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Public Hearing

before

ASSEMBLY TRANSPORTATION AND COMMUNICATIONS COMMITTEE

"The Department of Transportation's proposed
Employer Trip Reduction Program"

LOCATION: Freeholders Meeting Room
County Administration Building
Morristown, New Jersey

DATE: April 29, 1993
2:00 p.m.

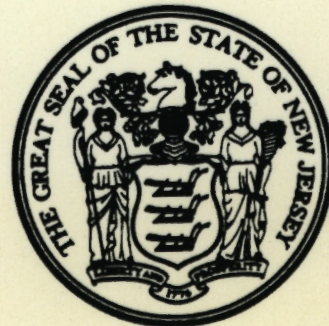
MEMBERS OF COMMITTEE PRESENT:

Assemblyman Alex DeCroce, Chairman
Assemblyman Ernest L. Oros

ALSO PRESENT:

Assemblyman Arthur R. Albohn
District 25
Assemblyman Robert J. Martin
District 26

Amy E. Melick
Office of Legislative Services
Aide, Assembly Transportation and
Communications Committee



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Public Hearing

before

ASSEMBLY TRANSPORTATION AND COMMUNICATIONS COMMITTEE

The Department of Transportation's proposed
Employer Trip Reduction Program

DATE: April 28, 1977
3:00 P.M.

LOCATION: Transportation Hearing Room
County Administration Building
Morristown, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Alan DeMarco, Chairman
Assemblyman Ernest L. Gros

ALSO PRESENT:

Assemblyman Robert A. Aldohn
District 22
Assemblyman Robert J. Martin
District 22

Mr. E. Wolff
Office of Legislative Services
State Assembly Transportation and
Communication Committee



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ALEX DECROCE
Chairman
FRANK CATANIA
Vice-Chairman
FREDRICK P. NICKLES
ERNEST L. OROS
JEFF WARSH
JERRY GREEN
DAVID C. KRONICK

New Jersey State Legislature

ASSEMBLY TRANSPORTATION AND
COMMUNICATIONS COMMITTEE
LEGISLATIVE OFFICE BUILDING, CN-068
TRENTON, NEW JERSEY 08625-0068
(609) 984-7381

NOTICE OF A PUBLIC HEARING

The Assembly Transportation and Communications Committee will hold a public hearing on the Department of Transportation's proposed Employer Trip Reduction Program.

The Hearing will be held on Thursday, April 29, 1993 at 2:00 PM at the Freeholders Meeting Room (5th Floor), County Administration Building, Court Street, Morristown, New Jersey.

The public may address comments and questions to Amy E. Melick, Committee Aide (609) 984-7381. Those persons presenting written testimony should provide 15 copies to the committee on the day of the hearing.

Note: Public parking is available on Schuyler Place.

Issued 04/14/93

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ASSEMBLYMAN ALEX DeCROCE (Chairman): Good afternoon, ladies and gentlemen. Before we begin, I would like to welcome you all to the Assembly Transportation and Communications Committee. My name is Alex DeCroce. I am Chairman of the Committee, and I represent the 26th District. We happen to be in the 25th District, represented by Assemblyman Arthur Albohn, who I asked to join us today since it is his district, and he has an interest because of the multitude of companies that are in Morris County. A lot of them are in his district, as well as mine, and will be, in all probability, those who will have to adhere to these requirements. I would also like to introduce Ernie Oros -- Assemblyman Ernest Oros, from Middlesex County, representing the 19th District. I think Assemblyman Martin will be here later on.

So at this time, I just would like to make a short statement.

Today we will be hearing from the Department of Transportation and various interests regarding the proposed Employer Trip Reduction Plan. Under this legislation sponsored by Senator Walter Rand and myself, the Department of Transportation has been charged with developing a plan to assist New Jersey businesses in complying with the requirements of the Federal Clean Air Act. The Department has been working cooperatively with interested parties during the past several months in accordance with the provisions of the Act. They have submitted draft regulations to the Legislature for comment prior to the publication of the regulations in the "New Jersey Register."

I'll tell you all to make sure you read them closely, because as I recall, they will be published on July 6. So if you have any comments on anything -- you want to disagree, or any one you might want to disagree with -- you better get these comments to us or to the Department.

We will be hearing testimony from the Department, the business and environmental communities, and others regarding the proposed Trip Reduction Plan. I'm certain you are all aware Morris County will be deeply affected by this Program. This is a progressive County, which has received the benefit of having many corporate enterprises located here within the last 20 years. Many of these businesses, which employ 100 or more persons, will be required to comply with the regulations we have before us today.

We recognize and applaud the efforts which are already being made by businesses in this area, by the Morris County Transportation Management Association, and also by successful programs such as McRides, who is here today, and who I helped kick off one time. Through programs such as these, businesses in this area and statewide will go a long way in helping to ease traffic congestion, reduce pollution, and maintain and improve the quality of life of all of our citizens.

I'd like to now call upon Assistant Commissioner Christine Johnson, from DOT, to present the overview of the proposed Employer Trip Reduction Program to us.

Thank you for coming, Commissioner.

A S S T. C O M M. C H R I S T I N E M. J O H N S O N:
Thank you for the invitation. Let's see, is this on?
(referring to microphone) (no response)

Last year, when you cosponsored a bill which gave the Department authority to implement what is a Federal mandate -- and I do want to emphasize that today -- I think you appropriately recognized that this program would be one of the most far-reaching that we have implemented in the State of New Jersey. It will affect 5000 employers at minimum, and potentially as much as half of the working force of New Jersey. So you asked us to come back before we promulgated the regulations and give you a chance to review them. We think that's appropriate, and we are happy to be back and give that opportunity. My staff will give a more detailed overview.

At the very beginning, I made a commitment to you and, very publicly, to the business community that we would try to make this as paperless and as business-friendly as possible. I am still doing everything I can to keep to that commitment.

I want to outline to you a little bit of what we have done, because we have probably stretched the boundaries of what you can do in promulgating a regulation and bending over backwards to try to consult with the potential regulated community.

We started off by forming three working groups; two smaller ones where they were fairly selected, consisting of about 20 people each, who we met with five times each, going through sort of issue by issue; and then a much larger working group that had an invitation list of 180 names that also included TMA's, counties, and various other public groups.

I want to publicly acknowledge the New Jersey Business and Industry Association, who has taken a very positive attitude on this. I mean, they didn't have to, and they have taken a leadership roll in formulating their own policy group, which has met with us and with staff.

I had met at one time with a very large group, and again with staff, going through issue by issue on this. Through this process, we have addressed some very complex issues in which I felt, personally, we were walking a tightrope between what I thought was going to get us by with the Federal mandate, and what legitimately business was bringing to us on what would work. That, fundamentally, is what we have to do. What's going to work?

I'd like to give you a sense of some of the concessions we have made. We have given a very broad interpretation of what good-faith effort is, and second, permitted exemptions and waivers from penalties. We are one of the few states to do this -- or few entities with this requirement to do this. We have also allowed that these

appeals be heard not before the DOT, but before, essentially, a peer review board, so that it's businesspeople hearing other businesspeople. DOT, of course, will be represented on it.

We have allowed employers to survey early, and use their own survey form as long as they get the information that is required. We're not doing too well, huh? (refers to microphone) We are not going to require periodic surveys of employees. For example, in 1995, this was one that was very tough for me to give on, because it was a way for me to check and see how the State was doing before, in essence, doomsday came. We said, "No, that was not a requirement -- an explicit requirement -- in the Federal law. We will give on that." Nor are we going to require that all the employer information be submitted to DOT.

I think we have taken a fairly creative approach in not creating a huge bureaucracy to review and certify all of these plans, nor are we requiring anything after 1996. Since EPA did not explicitly say anything, we are remaining silent on it.

Finally, we took the unprecedented step of submitting a draft document to a number of employers across the State, and getting comment before we sent it to you. We have benefited by that. If you count up the more than 40 presentations and consultations we have had with the regulated community, we have talked to about 1500 employers prior to the document that you have, which is about a third of our regulated community.

In addition, we've mailed out -- we've contacted about 6000 employers and mailed out about 12,000 brochures to let them know what we're doing, and giving them a little postcard -- you can see it here -- to send in to us so that they can get information on when the hearings will be held, and more detailed information about what's going on.

This is just the beginning. I am the first to say that this is an evolving document, that will only improve with

good dialogue between us, where we're on the same side of the table with the business community understanding what we've got to do, but us understanding what they can and cannot do.

With that overview, I would like to introduce Noreen Cardinali; who has really done the yeoman's work on this, and have her present the Committee with, essentially, what the regulations entail.

ASSEMBLYMAN DeCROCE: Thank you. I would like to introduce Assemblyman Martin, who has now joined us from Trenton. He is a very busy young man.

ASSEMBLYMAN MARTIN: Thank you. I do apologize. We met with the Judiciary Committee to close till 1:00 p.m. I came up the highways as fast as I could, while still maintaining the appropriate speed limit. (laughter)

ASSISTANT COMMISSIONER JOHNSON: And I'm sure it was congested, right?

Thank you very much.

N O R E E N S. C A R D I N A L I: The same presentation that you're going to see today is the presentation that we've made to, as Christine mentioned, the 1500 businesses throughout the State that are part of the regulated community. I'm going to try to walk you through the major components of the regulations.

The first question that I think most people ask is, "What is the Employer Trip Reduction Program, and why is it being implemented?" As Christine mentioned, our primary goal is to reduce air pollution created by commuting vehicles during the peak period, because the technological improvements will not be enough for us to reach our goal with cleaner air. The other benefits that the Department sees in this program are the traffic congestion relief at peak periods, as well as cost savings to employees throughout the State. And there are hidden benefits to the employers.

Just to go a step further with the mobility reasons for Employer Trip Reduction: There are many areas of the State, as I'm sure all of you know, that are suffering from tremendous traffic congestion, especially during peak periods. We do not have at the Department -- we don't have the capacity nor the resources to build our way out of the problem, and we just don't have the financial resources to do that either.

The two paragraphs that are in the Clean Air Act -- the 1990 amendment to the Clean Air Act, and they are really just two paragraphs -- as well as the New Jersey Traffic Congestion Air Pollution Control Act, will really change both the way the Department does business with the business community, as well as change the way the business community looks at their employees and their employees' commuting patterns.

It forces us to focus in on better land use planning, and moving more people, not just on fewer vehicles. It focuses in on public transit opportunities in the suburbs, including new and improved Park and Ride lots in the suburban areas, and it also creates an opportunity for us to put together some timesaving programs that are in conjunction with Employer Trip Reduction; timesavings such as the high-occupancy vehicle lane that we're planning on implementing next year on Interstate 80.

It really makes the employers much more of a partner in the transportation decision-making process, too, because by focusing in on the commuting trips, the employer gets the opportunity of saying what things will meet their employees' needs best.

Really what the State law did was, it empowered the Department with developing the program. If it had not been for the passage of the State law, the requirements and the regulations would have come through the Department of Environmental Protection and Energy.

Why do the regulations focus in on employers? The employers can effectively influence the employees' travel patterns through work site incentive programs. Commuting travel measurably contributes to the regional air pollution throughout the State and in other states. Commuting vehicles typically carry only one or two people, as opposed to your recreational trips where they do carry usually more than one person. Also, the Federal Clean Air Act requires that employers increase their average passenger occupancy by 25 percent by 1996.

To whom do the regulations apply? There is a definition in the regulations for what constitutes an affected employer that includes: public, private, institutional, as well as nonprofit employers that have 100 or more employees at individual work locations in any of 18 of New Jersey's 21 counties. We have excluded Atlantic, Cape May, and Warren Counties because there is less of an air pollution problem in those counties, and we are not required to include those counties in the regulations.

We have also made exceptions based on the EPA's guidance, and those exceptions would include employers that have 100 or more employees, but have fewer than 33 employees reporting between 6:00 a.m. and 10:00 a.m., which is the peak period that is being guided to the states through EPA; as well as employers that have 100 or more employees for fewer than six months of the year.

ASSEMBLYMAN DeCROCE: Can I just interrupt you for a second?

MS. CARDINALI: Certainly.

ASSEMBLYMAN DeCROCE: You're saying if I am an employer and I have 120 employees, if I have 40 a shift, then I am subject to this program?

MS. CARDINALI: That's correct.

ASSEMBLYMAN DeCROCE: If I have 100 employees, and I have maybe 25 on the first and second shift and the balance on the last shift, I don't have to--

MS. CARDINALI: You're not an affected employer under the regulations.

ASSEMBLYMAN DeCROCE: Okay.

MS. CARDINALI: Okay. Just to give you an idea of the magnitude of the program, this is really just an overview of the number of work sites that have 100 or more employees. This is not necessarily that every single employee that's on this list has to do something to change their commuting patterns, but it gives you an idea of the magnitude of the program. We're talking about 1.7 million employees, and that includes government employees throughout the State that are going to be covered in work sites that have 100 or more employees, which represents 47 percent of the workforce.

I like this overhead (indicating visual aid), because it really gives you a flavor of what exactly an employer is required to do. It's really six steps.

The first step is that an employer is required to register with the Department of Transportation. We would estimate that if the regulations are promulgated by November, that the employer would be registering with the Department by either December of 1993 or January of 1994.

The second step that an employer has to make is, they have to designate an Employee Transportation Coordinator at each location that has 100 or more employees that meets the requirements the affected employer has to find in the regulations. That Employee Transportation Coordinator can be appointed as early as now. In fact, we have been encouraging employers early on to do that.

The third action step for an employer is, they have to survey their employees' commuting patterns. The regulations go into some detail about how the survey should be conducted.

The fourth action step -- and this is taken right out of the Federal law -- is that by November 15, 1994, the employer must submit to the Department an initial plan of the trip reduction strategies for each location that has 100 or more employees.

The fifth action step for an employer is, the employer must implement the Trip Reduction Plan, which is really the employer's commitment to what strategies they are going to implement.

The sixth action step is, that by November 15, 1996 the employer must submit to the Department of Transportation an updated plan which documents their average passenger occupancy progress, and documents they're achieving the APO target -- Average Passenger Occupancy Target -- for the average vehicle occupancy zone in which the facility is located.

ASSEMBLYMAN MARTIN: Can I just have a point of clarification on that? I think the fourth one said you have to submit by November 15, 1994. Is that the time when number five -- the implementation -- occurs, or is there some further time? When does number five--

MS. CARDINALI: Number five? Those steps are actually done in chronological order. So the assumption is that by November 15, 1994, the employer will submit the plan. That is going to be a plan that says what strategies they're going to be implementing that will effectuate an increase by '96.

ASSEMBLYMAN MARTIN: When does number five have to occur?

MS. CARDINALI: Between 1994 and 1996 in order to achieve the goal.

ASSEMBLYMAN MARTIN: Is there an unstated step there? By submitting the plan is that plan -- does that have to be approved by DOT?

MS. CARDINALI: That's correct. Yes.

ASSEMBLYMAN MARTIN: And if it's not approved, then they have to revise their plan?

MS. CARDINALI: That's correct. Yes.

I'm using a fair amount of acronyms. I am going to attempt to explain what those acronyms are. The first one that I've used is Average Passenger Occupancy, and the second one is Average Vehicle Occupancy. The first one pertains to the work location; how an employer is responsible for calculating their passenger occupancy. That simply is the number of employees arriving at a specific affected work location between 6:00 a.m. and 10:00 a.m., divided by the number of vehicles in which they arrive. That's at the work site.

Average Vehicle Occupancy -- which is the measure by which we determine the baseline by which employers are being determined to achieve a goal -- is the number of employees arriving at all work locations within the nonattainment area between 6:00 a.m. and 10:00 a.m., divided by the number of vehicles in which they arrive.

Part of the requirements of the Federal Clean Air Act -- the two paragraphs that I mentioned, and also in the guidance that has come forth from the Environmental Protection Agency -- indicate that the states are responsible for establishing Average Vehicle Occupancy zones. So what we did in the Department, we collected data last summer through home-base surveys of employees to calculate what the average vehicle occupancy was within certain areas of the State; within the 18 counties that are affected by the regulations. So the numbers that you see up there for baseline represent the results of those home-base surveys.

The way we think we've put together the zones is what we hope will be the least painful for employers throughout the State, especially those employers in the 18 counties, because for the most part what it's done is, it has focused in on-- Suburban employers have a unique set of circumstances. They

don't always have all of the resources -- the transportation resources -- to be able to comply as easily as an urban employer might in an area where there is a lot of public transportation.

So we've divided it into two zones, and in the urbanized zone we've actually subdivided that into subareas. The numbers that you see there, the baseline is 1.22 in the urbanized areas. We have one target for basically the central business district of Newark, as well as the Jersey City area, which would be 1.97. We have another target for the more suburbanized area -- more suburbanized -- and there are degrees of suburbanization in those areas that this doesn't exactly explain, but the other targets within that urbanized area are 1.73 and 1.46. In the suburban area we have, again, tried to minimize the pain. Therefore the baseline is 1.12 and the target is 1.4. If we had--

ASSEMBLYMAN DeCROCE: You want to explain that baseline 1.12? What exactly does that mean?

MS. CARDINALI: The baseline is the result of the home-base surveys that we did with employees -- contacting employees at home--

ASSEMBLYMAN DeCROCE: Oh, I see.

MS. CARDINALI: --to determine how they are currently getting to work. If you had taken all 18 counties and put them together, you would've had a much higher baseline. That baseline for the suburban areas would be 1.15. So, by segregating the urbanized area away from the suburban area, we feel we've caused the least amount of pain in the suburban areas.

In calculating the work location, Average Passenger Occupancy -- and I'm just going to really focus in on what's included and what is not included under the regulations as they are written -- is, all employees that arrive, regardless of the length of time that they are at the site, as well as employees

that either work at home -- we consider that teleworking; that is, working at home or working at a satellite work location that's near the home -- or have a compressed workweek -- a day off during the typical week of the survey. A typical week would be a week that does not include holidays, for example.

Arriving vehicles would include all passenger cars and trucks with fewer than seven occupants, motorcycles, and mopeds. Those are really vehicles that do emit air pollution. Arriving vehicles would not include, under the regulations: van pools that have seven or more occupants, any transit vehicle that arrives at the work site, bicycles, nonmotorized vehicles, and those with alternative fuels, which are defined by the Department of Environmental Protection and Energy.

What is required as part of the Trip Reduction Plan? What is an employer required to submit as part of their plan requirements? The plan must document the Average Passenger Occupancy and describe the actions that an employer will implement to increase that Average Passenger Occupancy at the work location. We do not prescribe in the regulations any specific actions that an employer must take. It is assumed that an employer will take whatever actions are necessary, and implement whatever strategies are necessary to achieve the 25 percent increase by 1996, but we do not prescribe specific strategies.

The employers have flexibility, therefore, to tailor their own programs to meet the needs of their employees. However, we do encourage employers to take into consideration the characteristics of the work site, the characteristics of the types of employees that work at that work site, the schedule that is needed for implementing the actions so that they do achieve the goal by 1996, and, also, a process for monitoring progress towards achieving the goal. As Christine mentioned, we are not requiring a 1995 submittal.

An example of an incentive-- I'm sure many of you are thinking: What does an employer have to do to create an incentive for an employee to choose an alternative to commuting to work, other than driving alone? These are just some examples of some incentives that have been used in other areas of the country that have been found to be successful: There are financial incentives for employees who use commuting options. Those are tax-free benefits, both under State law as well as Federal law now. We also have parking management, which we are encouraging employers to consider, which may include preferential treatment for people that come in carpools and vanpools, as well as parking fees if they're necessary. Company owned and operated vanpool and carpool fleets are also an incentive program for employees, and a guaranteed ride home program, which is simply a program that an employer can either put in place or can work with a transportation management association to put in place. It guarantees that the employee will have an emergency ride home in the event that they need one.

Also, I'd mentioned earlier on-site matching, as well as information that an employer might choose to provide to the employees: alternative work schedules, which are also included and encouraged; and also, working at home and working at satellite work locations is encouraged.

ASSEMBLYMAN OROS: Excuse me, you mentioned some states that have been successful. What states are you referring to?

MS. CARDINALI: Well, the state that has the most experience and the longest track record of implementing programs like this is California. We have not used California specifically as a model for this program, largely because California is a model that we've learned-- Mistakes that have been made out in California. We hopefully have put together a program that rectifies some of the mistakes that were made early on with the California program.

There are other areas, mainly urbanized areas of the country, that have implemented programs, like in Arizona. Also, there are 11 states that are required to implement programs as a result of the 1990 Clean Air Act amendments. So we're one of 11 states that have to implement this program by 1994 as part of the plan submittal.

Just to walk you through the schedule, this is the employer submittal schedule: By November 15, 1994, the employers have to submit the initial plan, which has -- as included in the plan -- the baseline Average Passenger Occupancy and the plan program for that particular work site. By November 15, 1996, the employer has to submit an updated plan that has the revised Average Passenger Occupancy, and a revised program if the program has failed to achieve the goal.

After 1996, we have not required any future plan submittals unless they're mandated by Environmental Protection and Energy, I mean -- I'm sorry, the EPA -- as well as the employer had not achieved the APO target. So there would be a requirement for the employer to submit in 1997, if they did not meet the target in 1996. That would be their Average Passenger Occupancy report, which documents their progress toward meeting the target.

New Jersey law -- the New Jersey Traffic Congestion and Air Pollution Control Act -- has within it a plan certification requirement that prior to submittal to the Department, compliance plans must be reviewed by an approved certifier and certified for accuracy and efficacy. It is envisioned as part of the program and as part of the regulations that the Department of Transportation would select, train, and approve these people that are certifiers. The employers would then select a certifier from the Department of Transportation's list of approved certifiers. The certifier must be independent of the employer -- that's included in the State law -- and that means no current or recent past

employment or contractual relationship between the employer and the certifier, as defined under the regulations. The certifier would have to review the plans against a criteria that is set by the Department as part of the regulations, and certify or return the plan to an employer if the plan is not approved.

By what criteria would a certifier be reviewing a plan? Certainly for completeness would be: criteria, and accuracy of the calculation. Assuming that the employer has done this on their own, the certifier would be making sure that the calculation was done accurately; the appropriateness of the alternatives that were selected as part of the plan; the appropriateness both to the work site as well as to the employees; the appropriateness of the incentives that the employer selected; the likely effectiveness of those strategies in producing the target by the '96 deadline; the ability of the schedule to insure timely and thorough implementation; and the ability to monitor progress.

ASSEMBLYMAN DeCROCE: Thank you.

MS. CARDINALI: I'm sorry.

ASSEMBLYMAN DeCROCE: Oh, you're not done. I'm sorry.

MS. CARDINALI: Please indulge me. I'm almost at the end here.

Waivers: We also have a provision in the program for waivers. Basically, the waivers fall into two categories: one for good-faith effort, and the other for extreme financial hardship. Basically, the good-faith effort would be: Did an employer do all that reasonably could be done to implement the plan, and to try to achieve the target? In extreme financial hardship, the employer may petition the Department for a waiver from the penalties or for some reduced requirement.

What tests would be made for good-faith effort? On behalf of the employer, the primary test, as I mentioned: Did the employer do everything in accordance with their

implementation schedule; and did they comply with the plan requirements; was there a management commitment to the program; did they assess the employees' needs as part of the program; was there a periodic review of progress?

I think most of that is-- We can go on. Just to summarize why this program is being implemented: It is required both under Federal and State law. The State could stand to lose several million dollars in Federal highway funds per year. Citizens in neighboring states can sue for noncompliance under the Federal Clean Air Act amendments.

Who does it impact: employers that have 100 or more employees per work location.

Where: 18 out of 21 counties throughout the State, and in the six action steps that the employer is required to do.

ASSEMBLYMAN DeCROCE: Thank you. While you're here, the \$64 question: What if company A has 135 employees, half of them come in during the peak hours, but they don't bother filing?

MS. CARDINALI: Within the State law there are penalties for failing to file -- failing to register with the Department. I can look that up and tell you the exact penalty that's imposed, but it's right in the State law. That's not covered in the regulations.

ASSEMBLYMAN DeCROCE: But there are penalties for those companies who do not comply with the Clean Air standards?

MS. CARDINALI: There are penalties, yes. Yes, there are penalties.

ASSEMBLYMAN DeCROCE: I want to make that clear.

ASSEMBLYMAN MARTIN: Mr. Chairman?

ASSEMBLYMAN DeCROCE: Yes?

ASSEMBLYMAN MARTIN: I guess another clarification: You showed us different criteria for what you call the urban areas and suburban areas. Are there subsets of that criteria?

MS. CARDINALI: The subset is just for the urbanized area where we collected enough data to be able to segregate into subzones those employees that commute during those peak periods.

ASSEMBLYMAN MARTIN: All right. Are there subzones within-- You see that huge area? I guess that's-- (refers to slide)

MS. CARDINALI: The suburban area?

ASSEMBLYMAN MARTIN: --the suburban corridor from Gloucester County, Cumberland County, all the way up to Sussex. That's all a suburban zone. Is that--

MS. CARDINALI: That's correct. That's one zone.

ASSEMBLYMAN MARTIN: On the averages there, does it vary within that area or-- In other words, could Salem County have a different measurement than Morris County?

MS. CARDINALI: Yes, it does.

ASSEMBLYMAN MARTIN: When you were asking that there was going to be compliance, I didn't hear you say that there is a specific target for a given employer. Is there some understanding that the acceptable level of achievement would be that AVO that you have up there? How does one determine whether -- when they submit their plan, that their level of achievement -- I'm using my own terms -- would be satisfactory?

MS. CARDINALI: Okay, let me walk you back through that chart again, because I want to make sure I gave you the right answer the first time. I thought your first question was, how do we determine the baseline Average Vehicle Occupancy, and are there baseline Average Vehicle Occupancies that are different in different counties?

ASSEMBLYMAN MARTIN: I understood how you achieved it. I didn't know whether there was going to be, as far-- Once you've determined that, I don't think it was clear what a given employer had to achieve as far as their plan that would have to be submitted to you.

MS. CARDINALI: Any employer that is located in the suburban zone would be required to achieve the target Average Vehicle Occupancy of 1.4, if they're located in the suburban zone.

ASSEMBLYMAN MARTIN: Okay, that is the goal that has to be achieved by each and every one.

MS. CARDINALI: That is the goal for-- Yes.

ASSEMBLYMAN MARTIN: One further question: In reviewing your plans, suppose that you make a determination that a given employer might be able to go beyond that? Will you require them, or could you require them to have a higher level than what the average is, or is this acceptable?

MS. CARDINALI: The regulations do not require an employer to achieve anything higher than what is mandated under the regulations, which is the 1.4 target if they're located in the suburban area -- in the suburban zone. If an employer chooses to take steps that get them higher than 1.4, that's certainly something that the Department would encourage, but it's not required.

ASSEMBLYMAN MARTIN: So if an employer in Morris County right now already achieved this level, arguably all they'd have to do is give to you the method by which they have already achieved it, and presumably that would be acceptable to you as their plan of action?

MS. CARDINALI: If they have achieved an Average Passenger Occupancy of 1.4 by 1994, as part of their plan, they would be including in that how they plan on maintaining that, so that in 1996 they achieve a 1.4 occupancy rate also.

ASSEMBLYMAN MARTIN: Thank you.

ASSEMBLYMAN DeCROCE: Thank you.

Assemblyman Oros.

ASSEMBLYMAN OROS: Yes, back to the certifiers. I'm trying to play catch-up here. Will these people necessarily be employees of the DOT?

MS. CARDINALI: The certifiers were envisioned to be independent of both the employer, as well as the Department of Transportation.

ASSEMBLYMAN OROS: Are there any such organizations like that that exist right now; that are certifiers or have been certifiers?

MS. CARDINALI: We don't have any-- Do you want to--

ASSISTANT COMMISSIONER JOHNSON: I always get to answer this question.

We are taking a relatively unusual step in the certifiers. It has been discussed a great deal with the business community.

If you think about the problem, however, we have two points in time when we are going to be flooded with paper. One is in November of 1994 and then again in '96, and we have to answer the business community in a very fast turnaround time. I think the wrong thing to do would be to staff-up for those two peak period times, because we're talking about well over 100 employees. I mean, well over 100 employees. If I had to do that--

We thought the best way to handle this was -- I used the engineering community model -- to train and approve people to review these plans, and sign the plan for efficacy just like an engineer signs a plan. Then we will audit about 10 percent of them to make sure that it's okay. We're not going to try to audit-- We're not going to review them all.

ASSEMBLYMAN DeCROCE: Are you going to have enough time to put these people into place by 1994, or are we going to have something like the litter tax? We had a litter tax with no rules and regulations.

ASSISTANT COMMISSIONER JOHNSON: A what?

ASSEMBLYMAN DeCROCE: Oh, you don't know about that one. It's before your time. He knows about that.

ASSISTANT COMMISSIONER JOHNSON: I think we will. We would have a far greater chance at getting the private market to respond than to try to build a bureaucracy, honestly.

ASSEMBLYMAN DeCROCE: So you expect to have a fully certified team by 1994?

ASSISTANT COMMISSIONER JOHNSON: Yes, we've started to solicit for interest.

ASSEMBLYMAN ALBOHN: Mr. Chairman?

ASSEMBLYMAN DeCROCE: Yes, Assemblyman Albohn.

ASSEMBLYMAN ALBOHN: All of this looks very good and looks like it might work very nicely if you're talking about an industry that is, let's say, purely an office building, and they have 100 or more employees that all come to work at 8:30 in the morning and all go home at 4:30.

There are many small companies, not necessarily in urban areas, that have their workforce essentially divided between office people and manufacturing people, with the manufacturing people almost uniformly not observing the same working hours as the office staff. You might have the office staff coming in from 8:00 to 4:00, let's say, and the first shift in the plant will come in at 6:00 and go home at 2:00. The second shift will come in about the same time -- 2:00 -- and go home at 8:00, or something of that sort. Yet, if you have a company like that, and its employees are divided equally, you have 40 employees per group.

Now on top of that, especially in the less urban areas, those people are coming from all points of the compass, and if in order to meet this plan they have to drive all over the county to pick up somebody else, you're going to have more miles per employee than less.

I'm wondering just what accommodation do you propose to make for those companies that have this split shift kind of arrangement, or multiple shift arrangement, versus an office

building which has essentially the same single shift? Are they subject to the same rules and regulations, or the same penalties?

MS. CARDINALI: We have the de minimis rule of 33 employees at the first shift. So, if an employer has less than 33 employees, they're automatically not considered an affected employer under the regulations.

ASSEMBLYMAN ALBOHN: It isn't much help. Let's see, there are 360 degrees in the compass, and 33 employees could very well come from 10 degrees apart all around the compass, so there is not going to be much support amongst those 33 employees, it seems to me. You say 40 percent, so some 12 or so of them are going to have to pool rides with the other 24.

ASSISTANT COMMISSIONER JOHNSON: Let me walk through that example and say what are some likely outcomes of that situation. The regulation hits that employer, and your question is, are there special regulations that apply? No. It's the same set of regulations, but how we respond and how the employer responds, we do have some flexibility.

First, on the part of the employer, if I were in his shoes I would strongly consider, first of all, flextime. I'm going out on a limb in saying that, because the EPA does not agree with me, and we have committed to the business community that we will attempt to fight this with the EPA. If 12 of those employees could be shifted outside of the peak period--

ASSEMBLYMAN ALBOHN: You've obviously never run a manufacturing plant.

ASSISTANT COMMISSIONER JOHNSON: Well, I appreciate that, but I also know that if they are the white-collar workers or the service workers -- not the assembly line people -- that can often be done. I said, that's the first line of defense.

The second line of defense is, I would look at my MIS unit and see if some of that work could be done by telecommuting or remote sites. I am giving you some easy

things here. I would look at alternative fueled vehicles, because they count as zero vehicles. That is something that, basically, so I can comply-- It's worth me having 12 alternatively fueled vehicles so I can comply with the regulations.

If all that fails, and they also fail at ride sharing and the standard mass transit, given the way you said they're spread around the compass, they then have the alternative of coming in to us and pleading, not a financial hardship, but in good faith they tried; they failed. We then have the option of giving them a waiver.

There is one other option that we and they have, which is if they are either part of a larger company or want to team up with other employers in the area, they can submit a consolidated plan which allows their employees to pool with other employees, but for us to consider it as a statistical whole.

I think there are options in there, but in the end if they can't do it, they can't do it.

ASSEMBLYMAN ALBOHN: And then do they pay a penalty?

ASSISTANT COMMISSIONER JOHNSON: We will grant a waiver.

ASSEMBLYMAN DeCROCE: They wouldn't be penalized?

ASSISTANT COMMISSIONER JOHNSON: Pardon?

ASSEMBLYMAN DeCROCE: They wouldn't be penalized? They would be waived?

ASSISTANT COMMISSIONER JOHNSON: There is a waiver from the penalty provided that a good-faith effort has been made. They've got to try.

ASSEMBLYMAN DeCROCE: Okay, Assemblyman?

ASSEMBLYMAN ALBOHN: I'm not sure I'm satisfied.

ASSEMBLYMAN MARTIN: Alex, just a point on-- From your perspective, if an employer, in order to -- forgive the choice of words -- get around this, was able to move employees

to the commencement of their workday at 10:15, from your perspective that would be okay, because you're reducing the number of vehicle trips during commuter hours. So, as I mentioned to Alex -- or to Art -- the first thing that I would do as an employer might be to take whatever employees I could, and tell them that they come in at 10:01 a.m., which might get me around this. From your perspective that would be an improvement?

ASSISTANT COMMISSIONER JOHNSON: You need to understand, I'm getting two things out of this. As somebody responsible for solving some congestion problems in the State, that gives me a whole lot for you to move them from 8:00 to 10:00. I clear up Route 287 when I need to clear it up. For that reason -- and there is some air quality improvement -- I have made the commitment, essentially, to the business community that we're going to allow that in our State regulations. The EPA has been silent on whether they will approve those regulations, but staff has indicated, "Well, you're not really taking them out of their car." We're going to make a fairly forceful counterargument that there's a great deal of benefit from the very shift that you talked about.

When you're out in the middle of Hunterdon County, if I could use an example, and have employees coming from all points of the compass, that may be your only option, and it does a lot for me on Route 78.

ASSEMBLYMAN DeCROCE: Okay, thank you. I'll assume you will hang with us for a little bit. We may have some questions later.

ASSISTANT COMMISSIONER JOHNSON: Yes, thank you.

ASSEMBLYMAN DeCROCE: I'd like to call upon Win Orben, for Senator Leanna Brown.

W I N O R B E N: All set? Thank you. Senator Brown is at an out-of-state conference today, and asked me to present her statement.

"Chairman DeCroce, members of the Committee, I'd like to begin my remarks today by repeating an old expression with which all of us are very familiar, and which I believe is particularly relevant to the subject of today's hearing: 'They cannot see the forest for the trees.'

"Now, before you start asking, 'What in the world is Leanna talking about, we're here to discuss the Federal Clean Air Act, not some statute governing horticulture,' let me explain the relevance of that statement.

"All too often, those who are working on a particular problem are so sharply focused on the problem that they lose sight of the larger picture. In this case, the Department of Transportation, the business community, and we in the Legislature, have spent an enormous amount of time and effort attempting to comply with these Federal mandates. In particular, we have been examining how to implement an Employer Trip Reduction Program, for we all know that the more we reduce the number of vehicles on the road, the closer we come to achieving our goal of cleaner air.

"A key component of the proposed Employer Trip Reduction Program is the commute alternative, and included within the definition of commute alternative are the terms teleworking and telecommuting, which are defined as a strategy in which an employee substitutes the location at which his work is performed. That substitution usually means work at home, or work at a satellite facility closer to home.

"Chairman DeCroce, I firmly believe that teleworking and telecommuting are the wave of the future. With the advent of extremely user-friendly computers equipped with fax modems, and with access to gigabytes of data stored on CD ROMs, many of the tasks currently performed in a traditional office setting could easily be performed at home. The very fact that the Employer Trip Reduction Program specifically references teleworking as a alternative to the physical transportation of

a worker to a work site is proof positive that the authors of the Clean Air Act were keenly aware of teleworking's beneficial impact on air quality.

"To use another old adage, a transportation one at that, there is a roadblock ahead. While this Committee and the clean air advocates of the State can extol the clean air benefits of teleworking, those efforts will come to naught unless we in the Legislature act to remove State and local impediments to teleworking.

"There are municipalities in this State which have ordinances on the books specifically designed to prohibit individuals from working at home. But an even greater threat to the successful implementation of a successful teleworking component to our clean air efforts is New Jersey's 1941 Home Work Law. When it was enacted five decades ago, that statute had the noble objective of preventing worker exploitation and unfair competition among employers, ensuring enforcement of the laws governing employment outside the home, and the protection of consumers from goods of poor quality.

"While that statute was appropriate for its time, with the advent of heightened awareness of the causes of poor air quality, the change in the nature of the employer/employee relationship, and with the creation of the then unknown concept of teleworking, it is time for that statute to be reexamined.

"I have a bill that is currently before this House, Senate Bill No. 585, which would set up a special, temporary commission to examine and prepare a comprehensive revision to this archaic statute; a revision that will safeguard the employee against exploitation, while recognizing that the workplace situation and the needs of society and the family have changed since 1941.

"I urge the members of this Committee to join with me in the effort to remove the State and local barriers to the successful implementation of an air quality enhancing,

teleworking component of this Employer Trip Reduction Program. Teleworking and telecommuting are proven ways of reducing the number of fume-spewing vehicles that are on our highways. We must do everything possible to encourage the use of these alternatives."

Thank you very much. I have additional copies of this statement for the Committee and for anybody in the media.

ASSEMBLYMAN DeCROCE: You might give us at least two here. I have one myself.

Thank you, and tell Leanna thank you for her comments.

Now I'd like to call upon Dawn Perotta, Assistant Vice President, and Jim Sinclair, First Vice President of New Jersey Business and Industry -- and the cheerleaders of this particular act.

D A W N P E R O T T A: That's right, and you're going to hear it again.

Thank you, Mr. Chairman. I'm Dawn Perotta, and this is Jim Sinclair with New Jersey Business and Industry Association. We would like to thank you for this opportunity to testify today on the proposed regulations for the trip reduction requirements.

I would like to begin by saying that we do commend you, Mr. Chairman, for sponsoring this law along with Senator Rand. Your law allows this mandate to be implemented in a manner as fair as possible to the business community, and we really appreciate that.

One way in which it accomplishes this, in great part, is by providing the authority to the Department of Transportation to oversee the program. I would just like to publicly acknowledge Assistant Commissioner Christine Johnson and her staff. It's really been a very positive experience working with them. They have been incredibly receptive to suggestions from the business community. As she said, we've

had numerous meetings over the past many months -- well, actually years at this point -- and they have been very receptive to our suggestions.

Over the course of these many meetings, we really have managed to resolve most of the major concerns regarding the regulations, and Jim is going to highlight some of those for you. At this point, though, there remain probably three areas of substantive concern that we really hope to see resolved.

The first area has to do with what's already been discussed, and that's flextime. We strongly believe, as does the Department, that flextime should be an option for employers to utilize in achieving their APO goal.

Just real quickly, according to the strict definition of EPA's definition of APO calculation, that's taken during the 6:00 to 10:00 a.m. peak hours. So based on one interpretation, if employees are removed out of that 6:00 to 10:00 starting time, they can't really be counted when the final APO survey is done to determine whether companies have achieved their goal. This really is sort of in reference to flextime because in the area in telecommuting, as well as compressed work weeks, EPA does accept those employees being counted in the total number of employees.

As Assistant Commissioner Johnson has said, they're going to try to get the EPA's approval on that, and we're very grateful for that. If we need legislative support at some point in this endeavor, we would appreciate that, as well. It is really going to be essential for smaller companies and those not near public transportation.

The second area of concern has to do with the issue of averaging across zones. Now, interestingly, the EPA does allow large companies with facilities across the State to average across zones, like from suburban to the urban, or within the subareas of the urban zone. Unfortunately, at this point the DOT isn't able to see the merits of utilizing this as an

approach. We think it's an important tool for employers to be able to utilize if they so choose. We understand that the EPA would oppose a condition that vehicle miles traveled would have to be calculated if companies use averaging across zones. We wouldn't oppose that, but, again, we think it should be an option.

Finally, the third major area has to do with the surveying process. The regulations currently call for employers to achieve a 75 percent return response rate. Most companies probably will be able to achieve that, but many will find it impossible. So we would like to recommend that companies be able -- if they're over a certain size -- to do a scientifically sound, random sampling survey and achieve their APO that way.

Now, in each of these three areas, again, the DOT has indicated a willingness to assess, and especially with flextime, to really work with us to achieve that. That's consistent with the commitment that they've shown throughout this, so we just hope we can resolve all that.

ASSEMBLYMAN DeCROCE: Thank you.

J A M E S A. S I N C L A I R, P.E.: Commissioner Johnson highlighted a number of the areas where we worked together, and I'm not going to burden you with going back through that process.

This has been a cooperative process not only with the Department, but with the environmental community, and with government generally, including the Department of Environmental Protection. Unlike many programs that you hear me speak about in terms of regulatory activities, this is geared towards trying to figure out how to make it work, and having compliance in a very cooperative way even though there are penalties in this act. I think that we may be the only State that has penalties.

MS. PEROTTA: No.

MR. SINCLAIR: No?

MS. PEROTTA: No. In fact, hot off the wire, I just learned yesterday that Houston imposes a penalty of \$25,000 a day for noncompliance. Ours is going to be \$5000 a month, but we also have the good-faith effort exemption if companies can't, and Houston doesn't have that.

Jim and I do this all the time.

MR. SINCLAIR: It is that good-faith effort that I think is the key thing, and it's why we in the business community are committed to do the best we can to try to get the business community to achieve the goal in the Federal Act. I just really want you to understand that goal of 25 percent is out there; it's looming as a very large number.

In California, where the pollution level is 10 times the level in New Jersey, they're only reaching an 8 percent level for their -- all the work that they have done so far in implementing programs.

So the goal is out there to achieve. We're going to try to do it. There are things that we can do in terms of advising the business community. There are things that you may have to do. That, I think, is the wonderful part of this process, not only the cooperation that we have with the government, but the fact that we're having this particular hearing today in the middle of the regulatory design process. The oversight of the Legislature is very important in this process, because we're going to come back and revisit items.

Dawn has already worked with you on the tax incentives for employers and employees, a very important component of this program. There are going to be issues that come up: Senator Brown talking about telecommuting and what we need to do to make that work. Is that going to be the answer? No, it isn't going to be the answer, but it is a component that's going to work in some places.

The flextime in Assemblyman Albohn's example: If, in fact, the production workers started at 6:00 o'clock -- if they

moved up that time frame just 10 minutes, that takes them out of the time frame there. We think that makes sense. I mean, the flextime is clearly something. If we don't get it in the regulations, then clearly that is the kind of good-faith effort that we're looking for.

We're looking for employers to do the best they can within the economic constraints, within the nature of the workforce and the location. It's going to be different for lots of different people. It's going to be an extremely different program for the people downtown who have no control over their parking for their workers. How do they address those issues?

It's going to require greater cooperation between employers, the transportation management associations, and with the public transportation entities to provide some transportation; to put some new route in as we develop the data.

It's going to require requirements of working with municipal governments, because-- I like to use Commissioner Johnson's example, sort of the fast and dirty answer to this, and not one that we advocate: But what if an employer just closed down 25 percent of their parking spots in their lot? Well, good. They comply with the Act, because now they've, you know, forced the employees to do something else. But what would they do? Would they park on the street in the municipality? What is going to be the impact on parking garages in downtown areas where bonds are structured on the number of employees, or the number of people that park there? What kind of impact is this going to have?

We're going to have a lot more questions than we have answers right now, and it's going to involve working together with you. I think that also we ought to keep in mind that this really, from a business community standpoint -- as much as we're being driven by the Federal government and the Clean Air

Act-- We're looking at this as a traffic congestion act of removing some of those people off of the road so workers can get to work earlier. We're happy that it is in the Department of Transportation, and we're viewing it that way.

I think that the last thing-- There are going to be labor/management problems in this; ones that we haven't even experienced yet. But I have a gut feeling that they're out there, and there are going to be some really tough issues that we're going to have to address, because basically we're asking people -- you're asking employers -- to exert influence over employees outside of working hours. Their commuting back and forth to work is on their time. It's their option. It's their life, and their freedom of choice.

So, while there are incentives that we can do, and we have some really-- Later on, as we move into this process, we'll have some good results to report to you.

Right now, there is a company in South Jersey that has done an incentive system, a very simple carpooling system, where they put a board up and encouraged it -- as a corporate philosophy to encourage carpooling, and once a quarter, they give a little prize to everybody who has participated in the program -- a VCR, or a television set. It goes off in some drawing, and then they invite somebody to come in and talk about carpooling or environmental problems. They've almost been able to meet their goal with this very simple voluntary program.

Is that going to apply to everybody? Is it going to apply to the company that is out in the woods; that doesn't have public transportation? Certainly not. So the good-faith effort is something that is an important part of this process, and we look to -- not using that as a crutch, but that really is the backbone -- our commitment to make it work. But knowing that if people do what they say they're going to do, and

implement a program that is certified even though it falls short, that, in fact, is a good-faith effort. I think that is the key to your legislation, sir.

ASSEMBLYMAN DeCROCE: Thank you, Mr. Sinclair. Let me just say that with regard to your statement, I would hope that businesses and industries will comply, because we are giving them plenty of time. They have until December of '94 in order to get their material in, and then, frankly, the Act doesn't-- Implementation doesn't take place until, what, '96 is it?

MS. PEROTTA: Well, that's when the goal has to be achieved. Companies can actually begin programs now.

One thing I would like to mention to you in reference to that is that there is now something in the regulations that's an incentive for companies to file their plans early, before the November '94 deadline, so that DOT isn't really deluged with papers at the very last minute.

Companies that do submit early will be able to receive a 10 percent reduction in their filing fee. So I think we're all hoping companies will then begin that process sooner, and won't wait until actually November 15, 1994 to start getting the program in place. As Jim said, some are voluntarily doing it now even though they aren't even eligible for any of the incentives which you wonderfully got through the Legislature, too. I think that is going to be a big help to companies. Even without those incentives, some companies have begun already. I think in the beginning of '93 or '94 we'll see even more start, because the incentives will be in place.

ASSEMBLYMAN DeCROCE: I think communication is going to be the key to this Act. I think you have to get the word out to your members. I think the Chambers -- each of the Chambers -- have to get the word out to their members so they more than understand what we're attempting to do here; so those people can file on time and maybe even get the benefit of the 10 percent. Hopefully, that all will take place in a short period of time.

MS. PEROTTA: We've had one conference, as a matter of fact, back in March, and we're planning on doing another one in June to bring employers together, just to inform them of the requirements and to encourage them to get going. So, absolutely, we'll continue doing that.

ASSEMBLYMAN DeCROCE: Thank you. Thank you for your statement.

Does anyone have any questions?

ASSEMBLYMAN MARTIN: I have one question. The goal of the Clean Air Act, besides your emphasis on faster commutes and so forth, is to have cleaner air. My understanding of the biggest problem with commuter traffic is that old vehicles are big polluters, as far as the different elements that are now measured, as far as clean air. Since the purchase of a new car has a lot of probably good benefits, and not so many bad-- I can think of two: One, it stimulates the economy; and secondly, it provides the sales tax for the State of New Jersey, which is always looking for revenues.

Do you know if there has been any incentives at all, or suggestions, to try to encourage either through the employer or some mechanism that would stimulate those who are commuters to drive a vehicle to work, let's say, that is less than five years old, or whatever; some criteria along those lines?

MR. SINCLAIR: Actually, in Senator McNamara's bill on the LEV car, the study that they're looking at is looking at the alternative sources, and one of the things that they're looking at is a scrapage program. I think you're talking about how to get those older polluting vehicles off the road for credits. Basically, a company might be able to go out and buy 1000 old vehicles and get credit in terms of emission trade-offs. That's one of the things that they're looking at in the study.

There are programs in other parts of the country that have actually instituted the scrapage program. Whether there

is an incentive program for somebody to trade their car in, no, I haven't seen anything like that.

ASSEMBLYMAN MARTIN: Well, I just know there is at least some mentality among commuters that the vehicle that you take to work might be the old clunker, to the extent that you are comfortable with that vehicle, but that is also the biggest source polluter for clean air. What would be very frustrating is, if we really do have a tremendous work effort by the employers -- lots of carpooling, lots of flextime, and everything else -- and as you had pointed out earlier, when you get all done, the measurement of clean air is only reduced by some small fraction of what the goal is. That would be extremely disappointing and also frustrating, I think, for all of us.

MR. SINCLAIR: Well, I think that we really ought to understand the reality of the situation. Employers in New Jersey, or even individuals in New Jersey that reduce their driving habits, are not going to have much impact on New Jersey's air. This is a regional problem. We get most of our ozone precursors from upwind states. So, therefore, it's what goes on in Pennsylvania and the region that's really going to affect the quality of our air. What we're doing affects what happens in New York and Connecticut later on in the day.

Also, this is a summertime problem; ozone is a summertime problem. CO is a wintertime problem, and we're in attainment for CO right now, we heard the other day, because of the use of the oxygenated fuels. It isn't a simple answer here. This is part of a regional solution.

By the way, it is something that we had asked for in New Jersey. We asked for a regional solution precisely because of this problem, because New Jersey businesses had been required to ratchet down in New Jersey, yet the air quality wasn't being affected because of the upwind states. So we're

now part of the Ozone Transport Group -- the Northeast Region -- which is looking at regional solutions of which some of these transportation measures are a part of.

ASSEMBLYMAN DeCROCE: Aren't we part of a regional pact with New York and Pennsylvania?

MR. SINCLAIR: Yes, the Northeast Ozone Transport Group. Actually, it goes all the way down to the northern counties of Virginia, I believe, and up to Maine. I think that is a logical, scientific way to look at this in terms of some important -- because air doesn't just depend on state boundaries.

ASSEMBLYMAN DeCROCE: Anyone else? (no response)
Thank you very much.

MS. PEROTTA: Thank you.

ASSEMBLYMAN DeCROCE: I would like to call on Laurence Bernson from AT&T.

L A U R E N C E S. B E R N S O N, Ph. D.: Good afternoon, Mr. Chairman, and members of the Committee. My name is Laurence Bernson. I'm representing AT&T, and I'm here today to commend NJDOT for their refreshingly open approach in seeking and inviting input from all interested parties concerning this Employer Trip Reduction Program, as well as to comment on these draft regulations. I submitted 15 copies and I hope you have your own copies.

We believe that our comments will minimize uncertainties with specific requirements contained within the regulations, and will additionally provide flexibility and cost-effectiveness in the administration of this program.

The first thing I would like to talk about is the definition of an employee; that is, there is a lot of uncertainty in the business community of what is an employee. What we're recommending is that the employee definition be modified slightly and include in there a statement saying, "An

employee means any person for whom an employer is required to withhold Federal and State income taxes." This is consistent with the employee tax exclusion and employer tax credit bills.

In addition, this is the definition that is found in two other states that have issues with the Employer Trip Reduction Program; namely, the State of Illinois and the State of Maryland.

The reason why I want to cite other states is, out of the 11 states that are required to implement these programs, AT&T has-- We're in 10 of these states. To give you numbers again, we have 158 facilities and 84,000 employees. In New Jersey, we're looking at 56 facilities and 44,000 employees. So we're impacted, and we're trying to make sure that the regulations are consistent between the states, and all of them meet the requirements of the Clean Air Act amendments.

ASSEMBLYMAN DeCROCE: Larry, did you participate in these discussions?

DR. BERNSON: Yes, I did.

ASSEMBLYMAN DeCROCE: Have you expressed your concerns?

DR. BERNSON: We've expressed them. Again, there are still some interpretation differences. This is the first time that I am recommending this. I think the issue was, we've always recognized that "employee" needed to be modified slightly. The issue was how to redefine it. I was going through these other states' definitions and I had noticed that. So, again, that's why I'm recommending it. I submitted those comments to the DOT.

The other issue of contention is for the employer registration. It stated that the highest ranking officer has to sign off on this registration. For sites-- Let's say for employers with multiple locations in New Jersey, or with sites that are international, this highest ranking officer is meaningless. For that, we are recommending a designated

responsible manager be used. It's consistent with all other current requirements in New Jersey. You designate a responsible person or manager.

The other issue is that according to this-- In this draft rule making, it is stated that the contact person has to be physically located at the site. Our feeling here is, we have 56 sites -- we don't have to have 56 people physically located at that one site. I'll give you an example: Right now, I'm responsible for all air quality matters for AT&T Bell Laboratories. I am not at each site. I am stationed at Murray Hill. If there is a problem, the State agencies are notified. They know who I am, and they can contact me. We are requesting that that be changed, and that we be allowed to use a contact person who does not have to be physically located at each site.

The next issue is for the survey. EPA guidance allows for random surveys. A number of other states are allowing the use of random surveys. We think this is a very important part of this bill -- this regulation -- in that the way it is now written, every single employee has to fill out a survey form, and, again, DOT is hoping that 75 percent respond.

Well, at a number of sites we have more than 5000 employees. The EPA has recognized this. Other states have recognized this. Again, I will give you the States of Illinois, Maryland, and California. What I have given to you in Appendix I, or Attachment I, is the State of California's random survey procedures. There California -- this is the Bay Area Air Quality Management District-- They state that any employer with more than 400 employees has the option of either doing this random survey or doing individual surveys. Again, we're requesting that this be included within this working draft document.

Just to supplement that, again, it is important that you recognize that the determination of AVO was based on a

random survey approach. So the employers of this State are not asking for anything new. We all have the same option.

Another issue which has confusion is in calculating the Average Passenger Occupancy. If the employee is using multimodes of commuting -- they may walk, they may take the train, and then take a vanpool from the train station -- what mode do you use to put down on your survey form? That hasn't been addressed yet.

There are three ways. One is, you partition out the actual mileage from each mode used. To us, that is very complicated. The other is, you use the last mode used as you enter the workplace. That may be feasible, but if you drove three-quarters of the way and walked the last quarter, is that really, I mean, the intent of this regulation? Third, and the way that we view most appropriate, is just determine that mode of travel used which takes up the major part of the commuting miles, and then use that in your survey form. So, again, that is the recommendation that we are submitting.

As Dawn stated before, we are also requesting that work sites be allowed to average their APOs between these zones. We believe that as long as the employer is willing to -- besides looking at the mode of travel -- but look at the miles traveled by their employees and use the vehicle mile credits, that is consistent with EPA guidelines, and that also should be included in this working draft document.

To look at the compliance plans in Section 8 of this working draft the way it's presently written, it's stated that only those employers that entered into consolidated plans in 1994 are allowed to enter into those plans later on. Our feeling is that employers should be given that option, whether or not they entered into a plan in 1994. In 1994, a lot of employers have really no idea of the incentives that can be made available for their employees, or they do not know which

incentives really would work, which ones don't work, or whether their neighbors are entering into a program that will be beneficial to both employers.

So, again, we're requesting that be changed; that employers will be allowed to be entered into consolidated plans at any point in time, be it 1994, 1995, or 1996. That shouldn't be restricted only to those employers who enter into those plans in 1994.

ASSEMBLYMAN DeCROCE: I'm not sure I agree with you on that.

DR. BERNSON: What's the--

ASSEMBLYMAN DeCROCE: Well, if we don't put a time frame on it, I think people will just wait until the last minute, and, hopefully, they'll put something in it that will be waived or rejected either way.

DR. BERNSON: We're not saying waived. What's going to happen here is, again, this goes in the good-faith effort: In 1994, assume I have a commuting program -- a lot of car pools in AT&T -- and you decide to go through some other incentives. In 1995 you do a survey. You determine then, in fact, you're way below your goal. You'll then contact a number of other employers in the area and say, "Look, the program I gave to the State isn't working. What are you using? Can I buy into your program?" We'll say yes. You then will contact DOT and say, "I am revising my plan. I now want to work with AT&T and I'll be part of their carpool plan."

ASSEMBLYMAN DeCROCE: But that might happen anyway.

DR. BERNSON: According to this you're not allowed to get into consolidated plans.

ASSEMBLYMAN DeCROCE: That might happen anyway, because if you're not in by '94 because you couldn't come up with the particular program, you might have found an AT&T program or somebody else's program, and you may have to go in for a waiver in order to adjust your plan.

DR. BERNSON: Yes, but the good-faith waiver really comes out in 1996. I'm saying right now you're required to do a survey in 1994 and a survey in 1996. So the presurvey determines your baseline level and your compliance survey in 1996. For this good-faith waiver, you're going to have to show the State that you've evaluated your program between those two surveys; that you did your best.

What I'm saying is, the way it's written right now is, if I am an employer and I do not enter into a consolidated plan in 1994; and if in 1995 I did a survey and I determined that, you know, the program I wanted to do individually isn't working, let me now combine my program with somebody else's. I now can't do that.

ASSEMBLYMAN DeCROCE: I'm sure that may happen, but I am going to tell you -- because, frankly, the incentives that have been given by virtue of the bills that were recently passed -- I think most companies are going to attempt to comply within the guidelines.

DR. BERNSON: Right.

ASSEMBLYMAN DeCROCE: And I do believe that if they're not able to, obviously they will work something out with DOT.

DR. BERNSON: Okay, I hope so. What I'm saying here is, though, I don't like it when you have a date and it's not allowed. I understand your concern, but I'm saying, again, it's the option, and when something is specified as, "1994, use it or you lose it," personally, I don't think that is appropriate.

The other issue is the Employer Trip Coordinator. Again, we believe-- We have a number of sites in California and in Phoenix. We have Employer Trip Coordinators for those sites. What we're concerned about is-- The way it's written right now is, each site is required to have a coordinator. Again, our position is we would like to have-- We have 56 sites. We don't think it's appropriate that we have 56

separate people being ETCs. We'd like to have designated people; their full-time responsibility to handle a number of sites.

I'm now going to enter this other -- the Plant Certification Program. I think this is the one area that really has the business community confused, and I think it's important that everybody understands where this came about. We're the only state that uses this plant certification process.

Normally, in all of the other states the employer does the survey, develops the compliance plan, and submits the plan to DOT for approval or rejection. If it's rejected, it is sent back to the employer. The employer modifies it, and gives it back to DOT. That has been changed here, and let me just back up here and state why. In lieu of DOT hiring additional staff to satisfy this -- again, we're looking at over 5500 plans to be submitted in around a six-month time period between May to November of 1994 -- it is understood that it's really ridiculous for DOT to go out and try to hire people, train these people, and have people ready to review these plans. It's also not fair for those people, because once November 1994 comes around and they review the plans, there is no reason for them to be around. So we understand that outside consultants should be used. We agree with that.

What we don't agree with is the methodology that is being used, and how it is being used. To give you an example: In the New Jersey Department of Environmental Protection and Energy they use outside consultants to review air permit applications and associated regulatory documents. They're not State employees, but they're, again, contract workers for DEPE. The affected employer does not know when they submit and resubmit an application to the State. We don't know and we don't care whether it's the DEPE staff, or whether it's the consultant. The main thing here is we gave it to the State agency; they received it; they're reviewing it.

We believe that the way the process is now configured, it's excessive, burdensome, and very costly to affected employers.

Employers will be devoting additional time to request proposals from these certifiers. We will be spending time setting up meetings to discuss the programs with these certifiers. We're going to be negotiating contract conditions with the certifiers, all prior to submitting our plan to the certifier. Then once the plan is finally given to the certifier, the certifier will then review it. If the certifier feels that it meets the requirements, the certifier will then submit the plan back to the employer along with the certifier's review of that plan, and then the employer would then submit it to DOT. It is a waste of time and money. If the certifier does not approve that plan, then the certifier gives that plan back to the affected employer. The affected employer is now going to have to go back and make the changes.

This differs from the way it is handled in other states. In other states the employer directly hands it to the state agency. At that point the clock starts ticking. Here the clock doesn't start ticking until DOT receives the certifier's review form.

As an alternative to this program, we believe that DOT should manage and be directly responsible for the actions of these independent certifiers. We believe, however, that DOT has decided to distance itself from these certifiers despite the fact that right now DOT is selecting and approving the certifiers. They are providing training to these certifiers. They're requiring certifiers to submit letters of understanding. They're requiring certifiers to enter into contract with DOT for a year period, with possible financial penalties to be assessed if the certifier leaves. DOT also may request a performance bond.

So what we're saying here, right now there is a connection between these certifiers and DOT. In fact, DOT has stated that these certifiers are to be viewed as DOT's contracted agents. But we're saying it's great if the certifiers are your contracted agents, let them be part of DOT to review our plans. What we then can do is, once the employer prepares their plan, we'll then submit it to DOT along with a plan review fee. Typically these fees can range from \$200 to \$500, depending on the state.

At that point in time there are two benefits. One, the clock starts ticking once we submit that plan to DOT. Two, we now have a set plan review fee. Right now the fees can be set by the certifier -- are established independently by the certifiers.

In addition, this now will again free-- Right now DOT is stating that they will be spending -- they will be reviewing 10 percent of the plans to ensure that the certifiers are reviewing the plans correctly. The time spent by the DOT staff in overseeing these certifiers could be used in managing these certifiers.

Hopefully, you will accept those arguments, because we also have other problems concerning other parts of the section, where it states that the certifier has to be independent -- citing blood, marriage, etc.

In AT&T, it's going to be almost impossible for us to ensure that a certifier is not related to an AT&T employee. In addition, we have problems working -- in selecting certifiers. We have a lot of contracts with well-known established firms that can be used, or eligible certifiers. According to this requirement, if we use them for any nontransportation-related project, we can not use them for this transportation-related project. We feel that is unfair to us, as well as other firms in New Jersey, for using established engineering consultants.

The only other statement I have here is for Section 11 which is for the extensions, exemptions, and waivers. We believe that that should also be expanded to include union contracts adopted prior to the regulation implementation date, as a claim of hardship.

ASSEMBLYMAN DeCROCE: Thank you very much for your comments. I just wanted to say that your company is already involved in this program to a degree. I don't know if all of the 56 plants are involved, or areas, but I know the areas here in Morris County are.

DR. BERNSON: Correct. We have had an active carpooling/vanpooling program. Again, we have experience in California, as well as in Phoenix.

ASSEMBLYMAN DeCROCE: Thank you for your testimony. We have a copy of your testimony?

DR. BERNSON: Yes.

ASSEMBLYMAN DeCROCE: Okay.

Now, Mr. Richard Duprey from Commerce and Industry.

R I C H A R D L. D U P R E Y: Thank you, Mr. Chairman. A lot of my comments have been covered by others this morning, so the specific comments are addressed in there. I understand that some of the concerns that we had have already been addressed by the Department, so they're probably not relevant to the discussion any further.

However, we would also like to say we are appreciative of the Department of Transportation's flexibility in this matter. As you are probably aware, the Commerce and Industry Association wasn't a very big supporter of this bill as originally proposed a couple of years ago, nor last year when it was debated. We thought that with the Department of Transportation handling this program it would be a much more business-friendly law and regulation, and I think that's been borne out since that time.

ASSEMBLYMAN DeCROCE: We agree.

MR. DUPREY: As positive as we feel about the Department's handling of the program, we differ on the benefits that we think the program is going to ultimately achieve. For example, the Federal government has estimated that 87 percent of all commuters in the country commute by private automobile, compared with only about 5 percent taking mass transit. So, prying these employees out of their cars is going to require a huge effort on the part of business. It is going to be very difficult to accomplish. Even if it is done, at least one study compiled by the Department -- the U.S. Department of Transportation -- found that 64 percent of all peak-hour trips are not work related, which is consistent with the national data compiled by the Federal government itself, which found out work-related trips account for only about 26 percent of all trips taken, and which has been a steadily declining percentage for about 20 years now.

Important to this hearing today is the fact that work-related trips to major employment sites -- that is, companies with 100 or more employees -- account for approximately 40 percent of all the work-related travel. This suggests that Employee Trip Reduction Programs can affect only about 10 percent of all daily trips, and only 15 percent of all peak-hour trips.

Therefore, if companies achieve their 25 percent increase in the average vehicle ridership, it is only going to produce about a 2 percent to 3 percent reduction in area-wide trips. In other words, programs such as this one are going to have a very negligible effect on air quality and traffic congestion.

To illustrate that, I've included a typical company's experience with that to the back of my testimony there. What it essentially shows is that employers are going to have to achieve a 250 percent increase in commutable alternative utilization by their employees. We're pointing this out

because as these regulations are certainly better than we have ever anticipated they would be -- considering the way we view State agencies at Commerce and Industry -- business is going to face steep and significant fines of up to \$5000 a month. The comments that have been offered today to make the program even more flexible, we feel, because of these factors, they should be considered in the best possible light. As I said, my comments did address a number of different things, so I just want to cover one or two general areas again.

Assemblyman Martin had stated that older cars are the worst polluting cars. That isn't necessarily true, because a properly tuned older vehicle can be just as clean as a new vehicle, and possibly more so than an out-of-tune new vehicle. It's been found that 10 percent of all cars are causing about 65 percent of all the pollution of automobile emissions, so broad approaches like that aren't necessarily going to do much to improve the air quality or reduce congestion.

One suggestion that we would like to make is for the Department to consider using the trading of credits for companies that exceed their goals in reducing the number of automobiles traveling to the workplace. If they exceed that 25 percent reduction, the EPA has said that's something that states can do, and they say they can generally lower the cost of achieving given emission reduction targets. So we feel that this is something that should be done, and we strongly believe that it is worthy of further merit.

I won't take up any more of the Committee's time, but if anybody has any questions, I would be more than happy to--

ASSEMBLYMAN DeCROCE: Let me ask you, Mr. Duprey, are you working, too, along with the people--

MR. DUPREY: I have been invited to participate in the discussions.

ASSEMBLYMAN DeCROCE: You have?

MR. DUPREY: Yes.

ASSEMBLYMAN DeCROCE: Okay, thank you.

MR. DUPREY: Thank you very much.

ASSEMBLYMAN DeCROCE: Does anybody have a question for Richard?

ASSEMBLYMAN ALBOHN: I don't know if it's a question or a comment. We talk of driving habits; we talk about old automobiles. It just seems to me -- I say this only half in jest -- the best approach we can take to reducing air pollution from automobiles is to put a much stiffer spring under the accelerator pedal. I think we have all seen these guys burning rubber, gasoline, oil, and everything else, just by flooring the damn thing when they take off at a traffic light.

MR. DUPREY: I think it was Assemblyman Martin coming up from Trenton today. Right? (laughter)

ASSEMBLYMAN ALBOHN: Well, it could have been him. Yes, that's right. You see, I drive one of those older cars that most of you are looking down your noses at. I suspect since it's a diesel it probably produces less air pollution than anything else that's on the road.

MR. DUPREY: If I could just make one further illustrative example? When we talk about companies with 100 or more employees, the general view is a company with a factory and a gate, and cars coming through the gate, and all that.

When you have an office complex and you've got one major employer-- Those of you who have been to our offices, you know we are in an office building. There is one company in there with more than 100 employees, but it has a common parking lot which surrounds two office buildings, and for that one company to be able to stand there and try to count the cars coming in, and whose car belongs to whom, it's going to be a very difficult process for them to comply with that. That's why we doubt there is going to be much benefit realized by this program, but we hope that the suggestions that have been offered will be acted upon to make it at least that much more--

ASSEMBLYMAN ALBOHN: But don't you believe, frankly, Mr. Duprey, with the tax exclusions and tax credits given to these people, they're going to try and make it work? Obviously, it's a benefit in the long run.

MR. DUPREY: Oh, absolutely, and we hope they would do that; that all the tax credits would be implemented. It certainly is a step in the right direction giving them those credits, because it is an incentive for them to then comply with the program.

ASSEMBLYMAN ALBOHN: And, frankly, we would hope that people such as yourself, or those who are involved in industry, would continue their working relationship with the Department, so we can nurse this thing along and change it when we have to, from time to time.

MR. DUPREY: Right. Well, we've been doing our part, I think. We've held a program as well for our membership to bring them up to speed. We had Mr. Snyder come up and address the group, and we'll probably do another one again. It's a worthy goal. Whether it's going to happen, we doubt.

Thank you.

ASSEMBLYMAN DeCROCE: Anna Lustenberg, from New Jersey Bell.

A N N A L U S T E N B E R G: Good afternoon. My name is Anna Lustenberg. I'm Public Affairs Manager at New Jersey Bell. I brought along with me Bob Rivers, who has been working extensively on reviewing this legislation and the regulations, and if it's all right with the Committee, I would like to have him give the prepared testimony.

ASSEMBLYMAN DeCROCE: Certainly.

MS. LUSTENBERG: Thank you.

R O B E R T L. R I V E R S: As Anna just mentioned, my name is Bob Rivers, and I am a Manager with New Jersey Bell Public Affairs.

First, I'd like to thank you, Chairman DeCroce, and members of this Committee, for giving us this opportunity to share with you our views on these regulations.

Various New Jersey Bell personnel have worked very closely in development, first with the Traffic Congestion and Air Pollution Control Act, and later with the New Jersey Business and Industry Association's efforts in assisting the Department of Transportation in the formulation of these regulations.

Given the problems that these regulations are meant to address -- given traffic congestion which has come about as a result of growth and development patterns -- the result has been that you have many frustrated commuters; frustrated commuters who are also wasting fuels and causing air pollution. So given the nature of this problem and the objective that must be met, New Jersey Bell is of the opinion that the regulations appear to be equitable and workable, with possibly a couple of adjustments.

We think that Assistant Commissioner Johnson, the staff at the Department of Transportation, NJBIA, and a host of others that have been involved in this effort should be commended. We are also appreciative of having the opportunity to have participated in this process.

New Jersey Bell is particularly pleased with the inclusion of telecommuting as an Employer Trip Reduction strategy, so much so that I would like to briefly comment. New Jersey Bell is a Bell Atlantic Company. Bell Atlantic, on its operating company's behalf, has conducted an 18-month study -- a pilot telecommuting project involving 100 employees who have worked at home a minimum of one day a week. Not only have savings in commuter trips, miles traveled, gasoline, tolls, and other related expenses been realized, but also there have been other benefits which extend beyond traffic reduction. This

includes: increased employee morale, increased job satisfaction, and, which may be important to many businesses, increased productivity of its workers.

As a result of this, telecommuting options are now available to all of New Jersey Bell management employees, and we think it will prove to be a very important and invaluable tool.

We do have a couple of concerns. Maybe they shouldn't be viewed as concerns, because we know there's going to be difficulty in this, and I think that we all should share in the responsibility of achieving this objective. There are a couple of things that we would like to mention, but actually they have been mentioned already by numerous others, so I won't spend too much time with that.

One thing involves the requirement that the highest ranking responsible person at a given location, plus the employer having an employee -- or transportation coordinator -- at every given location. New Jersey Bell has 329 work locations in the State. If the regulations were in effect today, according to information that was made available to me, 39 of these locations would be affected. We think that it would be administratively burdensome if we were to have these individuals for each and every one of these locations. We would like to see a provision where maybe we can designate one employee or employer transportation coordinator, or a few possibly for the State, and possibly have one senior manager who can attest to the accuracy of all information we submit, including the plans.

In addition, there are two other things which have already been discussed. New Jersey Bell has, in addition to 39 affected locations-- We have in excess of 15,000 employees with the increasing responsibilities of a number of these employees with vacations, business travel, multilocation responsibilities, holidays, and other significant advance

with you some comments relative to the Department of Transportation's proposed regulations relative to the New Jersey Employer Trip Reduction Program.

In my oral testimony, I intend to cover only three points:

1) The need to provide employers credit for their employees who arrive at work outside the peak period.

2) Permitting certification of compliance plans by in-house qualified licensed certifiers.

3) Clarifying just who is and who is not included in the survey, and the Average Passenger Occupancy calculations.

We also have prepared additional written comments, which are now being distributed to you folks up on the Committee.

Concerning my first point, relative to the need to make provision for giving employers credit for those employees arriving outside the 6:00 to 10:00 a.m. peak period, the goal of this Program is to increase the Average Passenger Occupancy during that peak period. This will reduce either the number of vehicles or the number of employees arriving during this time. The goal is not necessarily to reduce the number of employees who arrive subsequent to the peak period. Therefore, we suggest revising the calculation formula as follows: The work location APO should be calculated by dividing the number of employees arriving during the day by the number of vehicles arriving during the peak period. Employees arriving would be defined as the total number of employees arriving at the location, Monday through Friday, during the survey week.

ASSEMBLYMAN MARTIN: Mr. Chair, could I just ask a point clarification?

ASSEMBLYMAN DeCROCE: Yes.

ASSEMBLYMAN MARTIN: I understood earlier that the point that the DOT was making was that they themselves support that idea, but they have to get around the Federal regulations

events that come about, and we think that there may be some difficulty with us reaching the current requirement -- or the proposed requirement -- that there be a 75 percent response rate for the APO survey.

We would like this Committee to consider, possibly, the use of a statistically valid random sampling technique. This is something that has, I believe, already been discussed.

Secondly, and very briefly, we looked at the locations, and some of our folks seem to think that we may have some significant problems in certain locations, where we may far exceed the APO targets in others, and we would like the Committee to consider the possibility of maybe some sort of statewide averaging as opposed to individual, or let's say, to work in conjunction with the APO targets.

Thank you for the opportunity to testify.

ASSEMBLYMAN DeCROCE: Thank you very much, Mr. Rivers.

Does anyone have a question for Mr. Rivers? (no response)

Thank you very kindly for coming.

MS. LUSTENBERG: We have copies of the testimony.

ASSEMBLYMAN DeCROCE: If you will. Thank you.

Now I'd like to call upon Mr. Barry Wood, Government Relations Manager for Exxon, and Don Paris, Counsel. A lot of reading material there, Mr. Wood.

W. B A R R Y W O O D: Pardon me, sir?

ASSEMBLYMAN DeCROCE: A lot of reading material there.

MR. WOOD: Mr. Chairman, ladies and gentlemen, I am Barry Wood. I work for Exxon Research and Engineering here in Florham Park. With me today I have Don Paris, who is our in-house Counsel, and to my left and to the rear is Pat Ihle, who is our Traffic Manager -- Coordinator of our Traffic Management Task Force. I appreciate the opportunity to share

so that-- As I understand the problem right now, it may not be something that the State can do, other than apply whatever pressure we can bring to bear on the Federal government and the EPA to change their regulations. Do you understand that the same way? DOT seems to be--

MR. WOOD: That being the case, I guess we would like to add support to their challenge.

F. DONALD PARIS, ESQ.: I'm not necessarily certain that the Federal regulations actually require, you know, what they're saying. The Feds may be interpreting it a certain way that might not be appropriate, as far as some of us are concerned.

ASSEMBLYMAN DeCROCE: Ms. Johnson?

ASSISTANT COMMISSIONER JOHNSON: If I could, we're going to do more than what Assemblyman Martin has said. We're going to take a positive stand on it and force the EPA to challenge us. We're not going to quite use the calculation he suggested. I feel like I've got a simpler one, but it will accomplish the same purpose.

MR. WOOD: I have no problem with that. The point being that if people come to work outside the 6:00 to 10:00 a.m. period, you should be giving some sort of credit. Because we, as a company, have always endorsed flextime, and we have a lot of people that currently work on flextime. Maybe they don't come in before 6:00 and go home after 10:00, but they might just do that, and you should be giving credit for that.

Let's go on to the second point -- the second point relative to allowing for in-house certification of compliance plans. We believe if a certifier is licensed or certified, his/her license or his/her certification is on the line when certifying a compliance plan. This should be sufficient. This certification should be the same as other instances which permit in-house licensed individuals to certify reports; such as, water pollution discharge permit reports, wastewater plant operations, professional engineers, etc.

The proposed regulations allow for plans to be returned if they are incomplete, which points out the possibility that any certifier's work may not initially be consistent with DOT practices. This further supports the argument for allowing in-house certification of compliance plans.

As for my third point, the regulations need to clarify who is and who is not included in the survey, and the Average Passenger Occupancy calculations. We understand that contract employees working for and paid by a contractor are not intended to be included, and that shared car pools by persons from different locations are included only partially. We understand DOT means to include only persons having a direct contractual relation with an employer, thereby establishing an employer/employee relationship. This would not include persons from agencies and contractors who are at a work location, and where the affected company employer has a contract with the agency or contracting company. Typically, these would include: food service workers, construction workers, temporary help from agencies, custodial people, and maintenance workers, etc.

As for shared car pools, the vehicle and passengers should be prorated to the respective work location, with no one location bearing the burden for the entire vehicle or benefiting from all of the passengers.

In closing, I would like to acknowledge that some of these concerns have already been addressed by the Department of Transportation as a result of continuing discussions held with representatives from the business community. I, too, would like to state for the record that we commend the Committee, and the Assistant Commissioner, Christine Johnson, and her staff, for involving the business community in the development of these regulations. We fully recognize that this is not, I repeat, not an easy assignment.

Mr. Chairman, thank you for the privilege of addressing you and your Committee on such a sensitive topic, and we would be glad to answer any questions you might have.

ASSEMBLYMAN DeCROCE: If I may, are you still participating in these conferences when they're having discussions pertaining to this?

MR. WOOD: We have made our comments known through the NJBIA, through the DOT, and yes, we are.

ASSEMBLYMAN DeCROCE: Okay. Does anyone have any questions for Mr. Wood? (no response)

Thank you very much.

MR. WOOD: Thank you.

ASSEMBLYMAN DeCROCE: Shannon Gibson, State Chamber of Commerce.

UNIDENTIFIED COUNTY ADMINISTRATION GUARD: Christine Johnson?

ASSEMBLYMAN DeCROCE: Does she have a flat tire or something?

UNIDENTIFIED COUNTY ADMINISTRATION GUARD: Her office wants her to call.

ASSEMBLYMAN ALBOHN: You've got to be back in Trenton in a half an hour. (laughter)

S H A N N O N M. G I B S O N: Good afternoon, Mr. Chairman. My name is Shannon Gibson, and I serve as a Legislative and Regulatory Analyst at the New Jersey State Chamber of Commerce. I testify in my role as staff liaison to the State Chamber's Transportation Committee, which is designed to provide technical guidance and expertise on issues that range from employer trip reduction, to light rail transit, to the transport of hazardous materials.

It is a Committee that really had existed in name only for some time, and I want to make that point clear, because we are working very hard to rebuild that Committee in terms of its numbers and its strength.

The State Chamber of Commerce recognizes that it has to take the initiative to educate employers on the potential impact of Federal clean air quality mandates and to demonstrate that, given a chance to voice specific concerns, the business people of New Jersey can help to develop a reasonable program.

The State Chamber of Commerce has been in contact with DOT and expressed an interest in working more closely throughout the development process. We have had Judy Parish address our Transportation Committee. I have spoken with Noreen Cardinali; we'd like to host a meeting in June. If you notice on the schedule, it says that, I think, between June 3 and June 30 is a period of time when the DOT will contact specific employer groups to sit down and discuss the regs in more detail. We have taken that upon ourselves, and we also do have a seminar in the preliminary stages.

I wish to identify where it might be appropriate to streamline the proposed requirements so that the Employer Trip Reduction Program is less intrusive and more cost-effective. In addition, I'd like to express concern with particular requirements that are either unclear, or in need of amendment. In no way do I intend to put you or the Department on the defensive.

I guess my reason for being here is just to shed some light on some obstacles that have to be overcome to implement an effective ETR Program. I think that your statement is accurate that communication is really going to be the key. You can look at this as a marketing program; that the DOT will have to really sell this program to employers, and employers will have to take it upon themselves to implement it.

ASSEMBLYMAN DeCROCE: Just a minute, Ms. Gibson. Don't you think the Chamber has a responsibility, as well as New Jersey Business and Industry?

MS. GIBSON: Yes, as I said, to educate the employers. I'm just saying we have to work on some of the finer details--

ASSEMBLYMAN DeCROCE: I see.

MS. GIBSON: --to make the employers understand better. I had noticed in some of our Committee meetings there is a lack of basic knowledge as to where these rules come from, and I think that's part of our responsibility to educate them on that.

One of the most troubling requirements is that prior to submittal to the Department, a compliance plan has to be certified as to its accuracy and efficacy by a qualified independent certifier. The State Chamber questions whether that requirement is an added level of bureaucracy that the New Jersey Department of Transportation could eliminate altogether.

To what extent does an independent certifier duplicate services provided by NJDOT itself? To what extent does an independent certifier duplicate what has already been done by an Employee Transportation Coordinator and verified by the highest ranking official at a given location? If the Department is to train individuals to manage transportation programs, is it better served to train the Employee Transportation Coordinator who is responsible for implementing the program at a specific work site?

And regardless of whether or not the need for an independent certifier is justified, the State Chamber of Commerce is alarmed by an obvious lack of responsibility on the part of certifiers to guarantee what each has been paid to do. In the event that a certified compliance plan is returned to an employer without the Department's approval, there is no provision stating that whoever certified the plan must offer assistance to revise it.

Keep in mind that at the time a compliance plan is returned, its accuracy and completeness have been verified by an Employee Transportation Coordinator; by the highest ranking official at the work site; by other individual employees or

outside contractors who contributed to its development; and by a DOT trained certifier.

If such a meticulous review process is used, it is difficult to understand why the compliance plan might still be deemed unacceptable unless there has been some mistake made, or the certifier did not do his job correctly. In that case, he, I think, should be required to help determine what changes are needed to make it acceptable. By that time, obviously the employer has run into some trouble and he needs more assistance.

Charles W. Browning, who is a member of the State Chamber's Transportation Committee, and a representative of Ford Motor Company, comments that, "To have this party simply walk in, review a compliance plan, collect a fee of unknown amount, and be absolved of all further responsibility is totally unacceptable."

One last point related to certification is that as members of the regulated community who must shoulder enormous administrative costs to implement ETR, the State Chamber of Commerce is uncomfortable with the fact that certifiers are permitted to set fees at their own discretion, and at the same time a certifier does not have to pay -- and the Department can correct me if I'm mistaken -- the certifier does not have to pay for the training provided by NJDOT, the cost of which is likely, or may be feared by small or medium-size businesses to be transferred to the affected employers.

Also unclear in this working document is the rationale behind a proposed fee structure that seems to charge an employer more for less. We feel it is not appropriate to double the cost for submitting an update plan. Assuming that the cost is intended to pay for the Department's expenditure of time and resources to process that compliance plan and administer the ETR Program, it would seem more likely for the cost to decrease with each subsequent filing. Some of these questions just need clarification.

The initial plan submittal is required to include seven items to establish a baseline against which future years can be compared. I quote from the regs: "Beginning with the 1996 update plan and for any subsequent update plan, an affected employer that has not achieved the target APO shall also complete Section 8, the Program Review and Projection."

Given that an employer submits one additional item, that much of the other seven items will remain unchanged, and that the DOT can assume to be more cost-effective in its administrative procedures by 1996, I think it will require less time and fewer resources to process a update plan as opposed to the initial plan. We see no reason a \$200 application fee is increased to \$400. We suggest that DOT reconsider this fee structure in fairness to the employer and the actual costs.

A second and perhaps more sensitive criticism of the proposed fee structure relates to the provision that exempts government employers from the payment of any filing fee whatsoever. Some of our businesses would like to know how that provision is justified.

If you consider how large State government is today, is it reasonable to transfer the cost of administering the ETR Program onto private-sector employees? Surely it does not cost less to process and monitor the compliance plan submitted by DEPE, DOH, or other State departments. Incidentally, the draft regs do not indicate whether State or Federal employees, or both, are exempt from the requirement.

Having studied the proposed requirements, I am certain that you recognize what an administrative nightmare the Employer Trip Reduction Program could lead to, both for employers and the Department, and the potential for increased costs to be transferred to the consumer.

In an effort to keep costs to a minimum, the State Chamber of Commerce recommends that the Department consider practical steps to reduce the amount of paperwork involved.

For example, is it possible -- and this may be a far-fetched idea -- but is it possible to allow an employer with multiple affected locations in a single AVO zone to submit one consolidated plan and appoint one Employee Transportation Coordinator?

In the proposed requirements, a consolidated plan is an option if the two or more participating work sites are located within a single AVO zone, and by definition, employers within that AVO zone share similar development characteristics, and the availability of like transportation services and facilities.

As the regs are currently drafted, an employer who chooses to submit a consolidated plan shall individually prepare for each work location, Section 1 and Sections 3-8 of the Standard Compliance Plan. The seven items which have to be reported separately include: a cover sheet, work location summary, current program summary, program additions, implementation process, monitoring process, and in the case of an update plan, the program review and projection. It is likely that much of this data is the same, and where unique operations cause it to differ, that fact can easily be footnoted in one submittal.

A consolidated plan should be more than a chance to average the APOs for different work sites. Employers within the same organization might benefit if the compliance plan were to represent a coordinated approach to transportation management. If you consider how the role of an Employee Transportation Coordinator is limited, you might be convinced that one individual is sufficient to direct that comprehensive program.

I describe that role as limited because, in essence, the greatest value of having appointed an ETC is that all correspondence is directed to one identifiable person. Since an effective ETR Program depends on the input of various

interested or affected parties, a business is likely to create a task force, and I understand that some businesses have done so. They have created a task force that assumes what otherwise is the role of an ETC.

In conclusion, I wish to ask the Department to clarify, and the Legislature to consider a few simple questions:

1) Is an employer required to pay an additional fee upon submitting a revised plan to the Department, either because that compliance plan has not been approved, or the work location has changed?

2) In the case that a hardship waiver is granted on the basis of financial concerns, will the Department be required to rebate the \$250 application fee?

3) Under the same circumstances, is it sufficient for a hardship waiver to reduce the target APO or exempt certain employees from the APO calculation while an employer is still required to register with the Department; conduct annual APO surveys; appoint an ETC; and develop and implement a plan for the work location? I guess the concern there is, what if the financial hardship is specifically caused by an employer's compliance with those requirements?

4) To what extent is an employer legally bound to the criteria defining a good-faith effort?

On behalf of the State Chamber of Commerce, I wish to thank you for this opportunity to testify. It is an understatement that the Department will find it difficult to, again, sell the Employer Trip Reduction Program, if you will, to employers, and for the employers to comply. I think if you take to heart some of the recommendations expressed today, that Program will become easier to comply with and more marketable to a wider audience; the audience responsible for implementing it.

I do want to express our appreciation for the Committee and the Department's support in the tax incentive bills. I think that will be a good addition.

ASSEMBLYMAN DeCROCE: Thank you very much, Ms. Gibson.

Does anybody have any questions for Ms. Gibson?

ASSEMBLYMAN MARTIN: Mr. Chairman, not of the witness, but just a point to clarify. She asked a point before: Is State government exempt, as far as the individual departments, as far as complying with--

ASSEMBLYMAN DeCROCE: Nobody is exempt.

MS. GIBSON: Not from complying, but from the fee.

ASSEMBLYMAN MARTIN: Do the different-- With the State government, is each department, first of all, responsible for coming up with its own compliance?

MS. CARDINALI: Yes, State government-- All government employers that are located in the State of New Jersey that are within the 18 counties are required to comply.

ASSEMBLYMAN MARTIN: But State government itself, is that-- Does State government have to comply?

MS. CARDINALI: Yes.

ASSEMBLYMAN MARTIN: Is that divided by department? Is that how you envision it?

MS. CARDINALI: We would envision it being divided by departments, yes.

ASSEMBLYMAN MARTIN: Okay, and do they have to pay the fee? The State paying itself is--

MS. CARDINALI: Under the bill that was passed there is no requirement for State agencies to pay for the filing fee.

ASSEMBLYMAN DeCROCE: Just the filing fee?

MS. CARDINALI: Just the filing fee.

ASSEMBLYMAN DeCROCE: Thank you very much for your statement. We appreciate it.

MS. GIBSON: Thank you, Mr. Chairman.

ASSEMBLYMAN DeCROCE: If anyone else would like to make a statement before we break up, I'll give you an opportunity.

Ms. Schleicher -- Judy Schleicher, mother of McRides.

J U D I T H P. S C H L E I C H E R: Well, actually I'm not going to take the credit, since the man sitting up in front of you is probably more responsible than I am for making it happen. There was a good reason for it, not because he decided I needed lifelong employment -- I don't think that was his reason -- but because this county had done some investigation of their own, both from the business perspective and from the county perspective.

They determined that the long-term future of this county was very dependent on moving people at peak hours, since that was identified as the critical problem here. By providing an entity, if you will, that would coordinate, would develop, and then implement smaller systems to move commuters to their jobs, they would be gaining access to employees who may live a distance away from their jobs, thereby getting the best people for the jobs in the Morris County employment region, as well as helping with clean air and helping the congestion problems.

The County recognized that you can't continue to build roads, or continue to widen roads. Some of you-- All of you, I think, that have had municipal experience know that one of the more difficult things in life to do is widen a road, especially if it's only for peak hour traffic -- those people going to and from their jobs.

So there are political as well as financial realities that really brought into being the McRides experience. There are now TMAs situated throughout the State, and because of some foresight by both the public and private sectors within this County, we now are uniquely, we hope, situated. I hope we have done our job well, to be able to help the businesses to comply, and not just comply for compliance sake, but get long-term, better transportation systems that work.

I really didn't have any comments that were done, because I really wanted to listen to what I heard here, and maybe bring some of my experience over the last six or seven years to this forum.

I was thinking, when Assemblyman Albohn talked about his older car: Older cars are usually larger, and larger cars make very comfortable car pools. I just want you to understand that. (laughter)

ASSEMBLYMAN DeCROCE: His is small, and I've ridden in it. It's not that comfortable.

MS. SCHLEICHER: Maybe we have to have a special category for people that can ride in your older car.

Anyway, the other thing that comes to mind is the forms -- the dreaded forms that all companies will have to -- that the State is working on, and the companies will have to fill out. I have seen a copy of the draft forms, and I just want to let you know, DOT has done a pretty good job, because I am not real good with paper -- as some people know who have seen my office -- and I figured if I could fill them out, almost everybody can fill them out. They're basically simple to look at and simple to figure out. Maybe not so simple to accomplish, but at least the initial goal of making something doable, less paper, I think, has been accomplished. I think we should recognize that. That was no easy feat to do that.

I think the reason we're all here is over one paragraph in a 800-page document; is because we're talking about change and not just throwing money at some smokestack. You know, some other rich company -- that's how we perceive it -- has to do something about-- It means that I may have to actually do something myself. I may have to carpool one day a week. I may telecommute. I have to change something about my life, and if anything, I've learned it's that nothing-- If you're dealing with change, it's not going to come easy. That's why everybody is here shaking their heads.

We also learned another thing along the way, and it was touched on by others that spoke before me: top management support. If we don't have that top management support, this is not going to happen. It's going to be very difficult for all

of us. We all face something. I heard the number \$400 million short-fall in highway funding if we don't comply. Well, that seems like kind of an idle threat. When you look at the competition for Federal dollars, and you've got this State with 18 counties out of compliance, maybe somebody else is going to walk in there and take our money?

So, you know, I just think we all have an obligation to try to make this work. I think it's leadership. It's going to take leadership from the business community and from the public sector, as well. I think we've seen a lot of that today; people working together to try to get this very difficult job done.

We ought to lead by example, and that's something I think that companies have to look at. It's not those people, but maybe all the people who can, even if it's just symbolic for some top management people, but we need to be in this together.

Another issue that was touched on today is communication. The best plans in the world are going nowhere unless we can communicate. Communicating is one of the jobs you're doing here. My fear is that some of the smaller companies who think it is the AT&Ts and the Exxons that are affected don't realize they have 130 employees. And guess what? They at least have to file that plan, and will begin to get fined. We have to start now. We don't have to wait for 1994; we should start now. I want to let you know that many of the companies in the county have come to this conclusion, and, in fact, we will have a couple of demonstrations or pilot projects under way to help with this effort.

On the public side we heard new systems -- there will be some new systems. I came from a meeting today, and I'll end with this, because it was interesting. We were talking about three corridors that were looking at new transportation systems

for those three corridors. We hope to have at least one of those -- with the help of the Legislature, hopefully two of those in place by the end of Fiscal Year '94.

During that process, of which we had about eight or nine companies, they talked about what we needed to do. We must get together. We must have our municipalities involved in this. The communication process, again, must get to their top management or we're not going to meet our goals. We hope that there are--

We also talked about some business opportunities that are out there. Some small business opportunities that might further help, and I hope that we will have-- We've got a working committee together that's going to help with this effort. I've come from companies saying, "Hell, no. We're not going to take this anymore," when they first heard about this legislation, to companies saying, "You know, we're going to go back and review how we do business, and how the policies that we have now are affecting business and our employees. We're going to try to make this law work with our businesses -- with the way we do business." That is the best way for all of us to comply.

I thank you very much for your attention.

ASSEMBLYMAN DeCROCE: Thank you, Judy.

MS. SCHLEICHER: I would be glad to answer any questions.

ASSEMBLYMAN DeCROCE: I appreciate it. I hope everyone understands this is a Federal mandate that New Jersey is attempting to comply with in order to maintain not only our clean air responsibilities, but to be able to continue that fund of dollars that comes in for transportation and necessities here in the State of New Jersey.

That has to be made clear to them. It's not just the Legislature wanting to oppose these rules and regulations, nor the Department trying to put these rules and regulations into

effect, but the fact of the matter is, we are required by Federal law to comply. Once everyone understands that-- I can't believe, frankly, in today's market that those heads of most of our larger companies, and even some of our mid-size companies, are not environmentally conscious, so that they don't want to participate in this type of program. They will be singled out, and they will be the big, bad guys right away. I don't think anybody really wants that to happen. So, hopefully, everyone will comply as we requested.

Of course, communications, and, frankly, informing the general public and employees working with these different companies is going to be the key. So I agree with you.

Congratulations. I understand you are going to West Essex. That's very good.

MS. SCHLEICHER: Yes. Yes, we're working with West Essex, as well. They're looking to be adopted by Morris County.

ASSEMBLYMAN DeCROCE: I know that. Thank you very much, Judy.

MS. SCHLEICHER: Thank you.

ASSEMBLYMAN DeCROCE: Yes, ma'am. Would you like to come forward?

K A T H E R I N E M O S E R: Yes.

ASSEMBLYMAN DeCROCE: Give us your name.

MS. MOSER: Good afternoon. My name is Kathy Moser, and I am the mother of Biking Is Kind to the Environment, a small nonprofit in Morris County. I am hoping that in the next five years we can do as good a job as Judy Schleicher and McRides have done in the last five years.

I'm here to speak on behalf of bicycles, and to encourage you to remember that cars are not the only form of transportation.

A few fun facts for you: Fifty-four percent of Americans live within five miles of work. That's close enough to bicycle. Also, many important people -- citizens who we're

trying to employ -- cannot afford to buy a car, and if they could afford to buy a car, there may be better things that they could do with that money. So bicycles are an extremely important, equitable form of transportation.

Bicyclers are, of course, the ultimate clean air commuters. We don't pollute at all. In fact, a person on a bicycle is the most efficient form of locomotion. It's more efficient than a cheetah -- really the most efficient. (laughter)

Bicycles interface extremely well with transit. Many of our train stations now are looking to try and increase their parking. They're meeting with resistance, and they're also planning on spending large amounts of money. Fourteen bicycles can go into a parking space that, say, is for one car. Six hundred dollars a spot is the absolute most you could possibly spend to park a bicycle, as opposed to \$2500 for the almost minimum you could spend to park a car. Bicycles are inexpensive to support, both on the roadways and by building bike paths.

Also, bicycles can be used for nonwork related trips. So through our ETR Programs we train, inspire, educate, and support people to use bicycles to get to work. They can also use their bicycles to go to church. They can use their bicycles to go to the post office. They can use their bicycles to go across town.

It leads to my last point, that people traveling by bicycle and also on foot build better communities because they know their neighbors. They know their streets. They know the land. They know where the rivers are. So bicycles build communities.

So I encourage you, please remember that cars are not the only form of transportation.

ASSEMBLYMAN DeCROCE: You know how important we believe bicycles are? We recently passed legislation allowing you to take your bicycle on our trains. How about that?

MS. MOSER: Yes, sir. Thank you very much.

ASSEMBLYMAN DeCROCE: You're welcome.

Anyone else? (no response) If not, I would like to thank you all for attending today's hearing. We do appreciate it.

This meeting is now adjourned.

(HEARING CONCLUDED)

New Jersey State Library

10/10/10

APPENDIX



131 Morristown Road
Basking Ridge, NJ 07920

April 29, 1993

The Honorable Alex DeCroce, Chairman
New Jersey State Assembly
Transportation and Communications Committee
101 Gibraltar Dr., Suite 2D
Morris Plains, NJ 07950

Dear Mr. Chairman:

Thank you for the opportunity to comment on the draft New Jersey Employer Trip Reduction regulations.

AT&T favors activities designed to enhance and promote air quality, and, in that regard, we supported the passage of the New Jersey Traffic Congestion and Air Pollution Control Act. We appreciate the manner in which the New Jersey Department of Transportation has involved our company and others in the development of the draft regulations.

We believe the attached suggestions will improve the state's success in achieving its clean air goals, and are consistent with the law and the guidelines set forth by the United States Environmental Protection Agency.

If you have any questions, please contact Dr. Laurence S. Bernson on (908) 582-3616 or Mr. James H. Walton on (908)204-8586.

Sincerely,

James H. Walton for

Judy F. Dixon-Williams
Corporate Superfund,
Energy and Employee
Commutation Manager

Attachments

IX

EF: 010-160

Copy to:

L. S. Bernson	AT&T - Bell Laboratories
D. L. Campbell	AT&T - Bell Laboratories
C. DiGangi	AT&T - Law
J. F. Dixon-Williams	AT&T - Corporate Environment & Safety
J. Downey	AT&T - Capital Corporation
B. L. Ennis	AT&T - Corporate Environment & Safety
B. M. Flynn	AT&T - Human Resources
M. J. Ford	AT&T - State Government Affairs
C. M. Johnson	New Jersey Department of Transportation
V. R. Kattoju	AT&T - EasyLink Services
J. A. Kohler	AT&T - Microelectronics
R. Larris	AT&T - Corporate Environment & Safety
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R. P. Rochford	AT&T - State Government Affairs
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J. H. Walton	AT&T - Corporate Environment & Safety

**AT&T Comments on Working Document for
New Jersey Department of Transportation
Employer Trip Reduction Program Regulations**

Section 2: Definitions

- "Average Vehicle Occupancy" should be redefined as follows to minimize uncertainty with the definition:

Average Vehicle Occupancy or **AVO** means the average passenger occupancy rate of all commuting trips between the residence and the workplace during the peak travel period, within an affected area.

- "Carpool" should be redefined to be consistent with EPA guidance:

Carpool means a vehicle occupied by two (2) to six (6) people traveling together between their residence and workplace or other destination.

- "Employee" should be redefined as follows:

Employee means any person for whom an employer is required to withhold federal and state income taxes; and is employed in a full-time or part-time position; who either reports to work or is assigned primarily to a work location eighty or more hours per 28-day period for at least two 28-day periods of any four consecutive such periods.

Section 5: Employer Registration

- Section 5(b)(1) should be rewritten since the stipulation of the "highest ranking officer" has little meaning for work sites with multiple locations. It is recommended that "highest ranking officer" be replaced with the "designated responsible manager".
- Section 5(b)(2) should allow that a contact person need not be required to physically be located at the affected facility, as long as they have responsibility for that location. It is recommended that "...contact at each location..." be replaced with "...contact for each location..."

Section 7: Average Passenger Occupancy (APO) Survey

- In accordance with EPA guidance, trip reduction program rules and regulations issued by other states (e.g., Illinois, Maryland, California) are allowing companies to either survey all employees that report to the work sites during the peak travel period, or employ a random sample method.

Thus, in accordance with the New Jersey Traffic Congestion and Air Pollution Control Act this option should be offered to affected New Jersey work sites, and listed as new Section 7(c)(7). See attachment for new Section 7(c)(7). This procedure is contained in Regulation 13, Rule 1, Trip Reduction Requirements for Large Employers, adopted by the State of California Bay Area Air Quality Management District.

- The following allowances are presently included in ETRP rules for other affected states and should be included within New Jersey's program.

Section 7(e)(9). An employee who reports to the work site during the peak period and who, while reporting, regularly transports one or more individuals to a daycare facility may be considered a ridesharing participant and the individuals who are transported to the daycare facility may be counted in the same manner as employees for the purpose of the calculation method detailed in this regulation.

Section 7(e)(10). Students licensed to drive and who would have normally reported to school during the peak period in a vehicle may be considered ridesharing participants and may be counted in the same manner as employees for the purpose of the calculation method.

- To minimize confusion in calculating an APO, the following should be included.

Section 7(c)(11). If a surveyed employee uses more than one method of transportation on a single day, the method which constitutes the largest portion of the employee's commute mileage shall be the method identified.

- Section 7(f) should be modified to allow for averaging APO's across work locations in different AVO zones. In accordance with EPA guidance the following sentence should be included:

"The employer may average work sites within different zones, as long as vehicle miles travelled are recorded at those work sites and it is the vehicle mile credits that are averaged to demonstrate compliance."

Section 8: Compliance Plans and APO Reports

- Section 3(f)(6) should be deleted since it is inappropriate to limit this option to only those employers that entered into consolidated plans in 1994. Many affected employers in preparing their 1994 plan will not have any experience in implementing trip reduction programs. Only after monitoring and evaluating their individual program will employers realize that it may be to their advantage to combine resources and participate in consolidated plans. Thus, affected employers should be able to enter into consolidated plans at any time without restriction.

If this section stands, it should be limited to "immediate family members (i.e., parents, spouses, children).

- Section 9(b)(1)(iv) is too restrictive and should only apply to individuals or organizations who have prepared ETRP compliance plans for the employer, and not to those who are under contract for any product or service. As written, TMA's will not be allowed to certify our plans since they charge membership fees and are under contract.

Section 11: Extensions, Exemptions, and Waivers

- Section 11(c)(2) should include union contracts adopted prior to the regulation implementation date as a claim of hardship.

- Section 8(h) needs clarification since, NJDOT has stated that each affected work site needs a dedicated ETC to administer the ECO program at that location. Thus, employers with more than one affected work site will need an equivalent number of ETC's. However, EPA guidance and the New Jersey Traffic Congestion and Air Pollution Control Act, does not mandate separate and individual ETC's for each work site. Instead they state that there should be the "appointment of a qualified and committed employee transportation coordinator". Thus, it is therefore requested that employers with multiple affected locations be allowed the option of using the same individual as the ETC for more than one site to provide flexibility, consistency, and cost effectiveness in administering the program. It is recommended that "...designate an ETC at each location..." be replaced with "...designate an ETC for each location...".

Section 9: Plan Certification

- In lieu of hiring additional staff to review the projected 5,500 plans that will need to be reviewed between May 1994 and November 1994, NJDOT has proposed that employers contract with "independent certifiers" to conduct this job function. While we have no objection to NJDOT using outside transportation professionals to supplement their staff in reviewing these plans, we have concern that the procedures as detailed in Section 9 are unnecessarily excessive, burdensome, and costly to affected employers.
- No other state in developing and implementing trip reduction programs use such a complicated process to review submitted compliance plans.
- NJDOT should review the procedures used by NJDEPE, whereby that state agency manages and is directly responsible for the actions of consultants hired to help NJDEPE personnel review permit applications and associated regulatory documents.
- With plan certifiers directly reporting to NJDOT, the review process would be more effective and less costly to the regulated community. There would be no duplication of effort and standard review fees could be established.
- Section 9(b)(1)(ii): This section should be deleted because it is vague, unenforceable and inordinately burdensome to the state's larger employers. In today's society, this provision is unworkable and unenforceable. An employer cannot be held accountable for being able to identify the relatives of its employees. In many instances the employees themselves cannot identify their relatives. Today, the extended family is the norm, with step parents and children on the increase. Surnames no longer indicate relationships; people form intimate relationships outside of marriage, and those that are married often use different names.

$$n = \frac{N}{1 + .0026(N-1)}$$

A sample of size "n" based on this formula should produce an APO with a sampling error of at most plus or minus 0.05, with 95% probability. The sample size based on this formula is displayed in the table below:

Number of Peak Period Employees at Work Site	Sample Size
400 to 420	200
421 to 440	205
441 to 460	210
461 to 480	214
481 to 500	218
501 to 550	225
551 to 600	235
601 to 650	240
651 to 700	248
701 to 750	255
751 to 800	260
801 to 850	265
851 to 900	270
901 to 950	274
951 to 1000	278
1001 to 1500	300
1501 to 2000	320
2001 to 3000	340
3001 to 4000	350
4001 to 6000	360
6001 to 10,000	370
> 10,000	380

Attachment I: Random Sample Methodology

Section 7(c)(7). Random Sample Method: The method described in this section must be followed when an employer chooses to use a random sample to meet the requirements of Section 6.

i) Summary:

- a. Section 7 (c)(7) provides an option for larger work sites to calculate an APO based upon a random sample of the employee population. The random sample option is available only for work sites where 400 or more employees start work during the peak period (6:00 a.m. through 10:00 a.m.).
- b. The size of the random sample depends upon the number of employees who start work during the peak period at the work site. The means to determine the minimum size of the random sample is described in Section 7(c)(7)(ii)(b).
- c. The sample must be selected as described in Section 7(c)(7)(ii). Once the sample group has been selected, the employer is not permitted to send additional survey forms to employees beyond the original sample group. This will invalidate the results of the survey and void the employer's option to utilize the random sample method.
- d. A high response rate is critical to ensure that the random sample produces an accurate APO for the work site. The employer should make a concerted effort to obtain a completed survey from each employee in the sample. All non-respondents in the sample will be treated as drive alone commuters (i.e. commuting in a single occupant vehicle) for purposes of calculating the work site APO.

ii) Basic Random Sample Selection Methodology:

- a. The employer shall compile a complete list of employees at the work site in alphabetical order, and assign a consecutive number to each employee. The employer shall exclude from the list employees who are known to regularly start work outside the 6:00 a.m. through 10:00 a.m. peak period.

- e. The methodology described in Section 7(c)(7)(ii)(d) will eliminate potential bias that could result from choosing survey participants on the basis of department, rank, income level, home zip code, or other demographic factors, or from excluding certain segments of the employee population.

iii) Selection Process for Subsequent Surveys:

- a. In subsequent surveys, the employer may select the random sample using the method described in Section 7(c)(7)(ii) or the employer may choose to survey the same employees that were included in the previous random sample. Employees in the previous random sample group who have left the organization shall be replaced in the new sample by employees selected per Section 7(c)(7)(ii). The latter approach may enable the employer to more accurately track changes in commute mode from one survey to the next.
- b. If the number of employees who start work between 6:00 a.m. and 10:00 a.m. has increased or decreased by more than 20% since the last survey, the employer shall select a completely new random sample group using the methodology described in Section 7(c)(7)(ii).

iv) Performance Objective Calculation, Reporting, and Recordkeeping:

- a. APO must be calculated according to the methodology described in Section 7(c). Notwithstanding the provision of Section 7(e)(8), any employee in the random sample group who fails to submit a complete survey form shall be included in the performance objective calculation as a drive alone commuter (single occupant vehicle).
- b. The employer shall submit: 1) the results of the survey; 2) a description of the methodology used to select the random sample; and 3) a tally showing the number of surveys distributed, the number completed, and the number of non-respondents.

- b. The employer shall determine the number of employees to be included in the random sample using the following formula, where n is the sample size and N is the number of employees who start work between 6:00 a.m. and 10:00 a.m.
- c. In no case can the random sample size be less than indicated in the above table. The employer may choose to include a larger number of employees in the survey. A larger sample group should more accurately represent the entire employee population, provided that the employer obtains a high response rate.
- d. After the sample size has been determined, the employer has two options for selecting the sample:
 - 1. Use a computer program to select distinct random numbers from the employee list (e.g., 278 distinct random numbers between 1 and 1000, where 1000 employees start work during the peak period).
 - 2. Select employees from the list based upon a sampling interval and random starting number.

To determine the sampling interval, the employer shall divide the total population of employees who start work during the 6:00 a.m. through 10:00 a.m. peak period by the sample size and round the result down to the nearest integer.

Example: If a work site has 1000 employees who start work during the peak period and sample size is 278, then the sampling interval equals $1000 \div 278 = 3.6$. The 3.6 is rounded down to 3 to produce the sampling interval. Therefore, every third name on the list shall be selected beginning at a random starting number X where X is between 1 and 3. If X equals 3, then the sample would include numbers 3, 6, 9, 12, 15, etc., until the required 278 numbers have been selected.



Commerce and Industry Association of New Jersey

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Testimony

**Proposed Draft Regulations, New Jersey
Employer Trip Reduction Program (ETRP)**

Statement of
Richard L. Duprey
Director of Government Relations

Before the Transportation & Communications
Committee
General Assembly
29 April 1993

- c. The employer shall retain records needed to document adherence to this protocol for a period of at least three years, including the master list used to generate the random sample and the names and numbers selected from that list.

dotcomm2.wp

compared with only 5 percent taking mass transit.¹ Prying employees out of their cars is going to require a sea change in personal commuting habits that will not be easy for business to accomplish. Yet even if this is done, at least one study compiled from US DOT study data tapes has found that 64 percent of all peak-hour trips are not work-related!² This is consistent with national data compiled by the federal government which found that work-related trips account for only 26 percent of all trips, and has been declining steadily for 20 years.³

Equally important to this hearing today is the fact that work-related trips to major employment sites (i.e, companies with 100 or more employees) account for approximately 40 percent of all work-related travel.⁴ This suggests that employer trip reduction programs (ETR) can affect only about 10 percent of all daily trips and only 15 percent of all peak-hour trips.

If companies achieve the 25 percent increase in average vehicle ridership, it is only going to produce a 2-3 percent reduction in area-wide trips. In other words, ETR programs, such as the Traffic Congestion & Air Pollution Control Act, are going to have a negligible effect on traffic congestion or air quality.

To illustrate the implications of these regulations, you will find attached to these comments an example of what a typical "affected employer" in urban Bergen County must do to achieve compliance with the law: essentially, a 250 percent increase in commute alternative utilization by its employees.

I point all this out because the regulations before us today, while certainly better than had been anticipated, can and must be improved still further. Business faces steep and significant fines for non-compliance, particularly for not reaching its AVO target. The Commerce and Industry Association questions whether any company can achieve this goal, let alone sustain it, yet there are no offsetting incentives for business: it is all stick and no carrot,

¹"Mass Transit: Effects of Tax Changes in Commuter Behavior," USGAO Report to Congressional Requestors, US House of Representatives, September, 1992, pp. 2-3.

²"Private Tollways: Resolving Gridlock in Southern California," Robert W. Poole Jr., Reason Foundation Policy Study No. 111, May, 1988, p. 6.

³"1990 Nationwide Personal Transportation Survey, Summary of Travel Trends," Federal Highway Administration, March, 1992.

⁴Southern California Air Quality Management District, Staff Report on Implementation of Regulation XV (1992), Private communication from Commuter Transportation Services, Inc.

Mr. Chairman and Members of the Committee:

The Commerce and Industry Association appreciates the opportunity to present its recommendations on the Department of Transportation's proposed draft regulations for its Employer Trip Reduction Program, as called for under the "New Jersey Traffic Congestion & Air Pollution Control Act" (P.L. 1992, ch. 32).

Our testimony today will make a number of suggestions for modifications to the regulations as written, as well as offer an important additional suggestion that we believe will serve as an incentive for business to go beyond the minimum requirements of the law.

1. Background

As you may be aware, the Commerce and Industry Association was a vocal opponent of the Act when it was originally proposed by Senator Rand several years ago in response to traffic conditions experienced on a number of state highways. We were not anymore enamored of the proposal when it was reintroduced as a means of complying with the federal Clean Air Act Amendments of 1990. However, we believed that if the legislature was going to adopt this program regardless of the detrimental economic impact it would cause to the state, then it ought to be made as "business friendly" as possible. For that reason, the Association did support implementation of the program under the auspices of the DOT because they were believed to be more responsive and understanding of business concerns that the Department of Environmental Protection & Energy could ever pretend to be.

Certainly they have bent a more willing ear to business concerns and this attitude is extant throughout the regulations. For example, the DOT created a tiered system for determining Average Passenger Occupancy (APO) and Average Vehicle Occupancy (AVO) rates and targets for urban and suburban areas, recognizing the unique circumstances of each. Additionally, the DOT was willing to modify its definitions, such as that for a "carpool," from a vehicle carrying not less than 9 passengers to one carrying not less than 7. The DOT could also have charged registration fees, as DEPE is wont to do, but did not.

This mindset is one very different from that business typically finds in state government, but is also very important because if business is ever going to be able to comply with this impossible law, then it is going to need as much flexibility and rationality in the agencies as is possible.

Consider that the federal government has estimated that 87 percent of all commuters in the country commute by private automobile,

5(b)1: Completion and Submittal of Registration Form:
"The form must be signed by the highest ranking [~~officer~~]
employee responsible for the operation or management of
[at] the affected location who shall attest to the
accuracy of the information reported.

5(b)1.ii: Name and telephone of the highest ranking
responsible [~~officer~~] employee responsible for the
operation or management of [at] the location.

We agree with the language which has been offered by others that would change the language as outlined here.

5. Section 9: Plan Certification

Section 9(b)1.ii.: (A certifier shall not be considered independent if:) certifier or an organization that employs the certifier prepared and or will assist the employer to implement the plan,

Section 9(b)1.iii.: certifier or any organization by which the certifier is employed is currently under contract to the employer to provide or receive payment for any product, professional service, or membership fee; or was under such contract within the past six months.

Some of New Jersey's leading business organizations, such as the Business and Industry Association, the State Chamber of Commerce, and the Commerce and Industry Association, have people on staff who are intimately familiar with the requirements of the law or who may be willing to hire qualified staff people to be a certifier. These provisions, however, would prohibit these organizations and others from being able to offer these services as a benefit of membership.

6. Section 10: Compliance Plan Review

Section 10(a): Plan Review Schedule: Within 180 days of receipt of plans, the Department shall review all submitted plans for completeness and consistency with the regulations and shall return incomplete and inconsistent plans to the employers for revisions.

The Department has established a rigorous program for certifiers to qualify as an approved certifier of the Department, ostensibly because the Department does not want that responsibility itself. However, if the Department will undertake a review of all plans anyway, there is no reason to mandate that a company pay for a service that the DOT may still reject. Either the DOT should review all plans, or it should accept the certification of the approved certifiers.

such as the tax credits which are still languishing on the Governor's desk. The recommendations that follow are offered with the foregoing in mind.

2. Section 2: Definitions.

AVO Zone: Change "Section 4" to "Section 6."

3. Section 3: Scope and Requirements.

3(b) Requirements: An affected employer failing to undertake any or all of these actions [~~shall~~] may be considered in violation of these regulations and [~~shall~~] may be subject to penalties in accordance with Section [~~12~~] 11.

Since a company is entitled to file for a "Hardship" Waiver' due to a legal prohibition from compliance, or some other condition, it is presumptuous to state that a company will be fined. Better language would have the word "may" substituted for the word "shall."

4. Section 5: Employer Registration.

5(a)2 Registration Deadlines: "Each employer that receives a notification packet shall respond even if the employer thinks it is not subject to the regulations."

As written, this language would require a 75-employee company, obviously not subject to the law, who is mistakenly sent a notification packet, to file a card stating it is not required to file. Moreover, the employer may be required to furnish additional information to the department to substantiate its claim.

Even the IRS does not operate in this fashion. A taxpayer not required to file a return is not required to file a return stating he is not required to file. Rather, it is incumbent on the taxpayer to determine his filing status and should he determine it incorrectly, whether willfully or innocently, he is still subject to fines and penalties.

Far be it from me to advocate that any agency model itself after the Internal Revenue Service, but in this situation, there is a presumption of knowledge on being required to comply and since criteria explaining whether a company is "affected" or not is readily available, it seems improper to require a firm to register that it is not required to register, if, in fact, it is not required to do so. Either delete this section or insert the word "may" for the word "shall" once again.

9. Conclusion

Mr. Chairman, the Commerce and Industry Association believes that the regulations that have been drafted by the department go a long way towards making this trip reduction program as "business friendly" as possible. We have been surprised, but pleased, at the receptiveness of the Department of Transportation to the concerns of business and their willingness to be flexible.

The suggestions that we have offered today are not made in criticism of the DOT's efforts, but rather to further facilitate the smooth implementation of law. The Association has grave doubts on the efficacy of the Traffic Congestion & Air Pollution Control Act because it is dealing with such a small subset of the driving public.

Moreover, when one considers that only 10 percent of the cars on the road today are causing some 65 percent of all automotive emissions, you easily get the idea that broad, shotgun approaches to the problem, such as this Act, are going to do little in way of cleaning our air or of reducing congestion.

There is, however, one further suggestion we would like to offer to the committee for its consideration, one which has been getting much attention at the federal level in other arenas: trading of "trip reduction" credits. We ask that this committee consider implementing a policy of allowing companies which exceed their trip reduction goals to trade their "excess vehicles" to companies who may not be able to initially achieve their goal.

We have heard two arguments against this policy: one, the goal of the law is to take cars off the road and this policy would go against that idea; and two, it would allow the companies with the credits to prey upon those unable to reach their goal. We find both specious.

In regards to the first criticism, since the intention is to reduce the number of cars on the road, trading credits would not upset that policy one bit. Indeed, it may even further the goal more so since companies in densely urban areas, with more mass transit facilities available to them, may try to exceed their allowances so as to make a profit on them. They may do more than they have to if there is a financial incentive to do so. And because the cities have more of an air quality problem than outlying suburban areas, that is where we would want to reduce the number of cars by a greater amount.

This brings up the second criticism of companies gouging others. Unless there is a government edict requiring companies to buy a service--for example automobile insurance--the price charged for such credits will reflect what the buyer is willing to pay. No one can be "gouged" if he is not forced to take the product. A company

APPENDIX A

Implications of the Employer Trip Reduction Program

A typical "affected employer" in urban Bergen County which has little or no mass transit services available to it, and for which walking or bicycling is impractical, will find the regulations of the ETRP a monumental hurdle to overcome.

If we assume the company has 115 employees who arrive in 100 cars (90 of which are single occupancy vehicles and 10 of which are carpools carrying a total of 25 employees), the company's APO 1.15 persons per vehicle. However, the area-wide AVO rate has been found to be 1.22 persons per vehicle and the target APO for Bergen County has been set by DOT at 1.46 persons per vehicle.

To reach the 1.46 target, the number of vehicles at this company would need to be reduced from 100 to 79. This could be achieved with 61 employees carpooling in 27 cars and 54 arriving alone. Thus, to comply with the ETR regulations, the number of employees carpooling would need to increase from 25 to 61--nearly a 250 percent increase!

*Based upon example developed by the Regional Plan Association,
"Transportation Demand Management in the New York Region"*

would not be required to purchase the credits so the seller would not be able to charge exorbitant prices for them. The free market will set the price.

And with the potential for profit comes an incentive to do. The Commerce and Industry Association believes that this proposal will augment the trip reduction program and serve to further the goals of the law. For that reason, we strongly urge you to consider it.

Thank you, Mr. Chairman, and I would be happy to answer any questions you or the committee may have.

Given the nature of this problem and the objective that must be met, it is New Jersey Bell's opinion that these regulations appear to be equitable and workable, with a few possible adjustments.

We think that Assistant Commissioner Johnson, the staff at the Department of Transportation, NJBIA, and a host of others should be commended on their efforts. And we are appreciative of having the opportunity to participate in the process.

New Jersey Bell is pleased with the inclusion of telecommuting as an employer trip reduction strategy. We thought it very important to briefly comment on the importance of telecommuting because its benefits may far exceed the requirements of an employer's trip reduction strategy.

New Jersey Bell is a Bell Atlantic company. On behalf of its companies, Bell Atlantic conducted an 18 month telecommuting pilot involving 100 employees who worked from home a minimum of one day a week. Savings in commuting trips, miles traveled, gasoline, tolls, and parking expenses were realized. The Company also benefited from improvement in employee morale, increased job satisfaction and, according to

TESTIMONY OF ROBERT L. RIVERS
NEW JERSEY BELL MANAGER PUBLIC AFFAIRS
BEFORE THE ASSEMBLY TRANSPORTATION
AND COMMUNICATIONS COMMITTEE

MORRISTOWN, NEW JERSEY

APRIL 29, 1993

I'd like to thank Chairman DeCroce and the members of the Assembly Transportation and Communications Committee for the opportunity to share with the Committee New Jersey Bell's views regarding the Employer Trip Reduction Program regulations.

New Jersey Bell personnel closely followed the development of the New Jersey Traffic Congestion and Air Pollution Control Act. We also have participated in the New Jersey Business and Industry Association (NJBIA) effort which assisted the New Jersey Department of Transportation in developing the current draft of the Employer Trip Reduction regulations.

Our State has experienced significant amounts of growth. And, when coupled with development patterns, given New Jersey's physical infrastructure, this growth has resulted in many of the State's roadway's being overwhelmed with motor vehicle traffic, especially during "rush-hour." The effect of this situation has been commuter frustration, wasted fuel, and air pollution, just to name a few concerns.

We would like to see a provision allowing the Company to assign these responsibilities to one or some limited number of individuals. For example, one responsible individual, who would attest to the accuracy of information reported for all locations, and one, or some limited number of individuals, who would be responsible for employee transportation coordination at all building locations where the employer trip reduction program applies.

In addition to employer transportation coordination issues, we would appreciate your consideration of two additional adjustments to the proposed regulations.

First, New Jersey Bell has in excess of 15,000 employees, the majority of whom report for work at the 39 building locations mentioned above. The mix of employee vacations, business travel, multilocal responsibilities, holidays, and other significant events affecting where an employee may be working on any given day, may make the achievement of a 75% response rate for the APO survey very difficult. We would like to see a provision allowing the use of statistically valid random sampling techniques.

Second, we feel some consideration should be given to statewide averaging, as opposed to the individual APO targets.

Thank you for this opportunity to testify.

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the Company's Director of Telecommuting, increases in employee productivity have been dramatic. As a result, the telecommuting option is now available to New Jersey Bell employees. Our experience shows that this is a valuable tool for meeting trip reduction goals.

We do have a concern, however, with an aspect of the compliance plan -- specifically the requirements that the plan for each affected employer work location be signed by the highest ranking responsible person at that location and that each work location have its own Employer Transportation Coordinator.

Regarding work location accountability, New Jersey Bell has 329 building locations. If the proposed regulations were in effect today, 39 of these work locations would be affected. The requirement that the highest ranking responsible officer or manager at a location be required to attest to the accuracy of the information reported, and the requirement that an Employee Transportation Coordinator be designated at each location will undoubtedly prove to be administratively burdensome.

Statement by Exxon Research and Engineering Company

before

New Jersey Assembly Transportation and
Communications Committee

regarding

Proposed Regulations for
New Jersey's Employer Trip Reduction Program

April 29, 1993

Statement by Exxon Research and Engineering Company
before
New Jersey Assembly Transportation and Communications Committee

Mr. Chairman, ladies and gentlemen. I am Barry Wood of Exxon Research and Engineering Company located in Florham Park. With me today are Pat Ihle, Coordinator of our Traffic Management Task Force, and our in-house Counsel, Don Paris. Thank you for the opportunity to present our views on the Department of Transportation's proposed regulations for New Jersey's Employer Trip Reduction Program.

In our oral testimony we intend to cover only three points. First, the need to provide employers credit for their employees who arrive at work outside the "peak period." Second, permitting certification of compliance plans by in-house qualified licensed certifiers. And third, clarifying just who is and is not included in the survey and average passenger occupancy calculations. We also have prepared additional written comments which we will submit at the close of our testimony for the record.

Concerning our first point relative to the need to make provision for giving employers credit for those employees arriving outside the 6-10 a.m. peak period. The goal of this program is to increase the Average Passenger Occupancy during the peak period. This will reduce either the number of vehicles or the number of employees arriving during this time. The goal is not necessarily to reduce the number of employees who arrive subsequent to

the peak period. Therefore, we suggest revising the calculation formula as follows:

$$\text{Work Location APO: } \frac{\text{Number of Employees Arriving During Day}}{\text{Number of Vehicles Arriving During Peak Period}}$$

Employees Arriving is: Total number of employees arriving at the location from Monday through Friday of the survey week.

We believe that each employee who arrives at the work location at a time other than during the peak period should be counted as one employee for each day the employee arrives outside the peak period and that the vehicle used by that employee should count as zero vehicle.

On the second point relative to allowing for in-house certification of compliance plans, we believe if a certifier is licensed or certified, his/her license/certification is on the line when certifying a compliance plan. That should be sufficient. This certification should be the same as other instances which permit in-house licensed individuals to certify reports, water pollution discharge permit reports, wastewater plant operations, professional engineers, etc. The draft regulations allows for plans to be returned if they are incomplete, which points out the possibility that any certifiers' work may not initially be consistent with DOT practice. This further supports the argument for allowing in-house certification of compliance plans.

As for the third point, the regulations need to clearly define who is and is not included in the survey and the average passenger occupancy calculations. We understand that contract employees working for and paid by a contractor are not intended to be included, and that shared carpools by persons from different locations are included only partially. We understand DOT means to include only persons having a direct contractual relation with an employer, thereby establishing an employer/employee relationship. This would not include person(s) from agencies and contractors who are at a work location and where the affected company employer has a contract with the agency or contracting company. Typically, these would include food service workers, construction workers, temporary help from agencies, custodial people, maintenance workers, etc. As for shared carpools, the vehicle and passengers should be prorated to the respective work sections, with no one location bearing the burden of the entire vehicle or benefitting all of the passengers.

In closing, I would like to acknowledge that some of these concerns may have already been addressed by the Department of Transportation as a result of discussions held with the representatives from the business community. I would also like to state for the record, that we commend Assistant Commissioner Christine Johnson and her staff for involving the business community so closely in the development of these regulations. We fully recognize this is not an easy assignment.

Mr. Chairman, thank you for the privilege of addressing you and your Committee on such a sensitive subject. We'd be pleased to answer your questions.

Exxon Research and Engineering Company
Comments on Working Document
for
Employer Trip Reduction Program (ETRP) Regulations

We are providing general comments and specific suggestions on the working document and subsequent regulations. Under the specific comments, suggested new language has been underlined.

GENERAL

- o The ETRP regulations should allow for employers to receive credit for their employees who arrive outside the "peak period."
- o In-house certification of compliance plans by qualified licensed certifiers should be permitted.
- o Clarification as to who is and is not included in the survey and APO calculations is essential. E.g., contract employees working for a contractor at a site, shared carpools by persons from different locations.
- o Throughout the document the "person responsible for the day-to-day operations" of a work location should be allowed to sign documents where signature is now required by "the highest ranking officer."

SPECIFIC

Section 2

"Average Vehicle Occupancy" - Need to clarify what is meant by "as a whole." Suggest revising to read as --means the average vehicle occupancy of an AVO zone of all vehicles commuting ... periods as determined in Section 6.--

"Carpool" - the term "work" includes "schools" as work place; therefore, schools should not be identified as alternatives to work sites. "Seating capacity" should be --six-- (if "nine" then 7 and 8 persons are either a "carpool" or "vanpool").

"Consolidated Plan" - Clarify to read as --means a plan ... for several work locations of such employer and/or other employers within an AVO zone or jointly by several employers"--

"Employee" - Clarify what is meant by "contract position." We understand DOT means to include only persons having a direct contractual relation with an employer, thereby establishing an employer/employee relationship, but not including person(s) from agencies and contractors who are at a work location and where the affected company employer has a contract with the agency or contracting company.

"Peak Period" - Suggest revising to read as --means the time period ... subsequently defined by the Department with due notice thereof per Administrative Procedure Act requirements to the public.--

"Single Occupant Vehicle" - Clarify what happens when more than one person is in the vehicle for part of the commute. How is the vehicle/persons counted at each work location?

"Work Location" - Revise to read as --means an area ... of a single employer, or more than one employer owned directly or indirectly by a common parent company or organization, and where employees perform work.--

Section 4

(a)2 - Suggest revising to read as --In each year after the initial notices are mailed, DOL shall send notices to any new affected employer since the previous notification mailing.--

(b) - Immediately before last sentence, insert the following new sentence: --Such date shall be no less than 60 days from the date of the notice.--; and at end of last sentence add language to also require publication in the New Jersey Register.

Section 5

In (b)1.ii and elsewhere throughout the working document and subsequent regulation, where reference is made to the "highest ranking officer" we suggest that instead reference be made to the --person responsible for the day-to-day operations-- at the affected location. This person is more familiar with the daily activities of the site and represents the company in daily activities. Also in (b)1. the attestation to the accuracy of the information reported should be to the best of the belief of the person signing.

In (b)2, both occurrences of "employer" should read as --affected employer--.

In (b)3, we feel substituting --believes-- for "thinks" would better convey DOT's intent. And we suggest adding after the last sentence the following: --Failure by the Department to notify such employers shall be deemed the Department's acceptance that the employer is not subject to these regulations. Each employer shall have 45 days to contest the Department's findings.--

Section 6

Clarification is required as to what happens when the same vehicle arrives at two different locations, either of the same or different employers. How is the car counted? It seems there should be a credit for this, however, the regulations are not presently clear on this point.

Section 7

(a) - Clarify whether the APO survey is the questionnaire or the actual count of vehicles arriving at the work location.

(c)5 - Confirm and clarify that contractor, agency employees, such as cafeteria contractor employees, secretaries, who arrive at an affected work location, are not included in the survey.

(c)5 - Should allow alternative information gathering other than surveys. For example, employers may be able to develop site Employee Statistics based on payroll, vacation, etc. records.

In (c)5, at the end after "vehicle" add --to the extent required to satisfy the 75%--. The alternate approach should only have to satisfy the 75% survey response rate specified, not up to 100% of the employee population.

In (e)1, allow credit to employers for employees arriving outside the peak period. As evidenced throughout the working document and particularly in Section 3(a). The goal of this program is to increase the APO during the peak period (6:00-10:00 a.m.), thereby reducing either the number of vehicles or the number of employees arriving during this time. The goal is not necessarily to reduce the number of employees who arrive subsequent to the peak period. Therefore, we suggest revising the calculation formula as follows:

--Work Location APO: $\frac{\text{Number of Employees Arriving During Day}}{\text{Number of Vehicles Arriving During Peak Period}}$

Employees Arriving is: Total number of employees arriving at the location from Monday through Friday of the survey week and--

In (e)2, add the following:

--Each employee who arrives at the work location at a time other than during the peak period shall be counted as one employee for each day the employee arrives outside the peak period.--

In (e)3, after "arriving" insert --during the peak period--

In 3.i - Shouldn't "occupants" be persons arriving at work, not merely occupying a seat?

In 3.ii - We question why mopeds are counted at all.

In 4.i - Carpools (e.g., station wagons) also may have 7 or more occupants. See comment on "occupants" in 3.i above.

In (e)6 - It is not clear what "in share of a vehicle proportional" means or how it would actually work. An example may be helpful.

In (e)8 - The impact of the last two lines is unclear. Also, "survey" is not defined. Why was the 90% picked as the survey response rate? What about the 75% response rate identified in §7(c)5?

Section 8

(b) - The fees are substantial, particularly for companies with multiple locations. There should be good rationale for the fee basis.

(d)3&4, (e)2 - We refer to our prior comments which propose that the person responsible for day-to-day operations at the work location, sign letters and other documents, rather than the "highest ranking officer."

(f)6 - An employer who submits an individual plan in 1994 should be able to submit a consolidated plan in 1996 if circumstances change or if there is good reason to do so. That option should be available.

Section 9

The Department should allow for in-house certification of compliance plans by an employee who is a licensed "certifier." This procedure is followed in other regulatory instances, e.g., licensed water treatment plant operators, licensed professional engineers signing a State treatment Works Approval (CP-1) form. Companies should not be subjected to another outside force/obligation to pay fees.

(a) - If certifiers are required to complete a training course and pass a proficiency exam, then there seems no good reason to also require the credentials set forth in (a)li and ii. Passing the exam should be sufficient to qualify the person as a certifier. Compare this with New Jersey's alternate certification route in the teaching profession.

(b)1 - If a certifier is licensed or certified, his/her license/certification is on the line when certifying a compliance plan. That should suffice and (b)li thru iv is unnecessary. This certification should be the same as other instances which require licensed individuals to certify reports, water pollution discharge permit reports, wastewater plant operations, professional engineers, etc.

(b)3 - Line 5, change "unacceptable" to --believed to require revision-- which we believe less offensive. Regarding the last sentence, if an employer chooses to use an outside certifier and then disagrees with or develops a poor relationship with this original certifier, the employer should not be held "hostage" to the original certifier. The employer should have the option to go to another certifier for approval of the revised plan.

Section 10

(a) - This allows for plans to be returned if they are incomplete, which points out the possibility that certifiers' work may not necessarily be consistent with DOT practice. This further supports argument for allowing in-house certification of compliance plans, and/or the ability to resubmit modified plans to a certifier different than originally used.

Section 11

(a) & (b) - Extensions and exemptions should be able to be sought by the company official responsible for daily routine operations at the employer's site, without having to get the "highest ranking officer" to sign off.

(c)1 - Line 2, "(d)" should be --(e)--.

(c)2 - "Hardship waivers" should be broad and within the discretion of the DOT which should be able to decide such waivers on a case-by-case basis. Financial hardship should not have to be "extreme" and other hardships, beyond financial, should be considered.

(e) - Line 4, after "consider," insert --any one or more of--.

Section 12

(c)1 - Line 2, after "penalty" insert --at the Department's discretion taking into consideration the good faith efforts of the employer--

(c)2 - Line 4, after "notified" insert --in writing-- and after "and the" insert --possible--.

(c)5 - If the government is subject to penalties then it also should be subject to paying plan filing fees in Section 8(b).

(d)1 - The legality of the \$250 appeal fee is questioned as possibly violative of due process.

(d)2 - Suggest certified people be included on the Hearing Board.

(d)3 - The Board's decisions are final only as far as the DOT is concerned. Further recourse to an Administrative Law Judge/Courts may be had.



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**COMMENTS ON THE EMPLOYER TRIP REDUCTION PROGRAM
AT A MEETING OF THE
ASSEMBLY TRANSPORTATION AND COMMUNICATIONS COMMITTEE**

BY

**SHANNON M. GIBSON
LEGISLATIVE AND REGULATORY ANALYST**

Thursday, April 29, 1993
County Administration Building, Morristown

34X

that requirement is an added level of bureaucracy that the New Jersey Department of Transportation (NJDOT) could eliminate altogether. To what extent does an independent certifier duplicate services provided by NJDOT itself? To what extent does an independent certifier duplicate what has already been done by an Employee Transportation Coordinator (ETC) and verified by the highest ranking official at a given location? If the department is to train individuals to manage transportation programs, is it better served to train the ETC who is responsible for implementing the program at a specific worksite?

And regardless of whether or not the need for an independent certifier is justified, the State Chamber of Commerce is alarmed by an obvious lack of responsibility on the part of certifiers to guarantee what each is paid to do. In the event that a certified compliance plan is returned to an employer without the department's approval, there is no provision stating that whoever certified the plan must offer assistance to revise it.

Keep in mind that at the time a compliance plan is returned its accuracy and completeness have been verified by an ETC, the highest ranking official at the worksite, other individual employees or outside contractors who contributed to its development and a DOT trained certifier. If such a meticulous review process is used, it is difficult to understand why the compliance plan might still be deemed

Good afternoon. My name is Shannon Gibson and I serve as a legislative and regulatory analyst at the New Jersey State Chamber of Commerce--an organization that together with its 110 affiliated local and regional Chambers of Commerce represents more than 45,000 business enterprises throughout the Garden State. I testify in my capacity as staff liaison to the State Chamber's Transportation Committee which is designed to provide technical guidance and expertise on issues ranging from light rail transit to employer trip reduction to the transport of hazardous materials.

The State Chamber of Commerce recognizes that it has to take the initiative to educate employers on the potential impact of federal clean air quality mandates and to demonstrate that, given a chance to voice specific concerns, the business people of New Jersey can help to develop a reasonable program.

I wish to identify where it might be appropriate to streamline the proposed requirements so that the Employer Trip Reduction program is less intrusive and more cost-effective. In addition, I would like to express concern with particular requirements that are either unclear or in need of amendment.

One of the most troubling requirements is that prior to submittal to the department, a compliance plan has to be certified as to its accuracy and efficacy by a qualified, independent certifier. The State Chamber questions whether

seem more likely for the cost to decrease with each subsequent filing.

The initial plan submittal is required to include seven items to establish a baseline against which future years can be compared. 'Beginning with the 1996 Update Plan and for any subsequent Update Plan, an affected employer that has not achieved the target APO shall also complete Section #8' the **Program Review and Projection**. Given that an employer submits one additional item, that much of the other seven items remain unchanged, and that the DOT can assume to be more cost-effective in its administrative procedures by 1996 (i.e. it will require less time and fewer resources to process a standard Update Plan), we see no reason a \$200 application fee is increased to \$400. We suggest that DOT reconsider this fee structure in fairness to the employer.

A second and perhaps more sensitive criticism of the proposed fee structure relates to the provision that exempts government employers from the payment of any filing fee whatsoever. How is that provision justified? If you consider how large state government is today, is it reasonable to transfer the cost of administering the ETR program onto private sector employees? Surely it does not cost less to process and monitor the compliance plan submitted by DEPE, DOH, or other state departments. And incidentally, the draft regs do not indicate whether state

unacceptable unless the department made a mistake or the certifier did not do his job correctly. In that case he should be required to help determine what changes are needed to make it acceptable.

Charles W. Browning who is a member of the State Chamber's Transportation Committee and a representative of Ford Motor Company comments that, 'To have this party simply walk in, review a compliance plan, collect a fee (of unknown amount) and be absolved of all further responsibility is totally unacceptable.'

And one last point related to certification is that as members of the regulated community who must shoulder enormous administrative costs to implement ETR, the State Chamber of Commerce is uncomfortable with the fact that certifiers are permitted to set fees at their own discretion. And at the same time a certifier does not have to pay for the training provided by NJDOT--the cost of which is likely to be transferred to affected employers.

Also unclear in this working document is the rationale behind a proposed fee structure that seems to charge an employer more for less. We feel it is not appropriate to double the cost for submitting an Update Plan.

Assuming that the cost is intended to pay for the department's expenditure of time and resources to process the compliance plan and administer the ETR program, it would

program review and projection (Update Plans). It is likely that much of this data is the same and where unique operations cause it to differ that can easily be footnoted in one submittal.

A consolidated plan should be more than a chance to average the APOs for different worksites. Employers within the same organization might benefit if the compliance plan were to represent a coordinated approach to transportation management. And if you consider how the role of an employee transportation coordinator is limited, you might be convinced that one individual is sufficient to direct that comprehensive program.

I describe that role as limited because in essence the greatest value of having appointed an ETC is that all correspondence is directed to one identifiable person. Since an effective ETR program depends on the input of various interested or affected parties, a business is likely to create a task force that assumes what otherwise is the role of an ETC.

In conclusion, I wish to ask the department to clarify and the Legislature to consider a few simple questions:

1. Is an employer required to pay an additional fee upon submitting a revised plan to the department either because that compliance plan has not been approved or the work location has changed?
2. In the case that a hardship waiver is granted on the basis of financial concerns, will the department be required to rebate the \$250 application fee?

or federal employees or both are exempt from the requirement.

Having studied the proposed requirements, I am certain that you recognize what an administrative nightmare the Employer Trip Reduction program could lead to and the potential for increased costs to be transferred to the consumer. In an effort to keep costs to a minimum the State Chamber of Commerce recommends that the department consider practical steps to reduce the amount of paperwork involved.

For example, is it possible to allow an employer with multiple affected locations in a single AVO zone to submit **ONE** consolidated plan and appoint **ONE** employee transportation coordinator? In the proposed requirements a consolidated plan is an option if the two or more participating worksites are located within a single AVO zone. And by definition employers within that AVO zone share similar development characteristics and the availability of like transportation services and facilities.

As the regs are currently drafted an employer who chooses to submit a consolidated plan shall individually prepare for each work location, section #1 and sections #3 through #8 of the standard compliance plan. The seven items which have to be reported separately include a cover sheet, work location summary, current program summary, program additions, implementation process, monitoring process and



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May 14, 1993

The Honorable Alex DeCroce
Assemblyman, District 26
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Morris Plains, New Jersey 07950

Dear Assemblyman DeCroce:

I am writing as a follow up to the Assembly Transportation and Communications Committee's public hearing on April 29, 1993 on the Department of Transportation's (DOT) proposed Employer Trip Reduction regulations. Although I attended the public hearing, I did not testify because the members of my Association had not yet reviewed the proposal. We hope that you will accept our comments to the proposal at this time and include them in your analysis. I apologize for the delay.

The New Jersey Association of Health Care Facilities (Association) is a trade organization that represents over 225 nursing homes, residential health care facilities and adult day health care centers in New Jersey. Generally, we support this proposal and applaud the DOT not only for the quality of this draft, but also for their willingness to accept input from the public throughout the legislative and, now, the regulatory process. Nevertheless, we have the following comments and questions on the draft. I have attached a copy of the draft regulations to which I will be making page and section references, for your convenience.

Page 3, Definition of Employee:

As one reviews this definition, we see that contract employees are included. Does contract employees include both those employees contracted directly to the employer as well as employees that are contracted directly to third parties, that come to the employer's work location? An example of an employee contracted directly to a third party would be a person employed by a temporary personnel agency. It is confusing since the definition speaks of "... any person employed by an employer, ...".

Page 9, Section 6(e):

The urbanized Average Vehicle Occupancy (AVO) Zone is divided into three sub-zones, but yet the suburbanized AVO Zone, which

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3. Under the same circumstances is it sufficient for a hardship waiver to reduce the target APO or exempt certain employees from the APO calculation while an employer is still required to register with the department, conduct annual APO surveys, appoint an ETC and develop and implement a plan for the work location? What if the financial hardship is specifically caused by an employer's compliance with these requirements?
4. To what extent is an employer legally bound to the criteria defining a 'good faith effort'?

On behalf of the State Chamber of Commerce I wish to thank you for this opportunity to testify. It is an understatement that the department will find it difficult to sell the Employer Trip Reduction program to employers. But I think if you take to heart some of the recommendations expressed today that program will become marketable to a wider audience--the audience responsible for implementing it.

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ployer from timely compliance. We respectfully recommend that section 9(b), pertaining to certification procedures, be amended to require a certifier to return a compliance plan within 21 calendar days of submission by an affected employer. We would certainly defer to DOT's expertise in choosing a different response period, if, for some reason, 21 calendar days is an unreasonably short period of time.

Additionally, the certifier who certifies a compliance plan that is ultimately rejected by the DOT has no duty to work with the employer to revise the plan and make it right. By initially certifying an employer's compliance plan, the certifier has warranted that the plan meets all regulatory requirements. Therefore, a certifier should not be "let off the hook", if he/she certifies a plan that is not acceptable to DOT. Accordingly, we respectfully recommend that section 10(a), pertaining to plan review schedule, be amended to require the certifier to work with and recertify an employer's plan within the 60 day period after return of the plan by DOT.

Section 9 is also silent on the level of fees that certifiers may charge. We respectfully recommend that section 9 be supplemented to establish a specific certifier's fee or, at least, a maximum fee that may be charged, to protect gauging by certifiers.

While it is indeed true that section 9(a)5 provides for an annual review of certifier performance by the DOT, we firmly believe that this oversight is inadequate to avert the potential of the abuses discussed above.

Page 21, Section 12(c)2:

We respectfully recommend that the term "hardship waiver" be amended to make clear that an employer who must comply with a collective bargaining agreement or other legal contract that makes compliance with the target APO impossible shall be granted a hardship waiver. While the term "hardship waiver" refers to an employer being "legally prohibited from compliance", we feel that this reference is not specific enough.

Page 22, Section 13:

We see no justification for the \$250 fee for filing an administrative appeal and recommend that this fee be deleted. If, for some reason, the \$250 fee cannot be deleted, at a minimum, an appellant who prevails should be entitled to the return of his/her \$250 fee, since it will be proven that the employer had been wrongly penalized by DOT.

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encompasses 14 counties, is not. It seems that the demographic and geographic diversity within these 14 counties would lend itself to sub-zones within the suburbanized zone as well. We respectfully recommend that DOT consider this option.

Page 12, Section 8(a)1:

This section would give an employer who becomes an affected employer after May 1, 1994, 180 days to submit an initial compliance plan and would further require compliance with the target average passenger occupancy (APO) goal in one year following submission of the initial plan or November 15, 1996, whichever is later. We believe that this timeframe is unfair to these employers and respectfully recommend that the APO compliance period be amended to be two years (rather than one year) from the date of submission of the initial plan or November 15, 1996, whichever is later. This amendment would make the compliance criteria for employers who become affected employers after May 1, 1994 identical to initially affected employers who must file their compliance plans by November 15, 1994 and achieve APO compliance by November 15, 1996, or two years after the filing of their initial compliance plans.

Page 15, Section 8(f):

We interpret section 8(f) as not allowing affected employers to file consolidated plans until 1996. We see no reason why affected employers should not be able to file consolidated initial plans which are due by November 15, 1994. Accordingly, we respectfully recommend that section 8(f) be amended to allow affected employers to file consolidated compliance plans for their initial compliance plan filing and all filings that will, thereafter, be required.

Sections 9 and 10, pages 16-19:

These sections, pertaining to plan certification and compliance plan review, are duplicative, costly and will delay the process. Specifically:

1. There exists no need for certifiers and the DOT to review employer compliance plans, as would be required in section 9(b) and section 10(a). Review responsibility should rest with only one party, especially since DOT will be training the certifiers, who will be DOT's agents.

2. Certifiers have no accountability to employers either on the quality of their work or on the amount of their fees.

Section 9(b)4 would require an affected employer to allow adequate time for certification and is clear that the failure of the certifier to expeditiously do his/her job would not excuse the em-

The Honorable Alex DeCroce
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We greatly appreciate the opportunity to comment on DOT's proposed Employer Trip Reduction regulations. Please do not hesitate to contact me at the address or phone number set forth above if you wish to further discuss our concerns.

Sincerely,



WILLIAM R. ABRAMS
Vice President

WRA:vae

cc: Members of the Assembly Transportation and Communications
Committee

Noreen Cardinali - Bureau of Suburban Mobility
Roseanne Persichilli - Assembly Majority Office
Amy Melick - Office of Legislative Services