole.

SENATOR DALTON: They put a "cap" on your use of administrative funds via the Spill Fund. They did not put a "cap" through the General Fund.

COMMISSIONER HUGHEY: Oh, fine. So, you want me to go through the process of the General Fund and put my Program a year behind.

SENATOR DALTON: You are going to have to go through the process anyhow in a year because there will be a \$138 million shortfall.

COMMISSIONER HUGHEY: Let me tell you something, Dan. Next year when I sit here don't ask me why I missed six months. That is why I am here today, and I want you to know that is why I am going to be here next year.

SENATOR DALTON: Commissioner, I am willing to talk to you about this legislation and your Program. I had Mr. Tyler here in February and I asked him for a list of sites. You gave me those sites today, four or five months later. So, don't think that this Committee hasn't asked the questions. We have asked the questions, and we are going to ask more questions relative to what we talked about in February and relative to this bill.

COMMISSIONER HUGHEY: Fine.

SENATOR DALTON: And, we'll stay here until the cows come home. Okay?

COMMISSIONER HUGHEY: Fine, come ahead. I'll stay here with you.

SENATOR DALTON: Okay.

COMMISSIONER HUGHEY: What I am telling you is, you have prejudged this whole discussion.

ASSEMBLYMAN HOLLENBECK: Forgetting the overall issue, there is something I am interested in dealing with, the administrative costs themselves and going through the budget. All right? As I go through it, I see \$4,476,000 in Fiscal Year 1983, and actual cleanup costs of \$2,775,000. You know, that appears to be an abnormal amount of administrative costs. It was because of these reports that I became interested. You said it is all accountable to the Fund as per the legislation, and I'm sure all of it is done that way. However, I got confused when I started to go through some of the budget sheets dealing with it. In other words, if I look at the costs charged for payroll -- and I'll talk about Fiscal Year 1983 -- the figure is \$184,000. Is that correct?

COMMISSIONER HUGHEY: May I ask you what you are reading from, Assemblyman Hollenbeck?

ASSEMBLYMAN HOLLENBECK: I am reading from a breakdown of administrative costs by category.

COMMISSIONER HUGHEY: Okay. Do you mean the one we sent you in a letter?

ASSEMBLYMAN HOLLENBECK: No, it is one that was provided by our budget office.

COMMISSIONER HUGHEY: By Mr. Hunt?

MR. HUNT: Are you reading the one captioned "DEP" or the one captioned "Department of the Treasury?"

ASSEMBLYMAN HOLLENBECK: This breakdown came from the Division of State Auditing.

MR. HUNT: Those are combined administrative costs for both Programs, I believe.

ASSEMBLYMAN HOLLENBECK: What two Programs do you mean?

COMMISSIONER HUGHEY: The two Program staffs, Bob Hunt's and mine.

ASSEMBLYMAN HOLLENBECK: Is that the payroll portion?

MR. HUNT: I believe so.

ASSEMBLYMAN HOLLENBECK: All right. What is the \$1,836,000 appropriation for positions funded for special purposes?

COMMISSIONER HUGHEY: That is our salary account for 1983.

ASSEMBLYMAN HOLLENBECK: So, the salary account for 1983 and the payroll account actually apply to salaries. What is the \$717,792? And, the "special titles," what is that?

COMMISSIONER HUGHEY: Bob, we are going to have to ask you because that is one of your reports.

MR. HUNT: Let me call Mike Fabian up here. He works with me, and I think he can help you delve into these numbers.

MICHAEL FABIAN: This report was put together by OLS. It reflects DEP costs coming through the special purpose accounts as a reimbursement from the Spill Fund account to the Department of Environmental Protection.

COMMISSIONER HUGHEY: Whose were the special titles? I think that is what we are trying to ascertain.

ASSEMBLYMAN HOLLENBECK: This wasn't a revenue account; this was a disbursal account. Whether or not the disbursements were expenditures--

MR. FABIAN: (interrupting) At the end of the year, there is a reimbursement from the Spill Fund -- I guess it is the Trust Fund Account -- to the Department, which refunds their accounts.

COMMISSIONER HUGHEY: What are special titles? That is not one of our categories, so whose category is it?

MR. FABIAN: I do not know where that category came from.

COMMISSIONER HUGHEY: Whose report is it?

MR. FABIAN: It is an OLS report.

COMMISSIONER HUGHEY: Okay. It is an Office of Legislative Services category, Bob, so I do not know the answer to that question.

ASSEMBLYMAN HOLLENBECK: Well, I will give you a total and maybe you can tell me what it was spent for.

COMMISSIONER HUGHEY: Okay, give me the total.

ASSEMBLYMAN HOLLENBECK: The total -- not including 1984 -- was \$4,384,000 spent under "special titles."

ASST. COMMISSIONER GEORGE TYLER: Is that the total since the inception of the Fund?

ASSEMBLYMAN HOLLENBECK: Yes, that is since inception.

ASST. COMMISSIONER TYLER: That has to be salaries for the professional staff in the Department.

ASSEMBLYMAN HOLLENBECK: In other words, when we talk about payroll positions funded for special purposes and special titles, are these all really payroll accounts?

ASST. COMMISSIONER TYLER: As the chart we put up showed, Assemblyman, the lion's share of the moneys drawn from the Spill Fund are for our salary accounts. I don't know how the OLS staff broke them down or how the Spill Fund Administrator breaks them down, but the lion's share is for salaries.

ASSEMBLYMAN HOLLENBECK: Assuming that you break your administrative costs down to varying things -- telephone, automotive expenses, etc.--

ASST. COMMISSIONER TYLER: (interrupting) Yes, we have done that in the letter we sent you.

ASSEMBLYMAN HOLLENBECK: But, that particular title I am citing with the \$717,000 is rather a large portion of the money. That is why I am curious. Were professional services involved in that?

COMMISSIONER HUGHEY: We're having trouble just because of the category differences between Legislative Services and Bob Hunt's office. We are trying to get you a reading on the \$717,000. (Commissioner Hughey confers with members of DEP staff and with Mr. Hunt.)

Bob, the only way I can explain it, subject to their clarification, is that we are working with the letter I gave you. The difference between the figure you're working with and the figure I'm working with is about \$800,000. I am going to ask Rich and Bob to check to see if those are their costs related to the Program. All right? I think that may be the filler. That may be their cost.

ASSEMBLYMAN HOLLENBECK: You know, I looked at the total of \$4,476,000 for 1983 -- we do not have 1984's -- and I was trying to break it down.

COMMISSIONER HUGHEY: Our funding, Bob, as we show it -- and these are our costs -- is \$3,546,503 for 1983. So, we have a shortfall

there between our numbers and your numbers of about \$800,000. I would think -- at least a reasonable guess would be that those would be Treasury's charges against the Fund, but I am going to have to let Rich check that.

ASSEMBLYMAN HOLLENBECK: What did you say your figure was, Bob?

COMMISSIONER HUGHEY: Mine was \$3,546,503. That is for 1983. Out of that, for us, \$2,000,000 was personnel.

ASSEMBLYMAN HOLLENBECK: That is a big discrepancy, you know.

COMMISSIONER HUGHEY: I am going to have to let Treasury do some research on that because it is their number.

MR. HUNT: If you will wait a minute, I can give you the Spill Fund expenditure -- please bear with me -- in terms of our own administration.

ASSEMBLYMAN HOLLENBECK: We have this broken down, apparently through your own good accounting procedures, you know, telephone, fringes, printing, vehicular, clothing, travel, and postage. We have it all broken down, I assume from the good accounting system you have. But, that one sort of stands out regarding what it is for.

COMMISSIONER HUGHEY: Bob, we are just going to have to let Treasury look that up. Everything that we gave you is an exact breakdown of our expenses for 1983 and 1984. That has to be involved somewhere in Treasury, but for them to itemize it will take a couple of minutes.

MR. HUNT: We do not have our actual figures for 1983 with us, but I believe it could have been as much as \$700,000, or maybe less. I think maybe it was around \$500,000.

ASSEMBLYMAN HOLLENBECK: We have \$717,000. When we talk about vehicular equipment in the administrative costs, I assume that is automotive equipment you are purchasing.

COMMISSIONER HUGHEY: That is correct.

ASSEMBLYMAN HOLLENBECK: All right. And then, of course, when we have vehicular in another spot charged as \$43,000--

COMMISSIONER HUGHEY: (interrupting) That would be gas, tires, etc.

ASSEMBLYMAN HOLLENBECK: You might be right on that; I think that is broken down. No, that is maintenance of the equipment, and you have some rent from the Motor Pool also. So, there is quite a bit when you look at vehicular. Of course, then we have other equipment. What would that be, testing equipment and stuff like that?

COMMISSIONER HUGHEY: That's right.

ASSEMBLYMAN HOLLENBECK: Six hundred thousand dollars worth?

COMMISSIONER HUGHEY: That is correct.

ASSEMBLYMAN HOLLENBECK: The best thing I guess, when we start talking about the administrative costs, is for us to familiarize ourselves with what the expenditures are for. Once we have a full understanding of it, then we will be able to understand why the administrative costs are high. Did I understand you to say before that some of the administrative costs are for Superfund?

COMMISSIONER HUGHEY: Sure. The numbers we are talking about are for our entire Cleanup Program -- Superfund and Spill Fund.

ASSEMBLYMAN HOLLENBECK: But, isn't there a question about the use of State Spill Fund moneys for cleanup on Superfund sites at this time?

COMMISSIONER HUGHEY: Not as much, as long as it is within the 10%.

ASSEMBLYMAN HOLLENBECK: As long as it stays within the 10%?

COMMISSIONER HUGHEY: It is totally acceptable.

ASSEMBLYMAN HOLLENBECK: The Superfund gives so much money a year for administration?

COMMISSIONER HUGHEY: Superfund, as we negotiate contracts, has an administrative component, which then for us, in terms of Spill Fund dollars, becomes a charge-back, or a credit. In other words, if we start a site -- I think the example I gave in my testimony was that at a certain point on Kin-Buc we reached \$60,000. That was Spill Fund dollars. We then used that as a credit against our 10% as we moved on to the next stage.

ASSEMBLYMAN HOLLENBECK: In other words, in 1983 we didn't receive any Federal revenues?

COMMISSIONER HUGHEY: In terms of Superfund?

ASSEMBLYMAN HOLLENBECK: Yes, Superfund.

COMMISSIONER HUGHEY: I don't know what our exact--

ASST. COMMISSIONER TYLER: (interrupting) We did, but I don't have that figure available. We can get it.

COMMISSIONER HUGHEY: We'll get that figure right now. We did receive some Superfund dollars in 1983.

ASSEMBLYMAN HOLLENBECK: Do you show \$10,684,000 under total revenues for 1983?

MR. HUNT: Those are Spill Fund revenues.

COMMISSIONER HUGHEY: That figure is Spill Fund dollars.

MR. HUNT: Taxes into the Spill Fund.

ASSEMBLYMAN HOLLENBECK: We don't show the revenues from the Superfund in this?

MR. HUNT: No, we don't.

ASSEMBLYMAN HOLLENBECK: So, we're not showing Superfund revenues, but are we showing all the expenditures of Superfund administrative costs within your Department?

COMMISSIONER HUGHEY: Yes, the costs you are looking at are the total administrative costs for our entire Cleanup Program. What we do not show is the money integrated through Superfund. There is a reason for that. The money generated through Superfund is volumes ahead of-- For example, this year, it is probably in the \$30 million to \$40 million range. The impact of that account on the Spill Fund is minimal. It will appear next year as a credit for administrative costs, or it may never appear. As a part of our contract negotiations, it may be accepted as a credit for the next stage of the cleanup in, for example, Kin-Buc. So, it really does not go through the Spill Fund accounting process.

ASSEMBLYMAN HOLLENBECK: When you deal with a cleanup, do the moneys for the people who are there from the State at the time of the cleanup-- Is that charged to administration at that time, or is that charged to cleanup?

COMMISSIONER HUGHEY: It actually goes through a change depending on what stage of the cleanup we are in. In the first stage, it is the preparation of a site for cleanup or a poor finding from EPA. That would fall into this category we are using as

administration. It can change after that to the 10% component of design or the 10% component of construction, so it changes as the project changes -- as it matures.

ASSEMBLYMAN HOLLENBECK: I am just trying to determine the specific administrative costs. Do we have other areas where we find that the Spill Fund is providing some of the money indirectly into those other areas? I know you prefaced it by saying it's all used for that particular purpose, that a person's time is charged to the Spill Fund by time-accounting procedures. Is it accurate that the person has not been on some other area?

COMMISSIONER HUGHEY: I think that is a fair question, and I think there are two responses to it. One I will give you, and then I will turn it over to Rich Keevey. The audit report has proved those expenses. We have to get prior approval from the Treasurer's office. Rich?

RICHARD F. KEEVEY: I was just looking at the audit sheet here. If I may take you back to the audit sheet, I will see if I can reconcile some numbers for you.

ASSEMBLYMAN HOLLENBECK: Sure.

MR. KEEVEY: The material the Commissioner gave you represents his expenditures from the Spill Fund for budgetary purposes for running his Program. The number he gave you was the \$3,547,000. That is what we show in the Governor's Budget Message also as an expenditure attributable directly to the Spill Fund on activities done by the Department of Environmental Protection. The number you have in front of you that has been provided by OLS is a consolidated statement of the total Spill Fund expenditures, whether or not they were paid or expended directly by DEP or other eligible expenditures. I think the difference is twofold. If you look down at the very bottom of the column under 1983, there is a \$449,222 charge. That is to the Spill Fund Administrator's portion; that is Mr. Hunt's operation, and the Commissioner does not get involved in that. Also, there is a \$144,700 expenditure to the Department of Health for an eligible expenditure related to the Spill Fund that the Department of Health participated in.

So, the numbers the Commissioner gave you were accurate and are what we reflected in the Governor's budget presentation as an expenditure against DEP. What you are looking at is a consolidated fund statement for the whole Spill Fund, including DEP, including the Spill Fund Administrator, and other eligible expenditures; for example, the Department of Health. So, I think what the Commissioner said was accurate and, hopefully, that ties in with the data you have here. So, the other category that OLS has termed "special titles" has to be directly related to the Spill Fund Administrator, the Department of Health, and some other area which I cannot identify at the moment. But, I think that brings it into reconciliation.

COMMISSIONER HUGHEY: Assemblyman Hollenbeck, if you will, let me do a clarification directly related to the legislation here. Your legislation is essentially for emergency response. That is the "cap" that your legislation would apply to. Let me now refer back to why I am as upset as I am about the JAC resolution, which I do not think was directly related, because I think it missed a lot.

SENATOR DALTON: It is interesting the way you do that, Commissioner. You link it to begin with, and now you're saying it is not directly related.

COMMISSIONER HUGHEY: I link it because the totals link, Dan. The totals link.

SENATOR DALTON: Well tell us, is it related or not, Commissioner? Don't beat around the bush.

COMMISSIONER HUGHEY: It is related by someone, but what is not calculated into it is everything we just discussed with Assemblyman Hollenbeck. There is no money in there for Treasury. There is no money in there for Health. So, when I talk about a shortfall, that shortfall is more.

SENATOR DALTON: You're saying there is presently a \$3 million shortfall. Is that correct?

COMMISSIONER HUGHEY: I think you can add on to that right now, because there is no money in there for Treasury--

SENATOR DALTON: (interrupting) And, we are going to walk away here today-- There is no money for Treasury?

COMMISSIONER HUGHEY: There is no money for Treasury; there is no money for Health. The number that was used was the number for DEP with regard to the Hazardous Waste Program.

SENATOR DALTON: Okay. Then Health is going to need something in a different part of the budget and Treasury is going to need something in a different part of the budget. Is that what you're saying?

COMMISSIONER HUGHEY: Yes.

SENATOR DALTON: Okay. So, it is \$3 million for your Department?

COMMISSIONER HUGHEY: Just for my Department.

SENATOR DALTON: Okay.

ASSEMBLYMAN PANKOK: Mr. Chairman?

ASSEMBLYMAN HOLLENBECK: Assemblyman Pankok.

ASSEMBLYMAN PANKOK: For 1983, the total for expenditures -- the piece of paper provided by the Commissioner -- is \$3,546,503. Over on the sheet we were provided for DEP, it says \$3,882,392 for 1983. What causes the difference in numbers there? I am at a little bit of a disadvantage. This is a statement of the Fund, and I am concerned about DEP. I looked quickly at the OLS audit and they indicated there were certain fringe benefits not billed during 1983. That may have been their accrual of the difference between the number the Commissioner is reporting, since that is the number we report also in the budget. Subsequent to that time, there had been a payment of fringe benefits over from the Spill Fund into the General Fund as reimbursement. I think that is the difference. There is a magnitude of about \$350,000 of fringe benefits which were disbursed from the 1984 account into the 1980 account to reimburse the General Fund. The statements that were provided in the budget are correct as the Commissioner indicated. I think this is an audit after the fact, picking up all the accrual which has been subsequently paid over.

ASSEMBLYMAN HOLLENBECK: I would like to correct something here though. We show \$131,000 in fringes picked up in 1983 within that figure of \$4.4 million.

MR. KEEVEY: That is correct. The \$131,000 was not the total of fringe benefits due to the General Fund from the Spill Fund. The State Auditor indicated that it was not only the bill-- Actually it is on Page 17 of the audit report. Since that time, there has been a payment over from the Spill Fund to the General Fund to pick up for that accrued liability. I believe that is the difference.

ASSEMBLYMAN ADUBATO: Mr. Chairman?

ASSEMBLYMAN HOLLENBECK: Assemblyman Adubato.

ASSEMBLYMAN ADUBATO: Mr. Keevey, I assume you were at the JAC hearings.

MR. KEEVEY: Yes, sir.

ASSEMBLYMAN ADUBATO: I imagine you were there the day the resolutions were passed, am I correct?

MR. KEEVEY: Yes, sir.

ASSEMBLYMAN ADUBATO: The resolution that the Commissioner is questioning, did that limit or "cap" the Departments of Health and Treasury in any way?

MR. KEEVEY: My reading of it would be--

ASSEMBLYMAN ADUBATO: (interrupting) The Commissioner indicated that it "capped" the Health and Treasury Departments.

MR. KEEVEY: Yes, it would "cap" DEP, Health, and Treasury. In Health and Treasury there would be no -- as far as I can read in here -- permission for us to permit any expenditure from the Spill Fund of that magnitude. Also, it would limit the amount of money we could approve for the Department of Environmental Protection.

ASSEMBLYMAN ADUBATO: As the only member of the Joint Committee today who served on the Appropriations Committee, I would just like to stress a couple of issues without going into the resolution in great detail. Just regarding the Treasury budget and the Health budget as has to do with the "cap" put on them, as far as I understood the resolution when I voted for it, we were not concerned about "capping" administrative costs for Health and Treasury. What we were talking about was, and I have it in front of me-- I will read from it: "We provide that expenditures for the Department of Environmental Protection's administrative costs associated with the Fund shall not exceed \$750,000."

Now, I guess what I'm saying is, if the Departments of Treasury and Health in the percentage of the overall budget that goes to administrative costs begin to approach an amount that is analogous with the Department, then I guess they can expect the same thing. But as far as I knew when I voted for this resolution -- Resolution No. 598 -- I was not voting in any way to "cap" Health or Treasury. Maybe there is a misunderstanding, but that is not what my vote was.

MR. KEEVEY: I think the resolution was drafted -- not knowing everything on everyone's mind, but from reading it afterward-- The intent was oriented toward Environmental Protection. I think that is probably clear. I have to check this, but the authority for which expenditures are made from other areas relative to the Spill Fund also comes from this language.

ASST. COMMISSIONER TYLER: When the resolution was passed it altered the budget language that had been in effect for at least the last four years, or possibly the last seven years, so that the total amount of administrative expenditures now drawable from the Spill Fund is \$750,000 for DEP and nothing for anyone else.

ASSEMBLYMAN ADUBATO: Dan, that was not--

SENATOR DALTON: (interrupting) Treasury is in a different part of the budget. As I understand it from the member of the JAC who is here, Assemblyman Adubato, the resolution was concerned with DEP's budget. Clearly, that was the intent of the budget resolution.

COMMISSIONER HUGHEY: Dan, I can't talk to you about intent. What I can do is interpret what I think the "cap" does. You know, I could be wrong, but I think Treasury can properly answer that question.

MR. KEEVEY: I am principally concerned at this moment with the DEP portion of it.

ASSEMBLYMAN ADUBATO: The Commissioner brought up the other two areas as areas where the Joint Appropriations Committee may not have realized the magnitude of its action. I assure you that that was not our intent, and let me go farther, if I may, Mr. Chairman. Whatever has to be done to assure the Department and the other two Departments that that was not only not our intent, but that we will do everything we can to ensure that they are not being touched here -- that we are not addressing the issue of their administrative costs.

But again, I have to say that if someone in the Legislature looks at figures, or our staff looks at figures which say that administrative costs for those two Departments or any other two departments are approaching a certain level, I guess then they can expect the same sort of action to take place. We would request a particular department to come back to the Legislature to ask for another appropriation.

Let me just say one other thing, Dan, to Commissioner Hughey relative to the action taken by the Joint Appropriations Committee. When you came before us, your budget asked for \$524 million -- in that area. Am I correct in saying that?

COMMISSIONER HUGHEY: No, you are not correct. What our budget did was give a target, just as has been done every year since I have been there. That target has been exceeded every year since I have been there through the language, which has now been changed. Steve, just as a caveat, I may be wrong about this, but I don't believe that I am. The Department of Health has no direct authority for direct funding. Their funding comes through us on a charge, so that, in effect, the "cap" has altered their status as well. I would think that the same probably applies to Treasury.

MR. KEEVEY: I'm looking at the budget and there is still authority to spend money for Treasury operations. That has not been withheld as far as I can tell. And, there is a limit on DEP expenditures.

ASSEMBLYMAN ADUBATO: You're saying that one of the two Departments is still--

MR. KEEVEY: (interrupting) Yes, sir.

ASSEMBLYMAN ADUBATO: Okay. The other thing, Commissioner, is the question of the six months. I clearly understand your concern that previously -- before the resolution -- you had a target figure, you were approaching that, and you needed more money you could draw from the Spill Fund. This resolution would ask you now, after the \$5.4 million, to come to the Legislature. Let me say that from my point of view, the six months that you talked about -- and I know you were just throwing that out -- if in any way the Legislature, or any one of us in

the Legislature, holds up the progress that your Department is undertaking relative to these areas which we have all said are so important, shame on us. Many times we have addressed the issue of moving faster with you. If anything we have done gets in the way of progress, I'm sure with your ability to communicate with those of us in the Legislature, that you will be on top of us. I, as a member of this Committee and as a member of the Joint Appropriations Committee, will assure you that that six-month figure was not something I was looking at. If you came to us in two months and said you needed it, it may be a little bit more of a pain in the neck to you, but we would be there because we are all concerned about the same thing, which is moving forward as quickly as possible.

COMMISSIONER HUGHEY: Steve, I'll be there before two months; I'll be there within two weeks. But, even if I am there, I think everyone has to understand how programs run in this State. They don't run just because I want them to run; they run because I negotiate with Civil Service, and I negotiate every expenditure with Rich Keevey. Now, in past years, I have been able to do that beginning in August because I could project the budget and the source of funds. That means I have been literally six months ahead of the process to establish positions to run my Program. I have to be able to show the funds before I can establish the positions, get approval for those positions, and fill them.

So, I am not throwing six months out as a maybe. I think it is a reality. If I bring this to you within the next week, which I certainly will, I am going to sit for some time before I get that bill passed. I guarantee you that I will, based on past performance, even with all the help I have had from the two Committee Chairmen here. When I am finished with that, I negotiate with Civil Service and the Department of the Treasury. That is their job. Their job is to make sure that I don't spend money that I don't have. Once I do that -- after I am finished with that process -- I get to recruit. The other way we were six months ahead of the process because we could project the funds and do the negotiations.

So, I am not throwing that figure out as a remote possibility; I think it is a reality.

SENATOR DALTON: If I may, Steve-- Mr. Keevey, so the previous statement with regard to the inhibition or the parameters placed by the resolution on Treasury is not the case, correct?

MR. KEEVEY: That is correct. With regard to Spill Fund administration, Mr. Hunt's operation, the language still remains for them to spend subject to our review.

SENATOR DALTON: It is my understanding that there has been legislation introduced by Senator Lesniak to provide moneys via the Spill Fund for the Department of Health. That bill has already been heard in my Committee. So, what I think we are talking about is the Department of Environmental Protection's \$3 million.

MR. KEEVEY: I would think that is more accurate.

SENATOR DALTON: Okay.

COMMISSIONER HUGHEY: Again, if you assume passage of the legislation, I guess that is correct.

SENATOR DALTON: In the Department's projected cleanup budget for Fiscal Year 1985-1986, a shortfall of \$138 million is anticipated. My question is, wouldn't it be wise for the Department to start to ask for a supplemental now to address that \$138 million shortfall?

COMMISSIONER HUGHEY: Actually, what we are asking for, Dan, is one year ahead of projection. What we are asking for this year is the approp bills which would free up the Bond Act, and then Spill Fund dollars.

SENATOR DALTON: You still have statutory prohibitions to freeing up the Bond Act, as I understand it.

COMMISSIONER HUGHEY: Why is that?

SENATOR DALTON: Well, the Spill Fund has to be gone through first and then -- and only then -- does the bond issue money become freed up.

COMMISSIONER HUGHEY: I think the real problem with the Bond Fund is not that we can't clearly show right now that we are going to go through the Spill Fund -- which is apparently satisfactory to both the Attorney General's office and the Spill Fund Administrator -- but that we can show in advance that we are going to tap the Spill Fund. At that point, we have to trigger the Bond Fund. The risk here, Dan,

is the one that you and I have been familiar with for over a year and a half, and that is the risk on reimbursement. We put at risk the bond issue and the Spill Fund dollars. That is what we put at risk.

I think as recently as last week I appeared before the Capital Planning Commission and did exactly what started the process which you have just suggested. I explained to them the Program for this year and asked for their concurrence in coming to the Legislature. I then explained the Program to them for 1986 and told them that the shortfall had two alternatives for coverage, one of which would be a bond issue, and the other a direct appropriation. That is the process, as you know, that I am forced to go through before I bring it to the attention of the Legislature. But, I am going to do it.

SENATOR DALTON: So, to answer my question, Commissioner, you are going to the Legislature to ask them to make up the \$138 million shortfall.

COMMISSIONER HUGHEY: The first year we are going to them to ask them to make the additional funding source available for 1985. Next year--

SENATOR DALTON: (interrupting) That additional funding source would be what?

COMMISSIONER HUGHEY: The additional funding source would be the Bond Fund and the Spill Fund.

SENATOR DALTON: Okay.

COMMISSIONER HUGHEY: Seventy-three point seven million dollars.

SENATOR DALTON: So, as I understand it, you have to go through the Spill Fund first and, because of the way the Bond Fund is structured, the Spill Fund has to be depleted before the bond moneys can be gotten at. Okay?

COMMISSIONER HUGHEY: Yes.

SENATOR DALTON: Then that gives you approximately \$126 million. Correct?

COMMISSIONER HUGHEY: Right.

SENATOR DALTON: Twenty-six million dollars through the Spill Fund, and \$100 million through the Bond Fund.

COMMISSIONER HUGHEY: Actually a little more than that. We are projecting the Spill Fund for two years, Dan.

SENATOR DALTON: My question to you, however, is are you still projecting a \$138 million shortfall? Are you projecting via the figures I received from you a \$138.7 million shortfall?

COMMISSIONER HUGHEY: Yes, in 1986.

SENATOR DALTON: Okay. Thus, my question becomes, wouldn't it be wise to start addressing that shortfall right now?

COMMISSIONER HUGHEY: The answer is, that is exactly what I did. A week ago I went to the Capital Planning Commission, laid out the strategy for them, and asked them for some advice. I asked them first for their endorsement of what I am going to ask for in 1985, and second, I made them aware of the shortfall for 1986. Whether that comes back through them to the Legislature--

SENATOR DALTON: (interrupting) Am I to understand that you are going to make up this \$138 million shortfall through bonding?

COMMISSIONER HUGHEY: No, I do not make that determination. What I do is--

SENATOR DALTON: (interrupting) Well, why would you go to the Capital Budget and Planning Commission and talk to them about the \$138 million shortfall?

COMMISSIONER HUGHEY: I go before the Capital Planning Commission on my entire capital budget, bonding and non-bonding. That is where I am right now. Depending on what the process is, I ask them directly for bonding or non-bonding. I have not done that yet on the \$138 million for two reasons. One is that the shortfall projected is a projected shortfall based on no reauthorization of Superfund. I do not happen to believe that this country is going to let that happen, and I think we will have a better figure later this year.

Secondly, I have not had any input from them at this point on whether they-- At every appearance I have made this year, I have asked for non-bonding approaches. I have asked for direct authorizations of appropriations. But, the \$138 million is not a real figure yet; it is a projected figure based on no reauthorization of Superfund. I do not think that is a practical consideration, and I think we will have harder numbers later this year.

SENATOR DALTON: I agree with your presumption that there is going to be a reauthorization of Superfund. Let's assume that the amount of moneys for New Jersey come in at \$40 million. Okay? You are still \$98.7 million short in your Program. What I am suggesting is that the Legislature would be more than willing to put that money aside for you so that you could address this problem. As I understand it, that money is going to be available via this year's surplus. I know I would be a very active sponsor of that legislation to ensure that you would have the money, Commissioner.

COMMISSIONER HUGHEY: We will prepare the legislation.

SENATOR DALTON: Very good. The Department's Fiscal Year 1986 estimate of funds available for the Spill Fund is \$12.3 million. Is that based upon the accelerator being triggered?

COMMISSIONER HUGHEY: No, we have not shown the accelerator. We presume the accelerator, but we have not shown it.

SENATOR DALTON: I don't understand.

COMMISSIONER HUGHEY: We assume that it will be triggered, but we have not shown it.

SENATOR DALTON: For how much?

COMMISSIONER HUGHEY: We have shown it in real dollars.

SENATOR DALTON: For how much?

COMMISSIONER HUGHEY: We haven't shown it here.

SENATOR DALTON: So, you don't know if you are going to trigger the accelerator or not?

COMMISSIONER HUGHEY: We know that it will be triggered; we have not projected the revenues from the accelerator.

MR. HUNT: We have a projection here. We have projected revenues at minimum rates of \$9.6 million a year with the accelerator against the chemical industry at \$13.7 million a year. We are projecting \$13.7 million with the accelerator against the chemical industry.

COMMISSIONER HUGHEY: So, that would be about a \$3 million to \$4 million addition to what we show, Dan. However, we have not counted it in because conservatively we also count on the Spill Fund to do the unpredictable emergencies, the things we are involved in now with

dioxin, for example, and radiation if we have to get into removal. But, it would add \$3 million to \$4 million, particularly in the 1986 category. Is that right, Bob?

MR. HUNT: That's right.

SENATOR DALTON: Are the unpredictable emergencies non-Superfund projects, Commissioner, on your budget?

COMMISSIONER HUGHEY: I'm sorry, Dan?

SENATOR DALTON: Do the unpredictable emergencies translate into the non-Superfund budget?

COMMISSIONER HUGHEY: Yes, unfortunate or emergency responses.

SENATOR DALTON: Why is it in your projections that in Fiscal Year 1985 you have projected an expenditure of \$4 million for non-Superfund projects and in Fiscal Year 1986 -- that is July, 1985 through July, 1986 -- you have projected \$11.5 million, a 187% jump?

COMMISSIONER HUGHEY: Dan, may I ask you to repeat the two numbers?

SENATOR DALTON: I'm looking at your numbers now.

COMMISSIONER HUGHEY: Yes, I know.

SENATOR DALTON: Okay. The non-Superfund projects, for Fiscal Year 1985 -- Calendar Year July, 1984 to July, 1985--

COMMISSIONER HUGHEY: (interrupting) I'm with you.

SENATOR DALTON: Okay. You project \$4 million, and in Fiscal Year 1986 -- July, 1985 to July, 1986 -- you project a 187% increase to \$11.5 million.

COMMISSIONER HUGHEY: Yes, there is no question about that. That is attributable -- and it is fairly clearly spelled out in the four-year Cleanup Program -- to the fact that we are building all the time. If you look at the category above that, the Superfund projects, while the jump is not as high, it certainly shows you how the Program begins to build. That one goes from \$94 million to \$145 million. This one more than doubles, and it is just related to the number of sites that are on the priority list for that year.

SENATOR DALTON: Non-Superfund projects being the smaller drum sites?

COMMISSIONER HUGHEY: Not necessarily. By that time you will have taken care of most of the smaller drum sites. We did 33 last year and are in the process of doing 60 more.

SENATOR DALTON: What I am asking, Commissioner, is how do you almost double that expenditure in a one-year period?

COMMISSIONER HUGHEY: It's real easy, Dan, depending on what projects happen to be on--

SENATOR DALTON: (interrupting) Why don't you spend the money now, instead of waiting for the next fiscal year?

COMMISSIONER HUGHEY: Well, I think that is one of the easiest questions to ask and one of the hardest to answer. Everyone says, "Why don't you spend the money now?" I think we're doing a very good job of spending the money in a responsible way. We have to do the work at a pace where we can maintain credibility, where we can maintain accounting, and where we can maintain project control. That pace has gone up not by 200% in the last two years, but by about 1000% in the last two years. So, I think the answer is that we have a Program and we're sticking to it. It seems to be working. We think it has worked exactly the way we said it was going to work this year. That's why.

SENATOR DALTON: So, the pace is going to increase 187% in one year.

COMMISSIONER HUGHEY: Dan, if you look at the four-year plan, and I know you have, you will realize why the pace increases. We are in the midst of attacking the biggest sites on Superfund now. As those sites come off, we will have more people to put on more projects on the non-Superfund sites. I think we have worked out a very logical progressive plan.

SENATOR DALTON: Given that rationale, you're saying more people are freed up to work on non-Superfund sites, but yet at the same time, you are projecting a 54% increase in the cleanup of Superfund sites.

COMMISSIONER HUGHEY: Dan, come on. You've been around this for a long time. You know that that increase could be largely one site -- largely one site. I mean, we're doing SYNCON resins this year, and that is probably going to be in a \$4 million category when it is

finished. So, what you're saying-- Let's talk about projects, not dollars.

SENATOR DALTON: Commissioner, I am trying to explore your answer. You said that once the Superfund sites are completed, you are going to have more money freed up to use on the smaller sites.

COMMISSIONER HUGHEY: I didn't say that; I said more people.

SENATOR DALTON: More people, okay. What I'm saying is, in one fiscal year you increase Superfund sites 54% and you increase non-Superfund projects 187%. That is a tremendous leap in one fiscal year.

COMMISSIONER HUGHEY: Well, I disagree with you. First of all, it is a leap only in numbers, not necessarily in sites, and I have just said that. It could be one site that could contribute that difference, but I don't think it is. The Superfund and the Stateside cleanup both grow on a yearly basis. As you get into cleanup, the costs increase. If you look at the cost of the Superfund projects, it is probably a matter of where we are in the construction of those projects. I think the four-year plan lays that out very clearly. So, there is no conflict there. We are building a Program that costs progressively more every year because of the stage we are in in cleanup.

SENATOR DALTON: Commissioner, I am not debating that with you. I think you stand on very firm ground, and that there has to be a natural progression in addressing these sites. What I am suggesting, however, is that that is an awful significant progression in one year, where you go to a 54% increase and a 187% increase.

COMMISSIONER HUGHEY: Dan, I don't happen to think it is at all. If you will go back to the charts I showed you earlier with Superfund sites, I think you will see how dramatic the changes are at this stage of the Superfund Program. Now, is it remarkable to think that those dramatic changes would occur in any cleanup program, Spill Fund or Superfund?

SENATOR DALTON: I suspect there are dramatic increases in the Superfund Program because of the fact that we received zilch money, or very little money -- what, \$20 million?

COMMISSIONER HUGHEY: This year?

SENATOR DALTON: Yes.

COMMISSIONER HUGHEY: No, we are close to \$40 million this year.

SENATOR DALTON: Forty million dollars this year.

COMMISSIONER HUGHEY: And that is not the reason for the dramatic increase.

SENATOR DALTON: Tell me why.

COMMISSIONER HUGHEY: This is the project total. All right? Every year we add more projects to this list. At various stages of cleanup, the costs become higher. I mean, the cost chart for Superfund follows progressively almost the number of people in the projects that are being worked on. And the same is going to happen on the Stateside. I do not think that is unusual. If you are in the midst of cleaning up ten sites and you add two more the next year, it is going to cost you. Now you are cleaning up 12 sites.

SENATOR DALTON: That is correct.

COMMISSIONER HUGHEY: The costs are in the cleanup stage now and they are going to be higher.

SENATOR DALTON: Those are Superfund sites, but what about the non-Superfund sites, Commissioner?

COMMISSIONER HUGHEY: A cleanup is a cleanup, Dan.

SENATOR DALTON: That was the Superfund chart, correct?

COMMISSIONER HUGHEY: Yes.

SENATOR DALTON: Okay. I'm talking about the 187% cleanup in one fiscal year in non-Superfund sites.

COMMISSIONER HUGHEY: There is an overlap in non-Superfund sites, just as there is in Superfund sites. You do not start-- I mean, it would be nice if cleanups could work on a calendar year, but they don't work that way.

SENATOR DALTON: I realize that.

COMMISSIONER HUGHEY: So, we are carrying part of one year into the next year and adding additional sites.

SENATOR DALTON: Where are we right now in non-Superfund sites as far as spending? In Fiscal Year 1984 we are going to be at \$4 million; that is what you project. Where were we this past year? I mean Fiscal Year 1985, excuse me. I'm sorry.

COMMISSIONER HUGHEY: In the \$2 million to \$3 million category. I do not have a specific figure.

SENATOR DALTON: Two to three million?

COMMISSIONER HUGHEY: Right.

SENATOR DALTON: So, we'll go from \$3 million, to \$4 million, to \$11.5 million.

COMMISSIONER HUGHEY: Right.

SENATOR DALTON: Okay. The next question I have deals with the whole preemption issue. It has been my impression, Commissioner, and that was reinforced as late as the Senate Energy and Environment Committee meeting in February on the Department's request for a supplemental appropriation of \$10 million, that the Department's position was that the Spill Fund moneys should not be committed to Superfund sites until the court case concerning the preemption of the Spill Fund by Superfund was resolved. I have always thought this position was overly cautious given the seriousness of the hazardous waste issue in the State, but the Department has consistently stood on their position. That is, the Department has been firm with regard to not spending those moneys on Superfund sites.

It is clear, however, that the Department has been spending Spill Fund moneys for administrative costs associated with cleaning up abandoned sites for several years. What I am trying to determine is-- The Department's position that they use the Spill Fund for cleanup of Superfund sites is preempted, but to use the Spill Fund for administrative purposes is not preempted. Can you clarify that distinction for me?

COMMISSIONER HUGHEY: We have taken the position that we can get credit for all our costs for administrative expenditures on Superfund cleanups credited specifically to a site. As you know, the preemption issue goes beyond an individual site. It does not stand alone. Preemption stands with credit. The current situation is that at a certain point where you begin to exceed the 10% category for a site, you cannot receive or transfer that credit to another site. When you are building a Program that is cleaning up repeated sites, it becomes very important. So, preemption is not the sole issue, Dan, for

our concern. It is also related to other things that are not in the Superfund law.

SENATOR DALTON: I guess what I am suggesting is that given your position, why would there be a distinction between Spill Fund administrative moneys and Spill Fund cleanup moneys?

COMMISSIONER HUGHEY: In essence, the way we have been signing the contracts with EPA, we have been putting off the issue. We are not making a distinction. We are spending our money with the Superfund Program with the thought in mind that we will credit it against the 10% administrative costs. However, we have not made that distinction. We are spending Spill Fund money for match. I think what we have been trying to say is not that we won't do it -- we are doing it -- but it becomes a greater risk as the expenditures become greater and as crediting is not allowable. I think that is still the case, but I am appearing before you today saying that I am perfectly willing, and I think the Legislature is willing, to go to the Bond Fund and to go to the Spill Fund for major expenditures without preemption being addressed -- I think we ought to know the risk -- and without credit, although we may have a chance under RCRA amendments to get credit, and I know you are familiar with that.

SENATOR DALTON: Yes.

COMMISSIONER HUGHEY: So, we are doing it. We are moving the Program by negotiating very careful contracts with EPA, and I know you have seen one or two of them--

SENATOR DALTON: (interrupting) I have seen at least one.

COMMISSIONER HUGHEY: (continuing) which leaves silent the question-- I mean, we have been fairly artful in the way we have developed these contracts. We think we can get credit, and we have taken the risk that we will.

SENATOR DALTON: It just seems to be a contradiction to me.

COMMISSIONER HUGHEY: I don't think it is a contradiction; I think it is an acknowledgment.

SENATOR DALTON: On one hand you're saying we are preempted, and on the other hand you're saying, "Well, we may be preempted, but we'll take the risk." What you are suggesting is that the risk at administration is less than the risk at cleanup. Is that correct?

COMMISSIONER HUGHEY: No, that is not what I'm saying.

SENATOR DALTON: Okay.

COMMISSIONER HUGHEY: Let me take you through a \$20 million site. All right? Right now, \$2 million would be our 10% share. The administrative costs, and this is a literal example-- From one of our projects, the 10% share would be \$2 million. The administrative costs of that \$2 million would be about five hundred. That is what we have been running on charge-backs. The difference would be one point five. Okay? So, we are not putting all of it into administrative costs even now. We are taking a risk; we are willing to take that risk. We would not be signing any contracts if we were not taking that risk. However, New Jersey set the standard for the contract language as well. If you look at the contract language, we think we have protected the Spill Fund match to the extent to which we have gone so far with the Federal Superfund Program in the language. It is going to be a bigger risk every year as we build the Program. I do not think that is a conflict. I have told you that it is a problem. Am I willing to spend the money? Sure I am. I want to have a Program.

SENATOR DALTON: Then why haven't we triggered the Spill Fund, Commissioner?

COMMISSIONER HUGHEY: Because, Dan, I built a four-year plan, which I know you have. The questions you asked me before are also addressed in the four-year plan. It lays out the projects by year. I am building a Program. The Spill Fund is going to be triggered in a very heavy way next year. When I don't have to spend the money, I don't think there is any reason to ask me to spend the money. This year we have attracted approximately 30% of the Federal Superfund dollars. We have an outstanding Program. Next year we need the Spill Fund. If you don't use the Spill Fund, the Bond Fund, and the Superfund in some collective fashion with a long-range plan, then you are not accomplishing anything. And, I think we have done that.

SENATOR DALTON: What I am suggesting, however, is that your long-range plan shows a shortfall for Fiscal Year 1986.

COMMISSIONER HUGHEY: There is no doubt about that.

SENATOR DALTON: Okay. What I am also suggesting is that by triggering the Spill Fund, you are going to get an additional \$10 million or \$20 million. Is that correct?

COMMISSIONER HUGHEY: No. We projected it for \$33.5 million in 1985, which would include the moneys that are in there this year. We have shown it as \$12.3 million in 1986, plus the trigger. We have not shown the trigger, but as Bob Hunt said, we would add about \$3 million a year.

SENATOR DALTON: The trigger?

COMMISSIONER HUGHEY: The accelerator.

SENATOR DALTON: The accelerator, using Mr. Hunt's estimate, would trigger \$3 million a year, but you are well aware of the fact that you could trigger, through that Fund, well in excess of \$3 million a year.

COMMISSIONER HUGHEY: I have to rely on Mr. Hunt.

SENATOR DALTON: Is that correct, Mr. Hunt?

MR. HUNT: It makes a difference whether you are triggering chemical tax or whether you are triggering petroleum tax.

SENATOR DALTON: That's right. Sir, what can you trigger in a given year via the Spill Fund using both taxes?

MR. HUNT: We are projecting the maximum for both taxes at \$30.4 million.

SENATOR DALTON: Thirty point four million dollars a year, okay. What we are doing -- we project \$3 million.

ASST. COMMISSIONER TYLER: That is the figure the Spill Fund Administrator provided us for the accelerator on the chemical industry. I think -- I'm not sure, I will defer to the Administrator -- that in order to raise the \$30 million, he has to accelerate the tax on the oil industry.

SENATOR DALTON: On both the chemical and the oil industries.

ASST. COMMISSIONER TYLER: He is governed by the Spill Act as to when he can trigger that accelerated cost for the oil industry. I think he has advised us, on the chemical side, to plan on \$3 million a year because he does not expect to be in a deficit vis-a-vis the oil industry. Is that correct?

MR. HUNT: That is correct, yes.

SENATOR DALTON: Okay, so what we are indicating is that despite the fact that we can trigger \$30 million a year via the accelerator for both the petroleum and chemical industries, we are anticipating a triggering of \$3 million a year via the chemical industry. Is that correct, Mr. Hunt?

MR. HUNT: Yes, but I think the point is, we are governed by the interpretation of the sites we are dealing with. The site has to be declared a petroleum site in order to get the petroleum accelerator.

SENATOR DALTON: I understand. My concern is that -- well, not even a concern, a question-- By triggering or anticipating an additional \$3 million, Mr. Hunt, how many sites are we addressing?

MR. HUNT: I do not have the number of sites. I am just talking in terms of dollars expended and whether they are going to be charged against petroleum or chemical by definition.

SENATOR DALTON: Can you answer that, George?

ASST. COMMISSIONER TYLER: It depends. If it is a \$3 million site, it's one site. It could be a hundred small sites. It could be--

SENATOR DALTON: (interrupting) You made the projections. What do you plan to--

COMMISSIONER HUGHEY: (interrupting) We didn't make the projections, Dan. What we said was, we specifically did not project the trigger, so we cannot answer that question. We can answer it if you would like us to review it.

SENATOR DALTON: I would definitely like you to review it, because what I am getting at, Commissioner, is that we are projecting, next July, anywhere from a \$90 million to a \$130 million shortfall in our Cleanup Program.

COMMISSIONER HUGHEY: Okay.

SENATOR DALTON: What I am saying is, this Legislature stands ready to address that shortfall, but you are going to have to provide information on the sites that are going to be addressed. What does the shortfall apply to, including sites, and how much? Is \$90 million an accurate figure? Is \$130 million an accurate figure? We stand ready--

COMMISSIONER HUGHEY: (interrupting) Dan, first off, you are right in that I would have to give you the information with regard to

the sites. But, that information is already in front of you. I am not here today with new numbers or new projects. The deficit I show is based on a four-year cleanup plan that has been in front of you for a year. I am not showing a deficit based on my hopes for the future. I'm showing a deficit based on my Cleanup Program right now.

SENATOR DALTON: I am not suggesting that you're not, Commissioner.

COMMISSIONER HUGHEY: Okay.

SENATOR DALTON: We're in agreement on that. We agree that we are short; next July we are going to be short. I think we are also agreed that this Legislature, in a bipartisan fashion, will address that shortfall. But what this Legislature is going to need is information from you as to why there is a shortfall, how much money you need, and which sites will be cleaned up via that money.

COMMISSIONER HUGHEY: That is no problem; that information is already available. The only missing ingredient, I think both of us would agree, is to what extent Superfund is reauthorized. That is the only question to us providing all that information by this afternoon. We know what the sites are.

SENATOR DALTON: I have no further questions.

ASSEMBLYMAN HOLLENBECK: I have just a couple of questions, Commissioner. You said something before about how much revenue was received this year from Superfund.

COMMISSIONER HUGHEY: Right, this year meaning 1984. We are probably on target with approximately \$40 million.

ASSEMBLYMAN HOLLENBECK: I've looked at the estimates of revenues on it and I do not find it in there.

COMMISSIONER HUGHEY: Well, you're missing a quarter. First of all, the Federal fiscal year is--

ASSEMBLYMAN HOLLENBECK: (interrupting) So, you have not received it?

COMMISSIONER HUGHEY: No, we are receiving it all the time, Mr. Chairman. You will not find it in the Spill Fund accounts.

ASSEMBLYMAN HOLLENBECK: Where does it go?

COMMISSIONER HUGHEY: It goes to sites, directly to sites, where we are working on contracts. As I said before, it is not reported in the Spill Fund. It is the second breakdown. It shows where we are projecting Superfund dollars. Again, it is a part of the four-year plan. We are right on target with what we projected for the four-year plan. We anticipated receiving \$40 million, and we are on target with one questionable project between now and the last quarter of the fiscal year which ends in October.

ASSEMBLYMAN HOLLENBECK: Then what was the \$6,300,000 you got from Federal revenues that you showed in past years? If it doesn't come to you--

COMMISSIONER HUGHEY: (interrupting) We can show it next year. We can show it after we have closed out a Federal year, but it would not show in the Spill Fund.

ASSEMBLYMAN HOLLENBECK: You have it shown now in the Spill Fund, don't you?

MR. HUNT: No, we don't. That money passes through the Spill Fund account.

ASSEMBLYMAN HOLLENBECK: I mean, because I show it as a revenue on the sheet. I show that you have had \$6,301,000 come from Federal revenues.

MR. HUNT: All right, but that was way back before Superfund and that was reimbursements on Chemical Control, etc. I think that is what you are referring to here.

ASST. COMMISSIONER TYLER: That's right.

ASSEMBLYMAN HOLLENBECK: All right. Both of them occurred in 1981-1982.

MR. HUNT: That's right.

ASSEMBLYMAN HOLLENBECK: So, that is what they are?

MR. HUNT: That's right.

ASSEMBLYMAN HOLLENBECK: How much of the revenues of the Spill Fund are used for the administrative costs of the Discharge Prevention and Containment Measure Plan?

COMMISSIONER HUGHEY: That is the Spill Cleanup Plan.

ASST. COMMISSIONER TYLER: I don't know if we have that broken down.

COMMISSIONER HUGHEY: Bob, I'm sorry. We provided that to the JAC, but I don't have it with me today. I think it is in the neighborhood of \$300,000. We will get it for you.

ASSEMBLYMAN HOLLENBECK: In other words, that was for the administrative costs and also for enforcement.

COMMISSIONER HUGHEY: Yes.

ASSEMBLYMAN HOLLENBECK: That is all of the costs that were pulled from the Spill Fund for that particular Plan?

COMMISSIONER HUGHEY: For that purpose, yes.

ASSEMBLYMAN HOLLENBECK: I have one question, but I think Senator Dalton covered it. With reference to where the administrative costs come from, from the General Fund or from the Spill Fund, the difference is -- you said one is where the industry is paying for it and the other is where the general public is. But, if you have the right to recover those costs against those sites, it makes no difference whether the recovery revenues go back to the Spill Fund or to the General Fund, if that is where the expenditures come from, does it?

COMMISSIONER HUGHEY: Understanding that the recovery, as Bob Hunt has told you today, is about 5%, 95% of it matters.

ASSEMBLYMAN HOLLENBECK: You stated that for every one of these cleanups now, we have a detailed breakdown of labor, time, administrative costs, etc.

COMMISSIONER HUGHEY: Yes, sir.

ASSEMBLYMAN HOLLENBECK: And that so much of the contract costs are for contract agents, professional services--

COMMISSIONER HUGHEY: (interrupting) Assemblyman Hollenbeck, that happened as a result -- and I know you are familiar with this -- of the Coopers-Lybrand work that was done for us, which put a whole new contract system into place. We have a follow-up program, again developed by Coopers-Lybrand, which computerizes time just as a business would, and we can check back. Now, there are some costs -- and these are the costs that Bob Hunt is trying to get a determination on from the Attorney General -- for my legal people, and the costs of things that are not always related to those expenditures, that have a

lot to do with our success in the Program. Those are hard to charge back right now.

ASSEMBLYMAN HOLLENBECK: I am going to stay mostly in the area of administrative costs. I get very concerned. It is a relatively small Fund right now, but it is a large administrative cost. Anyone who looks at it has to see that also.

COMMISSIONER HUGHEY: Again, let me disagree with you, because I do not want any misconceptions here. This year, 1984, we project \$5.4 million on about a \$50 million expenditure. That is right around 10% for administrative costs, which we have told you are not true administrative costs. Seventy-five percent of the people who work on these projects are professionals who actually work on the sites. I do not think that would be outlandish even if it was solely administrative. But, when it is not solely administrative, I think it is far less outlandish. The fact of the matter is that out of that \$5.4 million this year, approximately 10% of the project costs, 80% of that goes to professionals on the projects, and maybe 20% of that goes to what would fit into the general category the public generally associates with administration. So, we're talking about less than 2% which is true administrative costs in the essence of the word, and I do not think that is outlandish at all. I think it is very low.

ASSEMBLYMAN HOLLENBECK: I think what we have, with the term "administrative costs," is possibly a little bit of semantics.

COMMISSIONER HUGHEY: I agree with you.

ASSEMBLYMAN HOLLENBECK: You're separating professionals and everything else and leaving a very small portion which you are calling administrative costs. I would say your contract professionals, your legal services, and your accounting services are all part of administrative costs.

COMMISSIONER HUGHEY: They are part of the 2% I'm talking about. That has nothing to do with site managers, engineers, or technical assistants. Would you consider them administrative costs?

ASSEMBLYMAN HOLLENBECK: The costs for 1983 were \$4,476,000 on projects of \$2,775,000. That is not 2%.

COMMISSIONER HUGHEY: First of all, that is not the Program. We are running our entire Program. What you should really be dealing with are the accumulative totals of the Spill Fund and the Superfund. When you do that it puts those costs into relationship for you. And, if you do that, and further take out what really are administrative costs, the overhead on these projects is very low.

ASSEMBLYMAN HOLLENBECK: I'll take the whole thing, what has been spent since its inception, \$11 million worth of administrative costs, and total expenditures for cleanup of \$43 million, of which \$26 million was spent on one site alone.

COMMISSIONER HUGHEY: That year alone, Mr. Chairman, consists totally of the way business has been done in this State for the last six years since the Spill Fund was developed. There was \$3.2 million in administrative costs for one project. So this year we are talking about \$5.4 million projected for \$50 million worth of work. Now, I don't think that is outlandish at all; I do not think it is at all outlandish when you understand what makes up that term "administrative costs." Eighty percent of the people working on it are professionals who are running the programs and cleaning up the sites. Those are not true administrative costs. Administrative costs are about 2% of the total we are spending on the Program this year, and that is less than any business in the State of New Jersey.

ASSEMBLYMAN HOLLENBECK: We're talking about directly from the Fund, right? The Fund was a \$14 million Fund in 1982, and we had administrative costs of \$4,881,000. So, one-third of the Fund was being spent for administrative costs. Now, I don't want to dispute the word "administrative," but it is other costs, other than cleanup.

COMMISSIONER HUGHEY: Mr. Chairman, I wasn't here in 1982, but the charts I showed you today broke down the administrative costs to my satisfaction for 1983 and 1984. I cannot explain it any clearer than that. If you want to continue to apply it just to the Spill Fund, that is your business. But, I run a total Program.

ASSEMBLYMAN HOLLENBECK: Except that we are talking about them on the Spill Fund. In 1983, it was a \$10 million Fund -- \$10.6 million. Administrative costs were \$4.476 million.

COMMISSIONER HUGHEY: That \$4.476 million has built the best Program in the country for cleanup. To me, that is a decent expenditure, no matter what the cost is. Let's go to 1984 where I can show-- Dan, you folks are entitled to your opinion and you can choose to ignore--

SENATOR DALTON: (interrupting) Commissioner, no one is criticizing your Cleanup Program.

COMMISSIONER HUGHEY: Yes, you are.

SENATOR DALTON: I don't think that is the point.

COMMISSIONER HUGHEY: Hey, how can I run the Program without the costs? How do I run the Program without the costs? What, are we dreaming here? This is not magic.

ASSEMBLYMAN HOLLENBECK: Not with 42% administrative costs.

COMMISSIONER HUGHEY: It is not 42% administrative costs, Assemblyman Hollenbeck. If you choose to look at the charts, I think you will be able to convince yourself of that. I can't convince you.

ASSEMBLYMAN HOLLENBECK: You know, when you start removing professional services, those are part of the administrative costs. When you start removing your legal services, start removing the Treasury Department and the Department of Health -- those are all part of administrative costs whether you like it or not. They are there. Now, they might not be directly under your control, but they are there.

COMMISSIONER HUGHEY: Fine. Let's use the totals. The administrative cost for 1984 is \$5.4 million and I am running a \$50 million Program. How out of whack is that?

ASSEMBLYMAN HOLLENBECK: How much of that \$50 million Program is from the Federal government? How much is the Spill Fund?

COMMISSIONER HUGHEY: It's \$40 million from the Federal government. What difference does it make where it comes from?

ASSEMBLYMAN HOLLENBECK: So, it is a \$10 million Spill Fund Program again.

COMMISSIONER HUGHEY: Fine. Mr. Chairman, I run a \$50 million Program. I do not care where the components come from. You can care and you can keep matching it against one fund if you care to, but that is not the way I have to run this Program.

ASSEMBLYMAN HOLLENBECK: That is really the only question we have, Commissioner. It is not necessarily the amount of moneys, it is where the moneys are coming from. Apparently, that is why the Joint Appropriations Committee feels there should be more moneys from the Spill Fund used for cleanup -- used for the actual cleanup -- and then you can get some of the administrative costs from the General Fund. I assume that is what the concern of the Joint Appropriations Committee is.

COMMISSIONER HUGHEY: Well, Mr. Chairman, all I can say is--

ASSEMBLYMAN HOLLENBECK: (interrupting) Really, what they are trying to do is provide you with more money for cleanup.

COMMISSIONER HUGHEY: In essence, what they have really done is "cap" my Program. Let me just say this. For four years the JAC looked at this budget in exactly the same way -- for four years. Now they look at it differently. You can say they want to "cap" the administrative costs and that sounds great. The administrative costs are less than 10% of my Program. I think what has happened is-- I think there is a philosophical difference between whether you take it out of the Spill Fund or whether you take it out of the General Fund, and I'll talk about that because I don't happen to agree with your philosophy or Dan's.

But, the fact is I have to run the Program. What the JAC did was put a "cap" on what used to be a target. I do not think there is any excuse for that. I know what happened, and you know what happened.

ASSEMBLYMAN HOLLENBECK: I only know what I hear, and that is that they passed a resolution, and I don't know if the resolution was such a bad idea. I don't think it "caps" it. Assemblyman Adubato said he did not think it "caps" it, and he is on the Joint Appropriations Committee.

COMMISSIONER HUGHEY: Look, I don't know about Treasury, and I'm glad someone from Treasury was here to say that they were not "capped." But, there is no question that it "caps" us. I do not think anyone could read the resolution any differently.

SENATOR DALTON: It "caps" the Fund; it does not "cap" the Department.

COMMISSIONER HUGHEY: Okay.

ASST. COMMISSIONER TYLER: But then we would have had to prepare the budget last January when we prepared the rest of our General Fund budget, so we are six months behind on the portion that is "capped."

SENATOR DALTON: Assistant Commissioner, you said that you need an additional \$3 million. Correct? What this Joint Committee indicated was that you will have your \$3 million. Okay? We will push that through, but what we are also saying is that the source of the administrative costs should not be the Spill Fund.

COMMISSIONER HUGHEY: Dan, let's talk about that for just a minute because-- I have told you in the past that I have to run the Program and, generally, I don't care where the money comes from. I think, however, that there is a principle involved here. I think that the Cleanup Program ought to be paid for out of the Spill Fund. I think it is an entirely legitimate expense. I do not think it ought to be transferred to the General Fund, and a 5% recapture rate is not, in my opinion, a recapture at all.

We are talking about a shift in policy here, a policy that has been in the budget for four or five years.

SENATOR DALTON: Commissioner, next year you are going to have a \$138 million deficit. Okay? Where are you going to get that from? Are you going to go back to the petrochemical industry to get that? Where are you going to get that from? Are you going to get that from the petrochemical industry if we are changing our philosophy?

COMMISSIONER HUGHEY: The Program that I have shown you, Dan, includes my administrative costs for both years -- both years.

SENATOR DALTON: And you're saying you are going to have to come back to the Legislature and ask for more money. Are you going to go to the petrochemical industry and ask for more money?

COMMISSIONER HUGHEY: I would rather come back to the Legislature.

SENATOR DALTON: There you go, so we are not really changing policy or philosophy are we, because you are going to come back to the Legislature and the General Fund?

COMMISSIONER HUGHEY: Hey, let me tell you something. You are changing philosophy. I am coming back to the Legislature when the deficit is required in the long-range Cleanup Program. It is a change in philosophy to say that you are going to take administrative costs somewhere else.

SENATOR DALTON: The long-range Cleanup Program is next year. The deficit you are talking about is not long-range, it is next year.

COMMISSIONER HUGHEY: You're right.

ASST. COMMISSIONER TYLER: I just want to say one thing. Until today, every nickel for the Cleanup Program has come from the Spill Fund. As of today, or as of whenever the budget becomes law, some of it will come from the General Fund, and that is the change in philosophy the Commissioner is talking about.

SENATOR DALTON: What I am suggesting is, the change in philosophy is going to occur anyhow, Mr. Tyler, because you will be \$138 million short next year. Let me ask you this while we are on it. What are we going to be short in Fiscal Year 1987? We're \$138.7 million short in Fiscal Year 1986. What are we going to be short in 1987?

ASST. COMMISSIONER TYLER: We have not made projections for 1987.

SENATOR DALTON: You haven't made those projections, but do you think you are going to take that from the petrochemical industry?

COMMISSIONER HUGHEY: No. First of all, Dan, the \$138 million--

SENATOR DALTON: (interrupting) No, Commissioner, you are the one in your opening statement who made the remark that we scrubbed your Program, and we are not scrubbing your Program.

COMMISSIONER HUGHEY: Well, first of all, you opened--

SENATOR DALTON: (interrupting) You also indicated--

ASSEMBLYMAN BENNETT: (interrupting) Mr. Chairman, Mr. Chairman, keep calm, Mr. Chairman.

SENATOR DALTON: (continuing) that all of a sudden there is a change of philosophy and you are going to have to go back to the General Fund next year anyhow.

COMMISSIONER HUGHEY: Fine. First of all, Mr. Chairman, you made the statement in your opening remarks. I did not start it. You started it. I fed on it, and I meant it. There is a change in philosophy, and that \$138 million -- before you cite it six more times -- depends on what happens to the Superfund. So, I cannot tell you when I am going to come back for it.

SENATOR DALTON: Okay, ninety, how about ninety?

COMMISSIONER HUGHEY: Wait a second. Did I listen to your question or didn't I? Please have the courtesy to listen to my response. We are going to come back, and when we come back we will come back through the legislative process and it will be voted on and discussed in conjunction with the overall Program. It will not be because of one resolution.

ASSEMBLYMAN HOLLENBECK: I keep trying to get back to the nitty-gritty, Commissioner. You know, I guess the easiest way is, you have the accounting procedures, the numbers are available, and if I ask for a breakdown of the full account of the Spill Fund -- the salary account, the special titles account, the positions funded from the special purposes account -- can you give me them individually?

COMMISSIONER HUGHEY: Well, I can't answer for Treasury. We can give them enough information so that they can do it themselves.

ASSEMBLYMAN HOLLENBECK: I would assume you could, yes. I assume that information is available. In other words, how many people are working on that in the Department, the percentage of their time, hours, etc. That is all available, I assume.

MR. HUNT: Are you asking for a cost-accounting analysis?

ASSEMBLYMAN HOLLENBECK: Yes.

MR. HUNT: I think that could be made available.

ASSEMBLYMAN HOLLENBECK: I assume, also, that the Department of Health's portion of that particular question could be made available. What I am listing as a total administrative cost, the Commissioner, of course, does not list as a total administrative cost.

MR. HUNT: Yes, the information for the Department of Health could be made available.

ASSEMBLYMAN HOLLENBECK: Is that available from them?

MR. HUNT: It should be, yes.

ASSEMBLYMAN HOLLENBECK: All right. Of course, the other portion of it was from the Treasury itself, and they have an accounting procedure in there too. Right?

MR. HUNT: We do not have a cost-accounting system.

ASSEMBLYMAN HOLLENBECK: What about Treasury administration?

MR. HUNT: That is not cost accounting.

ASSEMBLYMAN HOLLENBECK: Well, whatever it is, the \$449,000--

MR. HUNT: Yes.

ASSEMBLYMAN HOLLENBECK: I think that is what we are really looking for. There was a question where the Commissioner said they would provide us information on the Containment Program, the accounting on that. I mean the DPCC Plan.

COMMISSIONER HUGHEY: Oh, the one we presented to the JAC?

ASSEMBLYMAN HOLLENBECK: Yes. How much of the, let's use the words "administrative costs" were used to prepare that Plan and to enforce that particular Plan?

COMMISSIONER HUGHEY: We will provide you with the same breakdown we provided to the JAC.

ASSEMBLYMAN HOLLENBECK: Yes, I think you said you would. That adds onto it also, and has a tendency to distort some of the figures. Does any member of the Assembly Committee have a question?

ASSEMBLYMAN BENNETT: Yes, Mr. Chairman.

ASSEMBLYMAN HOLLENBECK: Excuse me, Assemblyman John Bennett joined us and I didn't introduce him.

ASSEMBLYMAN BENNETT: Assemblyman Haines is here too.

ASSEMBLYMAN HOLLENBECK: Oh, I did introduce him.

ASSEMBLYMAN BENNETT: Oh, okay. I have been in the Legislature for five years. I never sat on the Joint Appropriations Committee and, after meeting in this room this morning, I hope I never have the misfortune to ever serve on that Committee when it meets in this room. It appears that this room has a tremendous problem with communication between different parties. I have heard the same questions come back and forth from both sides; I have heard the same answers come back and forth from both sides, and there definitely appears to be a communication problem in this room.

I heard that we have a philosophical change caused by a resolution that was passed by the Joint Appropriations Committee. It is my understanding that the resolution passed unanimously with bipartisan support and with Administration input. I wasn't there, so I don't know.

I think, Commissioner, that basically what led to many of us in the Legislature at least raising eyebrows to have you come forward to answer questions, was specifically when-- I know the information has been made available to us since the Fund has been in existence. However, when it was specifically drawn to the attention of the Legislature that the administrative costs were a high percentage of the Spill Fund expenditures for one given year, questions were raised which resulted in the answer we heard today which was, "Yes, it is a large percentage of the Spill Fund itself for one year, but it is a small percentage of the overall cost of my Program, and is necessary in order to ensure the success of my four-year Program." At least that is what I am hearing you say.

I do not think it was wrong, conceptually, for the Chairman of the Senate Energy and Environment Committee, as well as other legislators, to ask for a meeting today to ask these questions with respect to the philosophy of taking administrative costs for general administration and enforcement -- having that philosophically taken from the Spill Fund, as opposed to philosophically coming to the Legislature and asking for additional appropriations in order to effectuate that Program.

I think basically that is what we appear to be talking about. I have heard no one this morning, nor quite frankly in the past two years, specifically come forward to criticize the amount of dollars being expended administratively, nor to say that there was any administrative misappropriation of the funds in the operation of your Program. I think we are basically concerned, or want to address ourselves to where those moneys that are being taken from the Spill Fund will be expended. Would it not be more advisable to leave a larger amount of the moneys in the Spill Fund to pay for cleanup costs directly and have the revenues come from general revenues in a larger amount for these expenditures?

I understand your six-month problem quite clearly, and I believe you even gave us a specific example of another project that is important to the Department which needs a \$5 million expenditure that has not moved as quickly as possible. I believe that whatever we are discussing today, however, based on the plan that is being proposed for next year, almost becomes a mute topic. We have heard today from the Administrator, as well as the Commissioner, that next year whether the moneys that come out of the Spill Compensation Fund are going to be administrative or cleanup moneys, we are going to far exceed totally those dollars available for our expenditures. We will, in fact, trigger the accelerator and will have to invade the Bond Fund with the additional Superfund dollars that we project.

To be able to say that in 1986 we will be \$138 million short-- We may be more than \$138 million short if contracts are bid and we end up without dollars, or we may, in fact, have more moneys available with the reauthorization. If reauthorization is accomplished and effectuated by Congress and they do more realistic figures than simply a reauthorization of the present level, we may have even more additional dollars available to us. That is something we don't know.

I argued before the initial authorization of the Superfund that it is right for us, as New Jersey legislators, to at least address ourselves as though Washington was in a vacuum. We cannot guarantee ourselves, nor the people of our State, that Congress is going to act in a manner that will be in the best interest of the people of New Jersey. Therefore, we dealt with the formation and the thought of the \$100 million bond issue even as the Superfund was being debated in Congress, before it was a fact. It actually became authorized and became law in New Jersey after Superfund, and I am hoping that this country, in an election year, is going to exact all pressures on the Federal level to see that we have it. If we do, then we will not be dealing with \$138 million, but perhaps something a little more realistic.

I think, Commissioner, that the testimony you gave us today clearly sets forth the philosophy of the Department with respect to the cost of setting up the Program to clean up the sites. The philosophy

that I have heard is best borne by those directly responsible as far as an industry is concerned, as opposed to taking it from general revenues. The issue I personally feel is before us here is whether or not additional dollars are available to the Department for cleanup operations. Forget the source. Whether it is from the Spill Fund or whether it is from general revenues is almost immaterial. If additional dollars to the tune of \$5 million, or \$8 million if you need the additional three, are available to you from some source, can the four-year Cleanup Program be accelerated? If the answer to that question is "yes," then I personally feel that we need to come up with the additional dollars, expend them from the Spill Fund, if that is where they are, and take the moneys necessary for administration from the budget. If the answer to that question is "no," and the plan is in place and we are geared to where we are, then it becomes merely a philosophical question as to where those dollars come from. Certainly next year it makes no difference, because they will be all gone anyway.

If it is necessary to have the additional dollars and the present language is a problem, and the Joint Appropriations Committee may, in fact, have been wrong to presume certain legislation has been passed, we would be wrong today to presume that that language will, in fact, become a law of the State of New Jersey, that there will not be efforts made on either floor of the house to change that, nor would the Governor not take certain actions on his own part. So, we cannot presume on either side of the ledger; that is wrong. If it is necessary that additional dollars are needed and philosophically the Legislature feels those dollars should come from general revenues, would it not still be possible for an amendment to be done on the floor of either house to provide the shortfall dollars you are telling us about today to the tune of \$3 million? That would avoid any supplemental, but let's do it now and send it to the Governor's desk with that in there.

If we are going to need the dollars, then we should address ourselves to that. We can argue about philosophy, but when all is said and done, it becomes a one-time philosophy argument this year. From what I have heard today, I do not think it is going to be on the table

for next year. That is basically what I have to say. I would like to know if the \$595,000 you talked about will be reimbursed from the Federal government at some point in time. Are those figures which would be deposited back in the Spill Fund on any of the plans we have on receipts? Are any of those paybacks from the Federal government calculated into those receipt figures?

COMMISSIONER HUGHEY: I don't think so, no.

ASSEMBLYMAN BENNETT: Is that roughly only \$600,000, or is it possible that there would be additional dollars that we will also have paid back?

COMMISSIONER HUGHEY: There will definitely be additional dollars, John.

ASSEMBLYMAN BENNETT: All right.

COMMISSIONER HUGHEY: Let me try to answer your question. First of all, I think the Committee realizes -- and I'm sorry that Dan is not here because I would like him to hear this -- that I have never worked closer with any two committees than the two which are represented here today. There is no one I have more respect for in terms of his legislation than Dan Dalton. We have done a lot of things together. My frustration today, which has been pretty obvious to you, and which I think was obvious to Steve yesterday, is because a change was made without comment from me. I think we are dealing with the fact, as you said, that most of this frustration is mute at this point. I have to deal with reality. The reality is that I have a budget I have to address for this year. I don't know whether or not a change is possible on the floor. I would ask you or someone who is familiar with the appro process to do that. My backup at this point is to take Dan up on his offer to come in here with a supplemental bill by the end of the week, which would provide the additional funds because, you know, we are dealing with a real situation then to come in with the additional funds to fund the Program for this year. And, we will do that. We will have it to him before next week's session so that perhaps we can address it with a supplemental almost instantaneously.

In addition to that, we will have a firm number, I think, on what we are going to have as a shortfall, certainly by this fall,

because we will perhaps have a Superfund extension which will measure additional. I think everyone who has testified on it has said it should be major, which will cut that deficit dramatically, or we will have a problem that is somewhat like the one we outlined today.

There is one other avenue open to the State which would be a dramatic help, and that is a credit amendment. We have been working with both Senator Bradley and the house side -- our representatives for the State -- to try to work a credit representative into RCRA, which would give us a lot of charge-back potential in the third year. So, you know, I think the meeting was gratuitous, and I think that what you have seen probably on my part and on one Chairman's part is a frustration with a situation that has changed. But, I know what we have to do. I will prepare the supplementals quarterly. I will work with these two Committees to figure out what our shortfall is literally going to be. Next year when we approach this in a collective fashion before the JAC, we will all go in knowing what it is we would like to come out with.

ASSEMBLYMAN HOLLENBECK: Assemblyman Haines, do you have a question?

ASSEMBLYMAN HAINES: Bob, when we look at this thing on an objective level -- and I agree with everything John has said here -- one of the things that comes to my mind is, when you are hiring people to supervise this cleanup operation, you are not just pulling people off the street, you are hiring professionals in many cases. Has the delay in funding caused you a delay in your projects because of the fact that you do not have the type of people you need on some of these projects?

COMMISSIONER HUGHEY: I think the answer to that is that the last 18 months have been a struggle to gear up the Program, but we have totally reorganized the Division which does this work, we have changed the Civil Service titles to recognize the professional nature of the titles, and then we have had to have the funding. So, all of that has taken time, but we are pretty well geared up at this point.

ASSEMBLYMAN HAINES: You are not being held up by any delay?

COMMISSIONER HUGHEY: Not at this point. I think if we follow the course of action the Chairman outlined and which I now agree with, which is that we will try to do a supplemental almost immediately, we should not face that problem.

ASSEMBLYMAN HAINES: Thank you.

SENATOR DALTON: I know it is a big change in philosophy, Commissioner. I am going to have to think about it.

COMMISSIONER HUGHEY: I'm sorry you left the room. I was trying to compliment you on other things.

ASSEMBLYMAN BENNETT: He was saying all nice things while you were gone. (laughter)

ASSEMBLYMAN HOLLENBECK: Senator Costa, do you have any questions?

SENATOR COSTA: No, thank you. I think to say anything at this point would just be repeating things which have already been said.

ASSEMBLYMAN HOLLENBECK: Commissioner, I would like to thank you, the members of your staff, and the representatives from the Department of the Treasury for coming before the Committee and for presenting a lot of information to us. There are a few more items we have asked for which you have said you could easily supply. I would also like to thank the other members of the Committee for being here.

COMMISSIONER HUGHEY: Mr. Chairman, thank you.

(HEARING CONCLUDED)

