
Public Hearing

before

ASSEMBLY POLICY AND REGULATORY OVERSIGHT COMMITTEE

*“Testimony on DPCC mapping regulations, NJPDES fee regulations, and ‘overhead fees’
that accompany direct billing of manufacturers for the cost of processing permits”*

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: November 7, 1996
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Rose Marie Heck, Chairwoman
Assemblyman Richard H. Bagger, Vice-Chairman
Assemblyman Paul DiGaetano
Assemblywoman Carol J. Murphy
Assemblyman Kevin J. O’Toole
Assemblyman Neil M. Cohen
Assemblyman LeRoy J. Jones Jr.
Assemblyman William J. Pascrell Jr.

ALSO PRESENT:

Katharine A. Tasch
Office of Legislative Services
Aide, Assembly Policy and Regulatory
Oversight Committee



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

TABLE OF CONTENTS

	<u>Page</u>
Jane Kelly-Brickner Assistant Commissioner Legislative and Program Coordination New Jersey Department of Environmental Protection	3
Hal C. Bozarth Representing the Chemical Industry Council of New Jersey	14
William A. Petronchak Director Regulatory Compliance TR-Metro Chemicals	17
James Sinclair First Vice President New Jersey Business and Industry Association	20
Eric DeGesero Associate Director Fuel Merchants Association of New Jersey	22
Angelo Morresi, Esq. Member Environment Committee New Jersey State Chamber of Commerce	22
Michael A. Egenton Manager Government Relations New Jersey State Chamber of Commerce	25

TABLE OF CONTENTS (continued)

	<u>Page</u>
Catherine W. Cowan Assistant Commissioner Environmental Regulation New Jersey Department of Environmental Protection	29
George Bekun Representing Tosco, Bayway Refinery	50
Alfred H. Pagano, Ph.D. Representing Chambers Works, Deepwater E. I. du Pont de Nemours and Company	52
Clarke Hoffman Representing E. I. du Pont de Nemours and Company	54
Dennis Hart Director Division of Water Quality New Jersey Department of Environmental Protection	60
Curtis Fisher Program Director Citizen Lobby New Jersey Public Interest Research Group	69
Timothy Dillingham Representing the New Jersey Chapter Sierra Club	69

TABLE OF CONTENTS (continued)

Page

APPENDIX:

Copy of NJPDES regulations and
various charts and graphs
submitted by
Hal C. Bozarth

1x

Testimony plus attachments
submitted by
Eric DeGesero

18x

ses: 1-91 (Internet edition 1997)

ASSEMBLYWOMAN ROSE MARIE HECK (Chairwoman):

I just want to welcome everyone here today. We had a lot of preparation. We have a lot on our plate today, very important issues. Even though we're not voting on matters, we are discussing them at length.

I see there is in-depth testimony -- written testimony -- so I am going to request that the people coming forward keep their remarks to the point and as brief as possible so we can move this along. I think we're all of a mind to get the important points across without going into long dissertations.

We have Congressman-elect on my right, Bill Pascrell. (applause) He is a very important part of our Committee, so we want to make sure that his time is used in a very good way.

So we want to move all of our things along, Bill.

ASSEMBLYMAN PASCRELL: I like that, Rose.

ASSEMBLYWOMAN HECK: Because we want you to take to Washington the important things that we're doing here in New Jersey. We do lead the way, you know -- as you well know.

ASSEMBLYMAN PASCRELL: We do.

ASSEMBLYWOMAN HECK: Thank you very much and congratulations.

ASSEMBLYMAN PASCRELL: Thank you very much, Chairwoman.

ASSEMBLYWOMAN HECK: Of course, Assemblyman Jones, who is always with us, and Assemblyman Cohen is here, Assemblyman O'Toole, Assemblywoman Murphy-- Assemblyman DiGaetano is here. You

just don't see him for a moment. He is testifying in another room. Assemblyman Bagger was just here. He is testifying also.

(Conclusion of opening remarks)

(Begin DPCC and NJPDES portion of hearing)

ASSEMBLYWOMAN HECK: We're going to open up the meeting now to the DPCC and NJPDES-- The purpose of today's public hearing is to discuss the invalidation or prohibition of regulations that this Committee and the full Legislature found inconsistent with legislative intent.

This hearing will be transcribed pursuant to the procedure for invalidating or prohibiting rules and regulations that are found inconsistent with legislative intent found in Article 5, section 4, paragraph 6 of the State Constitution.

The two topics we will discuss to determine whether we will find inconsistency with legislative intent are the Department of Environmental Protection's Discharge Prevention, Control, and Countermeasure mapping regulations and the Department of Environmental Protection's New Jersey Pollutant Discharge Elimination System regulations.

This hearing will discuss the departmental action taken since the Legislature passed SCR-15 and SCR-26, the resolutions finding both of these regulations inconsistent with legislative intent. Our Committee heard and released these resolutions at our May 20, 1996 meeting.

The Committee will receive testimony and use what we learn today to determine whether we will use our constitutional authority to invalidate or prohibit the regulations. We are not voting on resolutions today; although, the Senate has already released from its Legislative Oversight Committee resolutions SCR-101 and SCR-102, finding the regulations inconsistent with legislative intent.

The public hearing will provide the Committee with testimony upon which to make our decision to invalidate or prohibit the regulations through a concurrent resolution.

Jane Kelly-Brickner, Beth Reddy, and Larry Thornton from the DEP will come up first.

A S S T. C O M M. J A N E K E L L Y - B R I C K N E R: Good afternoon, Chairwoman.

ASSEMBLYWOMAN HECK: You press that little button so it turns red. (referring to microphone)

ASSISTANT COMMISSIONER KELLY-BRICKNER: Good afternoon, Assemblywoman Heck, members of the Committee. My name is Jane Kelly-Brickner. I am the Assistant Commissioner for Legislative and Program Coordination for the Department of Environmental Protection. With me today is Beth Reddy from the Department's Discharge Prevention Program and Larry Thornton of the Department's GIS Unit.

On behalf of Commissioner Shinn, I would like to thank you very much for the opportunity to testify today on this particular issue.

While the notice didn't specifically indicate that you wanted to talk about the invalidation of these regulations, given what has been going on

in the Legislature -- the passage of two previous resolutions and the movement of the Senate resolutions last week -- that is the issue to which we will address our remarks.

When SCR-15 and ACR-68 were being considered by the Legislature -- and very recently, the Senate resolution -- the Department has consistently responded. Our response has always been the same. That is that the original Spill Act, as appears to be cited in the resolutions, did not provide the authority on which we adopted these regulations.

Rather, clear and specific authority for these regulations was provided in the 1990 DPCC law. That law was passed after there had been some spills -- some significant petroleum spills -- in the Kill Van Kull/Arthur Kill area, and the Legislature, at that time, felt it critical to give the Department the ability to put together a program whereby we would have information in the proper format in order to prevent, to the extent that we can, and to control spills of that sort.

So we provided you today with the language of the statute that we use as our authority for requiring that information in the digital format. That specific authority reads, and I quote, "The Department is provided with the authority to determine the manner and form in which DPCC information is to be provided including the form and technology to be used in complying with the mapping requirements." In our view, that is very specific authority, and so we have always taken issue with the belief that we are, in fact, acting inconsistent with the Legislature's intent.

However, we have always recognized that flexibility is the key in successfully implementing our digital mapping. So we were responsive to the

concerns that were raised by the Legislature in SCR-15 and ACR-68, and, in fact, we did make modifications to our regulations in order to phase in the implementation of the digital mapping requirements.

The regulations that were adopted on June 3rd -- and that was a few days subsequent to the Legislature's passage of the resolution -- actually allowed those submitting plans to only submit in digital form that portion of their plan that they are changing. So that if an entity has no changes to their facility, they are still only required to submit it under these rules in paper form and to certify that there are no changes when their renewal date arrives.

So, in summary, we feel very strongly that we have clear statutory authorization to require digital mapping under the 1990 law. We would be very happy to take any questions that you may have.

ASSEMBLYWOMAN HECK: Do we have any questions? Not at this point?

ASSEMBLYMAN JONES: Yes, I think I do.

The phase-in you made reference to is how many years?

ASSISTANT COMMISSIONER KELLY-BRICKNER: I'm sorry.

ASSEMBLYMAN JONES: The phase-in.

ASSISTANT COMMISSIONER KELLY-BRICKNER: The phase-in--

Well, actually, Assemblyman, what we've said is that under the changes to the rules, as effective June 3rd, that the entities need only submit that portion of their plan that changes from here on.

ASSEMBLYMAN JONES: So, through the Chair--

ASSISTANT COMMISSIONER KELLY-BRICKNER: So, in other words, Assemblyman, through the Chair, if their renewal date comes up any time from here on, they must submit changes in digital form. If they have no changes at their facility, then they send a certified letter saying, "We have no changes." It is only the changed portion that must be digitized.

ASSEMBLYMAN JONES: Okay.

Through you, Madam Chair. Obviously, there is support from industry on the resolution. Would there be any areas of compromise in order that both sides would achieve the ultimate goal? Because I believe that industry would certainly be more than amenable to comply; however, the issue that looms large -- that normally looms large -- is that of cost. But do you see some meaningful compromise that would allow both industry and the DEP to accomplish the ultimate goal?

ASSISTANT COMMISSIONER KELLY-BRICKNER: Assemblyman, through the Chair, I think that is a good question. In fact, in our changes to the regulations that is what we were trying to do. We were trying to be reasonable. We recognize that there is a cost involved.

But, quite frankly, I think the Legislature, in giving us that specific authority to determine the technology, recognized that we are in a computer age now, that this information, either now or in the future, will have to be in computer form. So I think we're going there anyway. With these changes we have tried to give industry some time to do it in a phased-in fashion.

ASSEMBLYMAN JONES: Okay.

ASSISTANT COMMISSIONER KELLY-BRICKNER: But I think that it is a way of the future. It's here now--

ASSEMBLYMAN JONES: Madam Chair, I certainly do agree. I think as we move or progress in the area of technology that if we don't comply we'll certainly be left behind to sort of stroll down the dirt path of low technology.

But, like with all things-- I almost liken it to the average household, not everybody can certainly afford a home computer and, along with that, require some budgeting into the purchase of that without disrupting the normal household obligations. Naturally, industry and business has its budgeting going forward like government. I would assume -- and obviously just reading some of the information that is posted up there -- the costs that exist seem to be a wide spread.

I don't want to sound overly sympathetic to large industry, but I do believe that we have to be reasonable, too. I think they should understand that there are some issues on this side that they must also be reasonable.

My question is, inasmuch as we are talking about cost and I see the spread -- in terms of what is proposed, it could cost between \$5000 and \$100,000 to implement-- What is the total cost, if we have it, that we're looking at from a statewide standpoint with some degree of specificity if the Division has that? (shown visual aid from audience)

Oh, okay. I think my question has been answered, Madam Chair.
Thank you.

ASSISTANT COMMISSIONER KELLY-BRICKNER: Thank you, Assemblyman.

ASSEMBLYWOMAN HECK: Assemblyman O'Toole.

ASSEMBLYMAN O'TOOLE: Thank you very much.

A couple of questions to the Department. We talk about advancing technologies, and perhaps in the next few years we may stumble upon another level of advanced technology that, perhaps, would make it more efficient in the Department's eyes or, I guess, more orderly, so to speak-- If we stumble upon maybe a laser disc or some other advanced technology, would the Department then require a paper, digital, and this third advanced technology in terms of three forms of mapping to be submitted to the Department?

ASSISTANT COMMISSIONER KELLY-BRICKNER: We don't have any plans to do that, Assemblyman.

ASSEMBLYMAN O'TOOLE: Okay. Where do you find the statutory authorities who require two forms of mapping?

ASSISTANT COMMISSIONER KELLY-BRICKNER: In the Spill Act language.

ASSEMBLYMAN O'TOOLE: Okay. Where specifically in the Spill Act?

ASSISTANT COMMISSIONER KELLY-BRICKNER: The Spill Act language as amended in 1990.

ASSEMBLYMAN O'TOOLE: Does it say "forms" or "form"?

ASSISTANT COMMISSIONER KELLY-BRICKNER: It says, "Form and technology."

ASSEMBLYMAN O'TOOLE: Form -- *F-O-R-M* -- without the *S*, indicating singular as opposed to plural?

ASSISTANT COMMISSIONER KELLY-BRICKNER: Well, Assemblyman, I think that by use of the word technology, the Legislature was

recognizing that things had changed. What was found at that time was that a lot of the information the Department had to deal with this very critical issue was old, was inaccurate, and I think those words were inserted for the purpose of making clear that we were moving into this new age.

Again, we've tried to do it in a phased-in approach in order to be reasonable.

ASSEMBLYMAN O'TOOLE: Well, we certainly-- We have covered some ground. I can imagine we have had some accomplishment by your admission of trying to phase it in, or your accommodation of trying to phase it in, by saying if there are no changes, then there will be no digital form required. But that is somewhat far afield from where we started from.

We heard several months ago that this was the only way to do it -- with digital and paper -- and now, on November 7, four or five months after the fact, we've gotten somewhat of a compromise from your position -- the Department's position -- some months ago.

My position is, and has been, that you may have some latitude and authority to choose the form, but, frankly, if you ever acquired a paper mapping and then, sometime later, after the fact, now require a digital mapping, I think it's somewhat cumbersome for some of the business members of New Jersey to have that expectation and to have that budgeting met in terms of they have been asked to submit a digital mapping after they have submitted and complied with a paper mapping. Where does this bureaucracy stop?

We're talking about-- Whether it be \$5000 or \$100,000, at some point it is going to be cost prohibitive, and at some point, we're going to be

losing jobs and industry because of the overregulation that we have seen in New Jersey. This is just an instance of trying to cut back and encourage some industry to stay here in New Jersey.

ASSEMBLYWOMAN HECK: Assemblyman, you have provoked a question in my mind.

Have you met with industry to discuss compromises and ways of expediting what your needs are and what their needs are?

ASSISTANT COMMISSIONER KELLY-BRICKNER: I know there have been discussions in the past. I was not involved in them myself.

ASSEMBLYWOMAN HECK: Since we last met or is this phase-in just your response?

ASSISTANT COMMISSIONER KELLY-BRICKNER: The phase-in was our response.

ASSEMBLYWOMAN HECK: So you have not met with them--

ASSISTANT COMMISSIONER KELLY-BRICKNER: Since the resolution on this issue?

ASSEMBLYWOMAN HECK: Yes.

ASSISTANT COMMISSIONER KELLY-BRICKNER: Since the resolution passed on this issue? We have not since this--

ASSEMBLYWOMAN HECK: But you haven't met with them?

ASSISTANT COMMISSIONER KELLY-BRICKNER: Not since this resolution passed.

ASSEMBLYWOMAN HECK: I would venture to guess that since their industry is being affected that the Department should always seek the

advice of the people being affected, because they might have some ways and means to offer to the DEP, a fairer, less expensive way of doing it.

We heard, when Assemblyman O'Toole first came up with this, that there were times that digital mapping crossed over from one business to the next. It was done by one, it could affect another and save money, but you're not looking at that either.

Am I correct in my recollection of that, Kevin?

ASSEMBLYMAN O'TOOLE: Yes. That was some of the testimony.

ASSEMBLYWOMAN HECK: So I think it would be advisable -- because we're not voting on this today, we're going to hear testimony today -- that you bring back to the Commissioner the recommendation from this Committee that some form of meeting take place, and a more reasonable way of looking at it and completing or getting the same results can apply.

Because we're not saying that environment should not be protected, we're saying that we should be a little more careful in the manner in which we look at expenses in moving in that direction. Because I think protecting the environment is absolutely a must, but I think it's also a must that the DEP must consider some suggestions being made by not only industry, but the environmental groups out there who might be able to come up with some good ideas. There is a lot of talent out there.

ASSEMBLYMAN JONES: Madam Chair.

ASSEMBLYWOMAN HECK: Yes.

ASSEMBLYMAN JONES: Madam Chair, I think you raised a very cogent point in that there has not been--

ASSEMBLYWOMAN HECK: I love the word cogent.

ASSEMBLYMAN JONES: You like that? (laughter)

ASSEMBLYWOMAN HECK: Just keep talking now. (laughter)

ASSEMBLYMAN JONES: With respect to there has not been a meeting since the resolution-- I think you're absolutely right that a lot of, perhaps, the testimony that we'll hear today may be moot if a meeting of that sort takes place.

So maybe we should be asking them to meet and--

ASSEMBLYWOMAN HECK: Do some homework, is what you mean?

ASSEMBLYMAN JONES: Yes. Because there may be a way to satisfy all sides and the testimony in itself may be somewhat moot.

ASSEMBLYWOMAN HECK: Do you think the Commissioner would be amenable to doing something like that?

ASSISTANT COMMISSIONER KELLY-BRICKNER: Well, Assemblyman, I don't want to give you the impression that there has not been input from industry -- a give and take.

ASSEMBLYMAN JONES: Oh, no, I didn't--

ASSISTANT COMMISSIONER KELLY-BRICKNER: Throughout the comment process we heard extensively from industry on this issue.

ASSEMBLYWOMAN HECK: Sitting at the same table is a little different than getting things in the mail.

ASSISTANT COMMISSIONER KELLY-BRICKNER: I understand your point.

ASSEMBLYMAN JONES: You're right.

ASSISTANT COMMISSIONER KELLY-BRICKNER: I understand your point.

ASSEMBLYWOMAN HECK: In our office we sit at a table. It is much easier face-to-face.

ASSEMBLYMAN JONES: I think, Madam Chair, it maybe that might be--

ASSEMBLYWOMAN HECK: Reading sometimes becomes cumbersome.

ASSISTANT COMMISSIONER KELLY-BRICKNER: And the hearing process, too.

ASSEMBLYMAN JONES: Is that the recommendation, Madam Chair?

ASSEMBLYWOMAN HECK: Yes, it is.

ASSEMBLYMAN JONES: That they go back and sit at a table and then come back?

ASSEMBLYWOMAN HECK: Yes, it is.

If you could-- I'm certainly going to be amenable to having more testimony, but I really think we're going to hear a lot of the same things. I would suggest to the people testifying that they keep it brief and to the point and that we recommend, from this Committee level, especially the sponsor of the bill, to go back to the Commissioner and say that this Committee recommends a sit-down meeting with all the parties concerned.

So would you do that for us, please?

ASSISTANT COMMISSIONER KELLY-BRICKNER: I certainly will, Assemblywoman.

Are there any other questions?

ASSEMBLYMAN JONES: No.

ASSEMBLYWOMAN HECK: Thank you very, very much.

ASSISTANT COMMISSIONER KELLY-BRICKNER: Thank you.

ASSEMBLYWOMAN HECK: Now, Jim Sinclair is here from New Jersey Business and Industry, Eric DeGesero, Hal Bozarth, Michael Egenton, and Angelo Morresi, if you would all come up, then maybe we can agree that you can give some input to--

You have to talk into one of those little mikes that record, because this is important.

HAL C. BOZARTH: How is this?

ASSEMBLYWOMAN HECK: Very good. And those little ones, too.

MR. BOZARTH: And those little ones, too. I think we can do that.

ASSEMBLYWOMAN HECK: Yes, please. I think your voice will carry. (laughter)

MR. BOZARTH: The one person, Madam Chairwoman, that you did not mention was one of my folks, Bill Petronchak, from TR-Metro, who is to my left.

I just wanted to take three seconds and explain a little of the position. I'm going to let everybody fill in.

ASSEMBLYMAN JONES: You say three? (laughter)

MR. BOZARTH: Did I say seconds? Thank you, Assemblyman Jones. (laughter)

We've been here before. We appreciate the fact that you folks have heard all of this. But it seems that when we hear from the Department we hear something less than a cooperative fashion.

You have to remember some basic things. I think Jane Kelly-Brickner is one of the best and the brightest in the Department. I appreciate her willingness, as she says, to go back and ask to talk.

In 1991, the Department required mapping. A lot of our members and Jim's members got together cooperatively, did the mapping, shared the cost. In Sybron's case -- one of the fellows who was here last time -- it cost them \$30,000 to do their mapping.

In 1996, the Department comes back, having never told the Legislature that the wording in the amendments was going to mean a change to this mapping procedure, and demanded that everybody remap again and in a different format. In Sybron's example, an additional \$18,000.

Now, the question of environmental protection comes up, and it is a valid question. Do maps do anything to protect the environment? Not directly, no. Do they give the Department and the company information that it would need to know in case of an emergency? Yes. Did the 1991 expenditure of money on the original maps provide the kind of information that both the applicant would need and the Department would need? The answer is, emphatically, yes.

Why then, did the Department not tell the Legislature, when the subsequent amendments were being made, that they were going to say, "Well, we want to go back and get new maps to do the same thing, even though we have the same information, and even though it will cost new people money"? Maybe the Legislature would have stood up and said, "Geez, we don't think that is a good idea."

That is why we are here for the Oversight Committee process. We're here because the Department is saying, "Regardless of the cost, regardless of the impact economically, regardless of how many people will lose their jobs, we've got a new technology out there. We already have the information, but we've got something new, spiffy, and shiny, and we want you to do it." Why? Then, right after -- three days after -- this Legislature and this body passes a resolution decrying that fact, the agency is out again saying, "Sorry, we're going to continue to do the same thing."

After a while, we begin to worry about how much money is going to be thrown at this bottomless pit. The information to protect the environment, if that is what it is, is there. If it is so important for the Department to have, if the Department wants that information in a different process, in a different procedure, let the Department convert the information. We have the maps. That is all we need to protect the environment.

Why in the world would the Department want to do it again? And Assemblyman O'Toole's question is: Again, when? Are we going to do it again when we get CD-ROM capability? I mean, what are we going to do? When does it stop? When will the agency say enough is enough? I think this Committee, this Legislature has said time and again, "It's enough."

I think, really, we're more than willing to talk as a group to the Department, but they seem committed with a minor change -- let's wait till you're up for renewal before you have to spend the money -- to do the same thing. Maybe the resulting answer here is, in addition to a meeting, a specific amendment to deny the Department the opportunity to interpret the legislation differently than you would have interpreted it. Take away their authority to require the maps. Leave the maps that are already done in place.

Most of the time I come before this Committee with large companies, multinational, Fortune 100 companies, and it is difficult for them to elicit some kind of sympathetic response when it comes to money, but Bill Petronchak from TR-Metro is not one of those companies, although a member of ours. His money -- maybe it's only \$30,000, maybe it's only \$8000 -- really means a lot to him. I want you to just give him two seconds to say--

ASSEMBLYWOMAN HECK: Absolutely.

MR. BOZARTH: --what he spent already, what it will cost in the future.

WILLIAM A. PETRONCHAK: Actually it's not my money, it's my company's money.

ASSEMBLYWOMAN HECK: Yes.

MR. PETRONCHAK: My name is Bill Petronchak, Director of Regulatory Compliance, at TR-Metro Chemicals. We just recently moved from Ridgefield to Avenel.

Our facility is a lot different now than it was in Ridgefield. In Ridgefield, we had 14 underground storage tanks, 20 aboveground storage tanks. We were a major facility. We were one of the first facilities in the State

to get DPCC approval back when the program was implemented. The plan at the time cost us \$30,000, plus about \$25,000 for maps.

Because the complexion of our business has changed, we are running our business a lot differently today. Where our old facility was a couple of acres, our new facility is about 100 feet by 200 feet -- smaller than a football field. I still have to do mapping. I, just last week, got conditional approval of my DPCC plan, which I worked on for about 14 months, contingent upon some small changes to the mapping.

But before that, after I had submitted my paper maps, I got a notification from the DEP that I must also send them in digital form. This was when I was in the middle of my plan. We do not store bulk at our premises. Everything is in drums. We transfer material from tank trucks into containers. That is all done under an overhang. There is sufficient capacity underneath the tank wagon to contain the contents of that tank wagon. The possibility of anything leaving our premises more than 55 gallons is very remote.

What I'm trying to say is, I'm not Bayway Refinery, not by any stretch of the imagination, but I still have to map the same area, even though my potential is much, much smaller. I have nothing against the DPCC Act. I think it's really a good act, because it makes us take a look at how we run our business.

I have, in my facility, seven storage tanks. Again, they're inside. They're under cover, and there is sufficient containment to contain the contents of those tanks. So there is almost no way that anything is going to leave my property.

I didn't have to pay for my second DPCC plan, because I did it myself. I originally paid about \$4000 for my mapping, because we have a neighbor who had previously done it. I went to his mapping guy. I got a deal there. I have gotten prices for submitting digital mapping that would cost me an additional \$6000.

Our business, we're about \$25 million to \$30 million a year. We employ about 35 people. Our new facility also happens to be in an Enterprise Zone, so people are happy to have jobs.

I really don't have anything further. If anyone has any questions?

ASSEMBLYWOMAN HECK: Any questions, Kevin?

ASSEMBLYMAN O'TOOLE: No, I have a question-- I guess it's more of a thought that we can go back around the table with the industry and the DEP. It doesn't require a response now.

The cost of mapping of a facility, whether it be just a change or an addition, would that, more or less, be the same cost of an entire new mapping system on a plant? The question is: Are there fixed costs associated with any new mapping or revised mapping at any of these plants?

MR. PETRONCHAK: Well, it's never good to be the first one. We were faced with that with our Ridgefield facility, which is why the original mapping cost so much. There weren't other people doing it at the time. Even the concessions that the DEP is talking about now, with only having to submit the digital mapping when there are changes in your facility, I'm going to be one of the first people going in, so it is going to cost me more and progressively less for the other people who would have to submit the digital mapping.

Basically, what they do is they take an area-- When I went to have my mapping done for Avenel he said, "Well, no problem. There is a facility a quarter of a mile from you. We just shift it over a quarter of a mile." They only have to do a quarter of a mile. So it cost me a lot less.

If I happen to be a facility in Warren or Sussex County with nobody surrounding me, I would have to bear the whole cost.

ASSEMBLYMAN O'TOOLE: Okay. That's it.

Thank you.

ASSEMBLYWOMAN HECK: Assemblyman, anything? (no response)

Any other information you would like to impart for the record?

JAMES SINCLAIR: Jim Sinclair from the New Jersey Business and Industry Association. I'll just be very brief in my comments here.

The Association supports the concept of the GIS system. We think that is a wonderful system, having digital access, being able to look at data and use it to make environmental decisions. It is really something that we support, and its direction is where the Department and the State is going. It is where everybody is going, and that is something that should be funded and should go forward.

We agree with Hal's position here on this that people met the environmental goal when they submitted their regular maps. They shouldn't have to meet that environmental goal -- do it just to help the State move forward with a bigger goal. It seems to me that of all of the issues that have come before the Oversight process, due to the Constitutional amendment, this is clearly the best one to have progressed so far, because it's really clear.

It wasn't the intention of the Legislature to have companies do something twice or just because it's nice. Clearly, this is an area where the Department should withdraw their regulation and should sit down with industry and come up with a better system.

Not every company has control over the data in their original maps; some do, some don't. Therefore, to get control of that, that is in the hands of surveying firms. So they have to pay for that, whatever the market will bear. It isn't something that that surveying company is just going to give away for free.

If it is so important to the State to take certain reaches or certain bays or certain sensitive areas and convert this information, then my suggestion the last time was that is why we pay money into the Spill Fund, to plan for spills, to plan how to take care-- This is a source of money that industry pays for. It is money that the State has. Do it on a phased-in basis and get the data in the way they want it and in a form that makes sense.

But I would be willing, sitting down with the State, to make even other suggestions on how to approach this. The companies that do have the information, maybe they could be encouraged to give it to the State. I think that, perhaps, in a nature of a good-actor policy that people do a little bit more if they can, that might be a system where people would be voluntarily willing to give the data to the State in digital form.

I think really what we object to is this sort of very heavy-handed way of saying, "Well, let's just make industry pay for it." That is really a system that doesn't work anymore. So I would be happy to sit down with the Department and talk about ways we can do this.

ASSEMBLYWOMAN HECK: Hal, your group, too?

MR. BOZARTH: Yes, ma'am.

ASSEMBLYWOMAN HECK: And the Fuel Merchants?

ERIC DeGESERO: Yes, Madam Chairwoman. That is a little-- Eric DeGesero from the Fuel Merchants Association.

That is interesting to hear the Department say that. Last Monday, in the Senate Committee they said that they were ready to take it right to court, so there has apparently been a change in the past 10 days.

ASSEMBLYWOMAN HECK: Oh, I'm sorry. I didn't know that. Well, this Committee is a little concerned about hearing that.

MR. DeGESERO: Well, Mr. Alan Edwards (phonetic spelling), from the Discharge Prevention portion, stated that they--

ASSEMBLYWOMAN HECK: Well, I hope they won't go to court before they take the recommendation of this Committee.

MR. DeGESERO: I hope so, too, because it is simply nothing more than a further clarification of the Legislature's intent.

ASSEMBLYWOMAN HECK: I'd rather see them sit down and spend the money wisely and in a conciliatory fashion rather than give it to the attorneys.

MR. DeGESERO: I agree with that sentiment, Madam Chair.

ANGELO MORRESI, ESQ.: Maybe it might be-- I have had people suggest that they might want to make a scholarship fund for inner-city kids rather than throw the money down the tubes.

ASSISTANT COMMISSIONER KELLY-BRICKNER: (speaking from audience) Assemblywoman, if I could just interject here?

ASSEMBLYWOMAN HECK: Yes.

HEARING REPORTER: Excuse me, Madam Chair, could you have the witness--

ASSEMBLYWOMAN HECK: Oh, you have to come forward, because she is trying to record this.

ASSISTANT COMMISSIONER KELLY-BRICKNER: I would object to that characterization of our testimony last week. At no time did the Department indicate that we were ready to go to court on this issue.

MR. DeGESERO: I would be willing to check the record and be willing to certainly stand corrected if I did not hear Mr. Edwards properly when he stated that. I will certainly stand corrected before this Committee if I am not accurate in that. I would like to check the transcript of the hearing.

ASSEMBLYWOMAN HECK: We'll see the transcript.

MR. DeGESERO: Very good. Thank you.

ASSEMBLYWOMAN HECK: Thank you very much.

MR. DeGESERO: Many of the items that I would raise, have been raised. I have presented some prepared testimony for the Committee. Simply, when does the cost of regulatory compliance stop something that has been met? Those aren't numbers that I dreamt up or anyone up here did. Those are directly from the Departments.

ASSEMBLYWOMAN HECK: Well, we're very concerned. This Committee is very concerned--

MR. DeGESERO: Yes.

ASSEMBLYWOMAN HECK: --about costs and job preservation, as well as protecting the environment.

Go right ahead.

MR. MORRESI: Angelo Morresi and Mike Egenton.

ASSEMBLYWOMAN HECK: I think you're going to have to go into the center. (referring to microphone)

MR. MORRESI: Turn that on? (referring to microphone) Angelo Morresi and Mike Egenton, State Chamber of Commerce.

I guess everything has been said that has to be said. I think the issue here is being worked on. A couple of points: One is, I'm not convinced that these maps protect the environment. They're a nice thing to have. I'm not sure that they have ever been used to track down a spill and to see where it has been going.

I think that everyone is required to have secondary -- and a lot of people I work with have tertiary -- controls and containment to the point where these spills are not going any place. I think the use of the maps is for other purposes. It is nice to have them, but I don't see where the industry and business sector has to pay for those types of nice things to have. That is for the State to decide and make its choices.

The second thing is, as far as--

ASSEMBLYWOMAN HECK: But all of your businesses have complied with the paper mapping.

MR. MORRESI: That's right. We've done it. What I'm saying is, if that is what you want to do, fine, but in my mind I'd rather see the money be invested in a dike rather than some map that I don't think really accomplishes-- But if there are other people who want to use that map for other purposes, fine, go ahead.

ASSEMBLYWOMAN HECK: Assemblyman Jones.

ASSEMBLYMAN JONES: Just one question, just by way of a request for information: Could the members of industry provide the Committee, perhaps, growth projections over the next five years and revenue projections, as well as, perhaps, the philosophy on retained earnings projected over the next five years?

ASSEMBLYWOMAN HECK: Excuse me, I just want to know what you need that for, as far as mapping, Assemblyman?

I mean, we're addressing--

ASSEMBLYMAN JONES: You want to know why I want them?

ASSEMBLYWOMAN HECK: No, no, I'm asking you-- We're addressing a particular situation here--

ASSEMBLYMAN JONES: Because the issue is cost and I would like to see what revenue anticipations are for industry over the next five years. I'd like to be able to see what the growth potential of--

ASSEMBLYWOMAN HECK: I think the issue, Assemblyman, just from my point of view was more than cost. They were talking about technology.

MICHAEL A. EGENTON: Right. It's a combination of the two.

ASSEMBLYWOMAN HECK: First they started with paper, then they came to the digital, and I don't remember which one of the gentlemen said, when they go to another technology, will that be an additional need. I don't think it was just cost. I think it was also progression.

MR. MORRESI: I think the point is waste. I don't know any company in any of these groups that are in the State of New Jersey that don't do what they have to do in terms of capital investment.

ASSEMBLYWOMAN HECK: I know that-- From listening over the years to even local businesses, there is a limited amount of money even for *R* and *D*, you know, research and development, within companies. I think the determination here is, we've done that, it serves the purpose, why do we have to spend the money in additional technology. I'd rather spend it in bettering my industry and bettering my employment ratio, etc. That, I think, is the--

Am I correct, Kevin? Is that what you're looking at?

ASSEMBLYMAN O'TOOLE: I'm sorry, I missed that last thing. I was reading one of the submissions here.

ASSEMBLYWOMAN HECK: Don't read when we're having this-- (laughter)

ASSEMBLYMAN O'TOOLE: Sorry, Madam Chair. (laughter)

ASSEMBLYWOMAN HECK: I'm talking about it not being just a question of dollars, it's a question of funneling the dollars not into new technologies all of the time. If something works with the paper and then going to digital, then going to new technology, it's not a question of their development and the funding over the next five years. It is where they can put the additional dollars in *R* and *D*, research and development.

ASSEMBLYMAN O'TOOLE: Right. That is what we've heard so far. That is correct.

ASSEMBLYWOMAN HECK: Isn't that what you were talking about?

ASSEMBLYMAN O'TOOLE: That is what we've heard. That is the testimony.

ASSEMBLYMAN JONES: And I certainly appreciate that, Madam Chair, but, again--

ASSEMBLYWOMAN HECK: I mean, they can do that if they would like, but I don't think it is pertinent to the bill.

ASSEMBLYMAN JONES: Well, I'm going to--

MR. MORRESI: I'll take it one step further--

ASSEMBLYMAN JONES: Well, let me-- I think I had the floor, if I can finish, Madam Chair--

ASSEMBLYWOMAN HECK: Excuse me, through the Chair--

ASSEMBLYMAN JONES: We'll move it, through you, very cogently--

ASSEMBLYWOMAN HECK: I can address what is pertinent and relevant to the hearing, Assemblyman.

ASSEMBLYMAN JONES: Madam Chair, again-- Let me just make this clear: As you are elected, I am--

ASSEMBLYWOMAN HECK: Through the Chair, Assemblyman.

ASSEMBLYMAN JONES: Through the Chair. I don't have to look at you, Madam Chair-- But through the Chair, Madam Chair, I would like to request the members of industry and business to provide me with -- whether the rest of the Committee wants it or not, that is your prerogative -- but, again, through the Chair, the revenue projections over the next five years with the growth potential over the next five years, and the potential philosophy on your retained earnings over the next five years.

Thank you.

I'm done.

ASSEMBLYWOMAN HECK: I think so.

Gentlemen, I think that the suggestion that you're making more money so you should pay more money for mapping is implied here. I really believe that the point-- If I am wrong, correct me. The point is that what you're looking at is what exists now and why they're doing it. Does it offer it any other environmental protection? You have complied with the ruling, and you're asking why, why must you spend this money? I don't think that is wrong.

Again, if you would like to-- The Assemblyman has made a request of you, and he certainly has the right to do that. This Committee has not made that request. So it is your own personal prerogative if you want to give him your dollar value, but I don't think the dollar value is significant in this particular instance, from a personal point of view.

I would respectfully request that the people within this Committee treat the Chair with respect and not with indignation when I ask for clarification in procedure.

ASSEMBLYMAN JONES: I would ask that that be reciprocal, also, Madam Chair.

ASSEMBLYWOMAN HECK: Gentlemen, I thank you very, very much.

MR. MORRESI: Thank you, Madam Chair.

MR. EGENTON: Thank you.

ASSEMBLYWOMAN HECK: I appreciate that. Let's move on to the next--

ASSEMBLYMAN JONES: Respect is, indeed, mutual, Madam Chair.

ASSEMBLYWOMAN HECK: I think we'll move on to the next matter. We're moving on the NJPDES and Catherine Cowan and Dennis Hart from the DEP, please.

ASST. COMM. CATHERINE W. COWAN: My remarks start out, good morning, Chairwoman Heck, members of the Committee. I'll address that as good afternoon.

My name is Catherine Cowan. I am Assistant Commissioner for Environmental Regulation at the Department. Thank you for the opportunity for the Department to appear here today. With me is Dennis Hart, who is the Director of the Division of Water Quality.

We want to discuss some of the very real issues involved in invalidating the entire water pollution control regulation known in New Jersey as NJPDES. It is NDES, nationally.

If adopted, the resolution that you are considering will eliminate New Jersey's ability to regulate water as delegated to the State by the EPA. The testimony and debate concerning the water pollution control fees of the last few months have missed some crucial points, which I would like to address.

First, we need to think about environmental impact. Passage of this resolution would have severe, immediate, and significant impact upon the State's water resources, as well as our pollution control efforts.

Secondly, budget impact: Passage of this resolution will result in an immediate budget shortfall for Fiscal Year 1997 of \$12.9 million. Now, this is the budget already approved by the Legislature in which we're approaching a halfway point.

In Fiscal Year 1996, the Department charged NJPDES fees to 1400 facilities; 889 of those facilities paid less than \$2500 in fees. Some of you are looking at the charts which we have handed to you.

The first chart indicates to you that-- The first chart talks about some of the highest industrial fee payers, and the second chart addresses some of the municipal fee payers. There are major discharges to the surface waters of this State. The eight highest fee payers are listed on the chart.

But you must keep in mind in your consideration that those that aren't listed here include the restaurants, the hotels, the hospitals, the small-town facilities, as well as park, prisons, and all of the other places that have NJPDES discharge -- 1400 in all in this State.

Now, on the third chart, the Fiscal Year 1996 fee distribution, you see that roughly 890 facilities paid less than \$2500 in fees. Going over to the third level -- between \$5000 and \$10,000 -- 482 facilities paid those fees. Then, all the way over to the right, between 16 and 17 facilities paid over \$100,000.

We haven't been discussing fees in a vacuum at the DEP. From 1992 to 1996, we had numerous meetings with all of the stakeholders concerned about this issue. We had meetings of small groups, large groups, public hearings. We presented white papers. We received comments on them. We responded to them.

The results of that Task Force included that we limit our fees to no more than \$15.3 million until changes in the program were implemented. What have we done in response? We have implemented 95 percent of the recommendations of the Task Force. At the same time, we have capped the fees that we requested from our dischargers to \$11.2 million. For the last three years, we've capped the fees that we've sought.

The only recommendation that was not accepted was that we eliminated exemptions for public schools. We kept that exemption. Public schools do not have to pay NJPDES fees, and we've held the line requesting fees for \$4 million less than we actually were recommended by the Task Force.

How have we held the line on these fees? We've looked for ways to reengineer the program. We've looked for ways to reduce our oversight activity in a number of ways, and we have, indeed, reduced the numbers of people who are paid for through those fees.

One of the major recommendations of the Task Force was that all dischargers pay their fair share. We believed in that as well. We adopted a three-year phase-in that reduced the fee of a number of facilities and increased the fees of some of the smaller facilities. This phased-in plan implemented higher minimum fees, and it was based on various types of permits. But in the course of that work, we reduced the highest fees considerably.

For example, the du Pont Chambers work facility paid a fee of \$700,000 in 1993. In 1996, we requested \$470,000 -- a 33 percent reduction. Hoffman-La Roche's Belvedere facility pays a fee now of \$364,000 compared to \$670,000 in 1993, and that is a reduction of 45 percent.

The New Jersey Discharge Elimination System -- fee system -- is based on a polluters' pay system. It is important for you to understand that the top five industries in this State are responsible for over 70 percent of the total industrial impact. You can see a graphic display of that in the last item on the charts that I have handed out to you, which demonstrates 72 percent of the environmental impact related to industrial discharges is produced by the five largest dischargers, and then, the remainder -- 28 percent -- comes from the rest of the industry in the State.

If you should pass this resolution which tosses out this traditional approach to charging fees based on the environmental impact caused by the dischargers, you will be overturning this approach to environmental regulation in New Jersey which has been ongoing for a number of years, through several administrations, and through a number of legislators.

The direction in the past has been to incorporate into the fee system a consideration of the environmental impact of that particular discharge not only for the quality of it, but also for the quantity of those discharges. In this way, the Department has encouraged dischargers to control and manage their discharges, and it has helped to fund the cost of dealing with the impact of those discharges.

You will hear, for other testimony, that our fees only pay for the cost of writing a permit once every five years. That is not an accurate representation of the cost of environmental regulation. Our fees include, as well as the writing of a permit, bringing facilities and keeping them in compliance with the conditions of that permit, and when they fail to meet compliance requests repeatedly, enforcing against their activities. It also

includes established planning for water quality, meeting numerous EPA requirements for long-range plans for needs in the State, as well as establishing water quality standards. How clean is clean? How clean is safe for people to be drinking downstream?

Further, we continue to monitor -- ambient monitoring -- of the water bodies of the State, as well as collect data so that we can respond to questions and maintain an ongoing database as to the quality of the water in the State.

These are only some of the issues that we believe need to be addressed in your consideration of this resolution, but I would add one other.

That is, for the last several months, we in the DEP have followed the direction that I have heard you give to other Departments this morning, Assemblywoman Heck.

That is, that we opened comments on a reform package of the NJPDES rules last February. We received comments, both written and verbal, in the press and in the court of public opinion. We responded to the concerns of our constituents. We met with them repeatedly through a series of both private -- they met privately -- and then public meetings in which the Department interacted, responded to requests for information, and attempted to clarify our intentions throughout the summer and fall.

Just a couple of weeks ago, our efforts resulted in a wonderful package of recommendations to the Department in terms of completing the work on a number of the NJPDES rules' sections and continuing our work over the next several months on the key issues of how are we going to determine

permits and issue them, and secondly, what are the acceptable standards for water quality in the State.

We're working with the stakeholders to improve what they viewed -- because they set aside from discussions the fees earlier in the summer -- as the key issues in the rules. How are we going to develop and maintain a permit program that avoided a stalemate that occurred earlier in this State, where permits were not being issued, and those that were, being challenged in the courts?

Dennis and I and other staff members are here to answer your questions. Thank you very much for your time.

ASSEMBLYWOMAN HECK: Thank you.

I'm going to ask if any of the members would like to ask any questions?

Assemblyman.

ASSEMBLYMAN JONES: Thank you, Madam Chair.

Hi. How are you?

ASSISTANT COMMISSIONER COWAN: I'm fine. How do you do?

ASSEMBLYMAN JONES: Just fine.

I have just a couple of questions pertaining to our movement to watershed management, which I understand was the goal of this regulatory overhaul, and I believe is the goal of a new and soon to be negotiated regulatory proposal to be funded.

If the Governor is somewhat serious in stating that it is her intention to move toward watershed management which requires more studies,

more planning, more monitoring data than we have now, what is the funding proposal that is attached to this?

ASSISTANT COMMISSIONER COWAN: We have not yet issued a proposal. We are in the process. We have a draft framework for watershed management. In the Department, our discussion has been relative to what should this framework look like. Because this is a pioneer effort, New Jersey will be in the forefront of many states, and it is very complex in this State because of the quality of the water and history. So we have a draft which we will soon issue, on which we will receive public comment.

Now, this is one place where we stayed internal for a period of time. We have not yet discussed with the stakeholders, but we also intend to hear them and to adjust it according to the comments that we'll receive.

In order to try to avoid debate solely over the funding, the Commissioner has asked us to talk about the way the program should work first, and then, when we've reached a consensus in terms of how the program should work, we'll address the funding issues.

There was a bond issue which provided for some funding on the ballot on Tuesday. We have looked for other sources of funding, both present and future, as possibilities. The Commissioner and the Governor are committed to pursuing watershed management in this State. As I am sure you are aware, when we are ready, we'll be coming to you to explain to you what we think it will cost.

ASSEMBLYMAN JONES: Through the Chair, in what kind of time frame do you sort of see this happening?

ASSISTANT COMMISSIONER COWAN: It is always dangerous to predict in the regulatory environment how long things will take. Our time frame for the first part of 1996 was to put this framework out on the street in June. We are now several months later than that. I would hope that in December or right after the first of the year it will be public. We can accept comments, usually 30 to 60 days, we can revise, and then proceed. It is integral to our moving ahead with the NJPDES reforms.

ASSEMBLYMAN JONES: Thank you.

ASSEMBLYWOMAN MURPHY: Madam Chair.

ASSEMBLYWOMAN HECK: Yes. Assemblywoman Murphy.

ASSEMBLYWOMAN MURPHY: Thank you very much, Madam Chair.

Through the Chair, I would ask if the fines are reduced, dropped, discarded, no longer exist, how and what would happen to the NJPDES Program in the State of New Jersey?

ASSISTANT COMMISSIONER COWAN: Well, the budget-- The Department is on budget, and so, technically, we would continue to be funded, but it would be the responsibility of the administration and the Legislature to determine the sources of funds. If there were not a possibility of finding funds, other states provide a higher percentage of the cost of the program from state funds than New Jersey does. That would be one option, from the General Fund.

Another option would be to cut some additional staff. We have already reduced the staff by about 83 since several years ago. So we're of the opinion that it would be very difficult to continue to maintain the program --

the quality of the program -- that is important for New Jersey with fewer staff and fewer resources.

We would, perhaps, be in the position for EPA to say that we have not met the minimum Federal standards, and they would then take over the program and issue NJPDES permits in New Jersey. Either we find sources of funds to maintain the program adequately to meet EPA standards or they may take it over, and they have delegated the authority to us. They can withdraw that delegation.

ASSEMBLYWOMAN MURPHY: Again, through the Chair, you spoke, I believe I heard you correctly, that the DEP, part of-- In the permit procedure, part of what the DEP does is to make sure that the agencies who have the NJPDES permits do keep in compliance.

ASSISTANT COMMISSIONER COWAN: Yes.

ASSEMBLYWOMAN MURPHY: This question of keeping compliance, do those persons send reports to the DEP on a regular basis to indicate the measurements that they may take along the way with things, or does the DEP go to them and actually do testing?

ASSISTANT COMMISSIONER COWAN: A little of each, but on a monthly basis DMRs are received at the Department, fed into our system, and tracked in terms of the discharges measured versus the permits' allowable limits and compliance with those limits. We also test the waters around the State on a regular basis, but that is ambient monitoring. It is to measure the overall improvement in the water quality which has, by the way, dramatically improved over the last 20 years.

ASSEMBLYWOMAN MURPHY: Again, through the Chairwoman, then the DMRs that are sent to the State are sent by the persons who hold the permits -- sent by them, themselves. No one has to go and get them. They collect the information. They do everything at their own plant, and then, they send that information to the DEP for the DEP to internalize?

ASSISTANT COMMISSIONER COWAN: That is correct. That is correct, Assemblywoman.

I am also advised that when there is some reason for concern, Enforcement does sampling at a particular facility where there might be some indication of noncompliance.

ASSEMBLYWOMAN MURPHY: Again, through the Chairwoman, does the DEP, if indeed they feel something is not in compliance, do they contact the permit holder and then work through that way, or does the agency send Enforcement out?

ASSISTANT COMMISSIONER COWAN: On the first infraction?

ASSEMBLYWOMAN MURPHY: No. I guess what I'm trying to find out is, if there is something -- a reading -- that is not in accord with what the DEP would choose to see or believes the permit allows for, is there something that the DEP goes out to do, or does the DEP pick up the phone or whatever and say, "Hey, listen, we've got these readings you sent to us, so you know what they are. They're out of compliance with your permit. What are you doing? What is going on," or whatever? I guess I'm trying to say: How many people does it take to make the phone call and have the conversation

regarding what goes on as opposed to sending personnel to be somewhere else, to do something, and then to come back with something?

ASSISTANT COMMISSIONER COWAN: I understand your question. You are correct that we will make a phone call or we will send a letter or we will make a personal visit. It depends on the level of the infraction and the threat to the environment.

A minor infraction, we would-- But it is our approach in DEP that over the last 25 years we used a command and control approach. They are the bad guys. We are the good guys. We're going to catch them, and then we're going to nail them.

Today, our emphasis is on compliance. First, writing permits that are understandable, effective, and enforceable. Secondly, helping them meet those standards, understanding their limits, and that is, bringing them into compliance, making sure, for example, to the extent that we can do so, that our DMR report is correct or it may be a spike. We discuss the issues with them. Only as a last resort is enforcement seen as the way to enforce and require compliance.

I will have to add -- and I think that is your question, actually, the core of your question -- it takes more people to work with industry than it does to write the permit and then send out Enforcement if there is a violation of the permit.

ASSEMBLYWOMAN MURPHY: I will certainly agree with you that it takes a different kind of working and certainly takes different kind of people, I have no question.

I would, through the Chair, like to comment that I am delighted to have the absence of one word here today. Having said I'm glad not to hear the word, I'm going to say the word. Too often, we read about the polluters as though we had a menace looming on the horizon when, indeed, it has -- after speaking with yourself and others -- certainly been, I think, laid fairly clear that each of us, every time we turn on a tap or let a sink of water out into whatever our system may be or any such common behavior, we are all, in the framework of the greater word, we are all polluters.

It is very pleasant not to hear the accusation that is so frequently made about the polluters, the large menace. It is much more productive, from every level of our entire world, I think, to speak about working together in compliance to better take care of the environment. So I applaud the continued restraint-- I'm the only one who has done this terrible thing today.

So thank you very much, Commissioner.

Thank you, Madam Chairwoman.

ASSEMBLYWOMAN HECK: I don't think the sponsors of this bill were-- I don't think their intent was to stop regulating. I think it was to lower fees and certainly not adversely impact the DEP. But I think that there has to be a look at why some of our fees are so consistently high.

Are you saying that you're doing more work? Isn't compliance more in place today? I don't hear any terrible stories coming forward that your workload has increased because the amount of damage that is being done by industry is so great that you have increased your workload.

ASSISTANT COMMISSIONER COWAN: Well, let me address that in a couple of ways, and Dennis might want to add.

Yes, compliance has improved. One of the measures of that improvement is that we are collecting fewer penalties for infractions. Some point to that as saying that we have relaxed our enforcement. It is our belief that we have been able to avoid penalizing people: one, by working for compliance, which is, after all, our purpose; and secondly, that industry has understood the threat of the Clean Water Enforcement Act and they have come into compliance more clearly in ways that avoid those penalties.

But I would go on to say that one of the things we recognize-- I repeat that there is a cost to environmental regulation. This debate is actually about who is going to pay that cost. It is whether or not the taxpayers pay. If you increase--

ASSEMBLYWOMAN HECK: Are you saying in other states it is as expensive, but the state itself is paying for it rather than fees?

ASSISTANT COMMISSIONER COWAN: I'm saying that in other states there is an increased funding from the general fund for the Water Quality Pollution Control Program.

In Delaware, for example, a third of the cost of the program comes from the general fund.

ASSEMBLYWOMAN HECK: So it's a third--

ASSISTANT COMMISSIONER COWAN: Yes.

ASSEMBLYWOMAN HECK: --and we're talking about a plant that pays a \$20,000 fee in Delaware as opposed to in the hundreds of thousands here -- doesn't look as if it's a third of the cost.

ASSISTANT COMMISSIONER COWAN: Now, our fees are higher. That's correct.

ASSEMBLYWOMAN HECK: But I am trying to see the correlation between the high fees and the level of enforcement and the protection of the environment. Because I look at the sponsors of this bill, Assemblywoman Crecco, and a dear friend, Assemblyman Lustbader -- we're very conservative people. So that is why I look at the bills very carefully and say, "I know that they don't want to see the regulation adversely impacted or the environment adversely impacted." But what they're looking at--

I personally have not the best feeling for fees, because I recall working on a Commission once and a letter coming to us saying that a budget was downsized-- This is about four years ago. And a letter coming from that then Commissioner saying, "We have to increase the penalties and fees because our budget was downsized." I remember that letter. It was real. It was passed around to us, and we found that very offensive.

I just want to make certain that within the realm of the bureaucracy that we haven't fallen into a place where we're so protective of a system and not just the results of that system, or the mechanism, that we don't look at the economy and the environment being a balanced partnership.

ASSISTANT COMMISSIONER COWAN: I believe that we are looking for the same balance. There is a matter of how much is enough and that is the debate.

ASSEMBLYWOMAN HECK: Agreed.

ASSISTANT COMMISSIONER COWAN: So the question is, of course-- We have, as I said in my remarks, we have already begun to address that balance through increasing the minimum fee charged from \$2400. That increased the fees for many of the smaller dischargers in the State. At the same

time, over a three-year phase-in period, we decreased the fees for the largest ones. I named just two, but we have the other figures available for you.

Now, the question that you're asking in terms of whether we are just defending the \$11.2 million as what we absolutely have to have, blindly without supporting it, my answer would be, no, we're not. We have in the DEP and the Water Quality Program made many efforts at reform. I would be glad to provide you with several reports that include those.

We have looked for ways to cut our costs. In fact, if we hadn't capped the fees at \$11.2 million, we would now be requesting something like \$20 million in fees based on previous projections of costs.

Commissioner Shinn, when he came in, capped them, and we have learned to live within those limits despite increased costs of staff and other activities. Watershed management, again, will be another way to pay for it, but we are looking at how we will pay those costs. So we're looking at shifting resources from the way we currently use them to other ways. So within the Department we are looking constantly at ways to strike a balance between how much we really need and whether we can cut some of the expenses we currently have.

ASSEMBLYWOMAN HECK: Are you reviewing the system that you use?

ASSISTANT COMMISSIONER COWAN: Yes.

ASSEMBLYWOMAN HECK: And refining that as well?

ASSISTANT COMMISSIONER COWAN: Yes. And that is part of this whole discussion over the NJPDES rules -- is that we published a proposal that we thought reflected the discussion in the early 1990s. We

found that people had been talking past each other, so we brought everyone to the table and for the last several months, as I said, they have been talking to each other and to the Department.

We found compromises. We now have to find regulatory language which addresses the compromise. It does change the process dramatically from the way we previously operated to the way we--

ASSEMBLYWOMAN HECK: I think there is some attention deficit syndrome out there. Somebody is very anxious to come up and tell us something now that you're talking.

ASSISTANT COMMISSIONER COWAN: No doubt.

ASSEMBLYWOMAN HECK: But I do I think it's important for us to look at the fees, the way they're structured, and what we're doing. Again, I think we need more input from everyone on how to improve the manner in which we produce.

If this was a penalty situation or repeat offenders, it wouldn't bother me in the least that you're raising those penalties, but this is a big structure that we're reviewing here.

Are there any other questions? Because I would like to call the other people up.

Assemblyman, please.

ASSEMBLYMAN JONES: Through the Chair, Ms. Cowan, I think you restated what I felt was the whole philosophy behind this debate. Who pays for keeping the environment clean becomes the question, the industry or the taxpayers. I believe today's resolution says-- We don't want

the industry to bear the burden and we reject the environmental philosophy that the polluter pays.

The question becomes: If the industry says that the pollutant loading aspect of a formula is unfair-- I believe that one of the industry representatives, who testified before the Senate Committee last week along with Mr. Bozarth, stated that the pollutant loading aspect of the fee formula did not -- or did provide incentive for reducing pollution. If that is the case, doesn't this suggest that it is in the environment's interest to keep these tied to the level of pollution so that the biggest emitters pay the most?

ASSISTANT COMMISSIONER COWAN: Well, let me restate that that is a public policy position that has been in existence in New Jersey for a period of time. It is in our regulations. It has been through the public process. There are objections being raised by industry today in terms of the size of the largest fees, but the large majority of the fees are smaller dischargers. We have 1400 dischargers and there are 17 which pay over \$100,000.

So when we talk about tying to environmental impact, that is a choice that we can make. What I was saying earlier is that we have reached consensus on how to issue permits. None of us were entirely sure when we started the process that we could come to consensus. Now we hope that we can finish that process, and then, we can, perhaps, move onto a discussion of this debate on the fees in New Jersey.

But if this resolution passes both Houses, then we will not be in a position to continue the program through this Fiscal Year nor the next Fiscal Year in the budget process. So that is what I'm saying: Yes, that is a decision that needs to be considered whether or not we continue to weigh

environmental impact in our fee calculations. We're willing to talk about it. I think it is key to this discussion. But we haven't focused on it this year because we focused on the larger issue of how do we continue, how do we develop a program that will allow us to issue permits and regulate dischargers?

ASSEMBLYMAN JONES: Thank you.

ASSEMBLYWOMAN HECK: Thank you, Assemblyman.

Thank you very much.

I'm going to ask Hal Bozarth to come up with Clarke Hoffman and George Bekun, the Chemical Industry Council, and then, Curtis.

Are you here, Curtis? (affirmative response from audience)

MR. BOZARTH: Thanks, Madam Chairwoman, I appreciate being here again this morning in front of this Committee.

I know many of you have already heard some of the things and seen some of the figures. We would like to take at least a fraction of the time that Ms. Cowan did in explaining, I guess, our side and our position in this thing.

I'm going to ask-- I'll tell you what, I can walk these up. (distributes visual aid) These are the top 15 fee payers in the State of New Jersey. It goes back to 1992.

I think we have lost track here of why we're all here. I listened to Ms. Cowan and it was all very interesting, but this is the legislative Regulatory Oversight Committee. The original intent of the statute which these bills and these resolutions address themselves to is whether or not they have the authority to charge a \$2.5 million permit fee.

The second major issue is not whether there is an environmental impact here, it is the cost of the program. Absolutely no one with me at this table will argue with the fact that we need to have strong environmental protection laws.

The third major issue here is this Committee, relative to the oversight process -- as I think it was Assemblyman Jones, last time, talked about, it has been a while -- trying to get us as a State, from a public policy point of view, competitive for those people who produce jobs here, so we don't continue to lose jobs.

I would submit, relatively simplistically, that as you look at these admittedly Fortune 100 or Fortune 50 companies, these fees aren't too high. What you have to remember is this is per year. A NJPDES permit goes, as we talked about before, for five years. So the real cost to the people who are on this sheet is five times that number.

The Department deserves credit, and Ms. Cowan does specifically, for, along with the Commissioner, lowering from, at least, 1995 to 1996 in most cases, those fees. They are stuck on the total cost of the program, \$11.2 million or \$11.5 million. What they're doing is they are rearranging deck chairs on the *Titanic* as the system is going down. So they're adding a little bit here, taking a little bit there. Overall, we feel better to only be paying \$2.5 million for a permit fee as opposed to in 1992 \$3 million for a permit fee. Everything in life is relative, ladies and gentlemen. I am here to tell you this is still a painful amount to pay whether you are a du Pont, a Fortune 50 company, you are a school district that has gotten away without paying anything, or a municipality. Look at the Trenton Water Works, \$48,000 a

year times five. Do the math. Find out what the citizens of Trenton are paying. It has nothing to do with environmental protection. It has to do with the cost of the program.

Let me show you what the cost of the program slide looks like to refresh your memory. (using visual aid) These are permit cost State comparisons. We have tried to use U.S. EPA numbers, and we have tried to take states that are competing are stealing our jobs so that you get a good look. Look what the New Jersey program costs, look what it costs in Pennsylvania, Delaware, South Carolina, and these are only a few. We have the highest permit fees in the nation. Not in the region, in the nation. Do we care about environmental protection? Yes. At what cost? When do we say we're doing the great job environmentally--

The members of the Chemical Industry Council, for instance, for their water discharges, specifically ran into this, over a four-year or five-year period -- reduced their water discharges by over 60 percent. We're doing the good thing environmentally, but we still have the old bureaucratic model in place that has to be paid for. That is what this is all about. It is the cost of the program. It is not about pollution loading. It is not about anything but the number of bodies and \$11 million or \$15 million depending on what you ask.

All we're saying is -- and the sponsors, I think, were saying -- that the original intent of the statute was to allow the Department to charge fees to cover the cost of a permit. Over the years, the Department has extrapolated that basic, simplistic language to say they can charge fees to cover the cost of the permit program.

The legislative oversight activity on this specific issue is understanding where we have gotten to under the convoluted logic of the original statutory intent, do you as the public policy leaders of the State need to make a balance check here? Are we getting what we're paying for? Are we getting the environmental protection that we need? I would suggest, yes, give the (indiscernible) and whether or not we have adjusted the cost so that we can remain competitive.

I have said all along if we're not careful we'll have a chart with one graph-- If people continue to leave the State of New Jersey, at some point you'll be back here with a diminishing number of permittees paying an increasingly larger amount of fees. Because as more people leave the system because of the high cost of the fees, the people who are left -- Trenton Water Works -- will go up from \$48,000 a year for each of five years to maybe \$100,000.

What I was hoping and what I think the sponsors were hoping was that this Committee would look at the cost of the program and say, "You can't afford to charge people this kind of money. You have got to do something to lower what the program costs."

We had testimony in the Senate Committee which said, basically, that the DEP employee cost for this program came out to about \$73,000. Interesting point, the average cost of a NJPDES permit is \$15,000. The actual cost of doing the work on the permit is, according to the DEP, about \$5700.

Now, I'm just a poor South Jersey guy. I'm not sure I follow the logic. It costs \$5700 to do the work--

ASSEMBLYWOMAN HECK: Something just flew over when you said that--

MR. BOZARTH: --the average cost is \$15,000, and I've got people here paying \$2 million for a permit. Something doesn't seem to ring a bell.

Now, my problem is I haven't had any lunch, haven't had an opportunity here to quiet down. I know you want to move. You've been here all morning, longer than I've been here--

ASSEMBLYWOMAN HECK: I think it is important that you go on the record, because, again, that is why we're doing this.

MR. BOZARTH: Well, I have to tell you, when I listen to the Department and they don't say, at least to our satisfaction, enough about the need to control costs-- I gave Ms. Cowan credit for doing that, but we're still left with \$2 million fees. That is not competitive.

Now, I want you to hear from George Bekun from Tosco Refinery, a major manufacturer in the State, also, a very profitable company. It makes a lot of money. My two friends that you have seen before from du Pont, a Fortune 50 company, make a lot of money, but they have something which is very interesting. These three people, as opposed to Trenton Water Works, they can vote with their feet. They're going to be here to tell you that they are going to vote with their feet if we don't do something about these fees.

George, please, you go first.

G E O R G E B E K U N: My name is George Bekun. I am representing Tosco. We operate the Bayway Refinery in Linden. Tosco believes that the

current annual NJPDES fee structure for the industrial treatment works far exceeds the intent of the statute.

This year, Bayway Refinery paid \$450,000 as the annual fee for its primary NJPDES permit. That fee doesn't include additional fees we paid for six other NJPDES permits which regulate facilities at our site. This is the highest environmental fee paid at the Bayway Refinery. It is about twice as high as the refinery's new Clean Air Act fee.

Over the past five years, the effective time period of a new NJPDES permit, Bayway Refinery has paid over \$2,300,000 in fees for this one NJPDES permit alone. This cost is exorbitant and bears no resemblance to the statutory requirement of the "cost of processing, monitoring, and administering the permit."

In general, the NJPDES industrial treatment work fees are the highest discharge permit fees paid in the United States, and they place New Jersey at a significant economic disadvantage without justification. We believe that the current industrial fee program must be reformed. We have submitted comments to the Department with our concerns, with the fee program in general, and the way the fees are calculated in particular, and have asked that the NJPDES Fee Task Force be reinstated so our concerns and those of industry in general can be addressed. Smaller, more equitable environmental fees are essential to maintain New Jersey's industrial base.

Thank you.

MR. BOZARTH: Thanks.

Dr. Al Pagano is next in our group, unless you want to ask Mr. Bekun a question.

ASSEMBLYWOMAN MURPHY: I think that we will let them continue and save any questions until the end.

ASSEMBLYMAN PASCRELL: I'll wait till they finish.

ASSEMBLYWOMAN MURPHY: Thank you.

ALFRED H. PAGANO, Ph.D.: My name is Alfred Pagano and I represent du Pont. Some of the information I have heard this morning, and I think you have heard what I have said before about the high fees that are paid by some of the top dischargers, but there are some other things that the Chairwoman raised before and I believe Assemblyman Jones did also. Let me try to give you some background information.

Over the years, we have used a fee formula to establish the fees for NJPDES dischargers. That fee, as you have heard from Ms. Cowan, is based on two pieces: one, called a base fee, and the other is an environmental factor. Putting these two together, you come up with the fee that is charged on an annual basis. Ms. Cowan has said, and the Department has shown, that they have tried to increase the base fees to some extent so that some of the smaller dischargers are paying more and maybe some of the larger dischargers are paying a little less.

But over the years, there have been changes made to the fee formula which have caused the high increase in the fees that we now see. For example, in 1985, Chambers Works was discharging at about the rate they are discharging today. Our fee at that point was \$25,000 a year. Now, over the years what has happened is they have made changes in the formula to change the way in which the environmental has been calculated.

Because of this, these fees have gone up to a point where the only way they could prevent us, Mr. Bekun's Bayway Refinery, and some of the larger folks, from paying, literally, millions of dollars in fees was to put a cap on the system, which we think was a great idea, because without the cap we would, literally, be paying maybe \$4-or-so million if you used the fee formula as it was demonstrated in the regulations.

The other thing that we talked about before, about where we stand competitively with the rest of the region or the rest of the United States-- I don't have it in front of me, but I do recall a document that was written by Washington's Ecology Department in which they compared fees for the entire United States. As was discussed earlier, some of the program costs in different states are paid by a variety of funding. It is a mixture of some fees, some state general funds, and in some cases, some Federal general funds.

It turns out, if I remember correctly, that there are only two states in the United States that charges 100 percent for their NJPDES fees. One is the State of West Virginia, and the other is New Jersey. The difference is, is that the State of West Virginia's NJPDES program in total is \$1 million -- \$1.2 million, as I recall for 1993, because that is when I remember seeing the report. It is higher in the State of New Jersey, and the cost for that is being borne by the NJPDES dischargers.

As we look at what this might mean, even though the changes have been made to the formula to change the way in which the environmental factors have been calculated, the fact remains that at the Chambers Works from 1990 to 1996 the amount of load into the Delaware River has decreased 90 percent. Our fees have decreased during that time about 15 percent.

So we have a problem in looking at this whole situation and saying that for us to remain competitive in this kind of a situation, the State of New Jersey is charging much more than surrounding states are charging, as demonstrated by Mr. Bozarth's chart. We're really saying we're not trying to get away with not paying any fees. Don't think that is necessarily correct or the right way to go, but they should be more in line with what other people are charging and it's not \$470,000 a year.

Thank you.

ASSEMBLYWOMAN MURPHY: Thank you very much.

MR. BOZARTH: And lastly, Clarke Hoffman, just with a few remarks.

ASSEMBLYWOMAN MURPHY: Yes, sir.

CLARKE HOFFMAN: Thank you, Madam Chairwoman. I have addressed the Committee before, so I will be brief.

The thrust of my address before and the thrust this time is around the issue of competitiveness. That is an issue whether you are a large business or a small business, whether you are a du Pont or whether you are a mom-and-pop store. You have to look at it all the time. You have to be competitive in markets that you deal with or you soon find your business deteriorates and you no longer have it.

But it is also something that the State, the Federal, and the local governments have to look at. In this specific case, we're talking around an issue of NJPDES fees and whether they are out of alignment with legislative intent, and even further, a point of that, from our perspective is, are they

competitive and what are you doing to your industry by not having competitive fees.

I think it has been mentioned on numerous occasions, and we have been able to document that, it hurts us when we try to compete. One of my jobs is to try and bring new business into the Chambers Works plant. You know, I have been working at that for a number of years.

Recently, we worked with the administration to try and attract a new \$100 million investment. As far as I can see, at this point in time, we're not going to get that investment. The reason is quite simple. We're somewhere on the area of, say, \$100 million investment. We're somewhere around \$3 million out on the construction costs, and we're probably \$2 million to \$3 million out on the annual operating costs of a plant versus a plant of ours -- a sister plant -- who is competing with us in South Carolina, excluding any kinds of State incentives that are being thrown into the picture.

Is this going to close that gap? No, it's not going to close the gap. But, as has been pointed out, we need to take every step possible to look at making us competitive. It's no secret to anyone, our business base in New Jersey has continued to deteriorate. If we can't attract new business here, it is going to go elsewhere.

It has been mentioned: voting with your feet, that is what it turns out to be. It's not a four-year or a two-year standing for election, but over the past thirty years, we've probably lost 75 percent of the employees that we used to have in this State. We're not going to turn that around unless we work together in some manner to make us more competitive.

The fees being out of kilter with what other states charge simply makes this State noncompetitive. So the issue is, you can decide what you want in the way of a program, but the issue, quite frankly, is how are you going to portion those costs? They are not apportioned in such a way to make us competitive and to be interested in investing in this State.

Thank you.

ASSEMBLYWOMAN MURPHY: Thank you very much.

Are there any questions for the representatives who have spoken?

ASSEMBLYMAN JONES: I would be delighted to ask one, Madam Chair, if you would allow that.

ASSEMBLYWOMAN MURPHY: Thank you, sir.

ASSEMBLYMAN JONES: Thank you.

Through the Chair, Mr. Bozarth had made reference to some past testimony in which we had dialogue. I did have grave concern with respect to New Jersey and being fairly competitive with respect to its industry just given the information, which I have seen before, in our last session, in terms of the fees that are assessed against the various companies -- the larger companies -- in New Jersey and do recognize, after having the opportunity to meet with other industry executives, that it was becoming extremely costly to do business in New Jersey from a mid standpoint.

In places like South Carolina, a lot of industry seems to be migrating to where it became somewhat easier to do business but with the same level of regulatory requirements. There was not a relaxation of the environmental issues or regulations in South Carolina versus New Jersey, but

more expenses. So, perhaps, it makes more sense that industry began to look to migrate to areas where it was more to their benefit.

When you begin to listen to the number of witnesses that have commented that this is a public policy issue which the Legislature must decide, which is the best way to fund a program for New Jersey? So the answer to that public policy question becomes one of the biggest concerns of this environment.

The question becomes -- and I would direct this to Hal, since we have sort of been going back and forth on this for a little while-- If we begin to move the cost burden off industry to the taxpayers -- and I'm not suggesting that I'm advocating one way or the other, but just taking this out a little bit -- from a regulatory standpoint, looking at the environment now, wouldn't we lose one of the best aspects of the program, which is what the pollutant loading aspect of the formula provides, which is a disincentive to pollute?

MR. BOZARTH: I think that is an excellent question, through the Chair to Assemblyman Jones. It is one that you would ask given the testimony.

I think in du Pont's case, for instance, they have reduced their pollutant loading to no small reason, because they had hoped there would be something back on the fees; although, with the cap, it's probably a wash. But I think there is a new ethos within the chemical process industry to do the kinds of things that we used to think, in the old days of command and control, government had to force companies to do. I think in many cases, I can make an argument that we are doing that for other reasons other than the command and control.

If this were the early 1980s, I would agree that that was an incentive way to get people to reduce their discharges, no doubt. I think we have come a long way not only in time, but in thought process to a new way of both regulating people and complying. So that if you were--

I would be glad to come up and show these to you, Assemblyman. (referring to charts) If you look at all of the discharges of the 105 member companies that we represent, you would see that from 1987 to, I think it's 1993, a significant decrease in emissions and discharges to all media, air, water, land.

So there is a seat change going on from this side of the table that is happening because of a lot of things that government did in the early 1980s. Now, there is the switch, and here is where the argument gets-- I don't think that disincentive matters any more to reduce the emissions. I think that is already an ingrained business ethos. We have seen, collectively, that there is a way to save some money in some cases. We have seen that it is good for public relations in other cases, and we have seen that it is the right thing to do from a variety of different ways.

So I don't think the old command and control way anymore -- I guess in the short answer -- is going to get you the same bang that it could have gotten us, collectively in society, back in the early 1980s. It's a new time.

That is why the first part of your question is so interesting and that is: Where do we switch the cost to?

I'm not sure that is really the applicable question -- again, Madam Chairwoman, through you -- anymore either. I think the real question is: What is the cost of a program that protects the environment and keeps us

competitive? Is it the amount of money that we are now spending which is so much more than the other states? Then, let's assume we can agree on X as the number of million dollars, and then the question is: How best to pay for that?

All of the other states, except two, you have heard testimony to provide some general funds to offset the costs so that it is not just the permitter. Nowhere in the original Water Act, for instance, does it say that only permittees will pay for all of the water program. It doesn't say that. It has grown because of the Department's interpretation of that original statute, over 15 years, to get to that point where now we can say, "It has always been the polluter pays."

Well, I don't believe that. I don't believe the original statute says that. I believe you would go blind before you found the words in the statute that say "polluter pays." You would go blind long before you would find them. But it is somewhere out there, and that is why we are here in regulatory oversight saying, in effect, let's find an answer.

No one wants the draconian happenings that Ms. Cowan foresaw, that the water program was going to disintegrate, pollution would be throughout the beaches and on the shores, the EPA would come in. None of that is going to happen. We don't want that to happen.

We want, in effect, a sized program which is appropriate to the need of environmental protection while keeping us competitive so that we don't lose more jobs this year than we did last year. One of the ways to lose jobs is to have Mr. Hoffman's boss look at the cost of compliance in New Jersey versus the cost of compliance in Delaware and find out that it is five

times more to comply in New Jersey than it is in Delaware. Where does he put his \$100 million? It's not here.

I know that it was very long-winded, but I hope I hit the issues that I know you're interested in.

ASSEMBLYMAN JONES: Yes, you did.

MR. BOZARTH: George, did you have--

ASSEMBLYWOMAN MURPHY: Excuse me, you have raised-- If I may interrupt now. You have raised a number of questions in my mind.

I hope that I am not cutting you off, Assemblyman.

ASSEMBLYMAN JONES: No, Madam Chair, you're not.

ASSEMBLYWOMAN MURPHY: Some questions then come from this conversation in my mind, and they are: How is the program carried out in other states?

Ms. Cowan, do we have any information that would show how the program -- the NJPDES Program -- which is a Federal program-- There are Federal levels and Federal determinations. Do we have a concept of how this program is, indeed, carried out in other states, recognizing ours is the most densely populated? But you need to come up, I guess, if I am going to ask you this kind of question.

ASSISTANT COMMISSIONER COWAN: I don't have specific data. We can certainly do surveys. Dennis may have some information, more than I have available.

Do you?

D E N N I S H A R T: At one time, Madam Chairwoman, during the reauthorization of the Federal Clean Water Act, the EPA hired a contractor to

look at all of the other states and how they are implementing the delegated program. They ranked New Jersey as far as size of program, permitting enforcement, and everything associated about the middle of the size of programs around the country. It is certainly not the largest. It's certainly not the smallest, but in the middle of the range.

MR. BOZARTH: That begs the question, Madam Chair--

ASSEMBLYWOMAN MURPHY: Just a minute.

MR. BOZARTH: I'm sorry.

ASSEMBLYWOMAN MURPHY: Thank you. Thank you very much.

I'm wondering if ranking them in terms of the size of the program has anything to do with ranking efficacy of the program and what the results of the program were? You may have a very small program, but it may be extraordinarily effective. Could we not redo that kind of an evaluation? Is our program now larger than it needs to be to maintain the effectiveness that we have come so far to achieve?

I don't think that any of us want to lose ground, because we have fought a long fight to come to this place. But it may be that a comparison and a review would give us a better place, or better assurance, that what we are doing is totally necessary or that we are not in the process of, perhaps, carrying up some parts of the program that are no longer as necessary and therefore more costly. The program itself in terms of results is what I don't think anyone wants diminished in any way and to maintain that assurance.

MR. BOZARTH: Standards are in place. No one, because they have the force of law behind them, will ever void those standards, will ever

exceed those standards without harsh environmental -- without enforcement things happening. We are not talking about going back environmentally.

I would suggest, humbly, you all should be talking about: Why is it so expensive in New Jersey? I mean, regardless of where in the middle of the pack Dennis has us, nobody has \$2.3 million fees for a five-year fee program in the country.

ASSEMBLYWOMAN MURPHY: Thank you, Mr. Bozarth.

Yes.

MR. HART: Madam Chairwoman, I don't want to get into an extended debate, but there are other states that charge higher individual fees than we charge in New Jersey.

What I would love to do for the Committee is talk about all of the really reengineering and reforms that we have done in this program over the last five years. I was brought into the program in the early 1990s, along with a number of other people, because the program at that time was not operating correctly.

There was nearly a 100 percent backlog of permits that weren't being issued. At the same time, the Federal law was changed. To get our dischargers not to just deal with what the technology can do at their facilities, but to get all the State's waters to meet water quality standards we did two things.

Number one, we tried to develop a plan to get the State to meet water quality standards.

Two, we went through a dramatic reengineering effort not only involving how we do business, what piece of paper comes from this person to

that person-- We did that activity. We're still going on. We are doing that every day. We have dramatically increased the efficiency of the program. We have reduced the size of the staff of the program by over 33 percent in that five-year period. We're still looking every day. We are, electronically--

The data that you talked about -- the DMRs -- we have developed a system, and now in conjunction with industry, all of that data can come to us electronically. We don't need the people now as it comes in to key this data in. So every day we're looking for more efficiencies in the program.

The real efforts that are taking place now are not just, are people in compliance with their current permits, but how do we get the State's waters to meet water quality studies by implementing the Federal Clean Water Act that says that dischargers have to maintain compliance with water quality standards.

ASSEMBLYWOMAN MURPHY: Now, I am going to take the Chair's liberty and stop you there and say: Is not the clean water program and developing all of the State's waters totally different than the permits for which the NJPDES Program is part of them for which those persons apply?

We are not the-- The NJPDES Permit Program that was instituted quite some time ago was not the Clean Water Program that is presently being implemented. They are not the same, are they? They may meet, but they are not the same program.

MR. HART: I'm not exactly sure I understand your question. I think they are substantially the same program.

ASSEMBLYWOMAN MURPHY: I'm not exactly sure I totally understand my own question. I know where I want to go, but I'm not sure how to get there. (laughter)

The pollutants-- As I'm reflecting back on the conversation and testimony I have heard here this morning, pollutants are down about 90 percent from what they were. Fees have dropped about 15 percent. That is an inequity that is the core, I would suggest, of the discussion here.

MR. HART: Well, we have instances like-- If you look at-- We have data that shows West New York and Hoboken. In the early 1990s, their treatment plants were in terrible condition. They were paying about \$650,000 each in permit fees. They both upgraded their treatment plants. Their current fees are approximately \$60,000 each. So as people have been able to reduce their discharges, we have been able to cut that specific fee.

But we're also looking at today-- When you look at permits, where would the State, as Assemblyman Jones talked about going into a watershed-- Where the activities are going on with all of the facilities is: How do we control toxics in this State? Many of the permits that we're talking about being in compliance with are in compliance with conventional pollutants, technology-based pollutants.

Now the activity is: How do we get to be in compliance with water quality standards? That is where the new activity, the new burdens on both the industry, the municipalities, and the State are coming into play.

ASSEMBLYWOMAN MURPHY: But it does seem to me, in listening to this, that you speak of new things, and we are talking old permits.

We are talking about permits that we're given for practices that were instituted at the time the permits were being developed and the program was developed.

We now speak to new, new, new, and new implies, does it not, a new permitting or a new processing or something new that has nothing to do with those permits that were and the basis on which those permits were issued? At the time that you first initiated the NJPDES Program and began the NJPDES Program, you were measuring and reading the discharges for certain specific things that people could understand and deal with, am I correct?

MR. HART: Yes, that is correct.

ASSEMBLYWOMAN MURPHY: All right. Now you are looking at them and reading them for things that were not part of the program when it was instituted. Is that correct?

MR. HART: They weren't part of each individual permit, yes.

ASSEMBLYWOMAN MURPHY: Correct. So the permit that was purchased in the beginning and the permit which was applied for--

I'm driving Mr. Bozarth almost frantic. I apologize. (laughter) Suddenly, I see an almost explosion, because he is dying to give the answer and I am struggling with the question.

Perhaps, Hal, I should spare us both a bit of pain and ask you. What were you going to say that, obviously, was to amplify what I was trying to find out?

MR. BOZARTH: You have hit it exactly on the head.

ASSEMBLYWOMAN MURPHY: Well, glory be.

MR. BOZARTH: What you have said, in effect, is when the original NJPDES Program was started and people got a NJPDES fee, they paid

X. Now, as we have progressed and the program has grown exponentially, we want the same people to pay 10 times X, and it is different.

I'll probably synopsise for you exactly where you were going by leaving you with some facts. Fact A, the actual cost to do a NJPDES permit to the Department -- their figures -- \$5700. Average cost for a fee, up \$15,000. Some of these people here, \$2.5 million over five years.

There is something totally out of whack. We are doing more than what the original statute said, in our reading of it, and that was the Department had the ability to charge a reasonable fee to do the permit. The Department has extended that, in our view, to permit program and then defined permit program as this ever growing thing which then, a diminishing number of people who are in the permit system, pay higher and higher fees to pay for -- watershed, new mapping, new this, new that. That is exactly where you were going.

So there are fewer and fewer of us here and theoretically we'll pay-- It's like Trenton Water Works. It is going to be here, because Trenton is going to be here. When du Pont goes and other folks go-- We're now down from 700 or 800 industrial permittees to, let's say, 500 in five years, because we're about the same in the last five years. It's \$48,000 for one year for Trenton Water Works in order to keep the ever growing size of the program paid for. It might be \$200,000.

It has nothing to do with pollution loading. It has nothing to do with "the polluter pays." It has to do with the size and the cost of the Department's regulatory program and how best to pay for it.

What they have done with the formula to pay for it is to just gerrymander something that comes up with \$11.2 million. It has no actual reality in basis to whether or not there is something from the environment. It is a way to raise money to pay for the Department's program.

That is a shame, because we keep saying, "All we want our fee to do is pay for the Department's activities relative to our permit." We think that is what the statute said. That is why we are in front on this Committee begging for help.

ASSEMBLYWOMAN MURPHY: Thank you, Mr. Bozarth. You're right, that is where I was going.

Ms. Cowan.

ASSISTANT COMMISSIONER COWAN: Thank you, Assemblywoman.

I just want to respond, with all due respect, to Mr. Bozarth that we have to continue to compare apples with apples. The permit fees to which he refers are, again, not just for the cost of writing a permit, but they are also for the cost of measuring the impact of that permit.

We, in New Jersey, do not have the liberty of some of the other states which have fewer dischargers, have a less complex water system, not aquifers very close to the top of the soil, and don't have the industrial complex that New Jersey has. It is a complex State in which to regulate water quality.

The water program runs around \$20 million a year. It includes both State general funds, fines and penalties that come in from those who do violate their permits, as well as Federal grants. There is a substantial Federal grant which supports other activities, such as monitoring, planning, etc.

So really, the State is spending about \$20 million. The permit fees do not support the full cost of the program. We have made tremendous strides in cleaning up the quality of the surface waters in the State, and so we agree, at least, on the idea that we need to talk about how much is enough. I said that in my remarks.

But let's be clear that we are not charging permit fees just for the cost of writing permits. It is for the overall water quality management program and to control pollution in the State.

Thank you.

ASSEMBLYWOMAN MURPHY: Thank you.

If I may-- There was mention of the fact that the industry and others were meeting with the DEP. Have these meetings been going on in the past three months? We passed the first intent resolution, I believe, in the spring. Have meetings been going on since the spring of this year?

DR. PAGANO: Madam Chairwoman, the answer to that specifically with fees is, no. Because the Department has really brought together a number of stakeholders -- the environmental community folks, industrial people, water purveyors, and whatnot -- and we have been discussing in great detail the proposal that the Department put forth in February.

It turns out that for one reason or another it was agreed that we wouldn't talk about fees specifically, because there were some other issues that had to be addressed that had to do with the program standards and whatnot. The effort has been worthwhile. It is a good effort. I think we're making progress in working with this proposal -- with the proposed regulations.

But specifically we haven't spent a great deal of time on fees, and that is not because neither the Department nor the rest of the stakeholders have said, "Let's not do it." It is just that other things seem to take some precedence.

ASSEMBLYWOMAN MURPHY: Thank you very much for that answer.

MR. BOZARTH: Thank you very much.

ASSEMBLYWOMAN MURPHY: Thank you very much and thank you for resolving my nonfought issue, Hal.

Are there others here who wish to testify?

I'm sorry, but I don't have slips. They may have gone out of the room with-- (indiscernible)

Mr. Dillingham, and then, Mr. Sinclair.

Curtis Fisher, would you like to sit with Mr. Dillingham? I apologize. I wasn't looking properly.

C U R T I S F I S H E R: (speaking from audience) I don't mind. (laughter)

ASSEMBLYWOMAN MURPHY: If I have created an unnatural alliance, tell me so. It doesn't seem to be that.

T I M O T H Y D I L L I N G H A M: It doesn't seem to be, no. I'm always happy to share the table with Curtis.

Thank you, Madam Chairwoman.

I'll keep it brief. I think what we would like to say is that we are very concerned about the explicit language of this resolution and its impact on

the programs, as well as the direction on the broader public policy question that Assemblyman Jones has introduced into this.

We think that the regulated entities should continue to carry the majority of the cost of the program -- the NJPDES programs, the Water Pollution Control programs. The permits are one piece of a comprehensive program to try to store and protect the water quality in the State.

There was some data that I had mentioned at the Senate hearing. Between the years of 1990 and 1994, almost 13 million pounds of toxics had been discharged to the surface waters of New Jersey. There is still an enormous environmental problem that has to be dealt with.

When you relate that to the fees program-- The way I understand the program is that the vast majority of the size of the fee is, indeed, related to the environmental impact assessment. That is a piece of the program we ought to keep in place. I do believe that the market forces associated with those fees will help to drive industry to reduce those pollution discharges to the surface waters, which they obviously have to do.

Mr. Bozarth and Dr. Pagano did note that the industry has made an enormous amount of reductions in the discharges from historical levels. I would argue, though, that that has been done as a result of the strong laws New Jersey passed in response to those pollution problems and that, indeed, the culture has not sufficiently changed that that oversight role and that impetus being provided by the public, by the government -- that the need has not been removed for that.

I think that is most clearly shown in a report that was released a couple of weeks ago evaluating the Pollution Prevention Program which

indicated that about 50 percent of the companies that were supposed to participate in this program had not done so and done so in a way that was diligent. In a contradiction, on the other side of that question, the ones that had, had found ways to significantly reduce the amount of pollution.

So I think we do need to keep those motivators in the law and not shift these costs to the public. That is sort of the other part of this. What is the alternative? You can shift the cost to the other dischargers, the smaller businesses, away from the larger dischargers, as Assistant Commissioner Cowan described, or you can shift a greater portion of that to the public. I think that we are very much opposed to shifting it to the public for the reasons that I laid out before.

In terms of whether or not the program is overly large or is simply trying to sustain itself through bounty hunting, through the fees, and that type of allegation, I think the Department has, indeed, reduced the size of the program significantly in the last several years. I'm sure you are all aware, the environmental community is very concerned about the very pragmatic and real impacts that has on the way the program functions.

The rules that were so hotly debated this last spring and summer, in which the Governor, ultimately, withdrew-- I think, in part, the problem the environmental community had with that is that the Department was driven to try to use mechanisms that rely less on staff and that are time saving or streamlining, and I think there was a pretty consensus built that in this case that streamlining effort posed some risk to the environment which was unacceptable and that that needed to be rethought.

So to the degree that we start to reduce the fees on these large polluters in the State and one of the responses then to downsize the programs, I think, the risk is very real of putting the environment at risk.

I guess I will end my comments there. The Department is, indeed, engaged in a discussion with both the regulated community and the environmental community, water purveyors to look at the program, to look at ways of more accurately assessing who is making various types of contributions to the problem that is out there in the water. Those are good efforts. They are large. They are complex. They are going to take a lot of time to work through, but I don't think it is fair to say that the Department is simply trying to sustain a bureaucracy or a program and that they are turning to the fees program to do that.

ASSEMBLYWOMAN MURPHY: Thank you very much, Mr. Dillingham.

Assemblyman Jones, any questions?

ASSEMBLYMAN JONES: No thank you, Madam Chair.

ASSEMBLYWOMAN MURPHY: Thank you.

MR. FISHER: Thank you.

My name is Curtis Fisher. I am testifying on behalf of New Jersey PIRG Citizen Lobby. I just wanted to come here-- I obviously appreciate you taking your time. I appreciate the opportunity to speak.

Because Tim already made the general comments that I would have done anyway, I'll just shorten my testimony and just want to directly respond to something that Hal Bozarth said, which is that the issue here is the cost of the program. But then he flips quickly to a chart of the permit fees. I

think it is important to note that what we're dealing with is we do have high permit fees, but the cost of the program, as Dennis pointed out -- who runs the program -- we actually don't have a very large program here.

In fact, New Jersey PIRG is actually in Federal court right now because of the failure of the Department to meet the most basic requirements of the Clean Water Act. We are going to win that lawsuit, because the State is not meeting its obligations under the Clean Water Act.

In simple, the Department has not put forth the resources or the appropriate standards necessary to clean New Jersey waterways up. That was part of the situation that led to the promulgation of regulations which, again, did not meet the requirements of the Clean Water Act. That is why we worked very hard to defeat that proposal. We have worked very closely with citizens who are concerned about the fact that a 33 percent cut, which the Department that deals with water quality has received over the last three years is unable to meet its obligations.

So it is the organization's that I represent feeling that we cannot talk about cutting the permit fees within a myopic perspective of what the overall program is. I will say that, and I don't think-- The permit fees are deceptive. Yes, they are high, but if you look at the du Pont effluent, it is one of the largest industrial facilities in the Northeast corridor. They have high permit fees.

Then, I just want to respond, also, to the concerns which I think are very valid, that New Jersey needs to provide a strong economic base for its citizens and, certainly, as legislators, to your constituents. But, unfortunately,

the rhetoric that these permits fees, which I was going to directly try to attack, very bluntly--

The testimony here today actually said the exact opposite. The man -- I thought he was with du Pont, but -- he said that the permit fees really don't matter. So what are we talking about here? We're not talking that these permit fees will have an impact on whether companies relocate or not.

We clearly have seen-- Study after study has shown-- In fact, the Business and Industry Association's own study showed that it is not environmental regulation, it is the labor costs, it's the property taxes, it is the high energy costs, which I am trying to address through other programs. Let's reduce energy fees, we'll definitely have a better economy. At the same time, it is small businesses that are growing our economy.

So when we're talking about lowering permit fees, look at the permit fee changes. They are increasing permit fees on small people. I'm concerned about that. I haven't heard any businessperson stand up and talk on behalf of those people, and I hope, as legislators, that you do.

So I think it is important to bring a reality check to the fact that we need to do more not less. We need to work harder to try to provide the economic and the environmental underpinning for a New Jersey that can really be productive in the 21st century.

So I appreciate the opportunity. I hope you oppose this legislation.

ASSEMBLYWOMAN MURPHY: Thank you very much, Mr. Fisher.

Assemblyman Jones, any questions?

ASSEMBLYMAN JONES: No thank you.

ASSEMBLYWOMAN MURPHY: If I may-- Mr. Fisher and Mr. Dillingham, I will ask you both--

Mr. Dillingham, I believe you said you would not prefer to see the public pay directly for the costs of maintaining this program within the DEP. Am I correct?

MR. DILLINGHAM: Yes, ma'am.

ASSEMBLYWOMAN MURPHY: If, indeed, we are all polluters, why should we not pay, all of us, for the cost of maintaining the program within the DEP -- directly pay for it as corporations do who are called polluters? If, indeed, that is the perception, why should it not be the reality? Why should we not all put our money where our mouths are, so to speak?

MR. DILLINGHAM: I guess I would try to break your question down a little bit. When we say that we are all polluters, I mean, I think you're right that, generally, the way society is constructed, whether it is the way we use land or the way we pipe household waste to sewage treatment plants or whether there are industrial discharges, it expands that universe as to who is a polluter. I think the idea is to try to maintain a tight relationship between each of those dischargers and who bears the cost for the programs to regulate them and to make sure that they are not impacting the environment.

So on that level, you could segregate out the industrial dischargers and say the polluter pays principle says that they are going to pay for that portion of the program. Then, the general public, in part, would pay through municipal fees, to your taxes, to your sewer and water. So you are already making that contribution in relationship to the dischargers.

ASSEMBLYWOMAN MURPHY: Well, I don't pay sewer and I don't pay water. I have a well and I have a septic system. While I am in charge of monitoring those and taking the management of those systems myself, I am not paying directly in that way for that.

MR. FISHER: Well, if I could just step in-- One, I think you are paying in terms of your general tax, because, as you know, now that the DEP is on budget and, as Cathy Cowan talked about, \$11.2 million comes from fees, \$20 million is the total of the programs. So we are picking up some of those.

But I think, and I agree with you, that we need to address all sources of pollution. I was mentioning the lawsuit. We're trying to move them to watershed planning, which is under the Clean Water Act, and, yes, when we look at those other sources of pollution, we're going to trying to find ways in which we can work with citizens in New Jersey to try to address their sources of pollution -- to try to reduce that. There might be some associated cost to that program.

But I think the difference is -- and the reason why I bring up du Pont as the best example is -- the four-year period of time in the last data run that we have from the national database is that they discharged 12 million pounds of toxic chemicals into the Delaware River. That is almost 12 times more than any other company in New Jersey into a waterway.

Of course, now, I know -- and I trust that you are not doing a similar behavior in terms of dumping into the waterways of New Jersey--

ASSEMBLYWOMAN MURPHY: No, I certainly hope not.
(laughter)

MR. FISHER: --so the permit fees represent the difference in that factor. I think, I agree with you, we need to have a principle to look at those other sources of pollution, but, clearly, the sources of pollution that you are generating are not as dangerous, especially since, and unfortunately, the Delaware River is a drinking water source. We have to address, as Cathy Cowan said, a very complicated system of water, the water program as a whole.

ASSEMBLYWOMAN MURPHY: Thank you, gentlemen.

MR. DILLINGHAM: Thank you.

MR. FISHER: Thank you.

ASSEMBLYWOMAN MURPHY: Mr. Sinclair, and then we have Michael Egenton and Angelo Morresi from the New Jersey--

MR. EGENTON: (from audience) Yes, I was just wondering, in the essence of time, may we approach the Chair, as well?

ASSEMBLYWOMAN MURPHY: We would be delighted to have you join Mr. Sinclair and I am sure he would also.

MR. SINCLAIR: I'd love it.

ASSEMBLYWOMAN MURPHY: What you're saying is, it's lunchtime.

MR. SINCLAIR: I think it's past lunchtime.

Good afternoon, my name is Jim Sinclair from the New Jersey Business and Industry Association. We represent 14,700 businesses across the State. We represent the bulk of the little people that Curtis is so concerned about. We don't want to see their fees increase. We don't see that a solution to the problem.

The problem, if I have been jotting it down here right, is that somehow in the process we have the highest fees in the nation, number one. Number two, we're one of only two states that don't have a state appropriation to pick up a portion of this program. That seems to be the problem and the answer all in one.

The issue is, is it the legislative intent for us to have such a really wacky program when we did this law? Clearly, the answer is, no, because at the time this law was passed I was in the Department of Environmental Protection and we did have a State appropriation at that point. Over the years, we have moved away from that State appropriation. We have had fewer and fewer dischargers. We have had less and less being discharged.

The system, clearly, is out of whack. If I listed properly the things that are out of whack in the system, we can start with ambient monitoring, water quality standards, water planning, watershed approach, and a variety of new stuff that probably should be supported whole and in part from some sort of appropriation.

Where would we get that appropriation to do that stuff? Clearly, the citizens answered that question for us, in part, in the recent election. They said a portion of the corporate business tax should go to pay for lowering the NJPDES fees by picking up these items here. That would make sense to do that and to do more. So that is an answer.

I got a little antsy while I was listening to some of the previous testimony, because there is more wrong with the system than just doing these extra things. Why do we have the highest fees? Because we're doing a lot of unnecessary stuff in the system, and it was really disingenuous, I think, in

some of the previous speakers talking about they're suing the State for not doing the right stuff or not allocating the right resources when their organizations were part of that process of trying to have us do a lot of unnecessary things.

The Clean Water Enforcement Act is clearly part of that. We do a lot of unnecessary inspections that are counterproductive from a man power standpoint, from an environmental focus dealing with -- actually dealing where the problems are. It is a waste of time and money. Senator McNamara, I think, is trying to address that in his legislation. When that goes through, maybe that will help us to lower the fees from being the highest in the nation.

There is a lot of cost in the system that we're not even talking about. We're only talking about what people are paying in terms of fees. There is a lot of unnecessary testing going on there, out in industry, that costs a lot of money to do the testing. The testing is done so that you can have this running average, so you can make sure that you don't exceed the limit in your permit, and it has no environmental benefit to it.

Our system is in tremendous compliance if you take a look at the numbers. There is great compliance in the system. So, perhaps, we need to figure a better way of using our resources instead of the vestiges of this Clean Water Enforcement process. We have a counterproductive system I think now.

I think if we move toward looking at this polluter-pay concept, as Assemblywoman Murphy was talking about-- We are moving toward looking at nonpoint source pollution. We know that that is the last great part of

unregulated impact into the water system. That is what we need to deal with. We need to be able to focus resources there.

Given the limited amount of resources that we have in the State and given the fact that we do have the highest fees on industry-- What does that highest fee mean? I mean, to say that is another signal. It is another flag.

I guess today is the day to pick on du Pont, but, because they were here and they were talking about their facility and they were talking about impact-- They discharge, but not into a drinking water supply. They discharge into the lower Delaware. That is not a drinking water supply for the State.

Also, if we lost du Pont, it would be a tremendous shame. It would be a tremendous shame from this whole brown-fields concept that we're talking about. At one time, the Chambers Works site was the largest chemical plant in the world -- absolutely the largest facility.

When I worked at the Chambers Works there were 10,000 workers there. It is a facility that has the best water pollution control program and system in the world -- their facility. This one that they were talking about is a huge, multimillion, maybe \$100 million system that represents, for me, in my view of the world, what an opportunity for new industrial expansion. What an opportunity for new chemical facility, new lines.

So when Mr. Hoffman was here talking about how he is losing out in competing in his company for facilities, that is something that we, from an economic development standpoint, should be very concerned about. How much would we be willing to pay in terms of incentives to get another 1000 workers into the Chambers Works or 2000 or 3000? I mean, the opportunity is there and somehow we're being blind to it. This is not just a question of:

How do we carve up and pay for the bureaucracy? This is: How do we build the future?

I think that we need to be awake and this is an answer--

ASSEMBLYWOMAN HECK: And I said before, Jim, it is very important that we look for the balance with the economy and the environment.

MR. SINCLAIR: Absolutely.

ASSEMBLYWOMAN HECK: The environment is absolutely a must for the protection of our future, our children, and our health. None of us should really downplay the importance of that, but I think we have to do it in partnership with one another and with respect for one another and do it in an up-front way so that we can trust one another in the future.

I think sometimes when we look at our past there have been occasions where trust was betrayed so we overcompensate. But, again, I think it is important for us to look at it as a direction that we must take for the protection of the economy and protection of the environment and do it with a dual track and do it the right way and not let the bureaucracy stand in the way of it.

MR. SINCLAIR: That is all I wanted to say about it.

ASSEMBLYWOMAN HECK: Thank you very much.

MR. SINCLAIR: Thank you.

ASSEMBLYWOMAN HECK: Is anyone else supposed to--

Assemblyman Jones has a question or a comment.

ASSEMBLYMAN JONES: I think I-- You have to turn me on up here. (referring to microphone)

ASSEMBLYWOMAN HECK: It should be. Mine is not on.

ASSEMBLYWOMAN MURPHY: These are not.

ASSEMBLYWOMAN HECK: Did you push the red?

ASSEMBLYMAN JONES: I'll just talk louder.

ASSEMBLYWOMAN MURPHY: Jim, could you see if those to the left are on and if they are, turn them off?

ASSEMBLYWOMAN HECK: Is yours on or off?

MR. SINCLAIR: Mine is on.

ASSEMBLYWOMAN HECK: Just turn it off.

MR. SINCLAIR: Now it's off.

ASSEMBLYWOMAN HECK: Is yours on now?

ASSEMBLYMAN JONES: Yes.

ASSEMBLYWOMAN HECK: Okay.

MR. SINCLAIR: Hey, I control them. (laughter)

ASSEMBLYMAN JONES: Be careful now. (laughter)

Through the Chair, Jim, there has been much discussion this morning about the exodus of industry from New Jersey because of environmental regulations. BIA recently, in its newsletter, released the result of a survey of businesses which have left the State which seemingly showed that environmental regulation is low on the list of reasons for business flight. I believe labor and personnel issues were probably at the top of the list.

So, inasmuch as we have made much discussion around the environmental regulations as reasons for businesses leaving the State, your Association factually presented that that is not the case. I am not in a position to debate it one way or the other, but would just ask you if you would care to

provide us with what the survey results were and just discuss a little bit what they mean?

MR. SINCLAIR: I would be happy to give you the results of that survey. It was a reasonably good survey, if I remember. I am not familiar with the details of it other than the results that you have. But let me interpret it.

We have 14,700 members in our Association, which represent the broad range of New Jersey's business community. Not every member of our Association has an environmental permit. Not every member has any interface at all with DEP. So we're talking about a broad range of companies, not a specific range of manufacturing firms, and that is how I would interpret it.

But I think that is really an unfair-- That is just my-- You have raised the issue. I need to go back, and through the Chair, I can give the Committee that data.

ASSEMBLYWOMAN HECK: I think that is a good idea.

ASSEMBLYMAN JONES: That is fine.

ASSEMBLYWOMAN HECK: All right, Assemblyman? He'll supply it.

ASSEMBLYMAN JONES: Thank you.

ASSEMBLYWOMAN HECK: Are there any other people?

Oh, all right.

MR. EGENTON: Madam Chairwoman. I am Michael Egenton with the New Jersey State Chamber of Commerce.

Recently, the Chamber-- Every year, annually, we hold a meeting with our membership -- the Chamber's membership is very diverse, too-- We have large companies and we have mom-and-pops as part of the State

Chamber. We held a legislative planning agenda session, if you will, down in Atlantic City last month. It was well attended by some of our members, including the gentleman from du Pont and other companies, as well as the medium and small businesses.

I'll tell you, I found out in the roundtable discussion we had on environmental regulatory policy that fees play a big role in companies whether they are going to stay here in New Jersey or whether they are going to move out of the State. Is that the only factor? No, by all means, it's not. But it does play a role in it. From the conversations and discussions we held at that meeting fees play a very important role.

The small businesses that I hear from -- and we hear from a lot of small businesses at the State Chamber -- they are really upset about the cost of fees. It is a competitive factor. The gentleman from du Pont, Clarke Hoffman, pointed out we are in a competitive mode with other states. Unless we do something about fees, about taxes, about quality of life, and about the burdensome regulatory roadblocks that we have-- It is all of these elements put together. You cannot isolate one particular area, but, yes, it is part of the overall broad picture. I hear it time and time again. In very basic terms, it is competition. We need to be competitive with the other states. We need to bring those fees down to a reasonable level.

I, along with Mr. Sinclair and others, though, don't feel that that cost should be passed on to the small business. There has to be an equitable solution. Some of us had alluded to the fact that other states do help out through their general revenue. Maybe that is a way to answer this question. I am sure we're willing to sit down in the art of compromise and work out an

equitable and reasonable solution. But I hear it time and time again from the Chamber membership.

We haven't done an extensive poll like the BIA has, but we do bring our members together and we do hear their concerns. So I just want to, at least, bring that out. I think you know where we stand with the issue.

Angelo had a few concerns that he wanted to bring to the table, as well. He is a member of the Chamber Environment Committee. Angelo is unique, because not only does he look out, I guess, for the issues for the large companies, but for the small businesses as well.

On a personal note, my brother was having problems with the Department of Environmental Protection with his Volkswagen garage. Angelo lent him assistance. But I was fortunate that way, because I happen to know the system. I know people in the DEP. I was able to get my brother the permit quickly so he didn't have to wait months on end.

But believe me, Madam Chairwoman, I feel sorry for the typical mom-and-pop who don't know somebody here in Trenton, who doesn't have a Trenton "lobbyist" to help them out to get through the bureaucratic jungle. I hear from a lot of other people, and I wish I had the time in the day to help those people, but the bottom line is it is fees and until we really all wake up and realize that we are going to lose companies like du Pont--

ASSEMBLYWOMAN HECK: It is a problem.

MR. EGENTON: Angelo.

MR. MORRESI: Madam Chair, thank you.

I am here today just to give you a quick example of what we're talking about in terms of the competitiveness. Then, I'll identify some summary items and we'll get out of here.

The bottom line is when we talk about competitiveness -- and one company comes to mind-- You're talking about typical numbers. You have heard them already. I won't repeat them. A several hundred thousand dollar permit in New Jersey, the same permit in Texas is \$19,000. The same permit in South Carolina is \$2500.

The difference in standards is zero if not more intense in other states, because everyone has their-- Those people are not less concerned about the environmental than we are. So the issue isn't there. The issue is a competitiveness in that nature.

The nature is, basically, if I am an engineer headquartered at some place -- wherever, X, Y, Z, Chicago, Geneva, Los Angeles, or New York -- and I am designing a new facility, a new plant and I say, "Where am I going to put this plant?" -- and it is going to cost 50 cents a pound to make this product, but if I put it over in New Jersey, though, with those high fees, that is going to add another 5 cents a pound. Then they have the higher energy costs. Well, that's another 5 cents a pound. Then, maybe you add on the labor costs and then it all adds up. I think that is where you are talking about the competitive nature of this problem. That is where it is coming from. Then at the bottom line the guy says, "Where are we going to put this plant?" It's not going to be in Jersey.

So we have a number of issues to address. Fees are a very important part of it. I think we have to just look at it from the point of view--

We got into this mess through a series of previous administrations. I don't think that any one Legislature ever made it a policy of the State to come up with this term polluter pays. I don't think any particular Governor did. I think the Department came up with that concept years ago and now it's the policy. I get a rub from that.

That is the purpose of this Committee, to come back, I guess, with this resolution, to look at what has happened, and then make a determination is that what was intended in terms of policy.

When you look at the fees, though, you look at it from the perspective of the small guy and the big guy, and there has been some casual type of -- I don't want to use the word threats-- But if you reduce the big guy's fees, then the little guy's fees are going to go up so it will look like -- get them fighting among themselves. That is not the issue.

The issue is: How big is this program and is it too big? Cathy Cowan, the Assistant Commissioner, and Dennis Hart, I'm sure they have done the best they can in terms of identifying the costs to be reduced. I know them both well, and I know that they are first-class. They got this program to the best that they can do.

I am concerned though. I have been involved with departments and other programs in terms of trying to identify where the costs are and who is doing what, and to be honest with you, you get a lot of double-talk. You get a lot of shifting of numbers, and you never know where anything is coming from. There is a lot of that going on. So you never keep to the bottom line as to really what is necessary, what is important to the environment, and whether

those dream type of programs that are-- Like the GIS Mapping Program, it's nice to have it, I love to have it, but does it really do anything for me?

When we're talking about the pollution, who is causing it, and why would it be appropriate or inappropriate for the State to assist in funding it, I think the number--

Al, you just gave me the number, what was it?

It's 65 percent of the pollution in the State is coming from nonpoint sources, and it's 35 percent from the point sources. So that is a number to give you-- If you need justification more than--

I think the other thing that we have to come to a conclusion on is what Jim has just talked about, this 4 percent corporate set-aside, which is going to deal with some of those additional studies. I know that Senator Bennett, in the meeting that I was at, had indicated that he would look at that as a way to reducing NJPDES fees. So there are moneys around, we just have to use them.

Thank you.

ASSEMBLYWOMAN HECK: Thank you.

Are there any questions?

ASSEMBLYMAN JONES: Just one. I didn't get the gentleman's name in the center.

MR. EGENTON: Mike Egenton, with the State Chamber.

ASSEMBLYMAN JONES: Mike?

MR. EGENTON: Right. Egenton.

ASSEMBLYMAN JONES: Through the Chair, that experience that you shared with us earlier, can you just share that with us again, but just sort of make it--

MR. EGENTON: Which one was that?

ASSEMBLYMAN JONES: With your brother.

MR. EGENTON: Well, my brother right now has opened up a garage. He was waiting for a permit, patiently waiting and waiting and waiting. It wasn't until he approached me and said, "You work in Trenton. Do you know individuals over in the DEP? Could you help me out?" I called over to the Department and asked them to check out the paperwork. The next day it was done.

Why I am using that example is, I guess I am blessed because I work down here in the system, that I happen to work with very fine people in the Department. I approached them one day via the phone. I said, "Could you check on my brother's paperwork and see why there is a holdup?" It just happened that they didn't get around to doing it. The next day, he got it. But I am using that as an example of-- I happen to know people over there based on my work down here in Trenton. I was able to help a "small-business person" out.

But you and I know, Assemblyman, that a lot of people don't have that benefit out there in the real world. That is why the small businesses that belong to the State Chamber are crying out for help on a combination of waiting for permits, on a combination of fees, on bureaucratic roadblocks, whatever they are. So I am using that as the classic example of-- I was able to

help. If I had the time during the day, I would help out hundreds of small businesses if I could.

ASSEMBLYMAN JONES: Okay.

MR. EGENTON: But that is not the reality of the situation.

ASSEMBLYMAN JONES: Through the Chair, how long-- Just in a normal case, how long would that take, not just the experience that your brother had?

MR. EGENTON: I don't know offhand. I know he was waiting several months -- for about four or five months -- for his permit to be approved.

ASSEMBLYMAN JONES: Okay.

MR. EGENTON: And he was up against, I guess, certain real estate transactions and timing, and he was very anxious to open his business, because he was moving from one place to another. So I intervened on his behalf. It was easily done by one phone call, and the paperwork was done. It was just a matter of getting around to doing it.

ASSEMBLYMAN JONES: Okay.

Thank you.

ASSEMBLYWOMAN HECK: Thank you.

Are there any other questions? (no response)

Thank you very much.

MR. EGENTON: Thank you.

ASSEMBLYWOMAN HECK: Anyone else? (no response)

We'll let you know when we're going to put this on the agenda again. It will come up again, as you know.

ASSEMBLYWOMAN MURPHY: Madam Chairwoman?

ASSEMBLYWOMAN HECK: Yes.

ASSEMBLYWOMAN MURPHY: Is there any way that our Committee today could encourage a last-time negotiation, if you will, between these concerned parties, both of whom seem to have expressed their interest in their concern for the State and for the environmental programs that have made this State such a great place but are concerned about the costs. Is there any way that we can encourage them to do that?

ASSEMBLYWOMAN HECK: We have been doing that all morning. I think it is very important to note that the appeal being made by the DEP seems to be about the money involved, that they don't want us to touch it. I think it is important that the DEP take the initiative in this particular instance to promote a meeting if they, indeed, are willing to look at that.

I got the impression, Assemblywoman, that the process for the environment was not of concern here, but the fees were of concern. Don't forget we had this before us before and passed the resolution. I don't think-- Am I correct in saying that nothing happened? (affirmative response) Nothing happened that we were made aware of, nor were we consulted in any way, shape, or form. But here we are again, 30 days have passed--

Am I correct?

UNIDENTIFIED AIDE: Much more than 30.

ASSEMBLYWOMAN HECK: Much more than 30 days, so action was taken again in the Senate. We felt that it was reasonable to have a

discussion of same to promote compromise and consensus, because we would much rather see that.

Again, we'll recommend to the Commissioner that he meet with all those involved -- industry, environment, along with the DEP -- and try to come to a resolution. But we will be hearing this matter again in a voting situation in the not-too-distant future, because it's not just going to lie there.

(Conclusion of DPCC and NJPDES portion of hearing)