

COMMITTEE MEETING

of the

ASSEMBLY LEGISLATIVE OVERSIGHT COMMITTEE

Continuation of the review of the status of the cleanup of the
CPS/Madison industrial site and discussion of Department of Environmental
Protection policy with regard to industrial cleanups

Held:
February 28, 1985
Room 346
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman William E. Flynn, Chairman
Assemblyman Thomas P. Foy, Vice Chairman
Assemblyman Frank M. Pelly
Assemblyman Richard A. Zimmer

ALSO PRESENT:

Steven B. Frakt
Office of Legislative Services
Aide, Assembly Legislative Oversight Committee

New Jersey State Library

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ASSEMBLYMAN WILLIAM E. FLYNN (Chairman): Good morning. We will now begin the meeting of the Assembly Legislative Oversight Committee on the topic of the action of the Department of Environmental Protection on the CPS/Madison industrial site case. I believe when we left off, we left off with -- let's see, who was the last witness? Was it George McCann? (affirmative response) George, will you please come forward? I think you were still testifying, is that correct?

GEORGE McCANN: The audience was asking questions.

ASSEMBLYMAN FLYNN: Yes, the audience was asking questions. I don't think we had a chance to finish the questions.

MR. McCANN: I had concluded my presentation.

ASSEMBLYMAN FLYNN: Okay. Why don't you come up, and bring whoever you need with you.

Assemblyman Foy is joining us now. How did you do upstairs?

ASSEMBLYMAN FOY: They're caucusing. They will be awhile; they'll call me when they need me.

ASSEMBLYMAN FLYNN: With Mr. McCann, we have Assistant Commissioner Tyler and Mr. Gaston. Before I throw the meeting open for questions from the audience, I have a few questions I would like to ask. When we took our tour last week, we found what was explained to us to be a rather large zinc pile, containing zinc, lead, and what not. I had a chance to look at the court order, which gave them 90 days to get that zinc pile out of there. I am told that the pile is a little smaller than it was, but that all they are doing is putting it somewhere else on the property. Does anyone from DEP know why that zinc pile has not been removed pursuant to the court order?

MR. McCANN: You are quite correct; the zinc pile was required to be removed. This has been of concern to the Department. It was supposed to be one of the major items to be included in any consent agreement we would be proposing. Over the last couple of years, the companies have failed to remove it, but during the last six months, they have been selling the zinc pile off. I would say the remaining pile you saw a week ago represents 10% of what the larger pile was at one time.

ASSEMBLYMAN FLYNN: It had been that much higher? We could see the zinc pile there was pretty big.

MR. McCANN: The one by the fence?

ASSEMBLYMAN FLYNN: Yes. It looked like an iceberg.

MR. McCANN: It was about 5% of what it had been.

ASSEMBLYMAN FLYNN: How much larger was the zinc pile previously?

MR. McCANN: About 95% larger.

ASSEMBLYMAN FLYNN: Ninety-five percent larger?

MR. McCANN: Yes. It ran to the other side of the concrete pad. It was approximately 20 to 25 feet high. As of yesterday, when we made our inspection of the facility, they had removed the remaining pile. It is still at the site, but it is now enclosed in one of the warehouses, which will prevent any runoff from the zinc pile. Also, there are floor drains in the warehouse which will capture anything if it does, in fact, get wet.

ASSEMBLYMAN FLYNN: So, basically what you are saying is that, as of today, it doesn't pose the kind of danger it posed last week.

MR. McCANN: The pile you see in the pictures you have is no longer there as of today.

ASSEMBLYMAN FLYNN: It's no longer there, and it is self-contained in a warehouse?

MR. McCANN: Yes, it is.

ASSEMBLYMAN FLYNN: Well, that is a good step in the right direction. Did your organization have the authority to cite them for the zinc pile alone? Granted, it is part of the court case, but couldn't you have pressed them on that one thing, since that seems to be a patent nuisance?

ASST. COMMISSIONER GEORGE TYLER: Assemblyman Flynn, we did. That is why it was removed, albeit not as quickly as it ought to have been removed.

ASSEMBLYMAN FLYNN: Well, maybe it was removed because we were all there.

ASST. COMMISSIONER TYLER: The last 5% probably was. I'm glad you brought the added attention to the problem. But, the other 95% obviously went first.

The other point is, our authority under the law is just like any other administrative agency. You can push administratively, but at some point you have to go to court to enforce the order.

ASSEMBLYMAN FLYNN: Were they ever cited criminally, as well as in the civil case?

ASST. COMMISSIONER TYLER: I am not aware of that.

ASSEMBLYMAN FLYNN: Does anyone from your Department know whether there were any criminal citations issued?

ASST. COMMISSIONER TYLER: We would have to look into that and get back to you.

MR. McCANN: Is that as it relates to the zinc pile?

ASSEMBLYMAN FLYNN: I mean for the totality of the CPS/Madison problem during the course of the last, I guess, four, five, or six years that we have been dealing with them. Have there ever been any criminal citations? I remember reading or seeing something where they had been involved in some criminal sanction. I am just trying to pin down what it was for and what the result was. I see some people in the audience shaking their heads yes. Maybe when they get their chance, they will be able to fill us in on that.

One of the items in the written report you submitted the other day was that you felt the reason why you wanted to try to get a consent agreement, rather than enforce the existing court order, was because there would be substantial delays due to additional litigation. What kind of additional litigation would occur, since you already have a court order which was appealed, and the appeal was denied?

ASST. COMMISSIONER TYLER: Ron Heksch, the Deputy Attorney General representing us, will address that question.

RONALD P. HEKSCH: I think we explained last time that the court order had some defects in it. The consultant who was hired by DEP to review the court order had some concerns about the way it was designed, and he suggested some modifications. So, the point being made was that we would have had to apply to the court for modification of the court-ordered remedy, to comply with our own consultant's recommendations. That would have opened the door again for

relitigating the remedy and would have caused the delays referenced in the statement that was submitted to this Committee.

ASSEMBLYMAN FLYNN: So, you're saying it would be your own opening of Pandora's box which would cause the delays.

MR. HEKSCH: I'm not sure it would be our own. It was the expert's opinion that alterations were necessary to the court-ordered remedy. Keep in mind that the court-ordered remedy was a mixture of recommendations by the State and the court's own expert. It was the judge's perception of what should be done. When that was reviewed conceptually there were defects noted, and those defects would have had to have been corrected before you could go into the design and implementation stages. That would have required opening up the judgment, and, at that point, we perceived that the defendant industries would have delayed the matter further.

ASSEMBLYMAN FLYNN: While I am on the topic of the court order, have you had a chance to do any research as to whether or not you need Perth Amboy's agreement to modify the court order?

MR. HEKSCH: Well, I think that is something that is going to have to be presented to the court. It is the State's position that Perth Amboy's rights under the court order are not being abridged by the consent judgment. Obviously, from what Mr. Seaman has said to me on the side, and to other people, he disagrees with that. It is going to be up to a judge to decide that. I think the drafts of the court order which have been circulated -- I don't know if the Committee has a copy, because it is tough to find a clean copy -- reference not affecting certain paragraphs of the original order that affect Perth Amboy. I think it should be noted that Perth Amboy's position in the litigation was different than DEP's. Perth Amboy wanted damages for the contamination of the aquifer. They wanted to abandon the aquifer and go on to some other source of water. The State wanted to resurrect the aquifer, which is what the plans we have been discussing propose to do.

Perth Amboy lost on that issue. All it was awarded was \$100,000, and I don't think that is affected by any amendment to the consent order we are proposing.

ASSEMBLYMAN FLYNN: At what stage of the litigation did your Department recognize that the court order of Judge Furman was not what you needed and wanted?

MR. HEKSCH: The CH₂M report, as I recall -- and, George McCann can correct me if I am wrong -- came in the fall of last year. That is when the review of the court-ordered remedy had been completed and--

ASSEMBLYMAN FLYNN: (interrupting) That would have been after the Appellate Division?

MR. HEKSCH: Yes.

ASSEMBLYMAN FLYNN: So, in other words, you couldn't have, for example, cross-appealed in the Appellate Division and gotten your additional remedies there, or could you?

ASST. COMMISSIONER TYLER: May I interject something? I think we did, Ron, on some legal points that were important to us.

ASSEMBLYMAN FLYNN: I know you received an expansion of moneys.

ASST. COMMISSIONER TYLER: Yes, but those were important legal points. Again, I just want to clarify what I said last time about the so-called deep public pockets that were there. We did perfect the court order on appeal, in part. We had to do that so we could access public moneys. Otherwise, there was not going to be any way to go after the Superfund or the Spill Fund under the original court order. So, we made some qualification to the court order on legal merits. Ron was addressing the technical aspect.

ASSEMBLYMAN FLYNN: That was my question basically: When did you discover the technical problems? It's too bad you didn't discover them either during Judge Furman's proceedings or shortly thereafter, so you could have tried to get the Appellate Division to give you the technical amendments. I envision that if Perth Amboy takes a hard-nosed position here-- Let's say you go back to court and you are successful. You get a modification, and that particular court says that Perth Amboy has no standing to challenge the modification. Then Perth Amboy can go to the Appellate Division, or they can go to the Supreme Court, and achieve another two or three years of delay while

the court action is still pending. I don't know if you gain anything by a consent order versus enforcing what you had. I just don't know.

MR. HEKSCH: I think that remains to be seen, but I think it would be difficult if the trial court concluded that Perth Amboy's rights were not abridged to get a stay pending appeal. I think with the--

ASSEMBLYMAN FLYNN: (interrupting) You're going back to the trial court, not the Appellate Division?

MR. HEKSCH: Right.

ASSEMBLYMAN FLYNN: So, you are going to get a different judge.

MR. HEKSCH: Right.

ASSEMBLYMAN FLYNN: So, now he is probably going to have to familiarize himself with a monumental file. I envision some serious delays here.

MR. HEKSCH: I think those delays would probably be inherent whichever way we go.

ASSEMBLYMAN FLYNN: The only way I see no delay is if you can get Perth Amboy to agree. If all three parties agree, then you have a deal. I think it would behoove you to try to bend over backwards to satisfy Perth Amboy.

Getting back to the monitoring now, what kind of monitoring has been going on, not since this Committee became active, but, you know, previous to that, in terms of the zinc pile and any other hazards that were there? What type of monitoring do you do?

MR. McCANN: There are a number of wells on the site that have been monitored. Sample analyses have been taken. There have been physical inspections of the site. As we discussed last week, there was a detailed sampling program conducted in the pond. We were out there for the purpose of that sampling exercise. Over the last couple of years, a presence was there, certainly not weekly, or even monthly, but there were periodic investigations. The type of problem we are dealing with is not one that changes overnight. The ground water contamination moves rather slowly. There is a process of ground water movement that carries the contamination. It is then bound, once again, in the soil

and it moves. There is a whole physical chemical process that takes place.

So, this is not something we are concerned about changing overnight, but periodic inspections of the site were made.

ASSEMBLYMAN FLYNN: Okay. Mr. Gaston, you weren't present last time. You had to be someplace else, and we recognized that. I would like to get some of your input because I understand you have been more or less the liaison between the Citizens Advisory Committee and the Department. Is that one of your roles?

JOHN GASTON: Well, as the Director of the Division of Water Resources, which is responsible for this case, I have had a number of communications with the Citizens Committee. We have been out to meet with them personally on at least two occasions, and our representatives have been there on many more occasions.

ASSEMBLYMAN FLYNN: I don't know if I asked this the last time or not, but maybe I can ask you. This particular matter has been dealt with by your Division, the Division of Water Resources. Now, of course, there is also the Hazardous Site Mitigation Administration. How do you decide which division will handle a specific problem such as this?

MR. GASTON: Why don't I let Assistant Commissioner Tyler answer that question, since he is responsible for both.

ASST. COMMISSIONER TYLER: I am blessed with both of those groups among my other blessings.

ASSEMBLYMAN FLYNN: Okay. How do you allocate problems?

ASST. COMMISSIONER TYLER: Well, frankly, there are lots of ways you can organize to deal with toxic waste. We have set up a unit in our Division of Waste Management that is designed primarily to deal with publicly funded cleanups. There are enormous fiscal safeguards, accounting safeguards, and paper-tracking systems that are associated with the expenditures of public funds, and a very elaborate procurement process that requires skills and expertise beyond the norm of a regulatory enforcement group. So, that is what is contained in our Hazardous Site Mitigation Administration. They are primarily dealing with Superfund and Spill Fund publicly funded sites. They also handle

our Environmental Cleanup Responsibility Act Program which, again, is a tailored program that comes into effect. I think I testified before you on that. You held hearings on that program about four or five months ago, as I recall. That also falls under the Hazardous Site Mitigation Administration.

Enforcement, especially enforcement against major industries and against large ground water contamination problems, has fallen primarily to our Division of Water Resources. That Division houses the State's geologic survey; it houses our State Bureau of Ground Water Permitting. So, there is a lot of in-house expertise there. Beyond that, it is my job -- sometimes unfortunately -- to force these units to work together in a compatible way. Commissioner Hughey now meets on a weekly or biweekly basis with the heads of those groups. We go through a case agenda so that we all know what the other person is doing and can work in a coordinated fashion.

So, this case properly arose as an enforcement matter. It was listed on the Superfund list so we would have the ability to go after public moneys if we had to, and this is true of other significant enforcement cases; for example, the Ciba-Geigy case and the American Cyanamid case in Bound Brook. In other words, where there is a multi-million dollar expenditure potential and an uncertainty as to the performance of the responsible parties, we have that option. It is an enforcement lever. It doesn't mean that the case automatically moves.

ASSEMBLYMAN FLYNN: Also, it doesn't denigrate the severity of the case because it is in Water Resources as opposed to--

ASST. COMMISSIONER TYLER: (interrupting) No, not at all.

ASSEMBLYMAN FLYNN: The one sounds more ominous. Toxic Waste Mitigation sounds more ominous than Water Resources.

ASST. COMMISSIONER TYLER: You could go to 50 states and find 50 different organizations. We are constantly contacted by the other states so that they can look at ours. I am very proud of that, not so much personally, but for the Department.

ASSEMBLYMAN FLYNN: All right. Now, before I ask if there are any people in the audience who wish to ask questions, is there anyone here from the affected industries, either CPS or Madison

Industries, who would like to testify today? (no response) I know we had a phone call from an attorney representing one of them. He wanted to be here, but he is tied up in court in Newark.

MR. FRAKT: Both attorneys are tied up in one way or another.

ASSEMBLYMAN FLYNN: Both attorneys are tied up somewhere else, so they will not be testifying. I wanted to give the industries a chance to have their say because we have kind of been down on them a little bit, and maybe they have some things they would like to put in the record.

Blanche Hoffman, did you have some questions you wanted to ask? (negative response) If you don't have any questions, I have other people who do.

MS. HOFFMAN: I have no questions, just a comment.

ASSEMBLYMAN FLYNN: You may make your comment after we have finished with the questions.

Albert Seaman, did you want to ask some questions?

ALBERT W. SEAMAN: Yes, I did.

ASSEMBLYMAN FLYNN: Please come up to the microphone, and will you please try to temper your statements?

MR. SEAMAN: After the last meeting, I went home and watched Channel 2 with Mr. Jim Jensen. One of the stars of the program was Mr. Gaston. I didn't know his name; I just learned it this morning. Mr. Gaston, I know that the dirty press can do things as they clip and edit their T.V. programs. This program was on the whole issue of the zinc pile, which has been there since 1981, and maybe 15 years before. Suddenly, my good friends here -- quote that "good friends" -- the bleeding hearts, say that the pile is almost gone.

I want to know where the yellow went. Where did all this stuff go that has been permeating the soil of this place? It has been ongoing, continuous. You can't fight cancer unless you get to the source, clean it up, and knock it off. Then you have to worry about the metastasis, the stuff that is downstream, the plumes, etc., which are just wandering around down there.

Now, the State is supposed to axiomatically have two speeds -- slow and stop. Your Committee should not be suckered in to decide

whether you like Plan A, B, C, or X, or Y. You people are legislators, and you're asking a branch of the government to give an accounting of why it has dragged its feet, and why it has not accomplished what the court ordered. Where is Steve Gray, the attorney who represented this? He is in private practice. No one is going to pay him to come here to tell you. These are all new faces. Who are these bleeding hearts? They weren't in on this case. The record is this high (witness gestures with his hand). Do you want me to review the record with you? You can resign from your practice for a month, read the record, and then we can argue it. But, here they are, coming in with pie in the sky, disregarding a valid court order. Judge Furman is one of our greatest judges; he is a learned gentleman and a respected gentleman. He is no yo-yo. He is not out of some title office. This guy knows his law; he knows his evidence; and, he knows his proof. He tried to give an equitable judgment. The State won its case, but according to these guys what did they win? Nothing.

Now they have a new plan, a better plan, and the zinc pile, when we get around to it, may go away. The City of Perth Amboy is not a municipality to be pushed around as a municipal litigant. Perth Amboy is my client. My client is engaged in a proprietary function. We own the water. We pay your township taxes year after year. We send our kids to school. You're not cleaning our property; you're not policing it. Maybe you ride around once in awhile to give some guys target practice, or what have you. But, the fact of the matter is, we have a property right. There is no way these gentlemen are going to con me out of that property right. They have damaged us. We're waiting for this wonderful plan. We think the place is shot. That is why our mayor said to you, "Get these guys out of here." Do you realize how many generations, or decades, or hundreds of years it will take to purge this affected soil? The State came in -- "Big Daddy" -- they're worried about the people downgrading it. The hell with Perth Amboy; we're stuck, we're gone. But, they are laying this rap on us; then when they come here, they speak about how wonderful it is going to be, and how this plan is better than that plan. They had one plan, and they threw it in the can and got another plan.

I'm sure Governor Kean doesn't like attorneys, and he certainly wouldn't listen to me. But, on the program that I alluded to -- and I'm sure you saw it, Mr. Gaston, and you know this is what happened -- somehow, on the program, it came out that the Republican campaign committee received \$5,000. In my recollection, it was \$1,000, but they said \$5,000. My recollection is that when it surfaced, there was a statement that the Governor's campaign committee paid it back. If I heard Jim Jensen's program correctly, there is no proof of that payment, nor of the return of that \$5,000. Then we heard from Mr. Gaston and he said, "No one from up above has been putting any pressure on us" -- or words to that effect -- "to do what we are doing." This is a matter of public record. Westmoreland and a few other guys can start a suit tomorrow if they want, but I heard it on T.V. They can get a copy of the record. It certainly doesn't look good; it looks bad. If the Governor can't produce a cancelled check for \$5,000, if they paid it out of petty cash, maybe they can get a receipt. He has a good shot in the election, and I would hate to have him besmirched or have him become an innocent victim of what I say is some unaccountable, unexplainable delay by these people to enforce their judgment.

ASSEMBLYMAN ZIMMER: Mr. Chairman, may I clarify what Mr. Seaman is saying? (affirmative response) Are you alleging that the Governor is influencing the DEP because he received a campaign contribution?

MR. SEAMAN: No, no. Did you see Channel 2 that Friday night?

ASSEMBLYMAN ZIMMER: No.

MR. SEAMAN: Well, that is what I am talking about. Get a copy of that, and if you have any--

ASSEMBLYMAN ZIMMER: (interrupting) What are you saying?

MR. SEAMAN: I am saying, as a consumer, as a listener-- Let Mr. Gaston answer on that point. Mr. Gaston, were you asked on that program whether you were being influenced, whether anyone was pressuring you?

ASST. COMMISSIONER TYLER: Mr. Chairman, this is not--

MR. SEAMAN: (interrupting) Just ask him. The man is in a position to be queried. This is a meeting.

ASST. COMMISSIONER TYLER: I would say this is highly irregular, at best.

MR. SEAMAN: It might be irregular.

ASST. COMMISSIONER TYLER: We are here to talk about a court order. I will allow John to say whatever you would like, Mr. Chairman, but, frankly, I'm outraged at this kind of garbage.

MR. SEAMAN: Well, I'm outraged at your conduct. I'm outraged at your statements, because you don't know what you are talking about.

ASSEMBLYMAN FLYNN: Mr. Seaman, basically I just want you to ask questions that are germane.

MR. SEAMAN: Okay. I am trying to ask one.

ASSEMBLYMAN FLYNN: If your position is that the great delay in some way--

MR. SEAMAN: (interrupting) A great delay, it's four years.

ASSEMBLYMAN FLYNN: Is that great delay in some way connected with some campaign assistance? If that is your question--

MR. SEAMAN: (interrupting) No, I am just saying that is how it went over national television. All right? I didn't make it up.

ASSEMBLYMAN ZIMMER: So, you're saying you don't believe that?

MR. SEAMAN: I believe it was \$1,000 and I believe he paid it back. They said \$5,000, and it's someplace off in limbo.

ASSEMBLYMAN FLYNN: You have no personal knowledge one way or the other?

MR. SEAMAN: No. I read it in The Star-Ledger -- I think I read it in The Star-Ledger -- and I heard it on CBS. Now, Mr. Gaston can prove me a liar if he wants to.

ASSEMBLYMAN FLYNN: I doubt very much if Mr. Gaston would say anything other than--

MR. SEAMAN: Other than what he is told?

ASSEMBLYMAN FLYNN: No, other than that there has been no influence. I have seen no signs of influence.

MR. SEAMAN: I'll quit with this. I know the Legislature is not supposed to adjudicate and the courts are not supposed to

legislate. You are being asked now to sit as judge and jury -- eeny, meany, miney, moe, which plan -- and that is not what you are here for.

ASSEMBLYMAN FLYNN: I am aware of that, but we are not going to do that.

MR. SEAMAN: You're here to find out why these guys are dragging their feet.

ASSEMBLYMAN FLYNN: Exactly. We are not thinking plans; that is not our duty.

MR. SEAMAN: Thank you. I can also tell you, sir, that I have a telephone message here. I was encouraged to attend by a Mr. Schwartz from Madison and, also, a Mr. Gast, whoever he might be. They wanted me to come to hear what they had to say. So, if they are not here, I ask to take my leave because I am not interested in hearing anymore of this. I've had my belly full of this.

ASSEMBLYMAN FLYNN: They are the attorneys for the other side.

MR. SEAMAN: Well, okay. They are not here and you said they are not coming, so I will go.

ASSEMBLYMAN FLYNN: Mr. Seaman, have you seen any of the drafts of the proposed consent order?

MR. SEAMAN: Yes.

ASSEMBLYMAN FLYNN: Are you in a position to comment as to what Perth Amboy's position will be?

MR. SEAMAN: It is totally unacceptable.

ASSEMBLYMAN FLYNN: Are there things that could be worked out if you sat down with the other two parties so that we could have a consent agreement?

MR. SEAMAN: Why do you have to have that? Why do we have to have this ongoing litigation and everything else? We have a court order. That is what I don't understand. Why don't the lawyers understand that the judgment is there?

ASSEMBLYMAN FLYNN: I recognize that.

MR. SEAMAN: Vacate the judgment. That is what everyone asked them to do.

ASSEMBLYMAN FLYNN: DEP is taking the position that what they have is not sufficient; that is their position.

MR. SEAMAN: That's news to me. Why has this come about?

ASSEMBLYMAN FLYNN: That is what they said last time, and they said it again today.

MR. SEAMAN: Well, they had a plan which presumably cost \$5-plus million; now they are going to settle for a \$2 million plan. I don't know how you can get more for less, but that is their problem.

ASSEMBLYMAN FLYNN: What I am driving at is, if we are going to sit around for another three years litigating between Perth Amboy, DEP, and--

MR. SEAMAN: (interrupting) No, it is about to blow up.

ASSEMBLYMAN FLYNN: What I'm asking is, is Perth Amboy willing to sit down with the other two parties?

MR. SEAMAN: I'm here.

ASSEMBLYMAN FLYNN: Well, I mean in a technical vein. You can't do it at an open meeting. You have to sit down with your technical people and their technical people, and try to come up with an agreement that Perth Amboy is willing to sign, so that we will not have another three years of litigation. Who is going to suffer? The residents of Perth Amboy, Sayreville, Old Bridge, and everyone else downstream are going to suffer.

MR. SEAMAN: As I told you before, those townships you mentioned -- those municipalities -- are not parties to this suit unless they come in amicus curiae. You people are worried about the water last week, today, and in the future. You have a good reason to be here. Why are you worried? Is this an ongoing assault to your water system -- to your water system, not ours? Forget ours; they docked us off. Where are you going with your downgrading order?

ASSEMBLYMAN FLYNN: My mother happens to live in Perth Amboy. I am concerned about her health. How is that for a good reason?

MR. SEAMAN: All right. Maybe she'll accept the admonition of W. C. Fields. He said not to drink water because fish make love in it. That might be a good reason; otherwise, I will bring you a bottle of Perrier.

ASSEMBLYMAN FLYNN: You did ask one question that perhaps can be answered, out of all your questions. That was the question relative to a plume.

MR. SEAMAN: Not a plume, plumes, plural, several.

ASSEMBLYMAN FLYNN: Can Mr. Gaston, or perhaps one of you other gentlemen, tell us about the plumes? Are they spreading? How much more area is being affected? What can we do to slow the plume down?

MR. SEAMAN: Where are they?

ASST. COMMISSIONER TYLER: First of all, let me refresh the Committee's memory of our testimony at the last meeting which was held on this subject last Friday. We presented two maps, which George is going to discuss briefly. The maps we presented depicted where we believe the plume to be, based on monitoring data at this point in time. I should say the plumes.

MR. SEAMAN: Can you tell us how they relate to your proposed crescent walls?

MR. McCANN: At this time, the plumes are not beyond the crescent walls proposed in the alternative plan. We have identified and verified the magnitude of the plumes with our data. We have shown decreasing levels -- slight though they may be -- at the immediate site, which would demonstrate that there is no longer a source of contamination being attributed to the ground water and increasing levels downstream, if you will, down-gradient from the site in the direction we have identified as the plume, increasing levels to show that there has been movement of the contaminants. All of that would be within the proposed crescent wall in the alternative design. Also in the plan, as I have mentioned, the wells which are proposed as a part of that alternative are situated to create a zone of influence in the most contaminated areas.

We feel we know exactly where the plumes are. We have verified that levels are decreasing at the immediate site, and increasing a little further down, which show that the contamination is moving. We are satisfied that the alternative plan deals with it in total.

I would like to respond to the issue of the zinc pile and what has happened to it. Zinc is a usable resource. It has been sold to other companies for the purposes of their manufacturing processes. Zinc is formed into zinc salts. It is commonly used in fertilizers, food additives, vitamins, and so forth. So, it does have an actual worth. It was sold to companies that utilize it in their own manufacturing processes. That is where the zinc is going.

ASSEMBLYMAN FLYNN: Does the Department have regulations as to how you are supposed to store zinc piles?

ASST. COMMISSIONER TYLER: Not per se.

ASSEMBLYMAN FLYNN: In other words, with the companies which legitimately use zinc, where do they keep it? How do they store it? Do you have guidelines on that?

MR. GASTON: The zinc which was stored in that pile was illegally stored. That is why it had to be removed. If someone else wanted to come in and create a zinc pile, we have technical requirements for the design and location of zinc piles, and we have monitoring requirements we would impose around the zinc piles to see whether or not anything was happening which shouldn't happen relative to the ground water.

ASSEMBLYMAN FLYNN: So, that was an illegally stored pile?

MR. McCANN: That's right. It was not supposed to be there. The court said it wasn't supposed to be there, and now it is not there.

ASSEMBLYMAN FLYNN: But, it took a long time to get it out of there.

MR. SEAMAN: Four years.

MR. McCANN: Yes, it did take a long time.

ASSEMBLYMAN FLYNN: That is the thing that scares me the most, that it was there, and who knows how many droplets of zinc, you know, flowed down into the aquifers.

MR. SEAMAN: First of all, the wind carries it, and water carries it. The water carries it on the surface and on the subsurface. That is how we are attacked by the zinc.

At the trial, they produced a lady, formerly of Rutgers, who is now down in Houston somewhere. She was a witness for Madison Food

Additives. She testified that zinc is an elixir of life. I think as an appeal to me, which was a rather unsubtle sort of statement, she said it was even good for sexual prowess. That was the proof.

ASSEMBLYMAN FLYNN: All right.

MR. SEAMAN: Then you hear this man. I don't know who this man is; I will find out his name when I leave. This man who is so--

ASSEMBLYMAN FLYNN: (interrupting) His name is George McCann.

MR. SEAMAN: George McCann. Everything is wonderful with him; everything is AOK. You can keep--

ASSEMBLYMAN FLYNN: (interrupting) He is not saying everything is wonderful; he's saying they are working on it. Isn't that what you're saying, George?

MR. SEAMAN: Yes, he's working on it, and I'm leaving.

ASSEMBLYMAN FLYNN: There is one thing you brought up, Mr. Seaman, which I would like to talk about. Is the continuity of employment and employees a problem? You said there is a whole new cast of characters.

MR. SEAMAN: They are all new faces. Where is the other team?

ASSEMBLYMAN FLYNN: Mr. Tyler, is that a problem, not necessarily in this case, but in all cases where there might be a turnover? Does it hurt you to a degree when someone has worked on a case and, all of a sudden, he leaves, and now you have to reinvent the wheel?

ASST. COMMISSIONER TYLER: That certainly does not apply in this case.

ASSEMBLYMAN FLYNN: Not in this case?

ASST. COMMISSIONER TYLER: In general, turnover is a management issue which we deal with in State government on a constant basis. It is not something I think has affected our Water Resources Enforcement Program, or our Hazardous Site Cleanup Program. I would like better salaries, and I would like better promotional opportunities for my staff so that we could retain good staff even longer. I would like to see the same DAG who started the case in 1981 stay until 1987,

or until whenever he has to stay. But, that is not how life works. People move on. I don't think it has affected this case in any way. I talked a little bit on the record at the last meeting relative to the effort and dedication of the staff that has worked on this case. I really believe that. I am disturbed, at the least, at the kinds of comments that have been thrown around here about the people in this Department, especially the people in this Division who have worked on this case.

You are not going to find a better cast of characters to deal with State pollution problems. They pursued this as vigorously, as thoroughly as they could. We are really confident of the data we have in this case. I made an offer at the last meeting to sit down with any of the individual experts. We have already started setting up sessions so that they can go over the data. I am confident that an objective look at the geologic and ground water quality data which we have developed is going to produce an agreement that we have the right solution here. I would not sit here and tell you that if it were not true. This is good data; it has been developed over time; it is quality assured. I'm telling you that you have a good cast of characters to pursue this.

ASSEMBLYMAN FLYNN: Well, of course, you have to admit that things have been going a little slowly, to say the least.

ASST. COMMISSIONER TYLER: Assemblyman Flynn, I could talk a long time about the pace of the cleanup program. Let me start with something--

MR. SEAMAN: (interrupting) May I go, please?

ASSEMBLYMAN FLYNN: Yes, sir.

MR. SEAMAN: I don't want to listen to you any longer.

ASSEMBLYMAN FLYNN: Are you going to sit in the audience, or are you leaving for Perth Amboy?

MR. SEAMAN: I am going to stay in the audience. Have a good day.

ASST. COMMISSIONER TYLER: (continuing) Quite frequently, the question of the pace of the cleanup comes up, and the assumption is made that the day after you find the problem you are going to show up

with a bulldozer to clean up the hazardous waste site. It just doesn't work that way. The Price's Pit case, just to give you an example of what I had to talk about last night, is a \$10- to \$12-million cleanup. You don't build a \$10- to \$12-million building, or a \$10- to \$12-million bridge, without doing an engineering feasibility study to determine the best alternative. You don't build that bridge or that building without doing an engineering design to determine exactly how things ought to go. Only then do you mobilize your field forces to go out to do the work.

Part of what has been going on in this case is exactly that, an engineering design. It took the Department a year and a half. We are not an engineering firm; we are a regulatory agency. The court imposed that requirement on us, so we did the engineering design. We had it verified by an outside firm. That took a total of two years. That is not unusual because you are not dealing with a highway and you are not dealing with a building; you are dealing with a hazardous waste site, something that is different, something which presents, at least, uncertainties, if not uncertain dangers, that have to be evaluated. That is what takes time. It took two years to legally perfect the judgment, so we had deep pockets to point to when we sat down with the responsible parties and said, "Look, if you don't move, we're going to." We had to unencumber that court order and make it joint and several liabilities. We had to take a \$5-million cap off, or the EPA would not have let us use the Superfund.

So, there was time, but it was time well spent. I think, as we presented it at the last meeting, the issue is, do we go back to court to try to enforce an imperfect judgment, or do we enter a court consent agreement, which is a typical way of doing a cleanup. It is being done in 40 or 50 other places around the State under the Department's supervision -- to clarify a point which came up at the last meeting. Do we do that and get a good solution that cleans the aquifer? You know, I sat here listening to the comments by the counsel from Perth Amboy thinking about the Appellate Court decision, which indicated, quite clearly, that Perth Amboy is willing to walk away and abandon that aquifer, and leave it there just for money damages. The

Department's solution, the one we fought to put in place, is to clean it up and restore it. I think that is the higher and better solution. That is the one we have to go for.

ASSEMBLYMAN FLYNN: Is there something you need legislatively to speed things up? You've said you are doing everything according to the way you have to do it, but it just seems such a long time. For example, we have, what, 95 sites?

ASST. COMMISSIONER TYLER: Yes.

ASSEMBLYMAN FLYNN: Statewide, on the national priority list. I don't think we have started to clean up any of them, have we?

ASST. COMMISSIONER TYLER: No, that is not true.

ASSEMBLYMAN FLYNN: We have started to clean up some of them?

ASST. COMMISSIONER TYLER: That comment has been tossed around, so I am glad you asked this question. First of all, you have to put that in the context that we have already cleaned up in New Jersey some 150 sites, some small, some big. It is not true that we have not cleaned up any sites. At least 150 have been completely cleaned up.

We put our most difficult sites on the Superfund list. We did that because at the time the Superfund program was enacted we had a very small State Spill Fund, about \$10 million a year, to deal with hundreds of millions of dollars worth of work. So, we pursued Federal money.

ASSEMBLYMAN FLYNN: Is that where the number 95 comes from?

ASST. COMMISSIONER TYLER: That's right. The Superfund program is a Federal grant program, and one would think that someone ought to be congratulated for qualifying 95 sites for Federal grants. We are leading the country in that regard. In any event, those are the most difficult sites in many cases.

ASSEMBLYMAN FLYNN: Those haven't been started because we don't have the Federal money?

ASST. COMMISSIONER TYLER: Many of them have been started. In fact, we are working on at least six to twelve of them right now. I don't have that number in my head, but I think it is a dozen.

ASSEMBLYMAN FLYNN: With your money or with Superfund money?

ASST. COMMISSIONER TYLER: Well, generally, when you get to the construction stage or the removal stage you're dealing with a 90/10 Federal cost-sharing formula -- 90% Federal, 10% State. During the first two phases, initially, under the first Superfund program in Washington, it was 90/10. When Ruckelshaus took the job as Administrator of EPA, he changed that formula so that the feasibility studies and the engineering designs were 100% Federally funded. But just for example, I mentioned Price's Pit earlier. We have already completed the first and the most critical public health step at that site. That was the relocation of the Atlantic City Municipal Utilities Authority well field. At Burnt Fly Bog, which is another site which is on the Superfund list, that site has been stabilized. The material has been drummed and stored, and is waiting for removal. We are now in the final phases of the engineering design for a cleanup of the wetlands area on that site. At the SYNCON resin site in Kearny, 12,000 or so drums were removed, and the site has been prepared for a final cleanup of the soils and the ground water. At the Chemical Control site -- and I am probably crazy to bring this up -- we moved thousands of drums. That site is all but complete. There is a small amount of material left on site that no one in the country will accept for disposal, so we are designing a special disposal method with EPA. There is a possibility that there are a couple of drums in the Elizabeth River, but then that site will be complete.

So, there are sites all around the State where work has been done. At the Lipari Landfill, the cap is complete, the water treatment system is hooked up, the pipe is in the ground to take the leachate to the treatment plant, and an off-site feasibility study is underway. I haven't even touched on the enforcement cases that the Water Resources Division is doing. So, if anyone says we haven't cleaned up any sites, they are not looking at the facts.

ASSEMBLYMAN FLYNN: Then you don't need any more legislation to speed the process?

ASST. COMMISSIONER TYLER: I didn't say that either.

ASSEMBLYMAN FLYNN: Okay. This Committee would like to know if there are things we can recommend. The whole goal of this Committee is to get things done as expeditiously as possible.

ASST. COMMISSIONER TYLER: I appreciate that.

ASSEMBLYMAN FLYNN: If you need something from us, other than billions of dollars, which we don't have--

ASST. COMMISSIONER TYLER: (interrupting) I would like to come back to you with a more thoughtful response to that, if I may.

ASSEMBLYMAN FLYNN: All right. Give us some things that would help your job. We are not trying to make your job harder; we are trying to make it easier.

Now, Mr. Gaston, did you want to say something?

MR. GASTON: I just wanted to say that your goal and our goal are exactly the same, in the sense that we want to clean up sites too and get them underway in a responsible and rapid fashion.

ASSEMBLYMAN FLYNN: Let us know what you need. Assemblyman Foy?

ASSEMBLYMAN FOY: I have several questions. First, I think in terms of what they need there are plans currently in the Legislature that have departmental support. The Governor has suggested the Environmental Trust Fund. There is \$450 million. He has made it an extremely high priority, and has called this, "The year of the environment." No case which has surfaced, in my mind, after learning various facts about it, points up the fact that our environmental problems are at a critical stage. We are in cardiac arrest in New Jersey when it comes to toxic waste. I know these people are working as best they can, but the time frame in this situation leads me to need to ask some questions so that we don't have a repeat of this. Hopefully, you will have the answers and, if you don't have the answers, you will have some suggestions.

First, you know, this baby was born March 16, 1977 with the initiation of a lawsuit. In a little over two weeks, it is going to be eight years old. By anyone's standard, we took it from infancy to the third grade as litigation. Civil lawsuits have plaintiffs and they have defendants, but this one seems to have victims as well. The people of Old Bridge Township have viable concerns that I know are important to you, but they really have not been adequately addressed, at least in terms of the perception of the people who are representing

the people in the town. Part of that may be because the issue is extremely complex and of a highly technical nature. Differing experts can have differing opinions. The disturbed mind that I operate from obviously comes from my training as a lawyer. Anyone going to law school always has a little bit of a warped perception on things, and perhaps that is why I need to know what happened after you got your judgment on October 16, 1981 -- the first judgment. Was any action on your part stayed by the appeal to the Appellate Division? Who knows that? Were you free to go forward with your design, your plans, and your implementation at that point?

MR. GASTON: I think we were. We began that process.

ASSEMBLYMAN FOY: You began some of that, so the appeal by the two industries did not prevent you from going forward in a compliance mode with the judge's order. Is that right?

MR. HEKSCH: That is correct, but there was a challenge in the Appellate Division to the remedy that the court below had ordered. No one could put a percentage on the chance, but there was a chance that the Appellate Division, when it did rule, or the Supreme Court, if it took the case, would either remand or revamp the remedy that the lower court had ordered.

ASSEMBLYMAN FOY: I understand.

MR. HEKSCH: So, one had to be cautious in going into the field at that point in time and starting to dig walls, etc., etc. I think that was a concern that both the Attorney General's office and DEP had during the two-year period between the initial entry of the lower court judgment and the Appellate Division decision.

ASSEMBLYMAN FOY: That, to me, is both a palatable and an understandable concern on your part. But, isn't the reality of the situation -- and, the technical people can address this issue -- that the plight of that site was so egregious that eventually, even if they won that case, someone was going to have to clean that site up?

ASST. COMMISSIONER TYLER: Yes, but not necessarily put a wall in.

ASSEMBLYMAN FOY: So, you were in a position to develop what you needed to develop. That was my question.

ASST. COMMISSIONER TYLER: Again, as John indicated, we started the design.

ASSEMBLYMAN FOY: Right.

ASST. COMMISSIONER TYLER: And, yes, the site has to be cleaned up and, yes, it will be cleaned up.

ASSEMBLYMAN FOY: Someone would have to do it.

ASST. COMMISSIONER TYLER: The design was for the wall that the court ordered. As you could see from our chart at the last meeting on this matter, we would prefer -- and, hopefully, we will reach a judicial consent order agreement -- not to do an entire wall, but to intercept the ground water contamination with hydraulic controls.

ASSEMBLYMAN FOY: I have read those reports. My question about that is, is that decision on your part a result of technology that came after the initial court order? If not, why didn't you advance that or, if you did advance it, why didn't the judge accept that advanced technology at the time?

ASST. COMMISSIONER TYLER: I think the word is knowledge. One of the things that happened during the intervening months was, as the design went forward, especially when we had the design reviewed by an outside engineering firm, we had a lot more sampling data to look at, including, very significantly, the sampling data at Prickett's Pond, which was an issue that had not been fully analyzed in the earlier phases. So, we had more information about the site. We had a lot more information confirming our judgment of the ground water flow. One could argue that you have to put a ground water wall around every site. In fact, quite frequently we do get involved in grout walls around landfills, where you have a mound that generally forces an emanation of contaminants in all directions. But, as I said earlier, we have very good data now in this case, some of it as recently as late last year, to confirm the ground water flow, the ground water levels. So, this hydraulic remedy makes sense and offers an opportunity that the court order doesn't to cleanse the site.

ASSEMBLYMAN FOY: Is your favorite remedy in this situation now an amalgam of the three experts' reports? Is it an amalgam of all three, or is it closer to any particular one?

ASST. COMMISSIONER TYLER: I think I would have to agree that it is an amalgam of all three, but George or John might want to comment.

MR. GASTON: It combines the information that was produced by all of them. I think, significantly, the alternate plan is a segment of the CH₂M Hill plan that has been produced upon review of the court ordered plan. What we have said is, the burden of performance of the alternative plan is on the industries. If it meets our standards and expectations, it can operate; if it doesn't, the burden is on them to produce a plan that does perform, and in the limit, that plan could be the court-ordered plan. In other words, the wall could be extended from being a half moon to being a full moon. So, in the context of the way in which this solution has been structured, we have what we think will work based upon all the information we had and that we now have. We have also incorporated an arrangement by which if what we understand to be the case isn't the case, and if the plan does not produce the results that we all expect it to produce, the responsibility for curing that is on the backs of the people who should bear the responsibility for it, the polluters.

ASSEMBLYMAN FOY: The thing that I expressed a concern about at the last meeting -- and, unfortunately, I have to earn a living besides my part-time position here, and I wasn't able to stay because I had to be in court -- was twofold: One -- and I think this is a clear expression of the residents' fears -- they don't want to see the fox in the chicken coop; they don't want to see our friend Dracula with the keys to the blood bank. They are concerned about the measures that are going to ensure compliance from the polluters themselves. It is an anomalous situation to say, "Well, the industry has the burden to clean it up." That is correct, they have the burden to pay for it, but I feel a little uncomfortable if they are going to be put in charge because you, as a governmental agency, have limited resources. You have limited enforcement capabilities. When you have to do something, you have to go to court to do it. I'm worried that because of the limitations placed upon you-- Many of these time delays, I honestly believe, come as a result of the fact that you simply do not have the

kind of staffing and the kind of support you need, and you haven't had that impetus until this crisis arose. That is my view of the thing, and I think there is a lot we will be able to do legislatively to assist in that and, hopefully, to ease the fear of the residents by providing you with the kind of resources you need, in terms of personnel, equipment, and operational capital, to do it.

What do you say to that? How are you going to ensure that these people who trashed this aquifer and this land are going to be capable and responsible in untrashing it?

ASST. COMMISSIONER TYLER: Maybe it is my legal training, but the first answer I will give is that the State's Spill Compensation and Control Fund and the Federal Superfund both give us legislative direction to do just that, to go after responsible parties, and not just to pay the remedy. I believe there are treble damage provisions in both laws for those who do not respond, and who just wait for the cost recovery action. So, there is a real legislative impetus, and probably correctly so in many cases, to drive companies which have caused the problem, once they have been brought to the bar of justice, so to speak, to correct it themselves, and under our supervision, I might add. We have built into the court order, and I will ask George to expand on this, as many safeguards as we have built into any court order, as a matter of fact.

I have one other comment. It is not an uncommon occurrence for an administrative agency to enter into a judicial consent agreement, or an administrative consent agreement for that matter, with a responsible violator, responsible violator meaning responsible for the problem, not a comment on their character either way. George, why don't you run down the advantages we built into the order.

MR. McCANN: First of all, within the order, the alternative plan that is proposed is the plan that now satisfies on its technical merits--

ASSEMBLYMAN FOY: (interrupting) Let me interrupt you for just one second to clear up one final problem I have. Are you going to independently enter into this agreement with these industries absent an application to the court to have it approved as a modification to the consent order?

MR. GASTON: The answer is, we are not.

ASSEMBLYMAN FOY: But, in terms of delay, a situation like that may involve people attempting to intervene.

MR. GASTON: That's right. Let me just make one statement about this whole question of legal delay. As, first, an engineer, second, a planner, and third, a semi-businessman, I really do not have any patience with delay. We have experienced a lot of frustration in this case, as well, because we want it cleaned up. But, in the context of what we got out of the court, one of the things which was permitted was for all of the parties to go back to see the judge every time a decision had to be made. That is a hell of a way to do business. Every time we had to make a significant decision, we had to go to see the judge and we had to get everyone to agree. We spent \$20,000 doing a pre-treatment study to see whether or not the zinc ought to be removed and the volatiles ought to be removed before we put it into the sewer. We saw the judge many times to get that agreed upon, underway, implemented, and finalized. So, the institutional structure that the court decision provided us was a collegial decision-making framework, where every time we had to make a decision, we had to go hold hands before the judge would agree and move forward. That was really a very severe restraint, because every time someone had a problem, we had a slowdown in terms of our program.

The advantage we have with this consent agreement, if we can put it together and get it implemented, is that we are out of that mode. We decide what is right and we decide what is wrong. We deal with the two industries as if they stand as one, instead of separately. So, we have a streamlined method of seeing what a decision is and implementing that decision so that progress can be made on some kind of a schedule that we can feel proud of, and whereby we can come to you and make you feel as though we are doing what we are supposed to be doing, which is cleaning up cases on a predictable schedule.

ASSEMBLYMAN FLYNN: Would the appointment of a master facilitate the court process at all and the problem that you just alluded to? Suppose legislatively there was a category of cases called "toxic waste cases," or suits, and a master would be appointed. Would that assist your speed?

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MR. HEKSCH: May I speak to that? There was a committee appointed by the Supreme Court last year to review the rules of court as they apply to different areas of the law. One of the committees dealt with environmental problems, and I had occasion to meet with them. It really gets very complex. If the master had special expertise in environmental matters, perhaps that would be helpful. You often find in environmental cases -- and I have been with government and have been litigating environmental cases for a substantial period of time -- that you have, as in many legal cases, two experts coming up with two different programs, one perhaps saying, "Do nothing," and the other saying, "Do everything." Some judges characterize one as the Cadillac approach and the other as the piggyback approach, and various other things. A judge who does not have special expertise has to make very technical decisions, and we run into difficulty with that. Perhaps this case is an example of that. Regarding special masters, again, it depends on how you set that up.

ASSEMBLYMAN FLYNN: Like Mount Laurel?

MR. HEKSCH: Yes.

ASSEMBLYMAN FLYNN: In the Mount Laurel cases-- I am involved in one right now. The expert is a planner with a lot of background in subsidized housing.

MR. HEKSCH: But, my understanding of the Mount Laurel case -- and, I am certainly not an expert in that field -- is that ultimately the judge makes the decision.

ASSEMBLYMAN FLYNN: The judge makes the decision based on the master's recommendation, but then you have to worry, as Mr. Seaman pointed out, that maybe you won't get a Judge Furman -- he has great respect for Judge Furman, and so do I. You might get a judge who was previously a real estate lawyer, and not necessarily akin to knowledge of environmental problems.

What I am suggesting is, would that be a recommendation? Would that speed things along, or do you feel that would not help? Should a master be appointed in environmental cases, toxic waste cases in particular?

MR. HEKSCH: I think it has potential. The problem is in the application, who the master would be.

ASSEMBLYMAN FLYNN: Who the master would be, all right.

MR. HEKSCH: I think potentially it is much better to litigate a case before someone who has technical knowledge, but he would also have to have judicial knowledge to be able to handle a trial proceeding. So, it would really have to be someone with very, very special expertise and, because of the evolving nature of the technical end of these types of cases, I think it would be difficult to find qualified people. I think you have to understand that the law -- strict liability, joint and several liability, those types of concepts -- have leaped ahead of the technology. The technology on cleanups is still not in a perfected status, as some of this case indicates. There have been changes as time as passed as to what an appropriate remedy would be. That is the problem with a master. I don't know how you would get someone who is qualified in all of the technical ends and who still has the judicial background to do these types of cases.

ASSEMBLYMAN FLYNN: Does your Department have very many ongoing cases right now in the toxic waste area, where you are actually in court?

ASST. COMMISSIONER TYLER: I don't think we have a lot of cases where we are actually in court because it is not a favored way to--

ASSEMBLYMAN FLYNN: (interrupting) You are trying to work things out.

ASST. COMMISSIONER TYLER: Well, we have 40 or 50 cases in the administrative enforcement process. I don't know how many of those we have actually sent over for the Attorney General to file suit. We could track that number down though, if you--

ASSEMBLYMAN FLYNN: (interrupting) Well, I am not looking for a finite number. I am just trying to get a scope. You're saying you do not have a lot. I am just trying to get a feel for it.

MR. GASTON: Assemblyman Flynn, I think another point that is worth indicating -- reinforcing the point that Assistant Commissioner Tyler made -- is that the Superfund and the Spill Fund have given everyone notice that it is no longer going to be acceptable to sit back and not do anything. So, the environment we are operating in today is

a great deal different than it was in the 1977-1978 period, where the legal strategies that were being played out were strategies of delay. Today the strategy that is being played out by responsible parties is coming forward. What we are arguing about in our discussions is what is to be done; we are not arguing about the basic question, "Should it be done?"

ASSEMBLYMAN FLYNN: Methodology.

MR. GASTON: So, cases which used to flow right on through the administrative process into the judicial process are being ticked off in the administrative process, and they are going either one of two ways: First, they are going into responsible party cleanups. We are having a number of them where we enter into agreements and right away we get solutions implemented. Second, they are being routed into the Superfund program, where we get a program underway to study design and implement a solution, and then go back to discuss who was right and who was wrong regarding the legal merits of the issue at another point in time. The institutional setting has changed regarding the case. Unfortunately, the one that is being reviewed here is one that stretches back into the late 1970s, where the mode of operation was legal confrontation and we played it all the way out.

ASSEMBLYMAN FLYNN: Assemblyman Foy?

ASSEMBLYMAN FOY: I have a couple of final questions. One of the things I wanted to clear up and address from a different approach, is the issue of the political contribution that Mr. Seaman raised earlier. You know, I don't for a minute suggest that, by that company making a contribution to the Governor's campaign, there was any influence, direct, indirect, or otherwise, on the actions taken by this Department. I think that is absurd and ludicrous; I think it is reaching, as far as that goes. But, the ability for something like that to happen, for a contribution to be made and accepted by an administration which is charged with the enforcement of ongoing litigation with a polluter, you know, where they have a court decision, and are now trying to negotiate a settlement. To initiate the issue by submitting a new plan, which admittedly may be less costly, less intense in some ways than the court-ordered plan, and then, within 60

or 90 days, to contribute \$5,000 to the incumbent Governor's campaign-- Whether there was any nexus of wrongdoing whatsoever, the reaction of the average person, certainly in Perth Amboy, Sayreville, and Old Bridge, if they knew about it, or of anyone else, would be one of outrage. We are a suspicious people when it comes to persons in public life. We have to be in a fish bowl. I am not troubled by a belief that any one of you is going to be any less vigorous in your pursuit of this case because they bought a table of tickets to the tent at Sea Girt. I am troubled by the public's perception that something like that could occur.

Now, I am told by newspaper articles that the money was returned. I heard today that the money was never returned. Whatever the fact of the matter is, maybe, as an Oversight Committee, we need to look into the issue of people who are under an enforcement compliance mode with our State departments, even being permitted to make political contributions, whether it is to me, as a member of this Committee -- and, no one gave me a \$5,000 contribution, I can tell you that -- or whether it is to the Administration, or what have you. This is a serious sideline issue. It doesn't affect any of you, other than it seems to me there is a fallout in terms of public confidence in your Department. I do not want to see that happen because you do not deserve to be tarred with that brush, however illusionary it may be. This is a very fundamental and sensitive issue. I think this Committee should take a look at that as something we need to inject oversight into.

I have two final questions. When do you think you will reach an agreement on the CPS/Madison and departmental plan, the alternative, after you have everything in place and are ready to go back to the court? How long after an agreement is reached, if the court accepts it, do you think you will put a shovel in the ground, drill a well, or do whatever you have to do?

ASST. COMMISSIONER TYLER: A lot of wells have been drilled already.

ASSEMBLYMAN FOY: Okay. When is the cleanup going to start? Give me some kind of a time frame; I will not try to pin you down to

it. I am just anxious to be able to say something to the people who are here from these towns.

MR. GASTON: Let us answer the second question first, if I may just jump ahead. The answer to the second question is, six to eight months from the date that we sign on the line, the cleanup will be in full operation, fully implemented and in operation. Six to eight months.

ASSEMBLYMAN FLYNN: Does that mean started or completed?

MR. GASTON: That means the construction of the wall and the pumping will be started.

ASST. COMMISSIONER TYLER: As we explained last time, the court order we have negotiated, if the court signs it, allows us to continue to clean up until it is done. No one is putting a time frame on that.

ASSEMBLYMAN FLYNN: That you don't know. The finished product could take years, I guess.

ASST. COMMISSIONER TYLER: It could, but during that time the water will be moving to the recovery wells and into the treatment plant, and not away from the site.

ASSEMBLYMAN FLYNN: How long do you think it will take-- Let's assume that you get the modified court order, six to eight months go by, you do your planning and all, and you start your work. From that point, before there would be substantial safety where you could say, "People are no longer in jeopardy," how long do you think it would take?

ASST. COMMISSIONER TYLER: I don't think anyone is in jeopardy today.

ASSEMBLYMAN FLYNN: No?

ASST. COMMISSIONER TYLER: No one is drinking water from that well field.

ASSEMBLYMAN FLYNN: I am concerned with those plumes.

ASST. COMMISSIONER TYLER: All of that contamination is still behind the wall that we showed you in Plan "B" last time. I don't think there is anyone in jeopardy from ground water at that site today. That has been the case. We are vigorously pursuing this case,

because ground water contamination is one of the things that our laws say shouldn't happen. It is one of the things we pursued people to get cleaned up. But that doesn't mean that we only pursue people after someone's health is damaged or after someone's health is threatened. The question is, it is not hurting anyone now and, if we put this plan in motion quickly enough, it is never going to hurt anyone.

ASSEMBLYMAN FLYNN: I don't know if anyone wants to venture a guess to the first part of Assemblyman Foy's question. That is a little tougher.

MR. GASTON: Yes, the first part of Assemblyman Foy's question is a little tougher.

ASSEMBLYMAN FLYNN: It is a little tougher because you are dealing with people other than yourselves.

MR. GASTON: We are not in control of the parties there. If we could get everyone to agree tomorrow and we could go to see the current judge assigned to this case, then six to eight months from the time we signed on, we would have a program in operation. To us that is a very attractive prospect and one of the reasons why we have been interested in moving this forward.

ASSEMBLYMAN FLYNN: Is there any intent on your part, your side, to bring Perth Amboy into the negotiations before you go back to court?

MR. HEKSCH: Well, I think this Committee is a little bit-- Perth Amboy has been involved. They are part of the CAC.

ASSEMBLYMAN FLYNN: I'm talking about the negotiations.

MR. HEKSCH: They are part of the CAC to the extent that they participate in the CAC. They have been privy to the meetings which have transpired between DEP and the CAC. I have had discussions with Mr. Seaman about the matter. He has been sent a copy of the court order. He has taken what we believe to be an unreasonable position. I don't know how you deal with that. I don't know what his basis is. He has indicated, both publicly and in private, that this is not going to go forward at all. I don't know what he based this on, or whether he has his own expert opinions.

ASSEMBLYMAN FLYNN: So what you are saying is, you are kind of throwing your hands up at this point. You are saying, "We can't talk to him, so that's it."

MR. HEKSCH: No, I think we will make every effort to present our case to the City of Perth Amboy. After we have a signed document, if we do get a signed document, we will go back to the City and make every effort to convince them that this is the appropriate way to go. We will meet with the mayor; we will meet with the consultants to the mayor. I am not sure what Mr. Seaman's source of information is or what the basis of his opposition is. Until we know that, it is really rather difficult to respond. There is no attempt to ignore the City of Perth Amboy.

ASSEMBLYMAN FLYNN: How does your Department interact with the CAC? Is the CAC in this case an unusual thing, or do you have a lot of these in other cases?

ASST. COMMISSIONER TYLER: Let me respond, if I might. We have a lot of ad hoc citizen type organizations like the CAC which spring up around hazardous site cases because of the great concern they present, at least in terms of worry and concern about what might be happening. Then, if there is any off-site contamination, there are direct health concerns. So, there are groups all around the State. In fact, in the non-enforcement situation, in the publicly funded cleanup case, we have designed a program which specifically does what might have helped in this case, and that is to go out in the early stages to try to present as much data as possible. For example, tonight or tomorrow night in Atlantic County, we are calling a meeting to present the early results of a feasibility study on a site known as the D'Imperio site, where we will explain the data, the health impacts, if any, and things like that.

I think I mentioned last time, in response to a question, that one of the constraints on us in this case, and one of the things we have to think about, is that this was part of our enforcement process. It is very difficult to open the enforcement process, even in cases like this, with the same degree of confidence and the same degree of openness that we have in a permit program, or that we have in a

publicly funded cleanup. It is something we changed internally at the end of 1984. Unfortunately, as I said last time, I think some of the positions got hardened here before that. At that point in time, it was maybe almost too late to reach out. I think if we did anything wrong in this case it was that we did not talk enough, but that is not the Division's fault. That is the policy we have been following in enforcement matters. I think it is probably a common policy in enforcement matters that you try to keep your cards close to the vest, so to speak, until you have the negotiated settlement that you want. You don't want to give away too many facts to the other side in a public forum. In fact, that was one of my concerns that happily has not occurred in coming before this forum.

I committed, at the last session, that now we would try to remedy that with follow-up sessions with each of the groups that has an interest here, especially with the CAC. My staff has already been trying to schedule these. We also had separate individual questions from the City of Sayreville, vis-a-vis their well field and the lack of a wall on that side of the site, and from the local sewer authority which provides a conduit into the Middlesex County sewer system. We will have these sessions to try to resolve those concerns. As I said earlier, I am confident that when their experts look at the data, we will be able to agree that the solution we have put forth is a good, if not the best, solution.

ASSEMBLYMAN FLYNN: Assemblyman Pelly, do you want to say something?

ASSEMBLYMAN PELLY: I want to make a comment and ask a question or two. Earlier, Assemblyman Foy made mention of the fact that we are about to celebrate the eighth birthday of the contamination of the Runyon Watershed. We have all read -- and I'm sure the public has read -- in the Sunday Star-Ledger of February 10, that this contamination began about 15 years ago. We are about to celebrate 15 years of this contamination of the Runyon Watershed. The public reads that, and we read it, and the question in the minds of everyone is, why haven't we done anything about it during those 15 years? I'm sure if there were a pothole somewhere and it remained for 15 years, we would

have substantial problems justifying that. We all share that guilt on the part of the public as it is addressed to us, and appropriately so. I am pleased that we are here trying to resolve the issue.

I would like to ask a question or two with respect to the continuance on the part of the industries to generate toxic by-products. Is that occurring or not? That is my first question. Do either or both of the industries continue to generate toxic by-products?

MR. McCANN: Of course, the industries are both still in operation. They do have a waste product, but they have put in numerous controls to prevent any problems occurring, such as those which created the ground water contamination. The types of controls and corrections that have been made include such things as paving of the areas where the materials are stored, drains to collect any accidental spills from drums, and curbing which works with the draining system to capture it all. So if, in fact, some of the waste products which they continue to generate were to result in a spill, they would not find their way to the ground water, but rather into a collection system which ultimately would discharge into the sewer.

ASSEMBLYMAN PELLY: Have you at DEP reviewed this process and actually physically seen the measures that have been taken?

MR. McCANN: Yes. We are involved with and are aware of all the corrections that have been made. As I mentioned, there is paving in all of the areas where we would have concerns about storage or transfer of any materials, such as with the drums in which the raw materials are brought in, as well as the waste materials from the processes. All of those areas are in the category where they have taken the necessary measures to prevent future, or further contamination from any accidental spills that might occur.

ASSEMBLYMAN PELLY: Are you aware of what kind of by-products these industries generate that are toxic?

MR. McCANN: I would have to defer to some of my staff.

ASSEMBLYMAN PELLY: Rather than specifically, are they in large quantities, or very small amounts? Are they carted off to another area, or are they continuously stored at the site?

MR. McCANN: The CPS Company manifests waste product materials which they are required to ultimately treat, remove, and dispose of.

ASSEMBLYMAN PELLY: I recognize that. That is in compliance with the law. Do they deal with the manifest system?

MR. McCANN: Right.

ASSEMBLYMAN PELLY: But, that is not my question. By what you are saying, they are, in fact, continuing to generate waste materials?

MR. McCANN: Yes.

ASSEMBLYMAN PELLY: By virtue of the fact that you are talking about manifests, I would assume they are carting it off to another location. Is it accurate to assume that?

ASST. COMMISSIONER TYLER: Yes, that only applies when it leaves the site.

ASSEMBLYMAN PELLY: Okay. Where is it being dumped?

ASST. COMMISSIONER TYLER: I would have to provide you with that later, and I would be glad to. I don't have that information at my fingertips today. If it is in the manifest system it is not going to a dump, unless it is a secure facility in another state licensed to take hazardous waste. The system is, in a sense, a check on where it goes. It requires an approval from a licensed storage treatment or disposal plant, either in New Jersey or in another state.

ASSEMBLYMAN PELLY: Will you be good enough to provide this Committee with that manifest? Are both industries availing themselves of the manifest?

MR. McCANN: Just CPS.

ASSEMBLYMAN PELLY: Just CPS? Madison Industries generates nothing and has no reason to use the manifest?

ASST. COMMISSIONER TYLER: It is possible that they can contaminate ground water, or did in the past, with items which do not constitute hazardous waste under the waste laws.

ASSEMBLYMAN FLYNN: Which well is the zinc on?

ASST. COMMISSIONER TYLER: Madison Industries.

MR. GASTON: Madison Industries discharges into the Old Bridge Township sewer system, and then into the Middlesex County sewer system from their process water. That is an activity that will be regulated by the Department as a significant industrial user of the two sewer authority systems. We expect there will be adequate pre-treatment provided as part of the process of providing pre-treatment for the material that is removed from the wells, as part of the cleanup in the context of the consent order. That is another distinct advantage of the consent agreement. We have been able to extend it -- not extend it, but include the process water and, in fact, we think solve a zinc pre-treatment problem that the Middlesex County Sewerage Authority will have to address as it implements its pre-treatment program.

ASSEMBLYMAN PELLY: Let me see if I understand this. The zinc that is produced, I assume, is a by-product of Madison Industries which is going to be incorporated -- not carted away as such -- but treated by the Middlesex County Utilities Authority, and dumped into their system.

MR. GASTON: Well, it will be pre-treated at the site and then passed through the Old Bridge sewer system to the Middlesex County system for some additional treatment prior to going into the Raritan.

MR. McCANN: That waste stream is currently discharging into the system, so the zinc waste product in the waste stream is, in fact, today going into the sewer system and to the Middlesex County Utilities Authority. The pre-treatment system, which is just now being implemented by the Authority, will provide, as Director Gaston said, the necessary pre-treatment and recovery of the zinc to minimize its effect on the operation of the Authority and its ultimate discharge to the bay.

ASSEMBLYMAN PELLY: The pile that -- I missed this, and I apologize -- remains outside of Madison Industries is a pile of zinc and lead, or just zinc?

MR. McCANN: As I mentioned earlier, the remaining pile represents about 5% to 10% of what the larger pile was at one time. Over a number of months, it has been removed and has been sold to other

manufacturers which use the material as a resource. The remaining portion that was there last week, as of today, was removed from its location on the site. It is now housed in a warehouse to prevent any runoff from the pile moving off-site at all. So, it is secured; it no longer exists where it was seen last week.

ASSEMBLYMAN PELLY: My question was, is it just zinc, or is it zinc and lead? Is it elemental zinc and lead? What is it? Tell me what it is.

MR. McCANN: It's mostly all zinc. Of course, there would be some other components in that, but its major component is, in fact, zinc.

ASSEMBLYMAN PELLY: And it doesn't require-- When one sells off a by-product of that nature, does it require the use of a manifest?

ASST. COMMISSIONER TYLER: Only if it constitutes hazardous waste, and I don't think it does.

ASSEMBLYMAN PELLY: This product does not constitute hazardous waste?

ASST. COMMISSIONER TYLER: That's right.

ASSEMBLYMAN PELLY: So, it is not complied with.

ASSEMBLYMAN FOY: If Assemblyman Pelly is finished, I have one more question.

ASSEMBLYMAN PELLY: That is all I have. Thank you very much.

ASSEMBLYMAN FOY: I just have one last question. During your settlement negotiations regarding the consent agreement with the industries, have you invited Perth Amboy to participate in each of those?

MR. HEKSCH: No.

ASSEMBLYMAN FOY: Why? I mean, they are a co-litigant.

MR. HEKSCH: The negotiations started before I was involved, so I really cannot answer that. I don't know why.

ASSEMBLYMAN FOY: As an attorney, I would be very troubled if I represented a co-plaintiff in a case and one of the other plaintiffs was in the process of negotiating a settlement with a defendant that I had a judgment against, and I was not notified about the settlement negotiations. I think that is a serious problem, and one that someone

has to own up to. I would like a report back from the file, from Attorney General Kimmelman, or from whomever preceded you with information as to what happened, even if you have to call Mr. Gray back and depose him. You know, they are a co-litigant; they should have been in the case.

MR. HEKSCH: But, their judgment is very limited. Their judgment is not to the same extent as the State's judgment. I am not sure that that is an explanation. I will try to get you a specific explanation. DEP is the one that has the judgment with regard to the remedy. Perth Amboy's judgment relates to dollars and cents.

ASSEMBLYMAN FLYNN: I notice a gentleman in the back who wants to ask a question. Sir, will you please come up and give us your name, address, and title, if any, and ask your question?

CHUCK ROBINSON: My name is Chuck Robinson. I am with Adtek Engineering, Inc. I work in this office for the City of Perth Amboy. We are the experts; this gentleman assured us that when we look at the plan we are going to be happy with it.

I have reviewed the plan and I have some serious problems with it. The plan is based on a theoretical model which has a lot of assumptions to it. In the CH₂M Hill report, the State's consultant questions a lot of the fundamental assumptions made. The reason we are not using the court-ordered plan is because of the CH₂M Hill report. Why is the CH₂M Hill report not being looked at now when we are talking about this alternative plan?

MR. McCANN: You are quite correct in that the proposed alternative is based on a theoretical design. The theoretical design as originally proposed underwent extensive reviews by the Department. There were two addenda to the original report based upon technical issues and concerns that were raised on the overall plan.

MR. ROBINSON: It didn't address the model.

MR. McCANN: Now the model has been reviewed by our Department's experts, our geologists, and we have, in fact, verified that model. We have run the model; we have verified the results. We are satisfied that the model, as proposed, would achieve the desired results. We feel that in the plan we have provided the necessary

assurances that if, in fact, the actual plan, when implemented, does not achieve the anticipated results as predicted by the model, we have the necessary assurances to make the corrections to the plan. Those include such things as: the extension of the wall to make it larger; the addition of wells; and, the changing of the pumping rates to effect the necessary desired results. Those are safeguards that we put in so that we are not just totally dependent upon a theoretical model, but once in implementation, we can, in fact, correct and adjust as is necessary.

MR. ROBINSON: Well, you are obviously talking about data which I have not seen.

ASSEMBLYMAN FLYNN: I was just going to say, you have not shared that data with Perth Amboy.

MR. ROBINSON: I have all the addenda. This was received through my initiation, through talking to on-level staff people. The point that you people made before about the approach of DEP in this case, in my opinion, is very fundamental here.

The first thing that we get, in any formal manner, is a consent agreement. Okay? The CAC is a bunch of citizens -- you know, not to belittle the CAC -- but they are not Albert Seaman, they are not technical experts behind Albert Seaman, and they do not represent the City's official position. The CAC is composed of citizens saying, "What is going on here?" They are concerned, but it is different than the actual technical things. I was at one CAC meeting, but I was there just because I was interested, not because I was a part of it.

ASSEMBLYMAN FLYNN: So, what you're saying is, explaining it at a CAC meeting is not the same as sharing the research, the studies, and the backup they have done with you. Is that what you're saying?

MR. ROBINSON: And, it is the timing of the whole thing. If, all of a sudden, you're a lawyer and you are almost being threatened, "We're going to go back to court and shove this down your throat," how are you going to react? It is going to be a very defensive reaction.

ASSEMBLYMAN FLYNN: So, we're back to the old communication, they didn't talk enough, problem.

ASST. COMMISSIONER TYLER: I agree that more talk would have helped. I pointed out the constraint we felt we had during the entire--

ASSEMBLYMAN FLYNN: (interrupting) You have to consider the co-plaintiff. You have a co-plaintiff here.

ASST. COMMISSIONER TYLER: During the entire negotiation process with the industry over the technical issue, we made it clear that we had to sit down and talk to Perth Amboy before the order would be finalized.

ASSEMBLYMAN FOY: Yes, but George, the judgment says-- There is one example. Prickett's Brook shall be rerouted. Okay? It gives you \$583,000 to reroute it. Two paragraphs later it says, "Perth Amboy is going to get \$585,000, \$330,000 of which shall be used to dredge Prickett's Brook. I mean, they are getting money to do certain things in conjunction with you, and you're negotiating a settlement without even inviting them to attend the settlement conferences.

Now, you're not the lawyer; you shouldn't know that. You were not the Attorney General at the time. But, someone should have invited the attorney for that co-litigant, who has a money judgment to perform certain actions in conjunction with the same money judgment that you got to perform certain actions, to participate, because you then are settling away their rights without the authority to do so. That troubles me. Again, as I told you, I am a product of a disturbed mind created by a law school. When I learn things like that, unfortunately, they stay with me, I guess.

ASST. COMMISSIONER TYLER: We will get back to you on that. We are not going to settle away anyone's rights without talking to them.

MR. ROBINSON: As a professional, I don't enjoy sitting here saying, "This report is no good, that report is no good," and things like that. This is not something that can be settled in a setting like this, or even in court.

ASSEMBLYMAN FLYNN: It's a workshop type of thing.

ASST. COMMISSIONER TYLER: I agree. Maybe you didn't hear me, and maybe it is too late or after the fact, but we have agreed --

and, we have said it three or four times publicly -- that you are invited to every piece of information and every bit of thought process we have. I hope the fact that I have prejudged your conclusion won't prejudice your conclusion. I hope to take an objective look at the data, and I hope you will come to an agreement with us.

MR. ROBINSON: What happens if we have a disagreement? You have already made a settlement with the industry.

ASSEMBLYMAN FOY: But he hasn't done that. He said that he hasn't done that.

ASSEMBLYMAN FLYNN: They are close to one. I would like to see Perth Amboy and your firm work closely with DEP because I can foresee that if the two plaintiffs do not work closely together, there will be continued foot-dragging. That six to eight months could become another six to eight years, who knows. I would like to see you work with them. They have offered to share all the data, and I hope that will be done almost immediately. Thank you for your help.

Now, Blanche Hoffman, did you want to say something? Did you want to ask a question or did you want to say something?

BLANCHE HOFFMAN: I would like to say something just briefly, okay?

ASSEMBLYMAN FLYNN: Will you please give us your name and address for the record?

MS. HOFFMAN: My name is Blanche Hoffman. I am Chairperson of the Citizens Advisory Committee.

On behalf of the Citizens Advisory Committee, I would like to thank you for calling for the Oversight Committee to meet in regard to the CAC's concerns. Thank you, also, to the members of the Committee who have attended.

I have some news to report to the Committee. After last Friday's meeting in Old Bridge, Assistant Commissioner Tyler's representative approached me and, on Mr. Tyler's behalf, stated that DEP is now willing to meet with the CAC and all interested parties. Additionally, he stated that all current data in DEP's hands would be released.

I commend Commissioner Tyler for finally opening the door; however, I want to caution DEP that the CAC will attend the meetings --

and we have always been willing to do so -- only with the understanding and expressed intention of having DEP address our concerns, negotiate what is acceptable to all parties, and then build safeguards into a revised consent order agreement.

The CAC's concerns are: Responsibility for the cleanup must rest with DEP, and I think this is most important; DEP must hire the engineering/consulting firm which will report directly to DEP; all the industries should be responsible for putting the necessary money into an escrow account; all the contamination must be removed, the aquifer restored, and the stream protected; and, there should be a slurry wall around the industries and the heavily contaminated area, as per CH₂M Hill. The upper layer, the unsaturated zone, should be cleaned; pumping must continue until the upper layer is cleaned; and, pumping must be continued until the plumes are eliminated, whether or not the companies are operational.

The pre-treatment of zinc and organics should be part of the consent order agreement. Recycling of water should be implemented to conserve this resource. The two-year post-recovery monitoring is unacceptable. The time frame must be open-ended, with semiannual monitoring. Dredging, pumping, and disposal of contaminated sediments of Prickett's Pond and parts of Prickett's Brook must be included in the COA. A 30-year escrow account must be established. Unannounced inspections of the industries must be part of the COA.

ASSEMBLYMAN FLYNN: Do you have copies of that which we can photostat and make part of the record?

MS. HOFFMAN: Yes.

ASSEMBLYMAN FLYNN: I'm sure the Department would like a copy also so that at least they will know what your major concerns are.

Is there anyone else in the audience who would like to ask a question? Yes, Mr. Robinson. Please give us your full name, your title, and your role in this matter.

CHARLES ROBINSON: My name is Charles Robinson; I am the President of Adtek Engineering, Inc., consulting engineers for the City of Perth Amboy since 1970.

There were two points brought up here which I thought were very pertinent. First, let us talk just for a second about the zinc pile. When we started our investigations, we concentrated on heavy metals. We tested for three different metals -- zinc, lead, and cadmium. The pile is always graciously referred to as the "zinc pile," zinc not being a toxic substance such as lead or cadmium. Our concerns there were for the lead and the cadmium. Now, in the late 1970s -- I've forgotten now whether it was a court order or an order directly from DEP -- Madison Industries was ordered to place that zinc pile under cover. They then preceded to get a building construction permit for the building at the rear of their property. We were told that the zinc pile was going to be in that building. The zinc pile was never moved. The building was then used for additional manufacturing purposes.

What we are concerned about -- and, I said this last time -- is that, indeed, if the heavy concentrations of lead and cadmium that we found in those days, the early 1970s, are not in Prickett's Pond, then they have been transported someplace. We believe they were probably in the lower part of Tennent's Pond. We are concerned here that no one is addressing that problem. The City of Perth Amboy has been under order from DEP since 1973 to remove backwash wastes which were historically dumped into Tennent's Pond since the original plant was built in 1926. We decided -- and we talked to DEP officials at the time -- that we did not want to remove this backwash waste which sits on top of the aquifer because it would offer a certain amount of protection, in that the sediments we knew were being transported downstream would not directly enter the aquifer. That is why the pond has not been cleaned out.

There was a bond issue put up by the City to do that, and we were proceeding when we stopped. What the City is facing right now because of these sediments -- which are sediments from the same two sources we are discussing here -- is that if those sediments are contaminated to any extent, we are not talking about a \$400,000 job as originally intended in 1972, or 1973, we're talking about a project which is going to cost the City of Perth Amboy millions of dollars.

This has not been addressed, and we simply get the answer, "Well, this is outside of the scope of this project." This is something that should be addressed.

ASSEMBLYMAN FLYNN: Does someone wish to address that?

ASST. COMMISSIONER TYLER: I would have to look into it a little further. There were some issues in the trial, as I understand it, that I would like to address first. I would be glad to respond to you in writing. It has something to do with cross-contamination of the pond by other materials from other sources.

ASSEMBLYMAN FLYNN: How about the question of Tennent's Pond?

ASST. COMMISSIONER TYLER: That is what I am referring to.

ASSEMBLYMAN FLYNN: You do not know at this point whether there have been any tests done on Tennent's Pond to see if--

ASST. COMMISSIONER TYLER: (interrupting) I think there have been tests done on it.

ASSEMBLYMAN FLYNN: Perhaps then you could follow up on that.

ASST. COMMISSIONER TYLER: I will.

ASSEMBLYMAN FLYNN: That could be important.

ASST. COMMISSIONER TYLER: Okay.

ASSEMBLYMAN FLYNN: Do you have another question, Mr. Robinson?

MR. ROBINSON: Yes, just one other point. It has sort of been alluded to here today that Perth Amboy went into this case after money. Well, yes they did. There was a decision to be made at the time. The people at DEP at the time we asked them this question, "When this watershed is cleaned up, is purged, will we be able to use it" -- we being the City of Perth Amboy -- "for water supply purposes in the future?" answered, "No." That is why we have treated that particular watershed, which is a very, very small part. We are talking about contamination; there is maybe 50 acres out of 1,300 acres of the City's property. That is a small watershed. We have treated that as a hydraulic problem in reestablishing new well fields so that we will not pull any contaminants from the contaminated area into our new well field areas.

What we are concerned about in the modeling, and in the Wehran Report, is that it tends to take the attitude: "Well, if this doesn't work, we will adjust to it." What bothers us about it is that we are going to get involved in excessive pumping in the manipulation of the water in the aquifer, in that it could pollute other areas. We are not saying it will; we're saying it could. We lack the technical information needed to analyze that.

ASST. COMMISSIONER TYLER: Again, we will make all the technical information we have available to you. We are not dealing with an exact science; that is why you build those kinds of safeguards into a court order. We build them into every cleanup we negotiate. We go into every publicly funded cleanup with the thought in mind that a model is just that, a model. It is not the real world. When you get into the real world, characteristics flow, and lots of things can happen to make those models less than perfect. So you design it based on the model -- I don't have to tell an expert like you that -- and then you have a safeguard built in.

Again, I will reiterate, those safeguards were not built into the court order that was issued. There is no flexibility there. We have to go back and reopen that court order. That is one of the advantages we will be presenting to the City. If the model is imperfect and turns out not to be 100% accurate, there is an opportunity for additional action. I think you have to approach -- and, maybe I'm wrong -- a ground water cleanup that way. You can't see it; you can't touch it; you have to do your best based on modeling and on monitoring data. Then you have to be flexible enough to shift gears if you have to.

MR. ROBINSON: That is very true. Our concern is that we do not feel that model covers an areal extent large enough to really give you a decent start in your pumping procedures.

MR. GASTON: Mr. Robinson, as the Director of the Division, we are responsible for the quality of the water and the quantity of the water. In constructing a solution here, we have had one principal ingredient put into the solution. It has to work. It has to work in a way that does not destroy your interest or denigrate your interest; it

has to work in a way that does not injure Sayreville; it has to work in a way that reflects what we think, based on our understanding of the geology and the hydrology of the area, will work; and, it has to have built into it an ability to get to a solution that physically is shown to work in a way in which we expect that it should work. The principal feature of this revised, amended alternative plan is that it has inherent within it that a program has to be put in place that has to work.

We think our proposal will. If it doesn't, we'll move it. There is an assurance in the form of a bond of \$5 million to make it happen with money on the table. We have a third-party consultant built into the agreement to oversee what is happening. We will have our people out in the field when the construction and the siting of the wells take place so that we will know what is happening there and that the wells are properly installed. We will have locks on the wells, two locks on the wells if necessary. We will have intensive monitoring on a periodic basis take place to confirm that, from a quantity standpoint and from a quality standpoint, the cleanup is proceeding on a schedule.

To me, that is an overwhelmingly positive package to be moving forward on, that does not have, and does not rely exclusively upon, one or two persons' technical decisions. It relies upon sound regulatory management enforcement control of a problem that needs to be brought under control and put on a time frame that will eventually bring about a cleaning of that aquifer at some point in time in the future. We need to get on with that, and we are willing to get on with it right away if we can move through what has been a very difficult process, one in which we realize we have not been able to deal absolutely as I would want to deal with everyone in the process. But, when you have 10 parties you are dealing with, and 10 different stories, it is like the "Naked City," seven million people and seven million stories. You don't get anything done unless you sort some things out and put together a program that you think can work from an environmental perspective and one that can produce a result.

We have done that in this case, and we would like to get on with the process of implementing it.

MR. ROBINSON: What I tried to say -- and this is my last comment -- is that we feel, after studying the Wehran Report, that that model is so limited that you are not really going to know what you are doing, and we're scared because we think you may impact us. That is our fear.

MR. GASTON: Well, we are going to know that because we have it built into the observation package, and when we do, we will adjust to it.

MR. ROBINSON: What I am trying to say is, the model should be something far, far better than what you are starting with.

ASSEMBLYMAN FLYNN: Mr. Robinson, they have made an offer now to give you as much data as they have, all the additional data.

MR. ROBINSON: Wonderful; very good.

ASSEMBLYMAN FLYNN: Perhaps after reviewing that you may want to talk to them some more. Thank you for coming.

MR. ROBINSON: Sure. Thank you.

ASSEMBLYMAN FLYNN: Mr. Nussbaum, do you want to testify?

STU NUSSBAUM: Yes, I do.

ASSEMBLYMAN FLYNN: Please give your full name and your title.

MR. NUSSBAUM: My name is Stu Nussbaum. I am a citizen of New Jersey and a resident of Old Bridge.

There are so many things I really want to say, and this is not an ideal time to do it. Last week, Mr. Tyler informed us that there was a change, that there was going to be pre-treatment, at least of the zinc. I think he said it was going to be done by the Middlesex Authority. I don't believe that is correct. It may be, but I heard a little bit different. I also heard that perhaps Mr. Gaston was saying it was going to be for zinc which is internal to the plant itself.

So, we have a little confusion. In any event, with a major change such as this being added, I would certainly hope that you fellows are not still 99% with the consent order. We have many, many questions, particularly if you are truly inviting us -- the citizenry -- into this discussion to talk about it.

You have spoken about many, many particular issues. For example, when is a cleanup complete? I don't have your latest consent order, but your original consent order, in essence, stated that when the water samples at the well met certain qualities, the cleanup would be complete. It did not say anything about any of the levels, about whether there are remaining contaminants anywhere in the system. In other words, if water came in from the south, if it pulled in and diluted these, we'll say, organics, or the zinc, still knowing that it is in there, but now it is diluted below detectability, you may shut this thing off. We asked the question at one of these meetings, "Why don't you measure the same way you measure the plume?" If the plume is still there, you keep extracting until you get it out.

We have also heard that there are new technologies. I would like very much to learn what new technologies are being addressed. You know, I have seen new technologies where they are inserting microorganisms into the ground, using chemicals to break the compounds off the surface, to get a meter to flow toward a pump, or to biodegrade in place. You guys are the experts. We, as citizens, hire you guys to work for us as experts. If the citizenry had these answers, then we wouldn't need DEP. You are our experts, and we rely on you. Now, I don't know about new technologies. I don't really hear about that much new technology being offered relative to the wall.

There are so many questions and problems. Today you said you were working on a two-year plan. We are familiar with things and more. We are familiar with CH₂M Hill after the court. We are familiar with Wehran; we are familiar with Converse. We are also familiar with Princeton Aqua Science. I am not familiar with DEP's plan. If there is a plan, we don't know what it is. This is the plan you talked about happening, we'll say, three or four years ago, not what is conceived of today. We would like to know how that came about.

Then there is the business about the pre-treatment/no pre-treatment. It seems to me we did not get an answer until last week that it was going to be included, and yet there was data implied for a long time that it was necessary. I was amused when you compared the Wehran Report with the Princeton Aqua Science Report. Wehran quoted

the exact same statement as Princeton Aqua Science, and both of them drew different conclusions. One said you must pre-treat; the other said you do not have to. They were quoting the same material. So, there is a lot of confusion here. I'm hoping you are not at 99%. I really had hoped that six months ago we would have more dialogue, more openness, with Perth Amboy, with the Old Bridge Utility Authority, and with the citizenry. We did say at meetings that we were not representing the water authority. Our water authority has a major problem with these two industries. They have put things into the system that our authority knew very little about. There are legal questions coming up between those two. Our water authority feels that they have been cut out of it totally. We, as a citizens group, are advising our town, but you have to talk to these people too. It is very important that you do this.

ASSEMBLYMAN FLYNN: Do you mean the sewer authority?

MR. NUSSBAUM: The sewerage authority, yes, and the MCUA also.

Now, we have one other question. The court originally said, "We are going to take the two industries and treat them as one. We don't want two separate industries." You fellows are saying the same thing. But, in reality -- lawyers, lawyers, and lawyers, and I am not a lawyer -- these are two separate companies. As I read your consent order, you give them such a degree of freedom that they will take the samples and report to you in six months. They will do this; they will do that. Now, these are two industries. They are not related in any way. One can say, "We'll take the sample today," and the other will say, "We'll take it tomorrow." One will say, "I want to take it." There is no clear line of command there.

ASSEMBLYMAN FLYNN: Your concern is that the monitoring process should be very tightly structured.

MR. NUSSBAUM: We very strongly feel that the two industries should not be allowed to do the monitoring at all. They should not be the monitors.

ASSEMBLYMAN FLYNN: That was Blanche's comment.

MR. NUSSBAUM: Yes.

ASSEMBLYMAN FLYNN: Is there going to be another workshop type meeting with the State?

MR. NUSSBAUM: We would hope--

ASST. COMMISSIONER TYLER: (interrupting) We have started to set that up already.

ASSEMBLYMAN FLYNN: Okay. At that meeting, hopefully, you can address your technical concerns.

MR. NUSSBAUM: Yes. Thank you very much.

ASSEMBLYMAN FLYNN: Unless there is someone who has something we have not talked about today, I am going to conclude today's session. We are going to get some additional information from the Department. There are at least three or four questions they are going to respond to. After we review that information, we will decide on our next course of action.

I would like to thank you all for coming and for your patience.

ASST. COMMISSIONER TYLER: Mr. Chairman, I would just like to thank you again for the opportunity to put our case on the table. I think it is a pretty good one. I want to publicly compliment Director Gaston and his staff from the Division of Water Resources, and Mr. Heksch from the Attorney General's office, for the really outstanding job they have done in this case. We are not perfect; I don't think that any solution we might propose is perfect; but, this is a good job, and you people can be proud of these guys at the table here. Thank you.

ASSEMBLYMAN FLYNN: Thank you.

(MEETING CONCLUDED)

APPENDIX



Township of Old Bridge

MIDDLESEX COUNTY, N.J.

ONE OLD BRIDGE PLAZA • OLD BRIDGE, N.J. 08857

February 28, 1985

ENVIRONMENTAL COMMISSION
(201) 721-5600

Assemblyman William Flynn
Chairman
Legislative Oversight Committee
Trenton, N.J. 08625

RE: CPS/MADISON INDUSTRIES

Dear Assemblyman Flynn:

On behalf of the Citizens Advisory Committee I would like to thank you for calling for the Oversight Committee to meet in regard to the CAC's concerns and also to the members of the committee who have attended.

I have some news to report to the Committee. After last Friday's hearing in Old Bridge, Assistant Commissioner George Tyler's representative approached me and on Commissioner Tyler's behalf stated that DEP is now willing to meet with the CAC and all interested parties and additionally that all current data in DEP's hands will be released.

I commend Commissioner Tyler for finally opening the door, however, I want to caution DEP that the CAC will attend the meetings, which we have always been willing to do, only with the understanding and expressed intention of having DEP address our concerns, negotiate what is acceptable to all parties and then build safeguards into a revised Consent Order Agreement (COA).

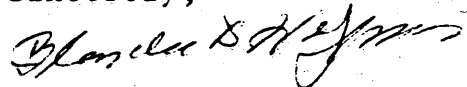
The CAC's concerns are:

1. Responsibility for the cleanup must rest with DEP. DEP must hire the engineering/consulting firm which will report directly to DEP. All the industries should be responsible for is to put the necessary money into an escrow account.
2. All the contamination removed, the
 - . aquifer restored
 - . stream protected
3. A slurry wall around the industries and the heavy contaminated areas as per CH2M HILL.

Assemblyman Flynn
Legislative Oversight Committee
February 28, 1985

4. The upper layer (the unsaturated zone) cleaned.
 - . Pumping must continue until the upper layer is cleaned.
5. Pumping must be continued until the plumes are eliminated, whether or not the companies are operational.
6. Pretreatment of zinc and organics should be part of the Consent Order Agreement (COA).
7. Recycling of water should be implemented to conserve this resource.
8. The 2 year post recovery monitoring is unacceptable. The time frame must be open ended with semi-annual monitoring.
9. Dredging, pumping and disposal of contaminated sediments of Prickett's Pond and parts of Prickett's Brook must be included in the COA.
10. A 30 year escrow account must be established.
11. Unannounced inspections of the industries must be part of the COA.

Sincerely,



Blanche D. Hoffman
Chairperson
Citizens Advisory Committee
for CPS/Madison Industries

MDL/BDH