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PUBLIC MEETING

before

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

"Assembly Speaker Joseph V. Doria, Jr.'s  
Environmental Management Accountability Plan"

May 9, 1991  
Room 403  
State House Annex  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Robert G. Smith, Chairman  
Assemblyman Neil M. Cohen, Vice-Chairman  
Assemblyman Arthur R. Albohn

ALSO PRESENT:

Raymond E. Cantor  
Office of Legislative Services  
Aide, Assembly Energy and Environment Committee

Spiros J. Caramalis  
Office of Legislative Services  
Aide, Assembly Energy and Environment Committee

\* \* \* \* \*

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

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ROBERT G. SMITH  
CHAIRMAN  
NEIL M. COHEN  
VICE-CHAIRMAN  
THOMAS J. DUCH  
ARTHUR R. ALBOHN  
JACK COLLINS

**New Jersey State Legislature**  
**ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE**  
STATE HOUSE ANNEX, CN-068  
TRENTON, NEW JERSEY 08625-0068  
(609) 292-7676

## NOTICE OF A PUBLIC MEETING

The Assembly Energy and Environment Committee will conduct a public meeting on Thursday, May 9, 1991 at 10:00 A.M. in room 403, State House Annex, Trenton, New Jersey.

This meeting is the second of several planned hearings regarding Assembly Speaker Joseph Doria's Environmental Management Accountability Plan.

The Committee will receive testimony from DEP Commissioner Scott Weiner regarding the review of permit applications and other aspects of the regulatory process in the Department of Environmental Protection. Former DEP Commissioners, representatives of environmental organizations, and representatives of entities regulated by the Department of Environmental Protection are invited to testify.

The Committee will focus on specific procedural and administrative problems experienced in the department's review of permit applications and other approvals.

The public may address comments and questions to Joseph Devaney, Raymond E. Cantor, or Spiros J. Caramalis Aides to the Committee. Persons wishing to testify must contact Mr. Devaney at (609) 292-7065 or Mr. Cantor or Mr. Caramalis at (609) 292-7676 prior to the date of the hearing.

Issued 5/2/91





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ASSEMBLYMAN ROBERT G. SMITH (Chairman): Will everybody please take your seat? The May 9 hearing of the Assembly Energy and Environment Committee on the Environmental Management Accountability Plan is hereby called to order.

Let me note for the record that several of the Assemblymen will be joining us shortly. They are downstairs working on a Plastic Recycling Bill. They will be up in just a minute.

We are honored, today, to have with us the newly appointed Commissioner of the Department of Environmental Protection, former BPU President, Commissioner Weiner. Let me welcome you, on behalf of the Committee.

COMMISSIONER SCOTT A. WEINER: Thank you.

ASSEMBLYMAN SMITH: I think this is the first time we've had a chance to have you in front of our Committee. Let me just say for the record how much we admire your past record of public service in State government. We're sure that you're going to have a very successful tenure at the DEP. With that in mind, Commissioner, take it away.

COMMISSIONER WEINER: Thank you very much, Mr. Chairman. It's nice to be here, I guess, wearing my new hat. I have, of course, had some experience with the Committee where I think we've done some important work together in my prior job.

I want to thank you for the opportunity to come today and discuss these series of bills. Two points that I want to make at the outset is: I think that all of us -- "all of," being the Department, the Legislature, the Governor, the regulated community, citizens in general -- share the same concerns. We want to have a Department of Environmental Protection that's strong, vigorous, well financed, efficient, and doing the mission as we all perceive for it.

I also want to, at the outset, put to rest any concerns that you or your members have had that somehow the

Department and myself have viewed the introduction of these bills as an antagonistic exercise. I don't at all. Needless to say, the process of governing and legislating is a cooperative one; a history that we're quite proud of in this administration in terms of our cooperation.

I think some very important issues are raised. Through this, I think we'll be able to accomplish two goals: most importantly, increase public confidence in their State government -- in this particular piece of State government -- and also make sure that we develop appropriate means to achieve the goals that we all share.

The underlying-- As I read the 14 bills, I see themes that come out of them, and they're very similar to the themes that I've talked about during my almost three months on the job. I've tried to identify five goals: openness, accessibility, efficiency, fairness, clarity of regulation, and firmness in enforcement. Clearly, those are the types of goals which are anticipated by this package of bills.

During my some three months on the job a couple of points have become clear to me. Some of us have talked about them during these three months. I ask your indulgence for a few minutes while I repeat them. I think it sets an important context for this discussion.

As I began to prepare myself to assume the responsibility as a Commissioner, it was clear that the public had lost confidence in the Department. And it wasn't just one segment of the public. The regulated community clearly had lost confidence in the ability of the Department to meet its mission in most, if not all, cases; public officials, the State Legislature, local-elected officials, and county elected officials had lost confidence. The regulated community, I mentioned, the environmental community, and in fact, to some extent, the Department itself had lost confidence in its ability to carry out its mission. This concerned me: Not just



because of the implications for government and for our society, but because I was confused as to how a situation like this could have happened when over the 20-year history of the Department, I was preceded by good, dedicated, competent Commissioners. Legislatures in the past -- your predecessors; some of you have sat on the Legislature -- acted knowingly, with the best of public interest, various Governors have presided over this, and yet we find ourselves, in 1991, with a Department that was in distress.

I used to say that I needed some time to get lost in the Department. I wanted to get over there and get lost and find out how it operates, how it breathes, and how it made decisions. After a couple of months of experience in trying to deal with day-to-day problems, again, a couple of early conclusions developed. I saw in the Speaker's remarks before this Committee, that he and I share some of these. But let me reiterate them again: First, the Department had stopped functioning as a Department some time ago. It wasn't entirely clear to me when. Rather than functioning as a Department they had functioned, as I described, as a confederation of divisions.

I think there are a lot of reasons for this. Part of this was a result of legislation that kept appending new and important responsibilities on the Department, and appending it in a way that created separate divisions with Senatorial confirmation. So it wasn't all part of a direct, integrated Department.

Sometimes that model works well. I think, for example, the Department of Law and Public Safety, where you have a number of individual divisions each of which with significant, independent, governmental responsibilities in the executive branch, clearly related in theme, but, frankly, could stand alone: Division of Motor Vehicles, Alcoholic Beverage Commission -- related, but not necessarily integrated.

That's certainly not the case when you think of the relationship between Coastal Resources and the Division of Water Resources. It needs to be a different type of relationship. Clearly not the same when you think about the permitting decisions that are made by the Department, either by the Commissioner or by his delegates, who, I think, have to be responsible for merging and considering the various implications that will arise through the various divisions. I don't think a day goes by, still, when there isn't a newspaper article somewhere about the situation where two divisions within the Department come up with conflicting results. That, in and of itself, to me, isn't as troubling, because that will happen. Different divisions will have different points of view.

What's troubling is that some time ago, the ability to reconcile those differences into a coherent policy had broken down. So the fact that the Division of Water Resources and the Division of Solid Waste may look at the same problem and come up with two different recommendations that are in conflict, I think, is to be expected. What's also to be expected is that from the Commissioner on down there will be means and processes within the Department to reconcile those differences; to make sure that the decisions are made in furtherance of a coherent public policy as articulated in legislation or the Governor's initiative. And for a whole host of reasons, that type of decision making structure had begun to break down, which leads me to a discussion of accountability.

With decision making comes accountability. Again, there's no simple, easy answer of why we weren't able as a Department to reach the levels that I think people would expect of us. Let me just suggest a few: One is a clear understanding or lack of a clear understanding from the Department's point of view as to what its job was.

It's very easy to say that the Department's job is to protect the environment, and to make sure that applicants for



permanent activity conform to societal standards. The difficulty was that as often as not, those societal standards weren't presented in the legislation. It was up to somebody to figure out what they were. It's not unreasonable that the Legislature might look to the Department and its administrative expertise to develop those standards.

Again, all too often, the Department, I think, responded to that responsibility by, again, shifting the responsibility -- not in a cooperative effort, but in an obligation shifting -- to the regulated community. So the regulated community would come forward and say, "Well, we understand that there are certain broad goals that we have to conform with. There are certain broad requirements. Here's our plan on how to achieve that." The Department would look at it and say, "No, we don't think this is good enough. We don't think it's good enough. Go back and try again."

In a gross oversimplification, you end up in black box regulation, and you run into problems of lack of clarity of what the requirements are. And you quickly run into an understandable frustration -- not just on the part of the regulated community but also, potentially and realistically, on the part of the environmental community -- that the Department is operating free-form, if you will. It's operating without the benefit of standards.

And frankly, unlike my experience with the BPU where the absence of regulation was supplemented by a whole body of decisions -- codified decisions; it became its own jurisprudence -- the lack of consistency, the lack of predictability, plagued the Department and plagued the regulated community, and, frankly, again, I think plagued the Legislature and anyone else who tried to evaluate the Department's work, because all of the broad themes were articulated. The means of implementation weren't always there.

So, we have set about a course in the Department over the past three months to try and attack these problems. What we've done so far, first and foremost, is try to understand and define our own mission. I think the principal building blocks of that process is a recognition on our part -- and something which I have believed firmly in in my tenure within government -- that regulation is simply not a means unto itself. Regulation isn't its own goal. You don't regulate for the sake of regulating. Regulation is one of a number of tools that's available to us in government to achieve certain public policy results.

Regulation, by its own nature, has to be adaptive. It has to change. It has to evolve. It may evolve in short periods of time -- months and weeks -- as you learn its process. It may evolve over long periods of time. The regulatory scheme that makes sense for one regulated activity in government or in society ten years ago is, by its very definition, going to change, and we in government and in the regulated community can't be afraid of that change.

As a Department, if we are going to be involved in the business of regulation -- and I think this is true, and I'll just take from my own experience now-- Whether you're regulating campaign finance activities, whether you're regulating public utilities, or whether you're regulating environmental concerns, first and foremost, the regulatory agency has to be clear in its regulatory standards, and it has to be prepared to give answers and help. That's the first job. That's all related to me with what the prime mission of any regulatory agency is, which is to achieve compliance with societal standards that are articulated either through statute or through regulation.

A department-- A regulatory agency is simply not doing its job if it's not able to say clearly what's expected of the regulated community. And it's not doing its job if it

can't help the regulated community get to a point of compliance. So, it comes up with the theme, the culture, or the obligation of giving answers, of being helpful.

One of the goals that I've set out for myself is that when my tenure is over, I hope people look back at the Department, and among other things say, "This is a place we could get answers. We didn't always like the answers we got. We may have disagreed with the policy, but at least we got answers." And then we can debate of the substance of the policies.

We need to make decisions. I found and continue to find, in a never ending series of daily adventures, that decision making in the Department, over the years, through multiple, multiple reasons, was delegated sometimes too far away from the Commissioner's Office, and other times it wasn't delegated far enough away. The decisions that I, frankly, shouldn't have to make, in just the management of the Department, come to me every day. Yet, important decisions that I think any Commissioner should be involved in, might never reach a Commissioner's Office. It would be two, three, four, or five levels removed from the Commissioner's Office.

And even if it were appropriate or inappropriate in an individual Commissioner's point of view to delegate that decision making further and further and further down the management chain, there was an absence at this point in time of any clearly defined or established review procedure. So now, if a decision is made by an assistant director or by someone on the assistant director's staff, the next question comes up, "How does somebody get formal review?" Not just for the applicant who may feel aggrieved by a decision of the Department, but what about the community as a whole who looks at the decision of the Department and says, "This was just wrong. It was just stupid"? Sometimes that happens.



What I described as the stupid rule, that I'm trying to initiate -- somehow that the regulated community, somehow that the community as a whole could look at the action of the Department, presumably one that occurs before final action and before the Commissioner's level and says, "There is something wrong here. The Department is not following its own procedures. The Department is not following the law. There is a clear violation of process." If you will, it's the administrative equivalent of a motion for summary judgment or an application for a declaratory judgment.

So, we are working very hard within the Department to establish those procedures so that not just the regulated community, but just as importantly, the interests of the community, the impacted community will be able to take a look at our decisions and say, "We think there's something wrong, and before this becomes final action, Department, we'd like you to reconsider it."

Finally-- Another thrust I want to talk about this morning is that of our enforcement mechanism. A regulatory agency really is only as effective as its enforcement program. To be effective, I believe, an enforcement program has to start-- As I mentioned, the premise of the goal is to achieve 100% compliance with the regulatory requirements. The mere assessment of penalties in and of themselves is not a goal. And while it's an interesting administrative body count: to take how many millions of dollars of fines have been assessed, how many millions of dollars of penalties have been collected, or how many summonses have been issued, it has some value from a management review process, but, all too often it's overstated.

The real test, I suggest, is to say, "What's the compliance rate? How many people are doing what's expected of them and is that rate improving? How do we, as a society, reach 100% compliance with the standards that we want to articulate?"

So in the area of enforcement, we have begun to make some very dramatic changes in the method that we assess penalties by, not to loosen the standards at all. In fact, I would argue to strengthen them to support the role of the Department. It simply does not add to public credibility when the Department might issue a notice of violation and a penalty assessment of \$1 million, only to settle it within weeks at a 95% discount; at 5% of the original assessment. It simply does no good in the area of penalty assessment now -- not in mitigation requirements, not recoupment of economic benefits, but society's imposition of a punitive action; a penalty that's meant to be a deterrent to spur compliance, if there's no recognition in the facts that surround it.

It simply does no good for the Department to assess penalties that are not sustainable in court. So as a matter of philosophy we've now said, the gross number of dollars isn't the issue. The issue now is that we come up with a number that's appropriate, that's firm, and that has an unmistakable message, not just for the violator, but for the entire State as a whole. And the only time those numbers will be compromised now is in evaluation of litigation risk, not merely because if you pay quicker you get a discount; not merely because if you do something faster you'll get a discount on the penalty.

It doesn't mean we don't move quickly for compliance. It doesn't mean we don't move quickly for mediation. When it comes to a penalty, we're going to come out with a number. That's the number. You can settle it or we can litigate it, because we're going to believe the firmness of our number. Regulation and enforcement of those regulations have to be clear, they have to be firm, and they have to be predictable. When they are, people realize that you can't shun a regulatory system. That's the goal that we want to have for the Department. So, with those broad themes, let me turn, again, in a very broad overview way to the package of bills now before us.

As I said, if one looks at this package in a broader sense, we see all of the same goals attempting to be achieved: openness, fairness, clarity, help, firmness, and enforceability. Where I will take question at times is with some of the means that have been suggested to implement those goals. That's not to say that we don't need some or all of this legislation, but I think in some cases we're going to need it in a different form.

For my remarks this morning, at least, I want to shy away from specific comments about specific bills; on how they can be revised. For me, I would like to suggest that we leave that, in the first instance, to some staff discussions. But I'll be happy to answer any questions you have. Let me give a couple of illustrations, just so you understand the tone of my remarks.

As part of my attempt to structure a Department that will serve the goals that I've just discussed -- I've embarked upon -- what I've discovered is an evolutionary restructure of the Department, as opposed to a big bang reorganization. As part of that, I've assigned to people that I'm very proud of, principal responsibilities in the area of enforcement, in the areas of permitting, and in the areas of site mitigation and cleanup.

Those people, for example, John Weingart in the area of Environmental Regulation and Permitting, is going to be responsible for developing a Department wide program for permitting activities, whether that permitting activity is an air program, a water program, or a solid waste program, because what is at the heart of the issues that we're discussing today is, how does the Department go about its business of permitting.

If we're going to articulate a policy, a philosophy within the Department of how we want that activity to take place -- if we want to incorporate pollution prevention in the first instance -- if we want to make sure that there's

opportunities for guidance, conferences, and help so that people understand what the rules and regulations are, it seems very obvious to me that you need to have one person accountable for that; hence, an Assistant Commissioner whose responsibility is to do that: to bring about, over a period of time, each of the various permitting components of the Department as part of the mosaic that's all connected together.

Needless to say, permitting, the whole permitting process-- The efficiency of the permitting process and all of the problems associated with it, the stories are legend. We could probably run a contest and say, "Everybody give their favorite permitting horror story."

The Department's response to that, as I've said, is to set up accountability, set up uniform management, and to take the best of our experience-- We do checklist now. We do pre-application conferences now. We do training programs now -- not as much as we should, but we do them. In some areas we do them. In some areas we don't do them. The goal is now to make that part of the ethic of the Department, and to do that through managerial accountability.

I would like to suggest that the creation of an Office of Permit Management, as suggested by one of the pieces of legislation, is exactly contrary to what I, as the person responsible for the management of the Department believe should be done. The goals are exactly the same, and I have no difficulty at all with this Committee and your colleagues in the Legislature setting out goals or setting out standards in terms of performance standards, approach, and obligation. But let us, in the executive branch, figure out how to implement that.

Hold our feet to the fire. Have me and my staff before this Committee as much as you want to make sure that we're meeting the legislative policies that are enacted. But let us figure out the tools. Frankly, the tools that might



work for me in the early 1990s may be very different than the tools that will be necessary for my successors as they approach their responsibilities.

The creation of an Office of Permit Management in the Commissioner's Office -- as well intended as that initiative was or is -- I think runs exactly contrary to the theme of a unified Department with accountability, that runs throughout the reorganization that we're now embarking on. John Weingart as an Assistant Commissioner has that obligation. He has that obligation -- not just to me as the Commissioner of the Department and not just to the Governor -- within the Department and ultimately to all of you, and to the rest of the State. It's my job to manage the Department, to make sure that that's carried out. Now, maybe there should be a staff to do some of the things you're suggesting in that office -- the Office of the Assistant Commissioner. Maybe we don't need the office.

My principal concern is that by centralizing in the Commissioner's Office a management technique by legislating a management approach-- For example, we may be embarking upon, what I believe contrary to some of my predecessors, was a mistake in management design in creating the Office of Regulatory Affairs, the regulatory office that used to be part of the Department. Like with the Office of Regulatory Affairs, and now with the Office of Permit Management, we would end up with a centralized cadre of staff who would be carrying out the assignments of the Commissioner.

Rather than the Commissioner's and the Governor's philosophy, and the Commissioner's and the Governor's approach to management being the responsibility of the Department as a whole, now it would become a separate cadre of people who would operate throughout the Department to achieve the result that is otherwise not achieved through good, strong, solid management. I don't want to put too fine a point on it today. My point is this: We all agree on the goals.

The Legislature may look at our permitting process and say, "We want more frequent reports. We want to accelerate the decision making process. We want to set time frames like we do in Coastal Resources. We want to ensure that there are guidance documents that are published as a matter of course." And you might, as a legislator say, "I'm just not willing to accept any Commissioner's assurance that that will always be there." Legislate those goals. We can work together on that. But let us, who have the responsibility for day-to-day management, figure out how to get there.

Let me also suggest that my comments -- my lack of comments about funding isn't meant to leave anyone with the impression that there won't be a need for money, or that some of the initiatives may not require money. But let me reiterate what I've mentioned to the Appropriations Committees, and that is, I believe very firmly that for this year I have in the Department all of the resources I need. I have the legal resources, the personnel resources, and the financial resources to carry out the mission. And I will feel a lot better a year from now, coming back -- six months from now, 18 months from now -- as I'm smarter, as we're all smarter in this process, to understand what new initiatives might be appropriate that have financial implications. So I'm not asking for money, but I also don't want to shy away from the fact that some things do cost money.

Another example that I want to touch on briefly, then conclude my remarks, is the issue of technical manuals -- guidance documents. One of the bills in the package would require the Department to issue technical manuals. To some extent we do. Again, I don't think we do it enough. It's something that we've already made a goal for every permitting program we have. It's important though to be able to distinguish as to whether or not those are guidance documents, or whether they are documents that are so specific, in fact,

they become regulations unto themselves. If they were the latter, then they would become redundant to the regulations and probably would have to be adopted by regulations.

So, we are committed as a Department now to do things like guidance documents; to do things like technical manuals; to do things like having pre-application conferences, so that an applicant can come in and know exactly what's expected of them, as much as we know. But there's a corollary to that information, help, and guidance to the regulated community, and that is access and participation by the community at large, so that they also have an opportunity to find out what the Department is doing.

There's is a tidal wave of decisions that are made every day at the Department that have a very serious impact on communities' day-to-day lives. We, of course, like to think that we're doing it in a way that comports with society's best interests, but I've learned as a government official that when I have to make decisions they're best made with the broadest public input. So we're now looking at a way to provide opportunities for the same degree of guidance in help and information to the public at large -- different initiatives that we'll be bringing up; something akin to the public room that I used to have at the Election Law Enforcement Commission where the public could come in and say, "I'd like to see all of the permitting decisions you're making for Bergen County, or all of the pending matters affecting the Village of Ridgewood, because there may be something in there which we in the community are very concerned about, and we don't even know it's pending before you right now."

These are all things we need to work on together. My point is not that we're shying away from the obligation for guidance, technical assistance, and advisory opinions, but, that we actually think that the obligations are much broader than just with the regulated community.

With that, Mr. Chairman, let me conclude my remarks in an overview of the bills. As I said, I think that the 14 bills set out the same goals -- the same themes that we need to achieve. Some of them present, I think, some very important initiatives that will help the Department do its job. Some of them, I think, despite the best of intentions, tread a little too much into design of management strategies rather than the articulation of public policy goals. Myself and members of my staff are ready at the Committee's request, to begin working with you and providing more specific comments to the specific bills, and, of course, coming back to meet with the Committee at any time when it is convenient.

ASSEMBLYMAN SMITH: Thank you, Commissioner. A couple of questions, if I might. I'm a little concerned with one or two of your comments with regard to the suggestion that perhaps we are interfering with executive prerogatives, with regard to management, or that we would be better legislating goals rather than doing some of the managerial incentives that we have in this package. And the only reason that I'm concerned is that, one of the things that we've been criticized about, as a Legislature, is that, perhaps, we haven't given enough guidance to the executive branch; that perhaps we've delegated too much authority and too much latitude.

Quite frankly, in our last hearing, probably the most valid criticism that I heard at least -- this is only in my opinion -- was that we have a system in which the regulated community doesn't know what the rules are. In your remarks you also suggested that that's a serious problem. So, I have a little bit of a problem with what you're saying in the sense that legislating-- We can all agree on goals, but I think we have to do a little bit more than that. We have to make sure that the rules are well known and that there's an expeditious process.



I have to tell you, honestly, I'm not quite certain how that's to be accomplished. I think the bill package is a good start, but certainly a lot of other things are coming up in hearings. I think I'm going to, respectfully, differ with you, in that legislating goals is the only way in which we have to approach this. I think we have to go further. I'm not quite sure what it's going to be, but I think we do have to go further than that.

One of the things that was provided to us by your staff was a summary of what is called, "Permit Backlog Information." I don't know if you have a copy of this.

COMMISSIONER WEINER: Not with me. I am familiar with the document.

ASSEMBLYMAN SMITH: Okay. In any case, as I reviewed this, I thought that it appeared there were a number of areas where the Department is doing a fantastic job. For example, in the Division of Environmental Quality, it appears that there are more than 36,000 permits processed every year. At this point, there is a backlog of 175 permits, which is -- and that's only in the air area -- out of a total of 5400 permits that are processed each year. That seem to be remarkable. It looks like it was less than 1%. Outstanding.

When I looked at the Division of Solid Waste Management figures, it appears that there are 16,000 permits that are reviewed each year. There was a backlog of 1160, but of that 1160 it was all, basically, in the A-901 program. And we all know that we in the Legislature have dropped the ball there in terms of providing the resources necessary to do the job.

However, when you get to the Division of Water Resources it looked like we have some problems there. For example, they say in the area of groundwater permits, the applications, just in one program, there was a total of-- For NJPDES -- industrial discharges -- total applications on hand

is 820. Then it says that the average number processed each year was 117. It says the backlog is 633. Well, if our average process is 117 and our backlog is 633, it sounds like we're never going to get to solve that particular permit problem under the existing arrangement. Does the Department-- That by the way is the exception, as opposed to the rule.

COMMISSIONER WEINER: Sure.

ASSEMBLYMAN SMITH: I've just indicated two Divisions where the record, I thought, was fantastic. But, for example, in Water Resources there were whole series of programs appearing to be in that kind of trouble. What is it that you think might be done in Water Resources to expedite that backlog?

COMMISSIONER WEINER: Let me make a couple of observations. First, words can be allusive things.

ASSEMBLYMAN SMITH: Right.

COMMISSIONER WEINER: If one defines "goals" as broad philosophical statements, I agree with you that I think the Legislature has an obligation to go beyond the broad philosophical statements. But, again, I would make the distinction of means and ends.

For illustration purposes, let us look at another favorite discussion point about the DEP -- the ECRA program.

ASSEMBLYMAN SMITH: Right.

COMMISSIONER WEINER: Not so much related somewhat to the permitting process, but more to the issue of standards, the Department is on the verge of issuing, for comment, in a prepublication mode -- and we will be doing it within about a week -- standards for soil and water cleanup under ECRA, the first time it's ever been done. I would predict it is years and years and years later than anybody would have thought it would be done.

At the time the statute was passed -- and I wasn't around then -- but I anticipate the Legislature said, "Here is a public policy goal that we want to achieve. We think it

makes sense in terms of liability, accountability, and responsibility. We're going to turn this whole program over to the Department to develop and administer, and rely upon their administrative expertise." It was hardly an appropriate decision, where society was at that point in time.

I think it was everybody's expectation -- it certainly would have been my expectation -- to get those regulations down, to develop those standards dramatically quicker than they had been. So, at that point in time I'd say, yes, it was appropriate, given all the realities of the original ECRA law, to turn to the Department to look for answers. I'd also suggest that the Department didn't meet its obligation as well as it could have: to develop those answers, provide that guidance, and provide public debate.

Now, it may be, as this process is completed over the year-- Theoretically, the Department might adopt a regulation or a standard which the Legislature disagrees with. You might think it's too stringent. You might think it is too loose. Clearly, I'm stating the obvious. I know that you know my belief; and I know your belief. But clearly, that's the time the Legislature could step in. You might look at it and say, "It's time to reform ECRA," for a whole bunch of reasons. The body of accumulative -- collective community knowledge is such that if you were to rewrite ECRA today, it probably would be much more specific, than it could have been then.

I'm not suggesting that you leave all standards setting, all societal policy, to the administrative agency. But I'm saying -- for example, with permitting -- there's a clear problem in the area of the Division of Water Resources. I will suggest to you that that's a management problem, and the reason why I will argue that so strenuously is because it's working well in some divisions and not well in other divisions.

In the first instance, before I would ask as a Department head for any new tools, I would do exactly what I am

doing: I am looking at that division, saying, "Why is it taking so long? Is it a question of accountability? Are the right people making decisions? Are there management controls in place there? Is the process so disorganized that we can gain productivity efficiencies, or is there a substantive problem" -- like, theoretically -- "standards are impossible to evaluate?"

Are we not relying on facts that can be presented to us, but reestablishing those known facts? For example, information we present to the Department, a fact will be established as a fact and certified to by an engineer, let's say. Query? Should the Department go back out and reestablish that fact, or should it rely on the existence of that fact, absent only the contrary, and move on to policy? It's an interesting regulatory debate, but that can affect timing and sequence. To what extent should we rely upon an engineer's certification, as a Department? I would argue, much more than we have. For example, that could speed things up.

In a recent discussion about the A-901 program, I asked for an evaluation of when the current backlog could be completed, based upon all of our current resources, putting the current pending legislation aside? I was told, 18 to 24 months. That was a very quick meeting. I said, "That's simply not good enough." It's simply not good enough, and you can't except that as an answer. So now go back and figure out how we can make it shorter, and what we're giving up if we do that.

One of the first things that was discovered was the issue of concurrent review. In the past, DEP's review would await the completion of a review by the State Police and the Attorney General's Office. So after you've jumped over one hurdle, you'd have them wait for time and sequence again, to continue for you to jump over the second hurdle. A very simple question was asked: "Why not do it concurrently so that we can compress time frames?" And we've saved months and months of time that way.

So in the first instance, Mr. Chairman, I'd say that the issue with Water Resources is management. Now after I meet my obligations there as a manager, then I might come back to the Legislature and say, now the issue is substantive, whatever they may be. But I would suggest that it's my obligation to the Legislature, to the Governor, and to the State as a whole, to manage the Department in such a way that we solve that problem in Water Resources. Legislating an Office of Permit Management in my Office, will do nothing to assist me. It will just create a level of bureaucracy that's unnecessary, and a group of troops running around inside the Department maybe doing my bidding, but would allow me to avoid my responsibility to impose accountability on that division.

ASSEMBLYMAN SMITH: All right. Speaking of our respective responsibilities, executive versus the legislative, when do you anticipate having completed the review of Water Resources such that you're going to be able to make whatever changes are necessary to move forward?

COMMISSIONER WEINER: One of the things that's going on now, as I've mentioned-- I announced, as you know, a reassignment of senior managerial responsibilities in the Department. Right now there are discussions that are taking place between Assistant Commissioner Keith, Assistant Commissioner Weingart, and Director Neafsey, to take a look for example at the current programs at the Division of Water Resources and see what permitting programs can begin to be reassigned at the earliest possible date, so that work is ongoing.

In terms of when will I feel more comfortable -- if I can anticipate the question -- coming back and saying I believe that either I have it under control managerially or that-- I don't know when that answer is ever given. I would like the benefit of at least six months for us to keep doing the work we're doing and be able to come back then to report to you on how we're doing.



ASSEMBLYMAN SMITH: All right, one other question. With regard to the data that was supplied to us, one of the areas that was analyzed is the Division of Hazardous Waste Management. It shows zero application backlogs for ECRA and for RCRA. In past hearings in front of this Committee, the regulated community has come in and complained bitterly about backlogs in, at least, the ECRA program. I assume because this is in writing, and it came from the Department, that it is accurate. Why is it that there is such a disparity in the view of the DEP, versus the view of the regulated community, with regard to the performance of ECRA?

COMMISSIONER WEINER: I'm going to take a stab at it; part of this is conjecture on my part. I can be smarter as I look into it more, but I think there are a number of points:

A lot of what ECRA does-- I think the vast bulk of ECRA are letters of non-applicability and -- "routine" is never an appropriate word -- relatively routine processing, and great strides have been made in recent years. When you have the problems that we've had in the ECRA program, even the most routine of applications and requests leave a legacy. It leaves an impression that takes a long time to dispel. In all frankness, people still tell horror stories that are a year or two old. Now, that's not to say that there aren't current problems.

ASSEMBLYMAN SMITH: I think they call that waiving the bloody shirt.

COMMISSIONER WEINER: Okay.

There are still current problems. A week doesn't go by we don't try--

I remember the arcade game at the Boardwalk, it was called, "Wack-a-Mole." There are a bunch of holes, and you have a hammer. It's a horrible game. These moles-- These groundhogs stick their head up through the holes, and you just beat them down. And if you beat enough down, quickly, you win a prize. Every day for me, is like Wack-a-Mole. (laughter)

ASSEMBLYMAN SMITH: That is probably the best description of the DEP Commissioner's role that I have ever heard. (laughter)

ASSEMBLYMAN COHEN: Similar to the Democratic caucus, too. (laughter)

COMMISSIONER WEINER: Although as I sit here, I probably would have liked to have picked an analogy other than an animal. But every day is a new adventure in problem solving. We have problems in the program. A lot of problems result from the previous inability or unwillingness of the Department to stick its regulatory neck out and say, "This is what we believe you should be doing."

Part of the problem is getting into the cue when the application is being completed in the first instance. So I'm not saying that the numbers are inaccurate. I think that there are continuing problems. And part of it is when the regulated community comes up and says, "You keep telling us you don't have enough. What is it that you want? When is enough, enough? When are the standards clean enough?"

We run into an interesting administrative -- I run into it, it's not new -- conundrum. What happens when somebody owns a piece of property, has no immediate desire to sell it, has a reason to believe there may be some contamination on the property, would like to clean it up, and would like to clean it up in such a way that they can get a clean bill of health from the Department so that when they do want to sell the property they only have to, then, get into the cue? Or they might not want to sell, they just want to clean it up and know that it's clean.

In the past, if people came to the Department, the Department might say, "We can't do that unless, in the first instance, you enter into an administrative consent order." People understandably say, "I don't understand this at all? I'm here. I want to do what I think is the right thing. I

want to make sure that I'm doing it the way you want me to do it. I'm going to spend my own money. Why do I have to do it this way?" I would describe that as regulatory inflexibility.

We're limbering up our regulatory muscles a bit, and becoming more flexible. We're looking at ways to work with the community and provide answers and solutions. As those problems pop up every day, the Management Committee that I've established uses them for illustrative purposes, not just a specific purposes. So hopefully, the same problems don't repeat again.

ASSEMBLYMAN SMITH: Commissioner, I appreciate your candid comments. Assemblyman Cohen, do you have any questions for the Commissioner?

ASSEMBLYMAN COHEN: All I know is that it's been interesting.

ASSEMBLYMAN SMITH: Commissioner, we appreciate your coming by today. And we would hope that we could have our Committee staff meet with your staff to discuss the bill package, and any additional tools that you think might be helpful for the Department.

COMMISSIONER WEINER: Thank you. We look forward to doing that.

ASSEMBLYMAN SMITH: Thank you, Commissioner.

Our next witness is former Commissioner of the DEP Jerry English.

F O R M E R   C O M M .   J E R R Y   F .   E N G L I S H : Good morning, Mr. Chairman, Assemblyman, and staff. Mr. Chairman, on behalf of the other former Commissioners that we were able to trace down -- many of whom are now going under assumed names (laughter) -- at the request of the Speaker, and frankly, we also sought out this opportunity-- Because we find ourselves, as former Commissioners, probably being the only people who are now in every State House in the nation without a formal association and an executive director-- (laughter) We've

already told Hal Bozarth that we think that he can take us on as a separate group. He is resisting that, I want you to know.

So we've had a lot of fun, as a matter of fact, being asked to come back. We call ourselves, not the old guard, but éminence vert, as opposed to éminence grise. All of us have had, we think, some of the same experiences. And at the same time we are, with great respect, understanding that each Legislature, each Commissioner, and each administration must function in its own time. But some of the things do remain the same.

And so it was with that perspective-- Several of us, by the way, do practice as attorneys or as engineers before the present administration, so we have a day-to-day understanding in many respects with many of the things that you have heard Commissioner Weiner talk about.

ASSEMBLYMAN SMITH: Commissioner, can I ask that you hit the button on the mike?

FORMER COMMISSIONER ENGLISH: That may have been my whole problem as Commissioner; technical inability to communicate. (laughter)

Can I just comment on what I was hearing from Scott Weiner?

ASSEMBLYMAN SMITH: Sure.

FORMER COMMISSIONER ENGLISH: Some of you recall as Neil does, that I served as a State Senator. I served as Counsel to the Senate, and as Legislative Counsel to the Governor long before I was ever crazy enough to become a line officer on the executive side.

I've listened to lots and lots of State officials testify. I must say that in that time I have rarely heard the head of a department testify with such candor, and I think that is a compliment to this Committee. It is not simple to walk into a room such as this -- of an equal branch -- and say, that things need to be fixed. That is not the party line. The

party line is, as for all of you who are Committee staff, to say, "Things are fine. Please leave us alone, give us money, and quick." That's not what you heard this morning. And I must say that I think that begins a remarkable opportunity for dialogue, certainly, spearheaded by the Speaker's bills. And I have comments about those bills.

Let me state that in talking with my former commissioners we did have a round-robin, and a box score of our own, about these bills, which I'll be glad to share with you. We shared the same worry that micromanaging of the Department may not be in the public interest.

Accountability is obviously needed. Unhappily, what we've observed-- And no discussion has taken place about the role of the court in this activity. In fact, instead of the Legislature coming back into oversight, those who have felt aggrieved for standards, or lack of standards, or arbitrary regulatory processes have resorted to the courts. In that respect the court has been stating -- the Appellate Division, principally, "This is ultra vires. You've gone beyond anything the Legislature had in mind." It would be nice, of course, if that exercise did not have to take place. Let's look at these bills a little more specifically.

To state to the Commissioner that the Commissioner must, in his or her office, have an Office of Permitting is one form of management that could be done, as the Chairman and the sponsor knows, without any bill. I would just state that perhaps Counsel to the Governor might review that bill as being one that would inhibit the role of the Commissioner before the Administrative Law Judge in that process, because the Commissioner's Office would have been directly involved in every single permit; so that should a time come when a permit is challenged, then there would be an automatic recusal of the Commissioner. That may not be the goal of the Legislature. So that is a technical part of this bill that does raise itself to me, as a practicing attorney.

To go back, in general, however, I believe that in the advice and consent process of selecting the Commissioner and following the Governor's goals, that to suggest through the Legislature, even respectfully, that they must follow a way of doing things within their offices -- to those who are able to pervert such things -- just gives another excuse: "I would like to be able to do this promptly and quickly but the Legislature has tied my hands. I must do things in this fashion." And, frankly, I do not believe that that is a goal that the Legislature is trying to achieve. What you're really looking for is accountability. And all of those things that I heard Commissioner Weiner and the Speaker say are, in fact, very accurate.

There was remarkable concurrence among the former commissioners on one or two points that are very specific with these bills that had to do with the process for all of those that are in the top echelon of the Department. We believe -- and I think that's without any disagreement -- that the Commissioner should be able to choose his or her top officials. They should not be bound through the present process. A couple of the commissioners, as you recall, must be confirmed. And I believe that that does not help the process.

A Commissioner should be able to pick the people that respond to him. And if he has problems with them, then they're permitted to take on some other life. I think that that is appropriate, and it makes certain that the legislators' approaches can be achieved. Civil Service has its own kind of problems. You deal with those every day, but that's a fact of government that everyone understands.

A second part of the bill that does bother me, personally, has to do with whether or not there should be some sort of malpractice board for licensed professionals built into a statute. Frankly, I think that that's one of the things, Mr. Chairman, that could lend itself to a form of inordinate



pressure by those who go before these regulatory groups and then are kind of being held up with: "If you don't put your permit in here properly, then I'm going to hand you into the same board that licenses me."

That may not be the intent. It is the perversion of that type of bill. And it would concern me because the parties, in fact, are not in an equal situation in these circumstances. The regulator is the one who has the opportunity to decide fairly or arbitrarily whether or not a permit has been properly submitted.

Finally, let me say that every time one gives a bill without an appropriation then perhaps those kinds of figures come up on the bean counting chart. I don't know that the process addresses that particularly well.

Therefore, I'm about to say something totally revolutionary which will ruin your whole day or make your day. These bills really started me thinking about this. I'm saying, this Department is now 20 years old. It is no longer an infant. It is no longer an adolescent, which I would say it was during the time I was Commissioner. It's now a pretty mature agency.

It has statutes, however, that are 20 years old and that are 100 years old. This is the time, I think, for the Legislature to start to really examine this. During the time when I was privileged to be in the executive branch, we revised the Criminal Justice Code. And as you may recall, it was needed. I think this is now the time for these statutes to be examined by a Legislative Commission, to be appropriately staffed to do so, and that what we finally learned in almost a quarter of a century be updated and modernized so that you don't have parts of one statute speaking to one issue and the regulator trying to implement that, and another statute contradicting it. No wonder the regulated community is frustrated. No one can manage in that sort of approach.

I didn't ask the other commissioners about that, by the way. They may or may not agree. But that's my respectful view of this. When a Commissioner of a department comes to you and tells you that the group has lost creditability, for whatever reason with all segments, then it may be that the problem is much broader than just whether or not you put permits in the Commissioner's Office. It goes to a much--

Everyone has to now come to the table under the process that I'm talking about and talk about what is real now: standards; whether or not there are any new things in the world to fix -- hazard sites as opposed to just a slurry wall -- and dig out the hot spots; whether or not there is a new approach to Coastal Resources; whether or not there is a new way of looking at permitting; whether or not there is now a fund that has to be in place, for instance, in a new form of inverse condemnation-- These are very broad issues and one that would take time and absolute dedication.

I think, frankly, that this Legislature is uniquely posed to do that. And certainly, under the leadership of your Committee and that of Speaker Doria, and with what I think are-- You have a very special Commissioner right now, someone with a great deal of background and training in government. He also served as a Councilman in Fort Lee. I think that that's an important combination of abilities. To be able to hear very well, to be able to manage well -- which he already has a background that has shown it, in the BPU -- and now a very important place to mold, not only in the image that the Legislature wants to see, which has a much longer continuum than any administration-- He has some goals for Governor Florio. He has independent goals. But in the long term, he must follow the Legislature's goals.

P.S. The other commissioners had hoped to be here today. Commissioner Sullivan is Chairing an important Committee on behalf of the State at Liberty State Park.

Commissioner Hughey has sent his comments. I will deliver these, for the record, to your staff to be included and asked that they be so received. Commissioner Daggett has written to the Speaker to say that he has his own independent comments to make.

So, just as I thought I had them in consensus, I'm not as skillful, yet, as you are, Mr. Chairman, but I'm working on this group. We hope we'll be invited to come again.

ASSEMBLYMAN SMITH: Thank you, Commissioner English. Our next speaker will be Roger Bodman, former Chairman of the SCORE Commission.

R O G E R A. B O D M A N: Thank you, Mr. Chairman and members of the Committee. I, too, come before you as a former commissioner, but not of the Department that's being addressed today. However, as you mentioned, Mr. Chairman, one of my civic activities since my departure from State government was to Chair this Commission on Regulatory Efficiency.

This Commission was established in 1987 with the specific purpose of looking at the regulatory process of the State. I will try to address myself, in general terms, to that.

I think it is fair to suggest that the various members of this Commission -- which was made up of a whole host of members of State government, of the Legislature, of various organizations; from business groups to labor groups and so forth -- came forward with a series of recommendations relating to the process. We certainly weren't prepared then, nor now to address the specifics of this package, or for that matter, of the various regulations -- that are near to regulations -- across State government.

We simply were asked to look at the procedures by which these regulations were adopted, and to a lesser degree, the management issues surrounding the regulatory procedures of this State. It seems to me in that regard, that this package of bills basically falls, really, into two major areas:

1) that of intent with regard to the regulation itself; and

2) the issue of management.

Let me just discuss some of the recommendations, very briefly, that this Commission suggested some two to three years ago, and then try, as best as I can, to tie them to what I feel are the various package of bills here, and how they coincide with one another.

For example: The Regulatory Efficiency Commission broke its recommendations into four major areas: the Legislature, agency, the Administrative Procedures Act, and implementation. Again, the theory behind it was that the regulatory process, although not intended to be a hidden process, was, in fact, in some people's words, sort of a hidden fourth branch of government.

I think it was fair to suggest that the "New Jersey Register" isn't on The New York Times best-seller list. They felt that anything that could be done to open the procedure -- recommend change -- would hopefully assist in better public policy in our State. Presumably that's what this package of bills is all about.

Again, the four areas that we made recommendations were: the Legislature, the agency, the Administrative Procedures Act, and what we called "implementation." I'll just highlight a few of them for you.

Under Legislature, all rules and regulations sent to the Office of Legislative Services should be forwarded immediately to appropriate reference committee members and staffs. One of your bills, for example-- I think one of the key bills in my opinion, if not the key bill in this package, A-4520, suggests that DEP transmit copies of proposed rules or regulations to appropriate legislative committee chairpersons prior to publication in the "New Jersey Register."

I think if there is any one package, in my humble opinion, or any one bill in this package that really gets to the heart of the issue, it may be that. Does that regulation properly reflect the legislative intent: Does it go well beyond? Does it go short of? Is it consistent with public policy that the Legislature intended?

If there was one theme that went throughout the myriad of hearings we had in the year that we attempted to put together this report, it was that. The regulations simply didn't seem to reflect, in many cases -- regardless of that-- Again, I'm talking statewide, not just the Department--

ASSEMBLYMAN SMITH: Right. Not just DEP, you're talking about all of the departments.

MR. BODMAN: Exactly. The Legislature should pay more attention to the regulatory process, and for that matter so should the executive. I am as guilty as any, in the two departments that I headed in the previous administration, with regard to not paying as succinct attention to regulations that crossed my desk as Commissioner of DOT or Labor that I might have. I think that if there was one bill here that's key, that may be it.

The bulk of the other bills seem to address themselves more to the management issues. I'm not going to suggest, nor do I have the ability to suggest to you, or to the Commissioner, or to the former Commissioner that just spoke, or others at DEP, really how to manage their department. I am here to suggest that this Commission made other recommendations along the lines of all State rule making entities should centralize their rule making and Administrative Procedures Act compliance functions.

It appears to me that A-4511 creates a permit management staff in DEP. Again, whether that should be legislated or managed by the Commissioner is an issue that I'm sure the administration and the Legislature can properly

decide. The question then, in my mind, or at least the recommendation is, that you in fact do it, and there be an attempt to try to centralize this procedure. I'm pleased that it's being addressed.

Every agency should adopt and maintain a policy of rule development, utilizing proactive advisory committees. Again, a cursory look at A-4514 requires DEP to conduct continuing education seminars for certain professional purposes on procedural and substantive requirements, again, an attempt to reach out to the regulatory community so they can get a sense of what the rules are, and hopefully that those rules will remain consistent.

Another recommendation: All agencies should codify within the New Jersey Administrative Code all policies and other requirements imposed upon the regulated community. A-4518 may not go quite that far, but it certainly suggests that DEP should adopt categories and schedules for reviewing written applications. In other words, set a time frame. Set the rules. Let the world know what you expect of them, so they can properly comply.

We had a whole host of recommendations surrounding the Administrative Procedures Act. Again, the Commission felt that the present social economic impact statement should be replaced with a new checklist of questions. In other words, make it more responsive if you will, and recommend as a series of suggested questions, that we had put in this report. Again, A-4521 may address that issue, I'm not sure. I'm not familiar enough with the legislation.

The intent was to try to determine, by way of the social and economic impact statements that are required under the existing Administrative Procedures Act that an appropriate list of questions be answered; that the Department truly try to get at and divulge, if you will, the impacts of the proposed reg in a way that's much more significant than is now done. I

think it's fair to suggest, in many cases, that regulations -- again, department wide, not just DEP -- that are published in the "Register" and address themselves to the social and economic impact statement is done in what I would consider to be a cursory fashion.

One of the other implementation recommendations we suggested was that a private firm should be certified and utilized when necessary in the processing of agency applications. Again, I believe A-4519 permits the employment of outside consultants to address themselves to permit backlogs.

The bottom line here, Mr. Chairman, is that generally speaking, I want to suggest to the Committee that this package of bills appears to be consistent with what our Study Commission had recommended some years back.

We certainly commend Speaker Doria for his leadership in advancing the package. Our goal at the time was to try to suggest the changes in the regulatory procedure, the process. And one of the key components of that, which is not necessarily designed simply to deal with DEP, obviously-- One of the key recommendations was that we suggested the legislative endorsement of Executive Order No. 66. As you know, Executive Order No. 66 was signed by Governor Byrne. It is still in effect, I believe, and is the five-year sunset review of all regulations.

The theory being that if, in our humble opinion, you created a regulatory system that truly got at the heart of legislative intent and made sure that the process worked, then-- Obviously, there are thousands upon thousands of regulations out there. As these regulations are required to be reviewed, if you will, as they now are under Executive Order No. 66, sooner or later they would be forced back through that funnel.

It's impossible to take and to have an outside Commission such as ours, or the Legislature for that matter, to



make suggestions or even, certainly, qualitative judgments as to the necessity of these myriad of regulations which of course are very complex in many cases. What we've simply tried to do is create a process or suggest a process to the government at the time, that would cause a procedure whereby this regulatory process could be improved. I do think that this package of bills, as they are aimed at this one specific agency of our government, clearly goes a long way towards doing that.

I would suggest that you may want to look at some of these other suggestions as you address yourselves to broader issues surrounding the regulatory process of the State.

With that, Mr. Chairman, I'll conclude my remarks.

ASSEMBLYMAN SMITH: Thank you, Mr. Bodman. Our next witness is Rob Stuart. Is he here?

UNIDENTIFIED SPEAKER FROM THE AUDIENCE: He's at another committee meeting.

ASSEMBLYMAN SMITH: All right. Well, I'm sure he'll come back. How about Marie Curtis from the New Jersey Environmental Lobby?

M A R I E A. C U R T I S: Good morning.

ASSEMBLYMAN SMITH: Good morning.

MS. CURTIS: I am Marie Curtis, as identified, Legislative Representative for the New Jersey Environmental Lobby. We are here today sharing the concerns that prompted Assembly Speaker Doria to demand accountability from DEP. Our concern with accountability, however, also has us questioning the remedy proposed.

We question whether statutory requirements for administration and management of a department, within the executive branch, are not indeed a breach of the separation of powers? The careful balance of all three branches of government provides accountability to the citizens of this State, while it assures that no one individual group dictates to all. We don't mean, here, to imply that when specific

programs go awry-- When legislative intent is obviously not being carried out, obviously, the Legislature does have the right to step in, statutorily, and demand that, indeed, the policy be carried out as indicated originally. We do think that this overall broad approach, however, goes a little too far in that direction.

Indeed, the new DEP Commissioner himself seems to agree with many of the proposals that were embodied in the package. We heard that here this morning. He has already taken steps to set up a permit management staff that consolidates reviews and promotes facility-wide permitting.

The requirements submitted here for seminars and application workshops are already, in many cases, being done. Preapplication meetings have long been standard in DEP, and written assistance and instructions are available to those applicants. We do, however, think that an opportunity for public input in the process is needed, and we were pleased to hear Commissioner Weiner mention that this morning. Should we demand new seminars, however, training manuals, and other costly tools when the Department is already hampered by staff and budget cuts? We think not.

Further, the proposal to remove certain division assistants and senior staff from classified Civil Service seems to us to be self-defeating. The protection afforded those positions now assures us some independence of thought and exploration of ideas within DEP. Decisions that might be right but not popular would never be made if those responsible had their jobs on the line politically.

While we applaud the Speaker for bringing these matters to light, we nonetheless, believe the remedy to be worse than the disease in this case. We would prefer a closer liaison between DEP and the Legislature, with both parties working to improve weak areas.

I think what we are saying essentially is that this broad overmanagement package is what we are objecting to. If specific areas are weak, and we all recognize that, indeed, they are, and if programs are off track and not following legislative intent, then, yes; we think you should step in and straighten things out statutorily. That's fine. That's your prerogative. But this sweeping overview and management by statute we really feel is a step in the wrong direction.

I thank you for the opportunity to be here today. If you have any questions?

ASSEMBLYMAN SMITH: Marie, one question.

MS. CURTIS: Yes.

ASSEMBLYMAN SMITH: As I listened to you, and as I read the statement, I had some difficulty in understanding the general theme. I thought that the general theme was that we should do nothing in terms of this legislative package but rather that we should have a closer liaison with the DEP?

MS. CURTIS: Yes.

ASSEMBLYMAN SMITH: The problem with that, of course, is some very significant problems have come to our attention; for example, permit backlogs. And probably, again, the most valid criticism that I heard in the last hearing was that the standards are not known by the regulated community; that there is occasionally -- or in some cases -- a hidden agenda or an unknown set of standards. So the questions become, what should we do?

MS. CURTIS: Well, I think you heard from the Commissioner that setting a time limit, setting up a time frame that, indeed, a permit has to be approved, disapproved, or whatever, within 90 days or 120 days -- something along those lines. Setting up the framework within which they can function, I think, might be the way to go. I think that's definitely a legislative prerogative. I think that's definitely within your right to do that. Then how the

Department manages to accomplish that task, that's up to them. I think it's a very fine line that we're dealing with here, as to where it becomes the Legislature taking over and administering the executive branch, if you will.

ASSEMBLYMAN SMITH: Thank you for your comments. Are there any questions from members of the Committee? (negative response) If not, Bill Dressel from the New Jersey State League of Municipalities.

W I L L I A M G. D R E S S E L, JR.: Thank you, Mr. Chairman and members of the Committee. My name is Bill Dressel. I am the Assistant Executive Director of the League of Municipalities. I have a brief statement I'd like to read into the record, Mr. Chairman.

ASSEMBLYMAN SMITH: How long is it, Mr. Dressel?

MR. DRESSEL: A page-and-a-half, double spaced.

ASSEMBLYMAN SMITH: Okay, go ahead.

MR. DRESSEL: On behalf of the many municipal officials who have experienced the quagmire that is often synonymous with the Department of Environmental Protection's permitting process, I would like to express how happy I am that this hearing is taking place. The fact that each of the bills in the package being considered today has bipartisan sponsorship is encouraging; and it is indicative of the well-deserved advocacy Speaker Doria has for his effort to reform the Department of Environmental Protection.

I am here today to express the League's support for the Speaker's objective; namely, to address the efficiency and accountability problems in what is debatably the most important bureaucracy in State government. As a person who has made a career of being a liaison between municipal and State government, I can emphatically say that the most often heard complaints made by local officials regarding the State government relate to the seemingly elusive nature of the Department of Environmental Protection.

I have heard time and time again from municipal engineers, managers, public works directors, and governing body members that the unresponsiveness of the DEP has made their jobs more difficult. Local officials, like the people in business and industry, experience frustration in their attempts to get permit applications acted on by the DEP in a timely manner. They, too, are often required to endure the seemingly endless wait for permit application review that brings public capital improvement plans to a grinding halt. They, too, feel the crunch of escalating fees charged by the DEP. Clearly, the League's constituents have had problems dealing with DEP, and those problems must be addressed. I believe the implementation of the environmental management accountability plan is capable of doing just that.

I should point out that the DEP has made an effort to be responsive to local government through its contacts with League staff during the past couple of years, and I am appreciative of that. Likewise, I recognize that the Department employs a great many intelligent, hardworking, and dedicated individuals who make it their business to serve the public. These good people are not, however, capable of overcoming the inherent structural problems of the DEP that makes the unnecessary duplication, overlapping, and conflict.

At this time, the League staff has only conducted a cursory review of the package of bills being considered today. Although, it is apparent that only a handful of these bill will have a direct effect on local government officials, and though they have yet to undergo the scrutiny of our Legislative Committee which is necessary for the League to take a position on them, it is clear that this package of bills constitutes a step in the right direction.

As you in the Legislature continue to work on reform in the DEP, the League would like to stay involved. The municipal officials who have dealt with the Department,

particularly in the application of permit approvals, can help identify specific problems that exist in DEP's regulatory procedures.

Again, I applaud the efforts of the Committee, the sponsors of the bills, and Speaker Doria. I thank you, Mr. Chairman, for your attention.

ASSEMBLYMAN SMITH: Any questions for Mr. Dressel? (negative response) There being none, let me ask Mr. Stuart from New Jersey PIRG to come forward.

R O B S T U A R T: My apologies, Mr. Chairman. We were debating plastics, down the hall. Thank you for the opportunity to appear here, to put these comments into the record. My name is Rob Stuart. I'm the Program Director of the New Jersey Public Interest Research Group. New Jersey PIRG is a nonprofit, nonpartisan organization that works on environmental, consumer, and good government issues.

I don't want to talk for very long on the package. I have some specific suggestions. I know that we're not, necessarily to offer line by line amendments. I have some concepts that I think I want to present to the Committee. I also want to suggest, from the beginning though, that we should take a step back and talk about -- at least point out -- what the DEP is, and what the DEP, in fact, represents for the State.

I would argue that-- As opposed to some of the people that spoke at the last hearing, which sees the DEP as a millstone around the neck of New Jersey and standing in the way of progress--

ASSEMBLYMAN SMITH: I think the phrase that was used was "regulatory sinkhole."

MR. STUART: That may have been the phrase.

ASSEMBLYMAN SMITH: And I would agree with you, that, I thought that was a very harsh characterization.

MR. STUART: I think that, in fact, the DEP -- an effective and well funded DEP -- is probably key not only to

our environmental health, but to our economic health. I think the work of the DEP, whether it be the decisions, the rules, or even the permits probably stand between the difference of whether or not the State is overdeveloped, polluted, and hazardous, not only to the health of the citizens but to those that would look at the State as a place to do business. And the difference between that vision and one which emphasizes the preservation of the natural resources we have, and is moving to correct the sins of the past where we didn't necessarily know the damage that we were doing to our natural environment.

I think over the last 15 years, we have provided the DEP with a tremendous amount of responsibility, a tremendous number of programs. We want the DEP, basically, to be all things to all people, in that we want the protection, but we don't, necessarily, always, in specific cases, want it to "impede" development and "impede" projects.

I think that given the responsibility we've provided, there may be times when, in fact, there are these choices that have to be made, and we should recognize that we can't have all the development. We can't have all the projects. We can't have all of the releases that some might envision, and have an overall clean and healthy State, one that is managing development in a way that's consistent with quality of life issues that we all know: traffic, congestion, and air quality.

One thing that we've said from the beginning on the Doria package is that the whole issue of whether or not the DEP is funded adequately to perform the responsibility should be examined. I think we've seen, even through the "fat years" of the '80s we had increases in the Department's responsibilities, but not necessarily consistent increases in the Department's resources, and in the last few years, we've seen cuts in the amount of resources to the Department.

One way that the Department, and thus the State, responded has been to increase fees and increase the percentage



of the budget that is actually coming from the regulated community. I'm not sure, but I don't think that the regulated community is very happy about that. I think it does change-- It is a public policy question in that it may change the relationship that DEP has with that regulated community, in that the person that's sitting across the table from a permit writer as a regulated industry, in fact, is the person that's paying that regulator's salary. I think that the whole issue of budget has to be examined. If we're going to-- If we want the DEP to be efficient, we have to provide funding consistent with that mission.

For lot of the specifics, in terms of providing timely information, we share some of those same concerns. In fact, we would suggest that some of the provisions which direct the Department to provide information to the regulated community should also be extended to the public. I cannot tell you the number of freedom of information requests and general inquiries that we have to the DEP that general citizens have that they then tell us about, that don't get answered. So I would suggest that we put in this legislation consistent reporting requirements or a particular process with a time--

ASSEMBLYMAN SMITH: Deadline?

MR. STUART: --deadline. That's good. I'm not sure deadline is the right word. So we know if we request particular information that is public information that we will know within 14 days, as you can do with the Federal government, whether or not we're going to be getting that information and what form it's going to be coming in.

More information should be available to the public in an electronic form and at a cost that is available to individual citizens' nonprofit groups. I think having that information in that form is probably going to streamline what the Department, in fact, knows about itself. As we've heard, there are many departments that are keeping sets of information

that is computerized, but the air computer information isn't consistent and can't be integrated into the water computer information. Those are just issues that I'm not sure that the Legislature has to legislate over, but it certainly is going to make the Department more efficient.

Again, if that information was then available to the regulated community it should also be made available to the public so that the public has a better sense of what's going on in the State.

Those are the main points that we wanted to cover. Again, it's to suggest that part of the problem that we've experienced is a lack of funds. Obviously, a more efficient use of the funds that are over there will address some of it, but just given the responsibility-- And probably what we're faced with in the '90s, is we're going to continue to have to fund the Department. We are going to have to come up with some long-term funding sources, for not only preservation and natural resources, but to replace the funds that have not been able to be used for hazardous waste cleanup; and even those that were set aside were not efficient to clean up all of the site that we have.

Finally, to request that when we're talking about providing information to the industry, that that also extends to providing that information to the public.

I'd be pleased to answer any questions that you have. I'll also be interested in knowing where the process goes from here?

ASSEMBLYMAN SMITH: Any questions for Mr. Stuart? (no response) Thank you, Mr. Stuart. Our next witness will be Eric Svenson from Public Service Electric and Gas.

E R I C S V E N S O N: Thank you very much for inviting me to speak.

Good morning, Mr. Chairman, members of the Committee, and staff. My name is Eric Svenson. I am the Manager of

Regulatory and Legislative Support with Public Service Electric and Gas Company. I appreciate the opportunity to provide PSE&G's views on Speaker Doria's Environmental Management Accountability Plan.

The mandate given to the Department of Environmental Protection given some 20 years ago was a significant challenge then, and this challenge has only escalated in intensity. As a society we are more and more recognizing the hazards of some of our past actions. In the present, this recognition has resulted in a sense of urgency which has led to a proliferation of Federal and State laws and regulations. At times, some have had unrealistic expectations and even conflicting provisions. The DEP grew at an alarming rate in response to both Federal and State mandates, and now has approximately 4000 employees. Program after program were added, each with separate staff.

The result is not unlike a business venture that has grown too quickly. It is very difficult to maintain control and stay focused. Policy objectives become mired in rigidity and compliance to detail, as opposed to being more broad in nature. Individual programs do not look beyond their immediate area and therefore, lose sight of the overall goals. Divisions and bureaus end up issuing conflicting policies and regulations. All of this results in a lack of coordination which fosters a lack of accountability. This, in turn, places a greater burden on the Commissioner and his direct staff as applicants seek such coordination from the top.

PSE&G is one of the largest investor-owned utilities in the country. Our facilities include: generating stations, gas metering stations, gas pipelines, overhead and underground transmission, office buildings, and local distribution headquarters. As such, we have frequent dealings with the Department. What we observe, especially relative to large projects, is a failure to issue permits in a timely and efficient manner.

From experience with our own facilities, large complex projects require a project management focus. Complex projects need to be addressed through a project management team concept headed by a high level manager with responsibility and accountability for all facets of the project and to whom management, in this case the Commissioner, is looking to ensure the establishment of milestones, assignment of tasks, coordination of resources, adherence to Department policy and regulations, and coordination between specific divisions and permittees. Such an approach can prove to be invaluable, but not in all cases. Smaller, less complicated permits do not require such integration.

For project management teams to succeed, they need the support and commitment of senior management -- a top down commitment. Individual team members must know that they are accountable to the project manager. Division management supplying the team members must also reinforce this accountability.

We were especially pleased to see in your legislative bill package before this Committee, the recognition that project teams should be formed when necessary.

Turning to another matter, we are also aware in our interactions with the Department that incomplete applications in general are a source of delay to all those involved in the permitting process. While I expect that the proposals regarding technical manuals and educational seminars will address this issue, applicants who continually submit deficient or insufficient data should be, as proposed, taken to task.

In today's age of limited budget resources, fee programs are a fact of life. However, fees should be permit specific and based on either the estimated or actual cost of administering, developing, and enforcing the applicant's permit. Fee programs should not be based on the concept of

"the deep pocket pays." In addition, applicants need the assurance that these fees are utilized for their regulatory oversight.

While we believe these bills represent a significant step, even more can be done. One proposal suggests that DEP utilize consultants to review permits when the number of pending permits exceeds the maximum number renewable on a timely basis by 150% or more. This threshold should be reviewed with consideration given to lowering it. With a constant backlog of such magnitude, where is the incentive to efficiently process permits?

Another proposal creates the permit management staff within DEP. In an effort to keep accurate records on the progress of permit reviews, it is important that the staff not hinder individual contacts between permit writers and applicants. Such dialogue is necessary when specific technical issues arise and conveying a question through a third party will only add to the bureaucracy.

I'm going to deviate from my written testimony here just to say that the record keeping provisions in the permit management staff provisions of the bill, I think, are very appropriate, because they provide the feedback through a project management concept to provide the milestones, tracking, and everything else that is necessary. I don't think that properly exists in the Department today.

Another proposal requires the development of technical manuals for permits within one year of enactment. Given the number and complexity of some permits, licenses, and certificates, the stated time period may be optimistic.

I'd like to conclude by saying that directionally, all of the proposals made by the Speaker are appropriate and make the best sense for the future of environmental regulation in New Jersey. Strong Department leadership is necessary to bring about these needed changes. We believe that such leadership is now in place at the Department.

Mr. Chairman, I submit to any questions that you may have.

ASSEMBLYMAN SMITH: Are there any questions for Mr. Svenson? (no response) There being none, thank you, Mr. Svenson.

Our next speaker will be Peter Furey of the New Jersey Farm Bureau.

P E T E R J. F U R E Y: Good morning, Mr. Chairman.

ASSEMBLYMAN SMITH: Good morning.

MR. FUREY: What I've tried to do with my testimony here is to condense the situation that pertains to the agricultural interests with regard to environmental regulation within the State.

Generally, we are supportive wholeheartedly of the legislative intent of the Speaker's package. In the interest of time, I would just like to refer you to the summary statement that I put together and attached to that. It is some recommendations that have come from the Farm Land Preservation Task Force.

I would like to say for the record -- or give you, rather -- five or six examples of the impact of the purpose of the legislation. I would like to emphasize that we don't see any one entity as a bad guy. DEP is not the bad guy, although they tend to give the regulated farmers fits. The legislators are not the bad guys, obviously. Legislation in New Jersey, on many occasions, has discriminated favorably to the support of farming. I think when the courts get involved, it is a symptom that something is awry.

Some of the cases that we have to illustrate the conflicts that we have that relate to our summary statement: In Middlesex County there was a farmer with a grain bin. He is a corn producer, and once a year it is augered up into the grain bin. A county health officer drove by and saw dust. He came in and looked at the size of the bin, looked at his

manual, said that the cubic storage space exceeded the standards, and all of a sudden he was an air pollution generating facility, and they threw the book at him.

A second instance was on the process of leaf composting. The Legislature banned the disposal of leaves in landfills. We jumped on this as an opportunity to compost leaves as a soil additive. When we went through the DEP regulations, initially, any farmer who would have taken leaves from a municipality to compost -- which is a highly desirable organic additive to the soil -- would have been regulated as if they were a landfill operator. That is an extremely cumbersome process. We got that fixed with legislation later on.

Wetlands: There is a whole series of wetlands problems from the first two years of implementation. One of the most immediate problems is the situation where vegetation quickly regrows and gets into the ditches. There is a stipulation that says if there is a ditch that has been covered with 50% of its original depth, that that would be considered a wetlands area; inviolate, and farming practices have to take heed of that. Those are happening time and time again in the State.

Another example would be vegetable processing plants. These are extremely important as an economic market for a lot of growers. It is directly tied to the open-space retention policies of the State. There is one Vineland vegetable processor that has been waiting six years for a SIU permit -- Significant Industrial User; six years. The same vegetable processor shut down a small part of his plant. He had to go to his local Assemblyman to get out of the computer, to stop receiving dunning notices for the permit fees. I don't know the specifics beyond that, but I can give you the name and phone number of the gentleman who is in charge of that.

Another example of conflicts that we think this package would help to redress, deals with odors. According to



the DEP Air Quality Code, any smell -- nonnatural; non, a smell that you wouldn't ordinarily expect -- at the lot line is considered air pollution. With livestock, as with all kinds of farming activities, that has been a problem over and over again.

Two final comments; two final examples: There is a vegetable grower in Tabernacle Township that had an irrigation pump. A fellow who worked for the DEP happened to be buying some produce on the weekend at his farm stand. He noticed the operation of an irrigation pump, and there was some leakage from the pump, oil dripping. A minor problem.

The farmer was visited shortly thereafter, and that leakage from the irrigation pump was considered a hazardous waste discharge. He had to spend over \$1000 putting in a concrete pad to prevent the oil dripping onto the soil. Now, technically, oil dripping on the soil -- maybe it's not a good thing -- but it was just totally out of whack in terms of the degree of the problem.

The last instance has to do with Green Acres and Open Space of which we are strong supporters of with Farm Land Preservation, etc. There can be conflicts there also, and one of them is this idea of rails to trails. Now, who could see any harm in taking an abandoned railroad right of way and making a bicycle path out of it? However, if the agency is not considerate of agriculture, that could be the beginning of the end of all the farms that may abut that area. This has happened in Warren County. Bicyclists lead to minibikes, lead to crop damage, lead to insurance problems, lead to vandalism, which is a very serious conflict for New Jersey farmers.

So, Mr. Chairman, I would just like to cease with that. We have some examples of problems and situations and we encourage the passage of the bill.

ASSEMBLYMAN SMITH: Thank you, Mr. Furey.

Our next speaker will be Dolores Phillips, New Jersey Environmental Federation.

D O L O R E S   A .   P H I L L I P S: It is now, good afternoon. I am Dolores Phillips. I am the Legislative Director for the New Jersey Environmental Federation. The Environmental Federation is a statewide, nonprofit environmental organization that works on environmental issues throughout the State. We represent approximately 71,000 members, and we have an adjunct coalition of 54 civic and environmental organizations.

Obviously, the goal of the environmental movement with respect to the New Jersey DEP would be to monitor and ensure that DEP is running efficiently and enforcing the laws that actually do exist. We have obviously had many concerns with this over the past several years, and certainly the best example of that was the efforts on the Clean Water Enforcement Act, where we had to look at legislation to mandate that DEP actually implemented the laws that currently existed.

The sponsors of this legislation should be commended for bringing up issues that are of concern to all of us who live in the State, and, in particular, it is heightening the level of debate on issues that are a problem that hopefully the Commissioner will take action on in the near future. I think the value of this package is that the threat of having micromanagement legislation forced down the throat of DEP, is enough to make the Commissioner act, hopefully, rather speedily.

With respect to that, we feel there are good aspects to some of this legislation, and we feel there are other aspects that are actually counterproductive to the goals the sponsors are actually looking to. In particular, I would like to point out three areas we have specific concerns with:

One is certainly the issue of hiring outside consultants. We feel that already one of the concerns that exist within DEP -- and probably the crux of the matter -- is the attitude of inertia that exists over at DEP. Certainly this inertia is contingent upon several variables. Certainly

with layoffs and impossible givebacks at their heels everyday, it is hard to maintain any type of morale, and obviously productivity there.

In the long run, the Commissioner, himself, has the responsibility to provide leadership to maintain efficacy, efficiency, and productivity. We are somewhat concerned about, what type of signal legislation that is micromanaging is actually sending to the Commissioner, and does that somewhat interfere with the Commissioner doing his job?

The Commissioner and several positions in DEP are obviously political appointments. We feel that DEP, at this point, is highly politicized. There are several aspects of this package that will actually politicize the Department even more. In particular, declassifying certain management staff, we feel, is sending the wrong signal. When you actually declassify positions that guarantee job security, do you really enhance the goals of this legislation, or is this counterproductive? From our experience, we feel that you are actually going to be losing senior staff; you are going to be harming morale; and, in fact, in the long run, you are going to be losing valuable staff and losing continuity in DEP.

We would urge, in particular, that the piece of legislation that addresses, you know, the declassification of the management staff-- We really feel that this should not be considered at all in this package.

In addition to that, the concern with outside consultants we have is-- We feel, in the long run, will this really be more efficient for DEP, or is it going to create a diversion of staff? We feel that, indeed, someone has to train the consultants who are going to be coming in. That is going to have to be senior staff which, right now, are processing those permits. After they are trained, somebody is going to have to review their work. So, are we really going to lower the backlog -- you know, abate that -- or are we going to actually exacerbate the situation?

We feel there are existing mechanisms already within DEP to address the backlog. Currently, DEP is not authorized for overtime. Why not authorize overtime? Why not expand the current staff, without risking the possibility of diverting senior staff, and possibly the conflict of interest that is going to be a concern, and certainly is addressed in this bill already? We are somewhat concerned about, where are you going to find objective consultants to come in, and, what happens to these consultants after they leave, also?

So, we would actually urge the Committee to give serious consideration to this particular measure, and really look at the effect of hiring outside consultants on DEP. We do not feel that action will abate the backlog of permit review.

Probably the third aspect of this that we are somewhat concerned about is the aspect of the permit management staff. We feel there already exists, you know, within DEP, a general classification for a permit staff. We do not feel it is actually going to help the situation. One needs to have certain credentials and certain experience to be able to address many of the permits. We feel that that particular piece of legislation does not necessarily add, but could actually hinder the goal that this legislation is trying to accomplish.

Again, we feel there are certain aspects of this that are of real value. I was not here for Commissioner Weiner's testimony, but I understand that he is certainly aware of this legislation, and is somewhat concerned as to, what is the precedent the Legislature is sending to the administrative agency to micromanage to the point where we have to tell the leader of a 4000-person agency to do a technical manual, to do an in-house seminar? I really feel the Legislature probably has gone a step too far in this regard.

I think the message can be sent, but we have many questions about this package and hope that it can seriously be

considered and looked at a little bit more in-depth as to its efficacy. We would be happy to provide further comment on the specifics, and provide you with some data on this, before this legislation actually moves.

Thank you.

ASSEMBLYMAN SMITH: Any questions for Ms. Phillips?

ASSEMBLYMAN ALBOHN: Just a quick question, or an observation: You speak of the problem of technical manuals, and so on. Would you deem it appropriate that no legislation could take effect until at least six months after the technical manual had been issued and made available?

MS. PHILLIPS: I would actually have to think about that.

ASSEMBLYMAN ALBOHN: We have one glaring example, you know, in the underground storage tank and the regulations for that, which still have not been issued, by the way. There are people out there still wondering what to do with their tanks. So, their situation might be getting a lot worse, but by the same token, they really don't know what to do because the regulations have not been issued.

MS. PHILLIPS: I think we all certainly recognize that the regs are a problem, again with the Clean Water Enforcement Act. We are just looking at the regs now which are supposed to go into effect July 1. I mean, obviously it is not going to happen. So, certainly it is a concern. I am not saying that I have all the answers. I think this package does heighten the level of debate. DEP knows that it has to shape up. We have particular concerns with some of the legislation on, will it really increase efficacy, or will it be counterproductive?

I would actually have to discuss with others the proposal that you put forth, and that may possibly be an answer.

ASSEMBLYMAN ALBOHN: Perhaps the Legislature should really handle that by including that kind of a provision in all of the bills of this nature that it enacts.

MS. PHILLIPS: But again, you go back to the same problem of having adequate staff to do that. I mean, the reality is that we are adding responsibilities on to DEP. There are reports that are going to have to be filed within specific periods of time to the Legislature and to the Governor. Who is going to do those reports? Are we going to be diverting valuable staff to write reports, when perhaps they should be doing other work?

We don't see the financing coming to DEP. If their budget continues to be cut back, what is the answer? I am not saying we have the answers. I am just saying, this is not, perhaps, the appropriate direction to go. Perhaps we need to look at this from a broader perspective. This has such a narrow perspective -- micromanaging.

Thank you.

ASSEMBLYMAN ALBOHN: Thank you.

ASSEMBLYMAN SMITH: Thank you. Our next witness will be Kelly Astarita, New Jersey Association of Realtors.

K E L L Y A S T A R I T A: Good afternoon. I am Kelly Astarita, Assistant Director of Government Affairs for the New Jersey Association of Realtors. We are a statewide trade Association comprised of licensed real estate brokers and sales agents.

We appreciate the opportunity to appear before you today to voice our support for Speaker Doria's Environmental Management Plan. We believe this effort is long overdue and absolutely vital to the economy of this State. However, our members do not support legislation, no matter how well-intended, which requires the hiring of additional staff at DEP. This is particularly true for fee-supported programs for which manpower calculations are unavailable. Therefore, we do not support the creation of a permit management staff in DEP, especially when a surcharge on permit fees would fund the hiring of this staff. Any increase in permitting fees is passed on by developers to the home-buying public.

While now is not the appropriate time to go into detail on specific bills, let me add that Realtor members have voiced strong support for a number of bills in the package, most notably Assembly Bill No. 4523, sponsored by Speaker Doria, which would require reporting, accounting, and auditing of the environmental program fees. The regulated community, which is often the victim of unjustified fee increases and bureaucratic delays, has a right to know how large amounts of private sector moneys -- moneys which could be used to stimulate the economy -- are being spent.

There are two issues which I would like to address which highlight what our members believe are deficiencies in the DEP regulatory process: ECRA and the Waterfront Development Act rule adoption which was overturned by an Appeals Court in December. Before I begin, however, I would like to note, to DEP's credit, that our members have had a very positive experience working with DEP on the Septic Advisory Committee in developing the Chapter 199 septic regulations.

Regarding the ECRA issue, our Association is very pleased with Monday's Appeals Court ruling invalidating three ECRA regulations and requiring DEP to develop more precise regulatory standards. The ECRA regulations have epitomized the uncertainty of the regulatory process. Now, there are a lot of comments that I could level at DEP on ECRA, but in regard to the uncertainty of the regulatory process, let me tell you this:

Even when a property owner can afford to do a cleanup plan under ECRA, there is nothing which precludes DEP from coming back a year later and saying, "I don't like the way you did this. You have to do it again to our specifications." Certainly, there is an air of uncertainty which surrounds this entire process.

Some other comments on ECRA that you have before you: Our Association feels strongly that ECRA reform is critical to

New Jersey's economic health. We hope that this issue will be afforded its own discussion by the Legislature in the near future.

The final issue I would like to address is the way in which DEP adopted last year's Waterfront Development Act rule amendments. Fortunately, these onerous regulations were invalidated by an Appeals Court, which held that the DEP had exceeded legislative intent in attempting to regulate development not immediately adjacent to the waterfront.

Although DEP had previously been admonished by the New Jersey Supreme Court in the Last Chance Development Partnership case to present well-crafted regulations which establish that a proposed development would have a direct effect on the navigable waterways, the Department apparently ignored this advice and ended up in court a second time, unfortunately at the taxpayers' expense. We believe that DEP has an obligation to the residents of this State to issue unambiguous standards that do not exceed the authority conferred to it by the Legislature.

Thank you for the opportunity to comment on this very worthwhile package. We look forward to a continued role in improving the regulatory process. Thanks.

ASSEMBLYMAN SMITH: Ms. Astarita, what is it that your Association would like to see in the way of ECRA reform?

MS. ASTARITA: I wish Hal Bozarth were still here. I have them in front of me, actually.

ASSEMBLYMAN SMITH: Just give us a 25-second summary.

MS. ASTARITA: Well, first of all, let me tell you this: We have a lot of small mom and pop business owners who are real estate members--

ASSEMBLYMAN SMITH: Right.

MS. ASTARITA: --who we are trying to do transactions for, who can absolutely not afford to do the ECRA cleanups. They cannot pay for them.



ASSEMBLYMAN SMITH: Okay. Who should pay for them?

MS. ASTARITA: Well, I totally agree with the ECRA law and that the person responsible for the cleanup should pay. But these are innocent property owners, in many cases, who are paying for these cleanups. Possibly--

ASSEMBLYMAN SMITH: What if you can't find the responsible party? Who should pay?

MS. ASTARITA: Well, there is a lot of money sitting around DEP. I was thinking about this a minute ago. If we do something and find out where all these moneys are, maybe we could use that pool of moneys that has been paid, for the people who are supposedly the polluters; apply those moneys to helping the innocent landowners to pay. Maybe, also, you could come up with some type of low-income financing for property owners who cannot afford to pay for the cleanups, so that they can.

ECRA has added so much time to the property development process. You think this is funny, but potential buyers die waiting for the entire process to be finished with. I talked to someone yesterday who started with ECRA -- who started the process on a site last May. This July it is expected to close. The deal has fallen through. I mean, industrial properties are not being sold -- period. I think we are going to see a real problem, you know, when the State Plan is implemented, because urban redevelopment is not going to happen in cities where there are properties that are contaminated. Property owners are walking because they cannot afford to pay for these. Cities are not foreclosing, because they cannot afford to do the cleanups, and you have abandoned properties that are sitting in the middle of cities. And urban redevelopment is not going to happen.

I hope we can talk more about this. I wasn't really prepared to go into detail on ECRA, but I hope that something will be done. Assemblyman Albohn has been so helpful on this.

ASSEMBLYMAN SMITH: Yes, he has.

MS. ASTARITA: I would like to see his legislation.

ASSEMBLYMAN ALBOHN: Look at my bill, Bob.

MS. ASTARITA: And you had a good bill, too. We would like to see ECRA reform. I wish Hal were here. He would jump up and clap, I'm sure.

ASSEMBLYMAN SMITH: Right. Your comments are certainly interesting in that respect. Are there any other questions for Ms. Astarita? (no response) There being none--

Tom Foote -- I'm not sure if I am saying that properly -- from the Jersey Coast Anglers Association? Tom, are you here? (no response)

ASSEMBLYMAN ALBOHN: He's gone fishing.

ASSEMBLYMAN SMITH: Gone fishing, right. Lastly, Lisa Verniero, Building Contractors Association of New Jersey.

L I S A V E R N I E R O: Thank you, Mr. Chairman and members of the Committee, for allowing me to speak today.

My name is Lisa Verniero. I am the Director of Government and Public Affairs for the Building Contractors Association of New Jersey. Our members build commercial and industrial buildings, as well as schools. It has been estimated that our members are responsible for 70% of all building construction in the State of New Jersey, aside from residential. Our members hire tens of thousands of union employees yearly.

In this time of economic recession, it is imperative that the permit process be revamped now, more than ever before. Our members wait for months, if not years, for developers or owners to obtain the proper permits. In turn, our members cannot hire the labor forces needed to start a project. In this slow economic time, permits must be expedited.

We are not asking that the environmental standards be lowered. We are asking DEP to be prompt, fair, reasonable, and

to have continuity. We support Speaker Doria's Environmental Management Accountability Plan and believe it is a step in the right direction.

Thank you.

ASSEMBLYMAN SMITH: Thank you so much. Are there any questions for Ms. Verniero? (no response) There being none, thank you for being present.

Is there any other member of the public who wishes to speak? (no response) Since there is no other member of the public wishing to speak, this public hearing is closed.

Thank you all for your attendance and participation.

**(HEARING CONCLUDED)**

APPENDIX

New Jersey State Library



SUMMARY AND FORMER COMMISSIONERS' BOXSCORE OF SPEAKER DORIA'S  
ENVIRONMENTAL MANAGEMENT ACCOUNTABILITY PLAN

Richard Sullivan

GENERAL COMMENTS: Mr. Sullivan does not have much affection for these bills insofar as they legislatively prescribe management. He thinks that they are a legislative ultimatum and would not be useful law. Overall, he believes that the DEP has the power to make most of these changes administratively and that it is a proper management function to do so.

Robert E. Hughey

GENERAL COMMENTS: From an overall standpoint, the package sounds very hard to disagree with. Who could be against a more efficient organization which is more responsive to those it serves? It is a reality the as DEP has taken on more and more responsibilities, its responsiveness has suffered. Part of the historical problem is the continual passage of legislation which adds responsibility without providing resources adequate to do the job. This package is a good example. Mr. Hughey basically disagrees with the overall premise. DEP has been the fastest growing department for over a decade. It's given every difficult task with optimistic and artificial timetables, and then criticized for falling behind. If the Legislature really wants to help, it can provide Scott Weiner with significant new resources and let him set the priorities and establish the management goals. In recent years, there has been entirely too much emphasis placed upon the problems associated with individual permits and too little on the overall objectives of the department. Even more important, Mr. Hughey thinks that it is time to have legislative services/DEP/ and the Treasurer's office agree upon a fiscal impact assessment for each new piece of legislation offered, and then to provide adequate resources within the legislation. This current package of bills would be a great place to start. In closing, it is easy to fault DEP because it is big and sometimes slow combined with the fact that its employees are not always the best at public relations. Let's remember that it is the toughest job in the State, always assuming new responsibilities, and it is required to say "no" more than every other department. Legislating its management priorities hardly seems the best way to help.

COMMENTS ON PARTICULAR PROPOSED BILLS

A-4511 (Doria/Franks)

Creates a permit management staff in Commissioner's Office to monitor and coordinate permit activities.

HUGHEY A-4511: It is unwise and unpopular to legislate management. No Commissioner should be told how to organize his/her office, and while permit coordination function may be a reasonable idea, being

told how it is to function and to whom it will report is overreach.

A-4512 (Bryant/Franks)

Changes civil service laws to provide for a single title for employees conducting permit reviews and establishes a procedure for reporting vacancies to the Legislature. Provides that all DEP division directors shall serve at the pleasure of the commissioner and that senior officials of each division shall be in the unclassified service.

SULLIVAN A-4512: Agree. He believes it does make sense for Assistant Commissioners to be appointed by the Commissioner and as well the Senior Officials at the highest levels. He does believe that the Commissioner ought to have the opportunity to pick the key people within his Department and then be accountable to run the place. However, he feels that it is inappropriate to reach down to the Assistant Director levels for Commissioner appointments. Most of these are experienced career people who provide memory and continuity, as well as, competence. Generally, they execute policies defined by their superiors.

A-4513 (Salmon/Mecca)

Requires DEP to compile basic "boxscore" information about the technical completeness of applications submitted by consultants and engineers.

HUGHEY A-4513: mandates a 20-day turn around; this bill includes a major increase in responsibility without provision of resources. This responsibility is going to require significant new money, or alternatively, will pull resources away from working divisions.

A-4518 (Cimino/Collins)

Requires DEP to classify its permits within each program into groups based upon environmental impact, medium (i.e., air, water, soil), relative complexity of review, and overall status of project. The bill also requires DEP to establish permit review guidelines establishing average times for review, disciplines required in the review, and the level of approval needed within the Department (i.e., bureau chief, assistant director).

HUGHEY A-4518: actually requires a risk assessment; this bill includes a major increase in responsibility without provision of resources. This responsibility is going to require significant new money, or alternatively, will pull resources away from working divisions.

A-4519 (Cohen/Shinn)

Authorizes DEP to use outside consultants to review permit applications when the overall backlog within a program exceeds certain levels. The bill also establishes a conflict of interest policy for contractors.

SULLIVAN A-4519: Agree.

A-4522 (Ford/Frelinghuysen)

The "Fee Revenue and Expenditure Accountability and Disclosure Act." This bill would require the Treasurer to include all anticipated fee revenue "above the line" in the budget document. The bill also requires DEP to submit annually performance data for each fee supported program similar to the data that is provided for programs funded by the General Funds.

HUGHEY A-4522: requires an annual audit; this bill includes a major increase in responsibility without provision of resources. This responsibility is going to require significant new money, or alternatively, will pull resources away from working divisions.

SULLIVAN A-4522: Agree.

A-4523 (Doria/Martin)

Requires a managerial and financial audit of fee programs in DEP.

SULLIVAN A-4523: Agree.





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May 9, 1991

SUPPORT FOR  
ENVIRONMENTAL MANAGEMENT  
ACCOUNTABILITY PLAN

TYPES OF ENVIRONMENTAL REGULATION

- WATER: supply and allocation
- WETLANDS: classification, supervision
- WILDLIFE MANAGEMENT: game code
- UNDERGROUND STORAGE TANKS: registration and monitoring
- PESTICIDES: licensing of applicators, etc.
- AIR & NOISE: odors considered pollution
- WASTE MANAGEMENT: organic wastes, refuse disposal
- LAND USE: Pinelands, stream encroachment permits, pending state master plan, others contemplated (endangered species habitat protection, aquifer recharge areas, wellhead protection, non-point source controls, trout production areas, landfill siting, others)
- FARM INFRASTRUCTURE: vegetable processing plants, right to know rules covering farm suppliers

TYPES OF PROBLEMS

- urban oriented legislation conflicting with rural/farm conditions
- lack of understanding of farming by DEP staff (e.g. grain bins/air quality)
- imprecise terminology in regulations leaving too much discretion to enforcement personnel; inability to adjust regulations based on real-world conditions
- conflicting policy objectives (open space protection versus environmental enforcement; e.g. So. Jersey processing plant)
- lack of uniform standards across the state
- tendency to use permit fees in lieu of general fund taxation
- "hand-me-down" regulations from federal agencies
- occasional inter-personal conflicts

OBSERVATIONS

- Speaker Doria's package of bills warrant endorsement
- DEP personnel in many instances will work with farming interests to resolve problems, but the process is slow
- the Right to Farm Act and the use of "acceptable management practices" can provide a useful tool if accepted by DEP
- total costs of enforcement are rarely understood by DEP administrators or environmental protection advocates
- it's always a healthy exercise to systematically review government regulations of any type



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1. Oversight on regulations that impact agriculture. There is need for a legislative process to review and assess the regulatory impact on Agriculture.

The consensus of the group was that to maintain agriculture there must be a profitable enterprise. Profitability in agricultural markets translates into a level playing field. New Jersey farmers must be competitive in their production costs and in their agricultural practices. Regulatory activity, in any area, that further restricts or limits the New Jersey farmer will fail to allow him to compete in the global marketplace.

2. Water Management. Water management is a critical issue for the viability and maintenance of Agriculture. Agricultural water needs should be given absolute attention in the State Plan. Agriculture also provides an important contribution to the management of this valuable resource as agricultural lands serve as an important component in aquifier recharge.

Water availability not only includes adequate and unrestricted water supply, but also assistance with the technologies that enhance water management, conservation, as well as relief from fees associated with water consumption.

Since water is critical to all animal and plant life, water management is an imperative to the operation of agricultural enterprises.

3. Permits and Licenses. Most New Jersey farms are family operations, without adequate resources to complete and process the numerous permits and licenses required by State, County and local agencies. In many cases the requirements are inappropriate or duplicative. These processes should be simplified with a sensitivity to agricultural

DE 111

needs. In many instances local authorities have a better understanding of agricultural practices. Municipalities should be given the authority to represent higher levels of government in the issuance of various permits and licenses.

4. Waste management. <sup>Water</sup> ~~Water~~ management is a critical issue for all of New Jersey's 7.6 million residents. Agriculture has been identified as an important component for the disposition of many types of waste. If managed properly, both the residents and agriculture can derive mutual benefits through land disposal of various wastes. However, these waste products must be free of toxic contaminants to assure food, air, and water protection as well as the avoidance of future liabilities to the land owner.
5. An affirmative statement on the issues of trespass and vandalism. Open lands will attract substantial recreational interests. This traffic will undoubtedly increase private property exposure and vulnerability to vandalism, lettering, theft, etc.

In addition to improving police surveillance to protect private property local and State authorities must clearly define liability of landowners who are subjected to litigation arising from trespassing and other acts.

6. Competitive Costs. Competitive New Jersey agriculture must employ a high percentage of unskilled seasonal workers. Compensation and employee benefits that are in excess of Federal requirements add to the per unit cost of production. In large intensive operations, such as fruit and vegetable production, this increased cost puts the producer at a significant competitive disadvantage.

New Jersey producers compete against national and global producers who

may have access to a less costly workforce.

Any mandated costs resulting from regulation unique to New Jersey limits the marketability of our agricultural products.

7. Regulatory Enforcement. The State Plan must assure producers that there will be uniform standards and enforcement. This includes zoning, construction, housing and labor facilities, marketing of farm products, farmland assessment, etc.

Uniformity <sup>of</sup> ~~is~~ regulation also includes conflicting or excessive restriction beyond Federal regulation. Particularly with respect to pesticides. Legislation that limits compounds to be used or the method of application will prevent growers from using the agricultural practices of their neighboring competition.

The regulatory process must recognize the concept of "Acceptable Management Practices" (AMP's) in Agriculture. These AMP's must serve as the basis for the regulation of agricultural activities in areas impacted by the State Plan. The AMP's, which are developed by New Jersey Agricultural Experiment Station (NJAES), and approved by the State Agricultural Development Committee (SADC) are based upon scientific research that will protect health and welfare of all of New Jersey citizens.

A comprehensive State Plan can enhance agricultural activity in New Jersey by abating urban encroachment and maintaining a political/economic environment in which New Jersey farmers can fully utilize production/marketing advantages unique to the State. However, the future of the State Plan and New Jersey agriculture will be an economic determination.



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### TESTIMONY OF THE NEW JERSEY ASSOCIATION OF REALTORS

Presented by Kelly Astarita  
Assistant Director of Government Affairs

### "THE ENVIRONMENTAL MANAGEMENT AND ACCOUNTABILITY PLAN"

Assembly Energy and Environment Committee  
May 9, 1991

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member of the NATIONAL ASSOCIATION OF REALTORS.

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Good morning. I am Kelly Astarita, Assistant Director of Government Affairs for the 38,000 member New Jersey Association of REALTORS, a statewide trade association comprised of licensed real estate brokers and sales agents.

We appreciate the opportunity to appear before you today to voice our support for Speaker Doria's Environmental Management Plan. We believe this effort is long overdue and absolutely vital to the economy of this State.

However, our members do not support legislation, no matter how well-intended, which requires the hiring of additional staff at DEP. This is particularly true for fee-supported programs for which manpower calculations are unavailable. Therefore, we do not support creation of a Permit Management Staff in DEP, especially when a surcharge on permit fees would fund the hiring of this staff. Any increase in permitting fees is passed on by developers to the homebuying public.

While now is not the appropriate time to go into detail on specific bills, let me add that REALTOR members have voiced strong support for a number of bills in the package, most notably Assembly bill 4523, sponsored by Speaker Doria, which would require reporting, accounting and auditing of environmental program fees. The regulated community, which is often the victim of unjustified fee increases and bureaucratic delays, has a right to know how large amounts of private sector monies--monies which could be used to stimulate the economy--are being spent.

There are two issues I would like to address which highlight what our members believe are deficiencies in the DEP regulatory process--ECRA and the Waterfront Development Act rule adoption which was overturned by an appeals court in December.

Before I begin, however, I'd like to note that our members

have had a very positive experience working with the DEP on the Septic Advisory Committee in developing the Chapter 199 regulations.

Regarding the ECRA issue, our Association is very pleased with Monday's appeals court ruling invalidating three ECRA regulations and requiring DEP to develop more precise regulatory standards. The ECRA regulations have epitomized the uncertainty of the regulatory process. For example, even when a property owner can afford to cleanup a contaminated property (that he may or may not be responsible for contaminating), there is nothing that precludes DEP from coming back a year later and requiring another cleanup. In fact, in working with various industry groups and our industrial and commercial REALTOR members, we have found that it is not uncommon for DEP to require the same property to go through the entire ECRA process 2 or 3 times!

In addition, while there is no question that many of the individuals working for the Department are top-notch professionals, a number of its staff are inexperienced. For example, the average case manager in the ECRA program is young, just out of college, with limited knowledge of technical environmental issues. Often, because of the length of time involved in getting through the ECRA process, more than one case manager will be assigned to an ECRA case. This turnover in personnel, coupled with an inexperienced staff, undermines DEP's ability to effectively administer regulatory programs.

Our Association feels strongly that ECRA reform is critical to New Jersey's economic health. We hope that this issue will be afforded its own discussion by the Legislature in the near future.

The final issue I'd like to address is the way in which DEP adopted last year's Waterfront Development Act rule

amendments. Fortunately, these onerous regulations were invalidated by an appeals court, which held that the DEP had exceeded legislative intent in attempting to regulate development not immediately adjacent to the waterfront.

The 1914 Waterfront Development Act was designed to facilitate navigation and commerce by regulating development such as docks and piers, and not developments upland of navigable waterways. Although DEP had previously been admonished by the New Jersey Supreme Court (in the Last Chance Development Partnership case) to present well-crafted regulations which establish that a proposed development would have a direct effect on the navigable waterways, the Department apparently ignored this advice and ended up in court a second time, unfortunately at the taxpayers' expense. We believe that DEP has an obligation to the residents of this State to issue unambiguous standards that do not exceed the authority conferred to it by the Legislature.

Thank you for the opportunity to testify on this very worthwhile package. We look forward to a continued role in improving the regulatory process.



