

PUBLIC HEARING

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before

SENATE ENERGY AND ENVIRONMENT COMMITTEE

SENATE BILLS 899, 1462, 2011, 2012

and

SENATE CONCURRENT RESOLUTIONS 73, 82

(Hazardous Discharge Site Cleanup Financing)

April 28, 1986

Room 334

State House Annex

Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Daniel J. Dalton, Chairman
Senator Paul Contillo, Vice Chairman
Senator Lee B. Laskin

Also Present:

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

New Jersey State Library

Hearing Recorded by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

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SENATE, No. 899

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator CONTILLO

AN ACT to amend and supplement the "Spill Compensation and Control Act," approved January 6, 1977 (P. L. 1976, c. 141).

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

1 1. Section 3 of P. L. 1976, c. 141 (C. 58:10-23.11b) is amended to
2 read as follows:

3 3. Unless the context clearly indicates otherwise, the following
4 terms shall have the following meanings:

5 a. "Administrator" means the chief executive of the New Jersey
6 Spill Compensation Fund;

7 b. "Barrel" means 42 United States gallons or 159.09 liters or
8 an appropriate equivalent measure set by the director for hazard-
9 ous substances which are other than fluid or which are not com-
10 monly measured by the barrel;

11 c. "Board" means a board of arbitration convened by the
12 administrator to settle disputed disbursements from the fund;

13 d. "Cleanup and removal costs" means all costs associated with
14 a discharge, incurred by the State or its political subdivisions or
15 their agents or any person with written approval from the depart-
16 ment in the (1) removal or attempted removal of hazardous sub-
17 stances, or (2) taking of reasonable measures to prevent or miti-
18 gate damages to the public health, safety, or welfare, including,
19 but not limited to, public and private property, shorelines, beaches,
20 surface waters, water columns and bottom sediments, soils and
21 other affected property, including wildlife and other natural

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted May 19, 1986.

**—Senate committee amendments adopted June 9, 1986.

***—Senate amendments adopted September 15, 1986

****—Senate amendments adopted October 20, 1986.

resources***, and shall include costs incurred by the department for
 the identification and legal defense of contractors pursuant to sub-
 section a. of section 7 of this act, subject to the appropriation by
 law of monies from the General Fund to the fund to defray these
 costs***;

e. "Commissioner" means the Commissioner of Environmental
 Protection;

f. "Department" means the Department of Environmental
 Protection;

g. "Director" means the Director of the Division of Taxation in
 the Department of the Treasury;

h. "Discharge" means any intentional or unintentional action
 or omission resulting in the releasing, spilling, leaking, pumping,
 pouring, emitting, emptying or dumping of hazardous substances
 into the waters or onto the lands of the State, or into waters out-
 side the jurisdiction of the State, when damage may result to the
 lands, waters or natural resources within the jurisdiction of the
 State;

i. "Fair market value" means the invoice price of the hazardous
 substances transferred, including transportation charges: but where
 no price is so fixed, "fair market value" shall mean the market
 price as of the close of the nearest day to the transfer, paid for
 similar hazardous substances, as shall be determined by the tax-
 payer pursuant to rules of the director.

j. "Fund" means the New Jersey Spill Compensation Fund;

k. "Hazardous substances" means ***the "environmental haz-
 ardous substances" on the environmental hazardous substance
 list adopted by the department pursuant to section 4 of P. L.
 1983, c. 315 (C. 34-5A:4);*** such elements and compounds,
 including petroleum products, which are defined as such by
 the department, after public hearing, and which shall be con-
 sistent to the maximum extent possible with, and which shall
 include, the list of hazardous substances adopted by the federal
 Environmental Protection Agency pursuant to section 311 of the
 ["Federal"] *federal* Water Pollution Control Act Amend-
 ments of 1972, **[""]** Pub. L. 92-500 as amended by the "Clean
 Water Act of 1977," Pub. L. 95-217 (33 U. S. C. § 1251 et
 seq.)***[,]*****;*** **[and pursuant to section 101 of the
 "Comprehensive Environmental Response, Compensation, and
 Liability Act of 1980," Pub. L. 96-510 (42 U. S. C. § 9601 et seq.),
 and]***** the list of toxic pollutants designated by Congress or the
 EPA pursuant to section 307 of [that] ***[the former]***
 that act***, and the list of hazardous substances adopted by

57A the federal Environmental Protection Agency pursuant to section
 57B 101 of the "Comprehensive Environmental Response, Compensa-
 57C tion, and Liability Act of 1980." Pub. L. 96-510 (42 U. S. C. § 9601
 57D et seq.)***; provided, however, that sewage and sewage sludge
 57E shall not be considered as hazardous substances for the purposes
 57F of this act;

58 l. "Major facility" includes, but is not limited to, any refinery,
 59 storage or transfer terminal, pipeline, ***[deep water]*** **deep-
 60 water*** port, drilling platform or any appurtenance related to any
 61 of the preceding that is used or is capable of being used to refine,
 62 produce, store, handle, transfer, process or transport hazardous
 63 substances. A vessel shall be considered a major facility only when
 64 hazardous substances are transferred between vessels.

65 A facility shall not be considered a major facility for the purpose
 66 of this act unless it has total combined above-ground or buried
 67 storage capacity of***[—]*** **.*

68 (1) [50,000] ***[25,000]*** **20,000*** gallons or more for
 69 hazardous substances which are other than petroleum or petroleum
 69A products, or

70 (2) [400,000] *[50,000]* *200,000* gallons or more for hazard-
 71 ous substances of all kinds.

72 For the purposes of this *[definitoin]* *definition*, "storage ca-
 73 pacity" shall mean only that ***total combined*** capacity which
 74 is dedicated to, used for or intended to be used for storage of
 75 hazardous substances ***of all kinds***. Where appropriate to
 76 the nature of the facility, storage capacity may be determined by
 77 the intended or actual use of open land or unclosed space as well
 77A as by the capacities of tanks or other enclosed storage spaces;

78 m. "Natural resources" means all land, fish, shellfish, wildlife,
 79 biota, air, waters and other such resources owned, managed, held
 80 in trust or otherwise controlled by the State;

81 n. "Owner" or "operator" means, with respect to a vessel, any
 82 person owning, operating or chartering by demise such vessel; with
 83 respect to any major facility *[or hazardous waste disposal facil-
 84 ity]*, any person owning such facility, or operating it by lease, con-
 85 tract or other form of agreement; with respect to abandoned or
 86 derelict major facilities *[or hazardous waste disposal facilities]*,
 87 the person who owned or operated such facility immediately prior
 88 to such abandonment, or the owner at the time of discharge;

89 o. "Person" means public or private corporations, companies,
 90 associations, societies, firms, partnerships, joint stock companies,
 91 individuals, the United States, the State of New Jersey and any
 92 of its political subdivisions or agents;

p. "Petroleum" or "petroleum products" means oil or petroleum of any kind and in any form including, but not limited to, oil, petroleum, gasoline, kerosene, fuel oil, oil sludge, oil refuse, oil mixed with other wastes, crude oils, and substances or additives to be utilized in the refining or blending of crude petroleum or petroleum stock in this State; however any compound designated by specific chemical name to the list of hazardous substances adopted by the department pursuant to subsection 3 k. shall not be considered petroleum or a petroleum product for the purposes of this act, unless such compound is to be utilized in the refining or blending of crude petroleum or petroleum stock in this State;

q. "Taxpayer" means the owner or operator of a major facility***[.]*** **[a hazardous waste disposal facility or a motor vehicle, truck, rail car, vessel or other mechanical conveyance used to transport hazardous waste for disposal outside the territorial boundaries of the State]** subject to the tax provisions of this act:

r. "Tax period" means every calendar month on the basis of which the taxpayer is required to report under this act;

s. "Transfer" means unloading or offloading between major facilities and vessels, or vessels and major facilities, and from vessel to vessel or major facility to major facility, except for fueling or refueling operations and except that with regard to the movement of hazardous substances other than petroleum, it shall also include any unloading of or offloading from a major facility;

t. "Vessel" means every description of *****[water craft]***** *****watercraft***** or other contrivance that is practically capable of being used as a means of commercial transportation of hazardous substances upon the water, whether or not self-propelled;

u. "Waters" means the ocean and its estuaries to the seaward limit of the State's jurisdiction, all springs, streams and bodies of surface or groundwater, whether natural or artificial, within the boundaries of this State;

v. "Act of God" means an act exclusively occasioned by an unanticipated, grave natural disaster without the interference of any human agency;

***[w. "Hazardous waste" means any amount of any hazardous substances required to be reported to the department on the special waste manifest pursuant to regulations adopted by the department under P. L. 1970, c. 33 (13:1D-1 et seq.), or as otherwise provided by law;**

x. "Hazardous waste disposal facility" means any area, plant or other facility for the treatment, storage or disposal of hazardous

135 *waste, including loading and transportation facilities or equip-*
 136 *ment used in connection with the processing of hazardous waste.】**

1 ***【2. Section 5 of P. L. 1976, c. 141 (C. 58:10-23.11d) is amended
 2 to read as follows:

3 5. Each owner or operator of a major facility *【*or hazardous*
 4 *waste disposal facility】** shall submit to the department the follow-
 5 ing information:

6 a. The number of barrels*【, tons】* or another measurement of
 7 the storage capacity of the facility;

8 b. Average daily throughput of the facility;

9 c. A primary and contingency cleanup and removal plan which
 10 includes, but is not limited to, an inventory of:

11 (1) The storage and transfer capacity of the facility;

12 (2) The containment and removal equipment, including, but not
 13 limited to, vehicles, vessels, pumps, skimmers, booms, chemicals,
 14 and communication devices, to which the facility has access through
 15 direct ownership or by contract or membership in a discharge
 16 cleanup organization recognized by the department, as well as the
 17 time lapse following a discharge which precedes such access;

18 (3) The trained personnel which are required and available to
 19 operate such containment and removal equipment and the time
 20 lapse following a discharge which precedes such availability;

21 (4) All equipment and trained personnel used or employed in
 22 any capacity at the facility to prevent discharges of hazardous
 23 substances;

24 (5) The terms of agreement and operation plan of any discharge
 25 cleanup organization to which the owner or operator of the facility
 26 belongs;

27 (6) The type and amount of hazardous substances transferred,
 28 refined, processed 【or】 *【,】* *or* stored *【*or disposed of*】* at the
 28A facility;

29 d. The steps taken to insure prevention of a discharge;

30 e. The source, nature of, and conditions of financial responsi-
 31 bility;

32 f. The department shall promulgate rules and regulations, as
 33 provided in section 21 of this act, establishing standards for the
 34 availability of preventative, cleanup and removal procedures, per-
 35 sonnel and equipment at 【any】 major 【facility with a total com-
 36 bined above-ground or buried storage capacity of 400,000 gallons
 37 or more of hazardous substances】 facilities *【*and hazardous waste*
 38 *disposal facilities*】*, as well as requiring the formulation of cleanup
 39 and removal plans for each 【such major】 *such major* facility,

40 where such plans are not required by existing federal statute, rule
 41 or regulation. Compliance with such standards and plans shall not
 42 be deemed a defense in addition to the defenses enumerated in sub-
 43 section d. of section 8 of this act.】***

1 ***【3. Section 7 of P. L. 1976, c. 141 (C. 58:10-23.11f) is amended
 2 to read as follows:

3 7. a. Whenever any hazardous substance is discharged, the de-
 4 partment may, in its discretion, act to remove or arrange for the
 5 removal of such discharge or may direct the discharger to remove,
 6 or arrange for the removal of, such discharge. If the discharge
 7 occurs at any hazardous or solid waste disposal facility, the depart-
 8 ment may order the facility closed for the duration of the removal
 9 operations. The department may monitor the discharger's com-
 10 pliance with any such directive. Any discharger who fails to
 11 comply with such a directive shall be liable to the department in
 12 an amount equal to three times the cost of such removal, and
 13 shall be subject to the revocation or suspension of any license or
 14 permit he holds authorizing him to operate a hazardous or solid
 15 waste disposal facility.

16 Removal of hazardous substances and actions to minimize
 17 damage from discharge shall, to the greatest extent possible, be in
 18 accordance with the National Contingency Plan for removal of oil
 19 and hazardous substances established pursuant to section 311 (c)
 20 (2) of the "Federal Water Pollution Control Act Amendments of
 21 1972" (P. L. 92-500, 33 U. S. C. § 1251 et seq.).

22 Whenever the department acts to remove a discharge or contracts
 23 to secure prospective removal services, it is authorized to draw
 24 upon the money available in the fund. Such moneys shall be used
 25 to pay promptly for all cleanup costs incurred by the department
 26 in removing or in minimizing damage caused by such discharge.

27 Nothing in this section is intended to preclude removal and
 28 cleanup operations by any person threatened by such discharges,
 29 provided such persons coordinate and obtain approval for such
 30 actions with ongoing State or federal operations. No action taken
 31 by any person to contain or remove a discharge shall be construed
 32 as an admission of liability for said discharge. No person who
 33 renders assistance in containing or removing a discharge shall be
 34 liable for any civil damages to third parties resulting solely from
 35 acts or omissions of such person in rendering such assistance,
 36 except for acts or omissions of gross negligence or willful mis-
 37 conduct. In the course of cleanup operations, no person shall dis-
 38 charge any detergent into the waters of this State without prior
 39 authorization of the commissioner.

40 b. Notwithstanding any other provisions of P. L. 1976, c. 141
41 (C. 58:10-23.11 et seq.), the department, subject to the approval
42 of the administrator with regard to the availability of funds there-
43 for, may remove or arrange for the removal of any hazardous sub-
44 stance which:

45 (1) Has not been discharged from a grounded or disabled vessel,
46 if the department determines that such removal is necessary to
47 prevent an imminent discharge of such hazardous substance: or

48 (2) Has not been discharged, if the department determines that
49 such substance is not satisfactorily stored or contained and said
50 substance possesses any one or more of the following char-
51 acteristics:

52 (a) Explosiveness;

53 (b) High flammability;

54 (c) Radioactivity;

55 (d) Chemical properties which in combination with any dis-
56 charged hazardous substance at the same storage facility would
57 create a substantial risk of imminent damage to public health
58 or safety or an imminent and severe damage to the environment;

59 (e) Is stored in a container from which its discharge is im-
60 minent as a result of contact with a hazardous substance which
61 has already been discharged and such additional discharge would
62 create a substantial risk of imminent damage to public health or
63 safety or imminent and severe damage to the environment: or

64 (f) High toxicity and is stored or being transported in a con-
65 tainer or motor vehicle, truck, railcar or other mechanized con-
66 veyance from which its discharge is imminent as a result of the
67 significant deterioration or the precarious location of the container,
68 motor vehicle, truck, railcar or other mechanized conveyance, and
69 such discharge would create a substantial risk of imminent damage
70 to public health or safety or imminent and severe damage to the
71 environment; or

72 (3) Has been discharged prior to the effective date of P. L. 1976,
73 c. 141.

74 c. If and to the extent that he determines that funds are available,
75 the administrator shall approve and make payments for any cleanup
76 and removal costs incurred by the department for the removal of
77 a hazardous substance other than petroleum as authorized by sub-
78 section b. of this section: provided that in determining the avail-
79 ability of funds, the administrator shall not include as available
80 funds revenues realized or to be realized from the tax on the trans-
81 fer of petroleum, to the extent that such revenues result from a

82 tax levied at a rate in excess of ~~[\$0.01]~~ \$0.02 per barrel, pursuant
83 to subsection 9b. of P. L. 1976, c. 141 (C. 58:10-23.11h), unless the
84 administrator determines that the sum of claims paid by the fund
85 on behalf of petroleum discharges or removals plus pending reason-
86 able claims against the fund on behalf of petroleum discharges or
87 removals is greater than 30% of the sum of all claims paid by the
88 fund plus all pending reasonable claims against the fund.

89 d. The administrator may only approve and make payments for
90 any cleanup and removal costs incurred by the department for the
91 removal of a hazardous substance discharge prior to the effective
92 date of P. L. 1976, c. 141, pursuant to subsection b. of this section,
93 if, and to the extent that, he determines that adequate funds from
94 another source are not or will not be available; and further pro-
95 vided, with regard to the cleanup and removal costs incurred for
96 discharges which occurred prior to the effective date of P. L. 1976,
97 c. 141, the administrator may not during any one year period pay
98 more than \$18,000,000.00 in total or more than \$3,000,000.00 for any
99 discharge or related set or series of discharges.

100 e. Notwithstanding any other provisions of P. L. 1976, c. 141,
101 the administrator, after considering, among any other relevant
102 factors, the department's priorities for spending funds pursuant to
103 P. L. 1976, c. 141, and within the limits of available funds, shall
104 make payments for the restoration or replacement of, or connec-
105 tion to an alternative water supply for, any private residential well
106 destroyed, contaminated, or impaired as a result of a discharge
107 prior to the effective date of P. L. 1976, c. 141, provided however
108 total payments for said purpose shall not exceed \$500,000.00 for
109 the period between the effective date of this subsection e. and
110 January 1, 1983, and in any calendar year thereafter.

111 f. Any expenditures made by the administrator pursuant to this
112 act shall constitute in each instance, a debt of the discharger to the
113 fund. The debt shall constitute a lien on all property owned by the
114 discharger when a notice of lien, incorporating a description of the
115 property of the discharger subject to the cleanup and removal and
116 an identification of the amount of cleanup, removal and related
117 costs expended from the fund is duly filed with the clerk of the
118 Superior Court. The clerk shall promptly enter upon the civil
119 judgment or order docket the name and address of the discharger
120 and the amount of the lien as set forth in the notice of lien. Upon
121 entry by the clerk, the lien, to the amount committed by the
122 administrator for cleanup and removal, shall attach to the revenues
123 and all real and personal property of the discharger, whether or not
124 the discharger is insolvent. The notice of lien filed pursuant to this

125 subsection which affects the property of a discharger subject to the
 126 cleanup and removal of a discharge shall create a lien with priority
 127 over all other claims or liens which are or have been filed against
 128 the property, except if the property comprises six dwelling units
 129 or less and is used exclusively for residential purposes, this notice
 130 of lien shall not affect any valid lien, right or interest in the prop-
 131 erty filed in accordance with established procedure prior to the
 132 filing of this notice of lien. The notice of lien filed pursuant to this
 133 subsection which affects any property of a discharger other than
 134 the property subject to the cleanup and removal, shall have priority
 135 from the day of the filing of the notice of the lien over all other
 136 claims and liens filed against the property, but shall not affect any
 137 valid lien, right, or interest in the property filed in accordance
 138 with established procedure prior to the filing of a notice of lien
 139 pursuant to this subsection.】***

1 ***[4. Section 8 of P. L. 1976, c. 141 (C. 58:10-23.11g) is amended
 2 to read as follows:

3 8. a. The fund shall be strictly liable, without regard to fault,
 4 for all cleanup and removal costs and for all direct and indirect
 5 damages no matter by whom sustained, including but not limited to:

6 (1) The cost of restoring, repairing, or replacing any real or
 7 personal property damaged or destroyed by a discharge, any income
 8 lost from the time such property is damaged to the time such
 9 property is restored, repaired or replaced, and any reduction in
 10 value of such property caused by such discharge by comparison
 11 with its value prior thereto;

12 (2) The cost of restoration and replacement, where possible, of
 13 any natural resource damaged or destroyed by a discharge;

14 (3) Loss of income or impairment of earning capacity due to
 15 damage to real or personal property, including natural resources
 16 destroyed or damaged by a discharge; provided that such loss or
 17 impairment exceeds 10% of the amount which claimant derives,
 18 based upon income or business records, exclusive of other sources
 19 of income, from activities related to the particular real or personal
 20 property or natural resources damaged or destroyed by such dis-
 21 charge during the week, month or year for which the claim is filed:

22 (4) Loss of tax revenue by the State or local governments for
 23 a period of one year due to damage to real or personal property
 24 proximately resulting from a discharge;

25 (5) Interest on loans obtained or other obligations incurred
 26 by a claimant for the purpose of ameliorating the adverse effects
 27 of a discharge pending the payment of a claim in full as provided
 28 by this act.

b. The damages which may be recovered by the fund, without regard to fault, subject to the defenses enumerated in subsection d. of this section against the owner or operator of a ***[hazardous waste disposal facility,]*** major facility or vessel ***[,]*** shall not exceed ***[\$100,000,000.00 for each hazardous waste disposal facility,]*** \$50,000,000.00 for each major facility or \$150.00 per gross ton for each vessel, except that such maximum limitation shall not apply and the owner or operator shall be liable, jointly and severally, for the full amount of such damages if it can be shown that such discharge was the result of (1) gross negligence or willful misconduct, within the knowledge and privity of the owner, operator or person in charge, or (2) a gross or willful violation of applicable safety, construction or operating standards or regulations. Damages which may be recovered from, or by, any other person shall be limited to those authorized by common or statutory law.

c. Any person who has discharged a hazardous substance or is in any way responsible for any hazardous substance which the department has removed or is removing pursuant to subsection b. of section 7 of this act shall be strictly liable, jointly and severally, without regard to fault, for all cleanup and removal costs.

d. An act or omission caused solely by war, sabotage, or God, or a combination thereof, shall be the only defenses which may be raised by any owner or operator of a ***[hazardous waste disposal facility,]*** major facility or vessel responsible for a discharge in any action arising under the provisions of this act. *******

*****[5.]***** *****2.***** Section 9 of P. L. 1976, c. 141 (C. 58:10-23.11h) is amended to read as follows:

9. a. There is hereby levied upon each owner or operator of one or more major facilities a tax to insure compensation for cleanup costs and damages associated with any discharge of hazardous substances to be paid by the transferee; provided, however, that in the case of a major facility which operates as a public storage terminal for hazardous substances owned by others, the owner of the hazardous substance transferred to such major facility or his authorized agent shall be **considered to be the transferee or transferor, as the case may** *****[,]*** *be****, ******* for the purposes of this section *****[,]*** ******* and shall be deemed to be *** [considered to be the transferee or transferor, as the case may be, for the purposes of this section and shall be deemed to be]** a taxpayer for purposes of this act. Where such person has failed to file a return or pay the tax imposed by this act within 60 days after the due date thereof, the director shall forthwith take appropriate steps to collect same from the owner of the hazardous substance. In the

18 event the director is not successful in collecting said tax***.***
 19 then on notice to the owner or operator of the public storage
 20 terminal of said fact said owner or operator shall not release
 21 any hazardous substance owned by the taxpayer. The director
 22 may forthwith proceed to satisfy any tax liability of the tax-
 23 payer by seizing, selling or otherwise disposing of said hazardous
 24 substance to satisfy the taxpayer's tax liability and to take any
 25 further steps permitted by law for its collection. For the purposes
 26 of this act***.*** public storage terminal shall mean a public or
 27 privately owned major facility operated for public use which is
 28 used for the storage or transfer of hazardous substances. The tax
 29 shall be **[measured by]** **[levied on]** *measured by** the number
 30 of barrels or the fair market value, as the case may be, of hazardous
 31 substances transferred to the major facility*****[,]*****;*** pro-
 32 vided, however, that the same barrel, including any products derived
 32A therefrom, subject to multiple transfers from or between major
 32B facilities shall be taxed only once at the point of the first transfer.

33 When a hazardous substance other than petroleum which has not
 34 been previously taxed is transferred from a major in-State facility
 35 to a facility which is not a major facility, the transferor shall be
 36 liable for tax payment for said transfer.

37 **[There is levied upon the owner or operator of a hazardous
 38 waste disposal facility, or in the case of the disposal of hazardous
 39 waste outside the boundaries of this State, upon the owner or op-
 40 erator of a motor vehicle, truck, rail car, vessel or other mechanized
 41 conveyance used for the transport of hazardous waste, a tax to in-
 42 sure compensation for cleanup costs and damages associated with
 43 any discharge of hazardous substances. The tax shall be levied on
 44 the number of tons disposed at a hazardous waste disposal facility
 45 or transported for disposal outside the territorial boundaries of the
 46 State. No tax shall be levied on hazardous waste which is to be
 47 reused or recycled for further use or temporarily stored for final
 48 disposal at another facility, upon submission of evidence to that
 49 effect approved by the commissioner.]**

50 b. The tax shall be **[\$0.01]** **[\$20.00 per ton of hazardous waste
 51 disposed at a hazardous waste facility or transported outside the
 52 territorial boundaries of the State,]** *****[\$0.02]***** ****\$0.0125****
 53 per barrel transferred and in the case of the transfer of hazardous
 54 substances other than petroleum or petroleum products, the tax
 55 shall be the greater of **[\$0.01]** ****[\$0.02]**** ****\$0.0125**** per
 56 barrel or **[0.4%]** ****[0.8%]**** ****1.0%**** of the fair market value
 56A of the product**[,]** until the balance in the fund equals or exceeds
 57 \$50,000,000.00**];** provided, however, that with respect to transfers

58 of hazardous substances other than petroleum or petroleum prod-
 59 ucts which are or contain any precious metals to be recycled, refined,
 60 or rerefined in this State, or which are transferred into this State
 61 subsequent to being recycled, refined or rerefined, the tax shall be
 62 **[\$0.01]** *****[\$0.02]***** *****\$0.0125***** per barrel of the hazardous
 63 substance***, and provided further, however, that the total
 63A aggregate tax due for any individual taxpayer which has paid
 63B the tax in the 1986 tax year shall not exceed 125% of the
 63C tax due and payable by that taxpayer during the 1986 tax
 63D year; except that for a hazardous substance which is directly
 63E converted to, and comprises more than 90% by weight of, a
 63F non-hazardous final product, the taxpayer shall pay no more
 63G than 100% of the tax due and payable in the 1986 tax year***. For
 64 the purposes of this section, "precious metals" means gold, silver,
 64A osmium, platinum, palladium, iridium, rhodium, ruthenium and
 65 copper. [In each fiscal year following any year in which the balance
 66 of the fund equals or exceeds \$50,000,000.00, no tax shall be levied
 67 unless (1) the current balance in the fund is less than \$40,000,000.00
 68 or (2) pending claims against the fund exceed 50% of the existing
 69 balance of the fund. The provisions of the foregoing notwithstand-
 70 ing, should claims paid from or pending against the fund not exceed
 71 \$5,000,000.00 within three years after the tax is first levied, the tax
 72 shall be \$0.01 per barrel transferred or 0.4% of the fair market
 73 value of the product, as the case may be, until the balance in the
 74 fund equals or exceeds \$36,000,000.00, and thereafter shall not be
 75 levied unless: (1) the current balance in the fund is less than
 76 \$30,000,000.00 or (2) pending claims against the fund exceed 50%
 77 of the existing balance of the fund. In the event of either such
 78 occurrence and upon certification thereof by the State Treasurer,
 79 the director shall within 10 days of the date of such certification
 80 relevy the excise tax, which shall take effect on the first day of the
 81 month following such relevy. With respect to the tax imposed upon
 82 the transfer of hazardous substances which are other than petro-
 83 leum or petroleum products, if the revenues from such tax exceed
 84 \$7,000,000.00 during any calendar year, such excess shall be re-
 85 funded or credited to the taxpayers who paid such tax during the
 86 calendar year. The refund or credit shall be based upon the amount
 87 of taxes paid by each taxpayer on transfers of hazardous substances
 88 which are other than petroleum or petroleum products for the calen-
 89 dar year in proportion to all taxes paid by all taxpayers on such
 90 transfers during said year; provided, however, that if at the end of
 91 the calendar year the increased tax rate as authorized by this sub-
 92 section or subsection i. is in effect, no refund or credit shall be

93 allowed for such calendar year; and further, provided that no
 94 refund or credit shall be allowed for a calendar year if by reason of
 95 such refund or credit a condition would occur which would authorize
 96 the imposition of the tax at the higher rate authorized in this sub-
 97 section or subsection i. However, a partial refund or credit shall
 98 be allowed to the extent that such a condition would not occur.】 In
 99 the event of a major discharge or series of discharges ****of*
 99A *petroleum or petroleum products**** resulting in reasonable claims
 99B against the fund exceeding the existing balance of the fund, the
 100 tax shall be levied *****【as follows:

101 (1) On petroleum or petroleum products.】***** at the rate of
 102 ~~【\$0.04】~~ ****【\$0.08】* ~~***\$0.04***~~ per barrel ****of petroleum*
 103 *or petroleum products**** transferred, until the revenue produced
 104 by such increased rate equals 150% of the total dollar amount of
 105 all pending reasonable claims resulting from the discharge of
 106 petroleum or petroleum products; provided, however, that such
 107 rate may be set at less than ~~【\$0.04】~~ ****【\$0.08】* ~~***\$0.04***~~
 108 per barrel transferred if the administrator determines that the
 109 revenue produced by such lower rate will be sufficient to pay out-
 110 standing reasonable claims against the fund within one year of
 110A such levy; and

111 ****【(2) On hazardous substances other than petroleum or petro-*
 112 *leum products, at the rate of the greater of 【\$0.04】 \$0.08 per barrel*
 113 *transferred or 【0.8%】 1.6% of the fair market value of such*
 114 *hazardous substance until the revenue produced by such increased*
 115 *rate equals 150% of the total dollar amount of all pending reason-*
 116 *able claims resulting from the discharge of hazardous substances*
 117 *other than petroleum or petroleum products】*** 【; provided, how-*
 118 *ever, that with respect to transfers of hazardous substances other*
 119 *than petroleum or petroleum products which are or contain any*
 120 *precious metals to be recycled, refined, or rerefined in this State, or*
 121 *which are transferred into this State subsequent to being recycled,*
 122 *refined, or rerefined, the tax shall be \$0.04 per barrel of the hazard-*
 123 *ous substances; and provided further, however, that any such*
 124 *increased tax rate on hazardous substances other than petroleum*
 125 *or petroleum products may be set at less than \$0.04 per barrel trans-*
 126 *ferred, or 0.8% of the fair market value of the hazardous substance,*
 127 *as the case may be, if the administrator determines that the revenue*
 128 *produced by such lower rate shall be sufficient to pay outstanding*
 129 *reasonable claims against the fund within one year of such levy】****
 129A ****provided further, however, that under no circumstances shall*
 129B *this rate be levied for the period of one year immediately follow-*
 129C *ing enactment of this 1986 amendatory and supplementary act.****

130 Interest received on moneys in the fund shall be credited to the
 131 fund. **【Should the fund exceed \$36,000,000.00 or \$50,000,000.00, as**
 132 herein provided, as a result of such interest, the commissioner shall
 133 report to the Legislature and the Governor concerning the options
 134 for the use of such interest.】

135 c. (1) Every taxpayer and owner or operator of a public
 136 storage terminal for hazardous substances shall on or before the
 137 *****【twentieth】***** ~~***20th***~~ day of the month following the
 138 close of each tax period render a return under oath to the
 139 director on such forms as may be prescribed by the director indi-
 140 cating the number of barrels of hazardous substances transferred
 141 and where appropriate, the fair market value of the hazardous
 142 substances transferred to or from the major facility, ***【or indi-**
 143 *cating the number of tons of hazardous waste subject to the tax*
 144 *imposed pursuant to this section and a copy of the special waste*
 145 *manifest required pursuant to regulations adopted by the depart-*
 146 *ment under P. L. 1970, c. 33 (13:1D-1 et seq.), or as otherwise*
 147 *required by law as appropriate.】* and at said time the taxpayer
 148 shall pay the full amount of the tax due.*

148a (2) Every taxpayer or owner or operator of a major facility or
 149 vessel which transfers a hazardous substance, as defined in this
 150 act, and who is subject to the tax under subsection a. shall within
 151 20 days after the first such transfer in any fiscal year register with
 152 the director on such form as shall be prescribed by him.

153 d. If a return required by this act is not filed, or if a return when
 154 filed is incorrect or insufficient in the opinion of the director, the
 155 amount of tax due shall be determined by the director from such
 156 information as may be available. Notice of such determination
 157 shall be given to the taxpayer liable for the payment of the tax.
 158 Such determination shall finally and irrevocably fix the tax unless
 159 the person against whom it is assessed, within 30 days after receiv-
 160 ing notice of such determination, shall apply to the director for a
 161 hearing, or unless the director on his own motion shall redetermine
 162 the same. After such hearing the director shall give notice of his
 163 determination to the person to whom the tax is assessed.

164 e. Any taxpayer who shall fail to file his return when due or to
 165 pay any tax when the same becomes due, as herein provided, shall
 166 be subject to such penalties and interest as provided in the "State
 167 Tax Uniform Procedure Law," *****【Subtitle】***** ****subtitle**** 9
 168 of Title 54 of the Revised Statutes. If the Division of Taxation
 169 determines that the failure to comply with any provision of this
 170 section was excusable under the circumstances, it may remit such
 171 part or all of the penalty as shall be appropriate under such cir-
 171a cumstances.

172 f. (1) Any person failing to file a return, failing to pay the tax,
 173 or filing or causing to be filed, or making or causing to be made,
 174 or giving or causing to be given any return, certificate, affidavit,
 175 representation, information, testimony or statement required or
 176 authorized by this act, or rules or regulations adopted hereunder
 177 which is willfully false, or failing to keep any records required
 178 by this act or rules and regulations adopted hereunder, shall, in
 179 addition to any other penalties herein or elsewhere prescribed, be
 180 guilty of a crime of the fourth degree.

181 (2) The certificate of the director to the effect that a tax has not
 182 been paid, that a return has not been filed, that information has
 183 not been supplied or that inaccurate information has been supplied
 184 pursuant to the provisions of this act or rules or regulations
 185 adopted hereunder shall be presumptive evidence thereof.

186 g. In addition to the other powers granted to the director in this
 187 section, he is hereby authorized and empowered:

188 (1) To delegate to any officer or employee of his division such of
 189 his powers and duties as he may deem necessary to carry out
 190 efficiently the provisions of this section, and the person or persons
 191 to whom such power has been delegated shall possess and may
 192 exercise all of said powers and perform all of the duties delegated
 193 by the director:

194 (2) To prescribe and distribute all necessary forms for the im-
 195 plementation of this section.

196 h. The tax imposed by this act shall be governed in all respects
 197 by the provisions of the "State Tax Uniform Procedure Law,"
 198 *****[Subtitle]***** ****subtitle**** 9 of Title 54 of the Revised
 199 Statutes, except only to the extent that a specific provision of this
 200 act may be in conflict therewith.

201 i. **[Notwithstanding** any other provisions of this section, upon a
 202 request from the administrator, the Treasurer may order the
 203 director to levy the tax on all hazardous substances other than
 204 petroleum or petroleum products at a specified rate greater than
 205 \$0.01 per barrel or 0.4% of the fair market value of the product, as
 206 the case may be, but in no event to exceed \$0.04 per barrel with
 207 respect to transfers of hazardous substances other than petroleum
 208 or petroleum products which are or contain any precious metals
 209 to be recycled, refined or rerefined in this State, or which are trans-
 210 ferred into this State subsequent to being recycled, refined or
 211 rerefined, or the greater of \$0.04 per barrel or 0.6% of the fair
 212 market value of the product with respect to transfers of any other
 213 hazardous substances other than petroleum or petroleum products,
 214 if and as long as the administrator determines the following:

215-216 (1) That pending, reasonable claims against the fund for
 217 hazardous substances other than petroleum or petroleum products
 218 exceed 70% of the existing balance of the fund, and

219 (2) That the sum of the claims paid by the fund on behalf of
 220 discharges or removals of hazardous substances other than petro-
 221 leum or petroleum products plus pending, reasonable claims against
 222 the fund on behalf of discharges of hazardous substances other than
 223 petroleum is equal to or greater than 70% of all claims paid by the
 224 fund plus all pending, reasonable claims against the fund.

225 The provisions of this subsection shall not preclude the im-
 226 position of the tax at the higher rate authorized under subsection b.
 227 of this section.】 (*Deleted by amendment, P. L. , c.*)

228 *【j. *At the end of the first quarter of the first full fiscal year sub-*
 229 *sequent to the effective date of this amendatory and supplementary*
 230 *act, and at the end of each fiscal quarter thereafter, the director*
 231 *shall, after consultation with the administrator, determine if the*
 232 *tax levied on the disposal and transfer of hazardous waste pursuant*
 233 *to the provisions of this section is sufficient to raise \$9,000,000.00 in*
 234 *that fiscal year. If, in the opinion of the director, the tax levied on*
 235 *the disposal and transfer of hazardous waste is not sufficient to*
 236 *raise \$9,000,000.00 in that fiscal year the director shall adjust the*
 237 *tax to an amount sufficient to raise \$9,000,000.00. At the end of*
 238 *the first full fiscal year subsequent to the effective date of this*
 239 *amendatory and supplementary act and at the end of each fiscal*
 240 *year thereafter the director shall refund, in proportion to the taxes*
 241 *paid by the taxpayer, any revenues in excess of \$9,000,000.00.】**

1 ***【6. (New section) The Senate Energy and Environment Com-
 2 mittee and the General Assembly *【Agriculture and Environment】*
 3 *Environmental Quality* Committee, or their designated succes-
 4 sors, shall, by the end of the fifth year following the effective date
 5 of this amendatory and supplementary act, conduct a study to de-
 6 termine the necessity of continuing the tax on hazardous substances
 7 at the rates established pursuant to this amendatory and supple-
 8 mentary act in order to maintain adequate financing for hazard-
 9 ous discharge site cleanup activities.】***

1 ***【7. **【This act shall take effect on the 180th day following
 2 enactment but the】** *(New section) The** Department of En-
 3 vironmental Protection and the Department of the Treasury shall
 4 take all actions necessary prior to the **【effective】** **operative**
 5 date of this act to implement the provisions of this act on the
 6 **【effective】** **operative** date thereof.】***

1 ***3. (New section) a. The Department of Environmental Pro-
 2 tection shall compile a list of facilities which, based on all informa-
 3 tion made available to or collected by the department pursuant to
 4 State or federal law, may have sufficient storage capacity to be
 5 classified as a major facility.

6 b. The department shall transmit this list to the Director of the
 7 Division of Taxation in the Department of Treasury on January 1
 8 of the year next following the enactment of this act and annually
 9 thereafter, provided that the department may update the list more
 10 frequently as it deems appropriate.

11 c. The director shall utilize the list compiled by the department
 12 to notify the owners or operators of the facilities thereon that they
 13 may be liable for the tax levied pursuant to section 9 of P. L. 1976,
 14 c. 141 (C. 58:10-23.11h).

15 d. The owner or operator of a facility so notified by the director
 16 shall pay the tax or provide an explanation as to why the facility
 17 should not be classified as a major facility.

1 4. (New section) The department shall compile a list of facilities
 2 which, based on all information made available to or collected by the
 3 department pursuant to any State or federal law, would be classified
 4 as a major facility if storage capacity therefor were set as 5,000
 5 gallons of hazardous substances which are not petroleum or
 6 petroleum products.

1 5. (New section) The department shall annually submit a written
 2 report to the Senate Energy and Environment Committee and to
 3 the Assembly Environmental Quality Committee, or their suc-
 4 cessors, which shall include the information required pursuant to
 5 section 26 of P. L. 1976, c. 141 (C. 58:10-23.11j) as well as the list
 6 transmitted to the Director of the Division of Taxation in the
 7 Department of Treasury pursuant to ****[sections]**** section
 8 **** 3 ****[and 4]**** of this amendatory and supplementary
 9 act ****and the list compiled by the department pursuant to sec-
 10 tion 4 of this amendatory and supplementary act****.

1 ***[**8.]*** **6.** This act shall take effect immediately,
 2 but shall remain inoperative until ***[180 days following the
 3 enactment of P. L. . . ., c. . . . (C. . . .) (now pending
 4 before the Legislature as Senate Bill No. 2011 of 1986), the enact-
 5 ment of P. L. . . ., c. . . . (now pending before the Legislature as
 6 Senate Bill No. 2012 of 1986), and until the Legislature has agreed
 7 to the amendment to Article VIII, Section II of the Constitution
 8 of the State of New Jersey proposed by Senate Concurrent Resolu-
 9 tion No. 82 of 1986.**]*** the enactment of P. L. 1986, c. . . .

10 (C.) (now before the Legislature as Senate Bill No.
 11 2012 of 1986 ****or Assembly Bill No. 2701 of 1986****) and P. L.
 12 1986, c. . . . (C.) (now before the Legislature as Assem-
 13 bly Committee Substitute for Assembly Bill Nos. 2699 and 2700
 14 of 1986); provided, however, that the tax provisions in ****section
 15 2 of**** this ****1986 amendatory and supplementary**** act
 16 shall take effect on the first day of the third calendar month fol-
 17 lowing enactment.***

HAZARDOUS WASTE (Cleanup)

Doubles the rates of the Spill Fund tax.

SENATE, No. 1462

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1986

By Senator GORMLEY

Referred to Committee on Energy and Environment

AN ACT establishing the New Jersey Hazardous Discharge Site Cleanup Trust, defining the functions, duties and powers thereof, including the authorization to issue bonds, notes and other obligations and to establish any reserve funds necessary therefor, and to finance the cleanup or mitigation of hazardous discharge sites in this State.

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

1 1. This act shall be known and may be cited as the "New Jersey
2 Hazardous Discharge Site Cleanup Trust Act."

1 2. The Legislature finds that the improper, irresponsible, and
2 often illegal discharge of hazardous substances presents a grave
3 danger to the public health and safety, and to the environment; that
4 the dangers posed by these discharges can be minimized only by
5 their prompt identification, cleanup, and removal; that available
6 sources of revenue are not adequate to finance these abatement
7 efforts; and that it is, therefore necessary to provide a State
8 mechanism to finance the prompt identification, efficient cleanup
9 and removal of discharges of hazardous substances.

10 The Legislature therefore determines that it is in the public
11 interest to establish a State authority authorized to issue bonds,
12 notes and other obligations and to establish any reserve funds
13 necessary therefor, and to finance the cleanup or mitigation of
14 hazardous discharge sites in this State.

1 3. As used in this act:

2 a. "Bonds" means bonds issued by the trust pursuant to this
3 act;

4 b. "Commissioner" means the Commissioner of the Department
5 of Environmental Protection;

6 c. "Department" means the Department of Environmental Pro-
7 tection;

8 d. "Hazardous discharge" means the actual or imminent release,
9 spill, leak, emission or dumping of any hazardous substance into
10 the environment which represents a threat to the public health and
11 safety or the environment;

12 e. "Hazardous discharge site" means any site in this State in-
13 cluded on the National Priorities List of hazardous discharge sites
14 adopted by the United States Environmental Protection Agency
15 pursuant to the "Comprehensive Environmental Response, Com-
16 pensation, and Liability Act of 1980," Pub. L. 96-510 (42 U. S. C.
17 § 9601 et seq.) or other hazardous discharge sites approved by the
18 department;

19 f. "Hazardous substances" means those elements and compounds,
20 including petroleum products, which are defined as such by the New
21 Jersey Department of Environmental Protection, after public
22 hearing, and which shall be consistent to the maximum extent
23 possible with, and which shall include, the list of hazardous sub-
24 stances adopted by the federal Environmental Protection Agency
25 pursuant to section 311 of the "Federal Water Pollution Control
26 Act Amendments of 1972," Pub. L. 92-500 (33 U. S. C. § 1321), as
27 amended by the "Clean Water Act of 1977," Pub. L. 95-217 (33
28 U. S. C. § 1251 et seq.), the list of toxic pollutants designated by
29 Congress or the Environmental Protection Agency pursuant to
30 section 307 of the former act (33 U. S. C. § 1317) and, to the extent
31 they are not otherwise included, any substance defined as hazardous
32 pursuant to section 101 of the "Comprehensive Environmental
33 Response, Compensation, and Liability Act of 1980," Pub. L. 96-510
34 (42 U. S. C. § 9601 et seq.); except that sewage and sewage sludge
35 shall not be considered as hazardous substances for the purpose
36 of this act;

37 g. "Notes" means notes issued by the trust pursuant to this act;

38 h. "Project" means the identification, cleanup or removal, or
39 any combination thereof, of hazardous discharges at a hazardous
40 discharge site which meets the requirements set forth in section 17
41 of this act;

42 i. "Trust" means the New Jersey Hazardous Discharge Site
43 Cleanup Trust created pursuant to section 4 of this act.

1 4. a. There is established in, but not of, the Department of
2 Environmental Protection a body corporate and politic, with
3 corporate succession, to be known as the "New Jersey Hazardous

4 Discharge Site Cleanup Trust." The trust is constituted as an
5 instrumentality of the State exercising public and essential govern-
6 mental functions, and the exercise by the trust of the powers con-
7 ferred by this act shall be deemed and held to be an essential
8 governmental function of the State.

9 b. The trust shall consist of a five-member board of directors
10 composed of the State Treasurer, and the Commissioner of the
11 Department of Environmental Protection, who shall be members
12 ex officio; one person appointed by the Governor upon the recom-
13 mendation of the President of the Senate and one person appointed
14 by the Governor upon the recommendation of the Speaker of the
15 General Assembly, who shall serve during the two-year legislative
16 term in which they are appointed; and one resident of the State
17 appointed by the Governor, with the advice and consent of the
18 Senate, who shall serve for a term of four years, except that the
19 first appointee shall serve a term of two years. Each appointed
20 director shall serve until his successor has been appointed and
21 qualified. A director is eligible for reappointment. Any vacancy
22 shall be filled in the same manner as the original appointment, but
23 for the unexpired term only.

24 With respect to those public members first appointed by the
25 Governor, the appointment of the member upon the advice and con-
26 sent of the Senate shall become effective 30 days after his nomina-
27 tion by the Governor if the Senate has not given advice and consent
28 on that nomination within that time period; the President of the
29 Senate and the Speaker of the General Assembly each shall recom-
30 mend to the Governor a public member for appointment within 20
31 days following the effective date of this act, and a recommendation
32 made in this manner shall become effective if the Governor makes
33 the appointment in accordance with the recommendation, in writing,
34 within 10 days of the Governor's receipt thereof. In each instance
35 where the Governor fails to make the appointment, the President
36 of the Senate and the Speaker of the General Assembly shall make
37 new recommendations subject to appointment by the Governor as
38 determined in this section.

39 c. Each appointed director may be removed from office by the
40 Governor for cause, upon the Governor's consideration of the
41 findings and recommendations of an administrative law judge
42 after a public hearing before the judge, and may be suspended by
43 the Governor pending the completion of the hearing. Each director,
44 before entering upon his duties, shall take and subscribe an oath
45 to perform the duties of his office faithfully, impartially and justly
46 to the best of his ability. A record of oaths shall be filed in the

47 Office of the Secretary of State.

48 d. The Governor shall designate one of the appointed members
49 to be the chairman and chief executive officer of the trust and the
50 directors shall biannually elect a vice-chairman from among the
51 appointed directors. The chairman shall serve as such for a term
52 of one year and until a successor has been designated. A chairman
53 shall not be eligible to succeed himself. The directors shall elect
54 a secretary and treasurer who need not be directors, and the same
55 person may be elected to serve as both secretary and treasurer.
56 The powers of the trust are vested in the directors in office from
57 time to time, three directors shall constitute a quorum at any
58 meeting. Action may be taken and motions and resolutions adopted
59 by the trust by the affirmative majority vote of those directors
60 present, but in no event shall any action be taken or motions or
61 resolutions adopted without the affirmative vote of at least three
62 members. No vacancy on the board of directors of the trust shall
63 impair the right of a quorum of the directors to exercise the powers
64 and perform the duties of the trust.

65 e. Each director and the treasurer of the trust shall execute a
66 bond to be conditioned upon the faithful performance of the duties
67 of the director or treasurer in a form and amount as may be pre-
68 scribed by the State Treasurer. Bonds shall be filed in the Office
69 of the Secretary of State. At all times thereafter, the directors
70 and treasurer shall maintain these bonds in full effect. All costs
71 of the bonds shall be borne by the trust.

72 f. The directors of the trust shall serve without compensation,
73 but the trust shall reimburse the directors for actual and necessary
74 expenses incurred in the performance of their duties. Notwith-
75 standing the provisions of any other law to the contrary, no officer
76 or employee of the State shall be deemed to have forfeited or shall
77 forfeit his office or employment or any benefits or emoluments
78 thereof by reason of his acceptance of the office of ex officio director
79 of the trust or his services thereon.

80 g. Each ex officio director may designate an officer of his depart-
81 ment to represent him at meetings of the trust. Each designee may
82 lawfully vote and otherwise act on behalf of the director for whom
83 he constitutes the designee. The designation shall be delivered in
84 writing to the trust and shall continue in effect until revoked or
85 amended in writing and delivered to the trust.

86 h. The trust may be dissolved by law provided the trust has no
87 debts or obligations outstanding or that provision has been made
88 for the payment or retirement of these debts or obligations. The
89 trust shall continue in existence until dissolved by act of the Legis-

90 lature. Upon dissolution of the trust, all property, funds, and assets
91 of the trust shall be vested in the State.

92 i. A true copy of the minutes of every meeting of the trust shall
93 be forthwith delivered by and under the certification of the secre-
94 tary therefor to the Governor and at the same time to the Senate
95 and General Assembly. The time and act of this delivery shall be
96 duly recorded on a delivery receipt. No action taken or motion
97 or resolution adopted at a meeting by the trust shall have effect
98 until 10 days, exclusive of Saturdays, Sundays and public holidays,
99 after a copy of the minutes has been delivered to the Governor
100 unless during the 10-day period the Governor shall approve all
101 or part of the actions taken or motions or resolutions adopted,
102 in which case the action or motion or resolution shall become
103 effective upon the approval. If, in the 10-day period, the Governor
104 returns the copy of the minutes with a veto of any action taken by
105 the trust or any member thereof at that meeting, the action shall be
106 of no effect. The Senate or General Assembly shall have the right
107 to provide written comments concerning the minutes to the
108 Governor within the 10-day period, which comments shall be re-
109 turned to the trust by the Governor with his approval or veto
110 of the minutes. The powers conferred in this subsection upon the
111 Governor shall be exercised with due regard for the rights of the
112 holders of bonds, notes and other obligations of the trust at any
113 time outstanding, and nothing in, or done pursuant to, this sub-
114 section shall in any way limit, restrict or alter the obligation or
115 powers of the trust or any representative or officer of the trust
116 to carry out and perform each covenant, agreement or contract
117 made or entered into by or on behalf of the trust with respect
118 to its bonds, notes or other obligations or for the benefit, pro-
119 tection or security of the holders thereof.

120 j. No resolution or other action of the trust providing for the
121 issuance of bonds, refunding bonds, notes or other obligations
122 shall be adopted or otherwise made effective by the trust without
123 the prior approval in writing of the Governor and the State Trea-
124 surer. The trust shall provide the Senate and General Assembly
125 with written notice of any request for approval of the Governor
126 and State Treasurer at the time the request is made, and shall
127 also provide the Senate and General Assembly written notice of
128 the response of the Governor and State Treasurer at the time that
129 the response is received by the trust.

1 5. Except as otherwise limited by this act, the trust may:

2 a. Make and alter bylaws for its organization and internal man-
3 agement and, subject to agreements with holders of its bonds, notes

4 or other obligations, make rules and regulations with respect to
5 its operations, properties and facilities;

6 b. Adopt an official seal and alter it:

7 c. Sue and be sued:

8 d. Make and enter into all contracts, leases and agreements neces-
9 sary or incidental to the performance of its duties and the exercise
10 of its powers under this act, and subject to any agreement with
11 the holders of the trust's bonds, notes or other obligations, consent
12 to any modification, amendment or revision of any contract, lease
13 or agreement to which the trust is a party;

14 e. Enter into agreements or other transactions with and accept,
15 subject to the provisions of section 20 of this act, grants, appro-
16 priations and the cooperation of the State, or any State agency, in
17 furtherance of the purposes of this act, and do anything necessary
18 in order to avail itself of that aid and cooperation:

19 f. Receive and accept aid or contributions from any source of
20 money, property, labor or other things of value, to be held, used
21 and applied to carry out the purposes of this act subject to the
22 conditions upon which that aid and those contributions may be
23 made, including but not limited to, gifts or grants from any depart-
24 ment or agency of the State, or any State agency, for any purpose
25 consistent with this act, subject to the provisions of section 20 of
26 this act:

27 g. Acquire, own, hold, construct, improve, rehabilitate, renovate,
28 operate, maintain, sell, assign, exchange, lease, mortgage or other-
29 wise dispose of real and personal property, or any interest therein,
30 in the exercise of its powers and the performance of its duties
31 under this act:

32 h. Appoint and employ an executive director and any other
33 officers or employees as it may require for the performance of its
34 duties without regard to the provisions of Title 11 of the Revised
35 Statutes;

36 i. Borrow money and issue bonds, notes and other obligations,
37 and secure the same, and provide for the rights of the holders
38 thereof as provided in this act:

39 j. Subject to any agreement with holders of its bonds, notes or
40 other obligations, invest moneys of the trust not required for
41 immediate use, including proceeds from the sale of any bonds,
42 notes or other obligations, in any obligations, securities and other
43 investments in accordance with the rules and regulations of the
44 State Investment Council;

45 k. Procure insurance to secure the payment of its bonds, notes
46 or other obligations or the payment of any guarantees or loans

47 made by it in accordance with the act, or against any loss in con-
48 nection with its property and other assets and operation, in any
49 amounts and from any insurers as it deems desirable;

50 l. Engage the services of attorneys, accountants, engineers, and
51 financial experts and any other advisors, consultants, experts and
52 agents as may be necessary in its judgment and fix their com-
53 pensation;

54 m. Subject to any agreement with holders of its bonds, notes or
55 other obligations, purchase bonds, notes and other obligations of
56 the trust and hold the same for resale or provide for the cancellation
57 thereof, all in accordance with the provisions of this act;

58 n. Subject to any agreement with holders of its bonds, notes or
59 other obligations, obtain as security or to provide liquidity for pay-
60 ment of all or any part of the principal of and interest and premium
61 on the bonds, notes and other obligations of the trust or for the
62 purchase upon tender or otherwise of the bonds, notes or other
63 obligations, lines of credit, letters of credit and any other security
64 agreements or instruments in any amounts and upon any terms as
65 the trust may determine, and pay any fees and expenses required
66 in connection therewith;

67 o. Make payments to the State from any moneys of the trust
68 available therefor as may be required pursuant to any agreement
69 with the State or act appropriating moneys to the trust; and

70 p. Take any action necessary or convenient to the exercise of the
71 foregoing powers or reasonably implied therefrom.

1 6. a. Except as may be otherwise expressly provided in this act,
2 the trust may from time to time issue its bonds, notes or other
3 obligations in any principal amounts as in the judgment of the trust
4 shall be necessary to provide sufficient funds for any of its corporate
5 purposes, including the payment, funding or refunding of the
6 principal of, or interest or redemption premiums on, any bonds,
7 notes or other obligations issued by it whether the bonds, notes or
8 other obligations or the interest or redemption premiums thereon
9 to be funded or refunded have or have not become due, the establish-
10 ment or increase of reserves or other funds to secure or to pay
11 the bonds, notes or other obligations or interest thereon and all
12 other costs or expenses of the trust incident to and necessary to
13 carry out its corporate purposes and powers.

14 b. Whether or not the bonds, notes or other obligations of the
15 trust are of a form and character as to be negotiable instruments
16 under the terms of Title 12A of the New Jersey Statutes, the bonds,
17 notes and other obligations are made negotiable instruments within
18 the meaning of and for the purposes of Title 12A, subject only to

19 the provisions of the bonds, notes and other obligations for regis-
20 tration.

21 c. Bonds, notes or other obligations of the trust shall be autho-
22 rized by a resolution or resolutions of the trust and may be issued
23 in one or more series and shall bear any date or dates, mature at
24 any time or times, bear interest at any rate or rates of interest
25 per annum, be in any denomination or denominations, be in any
26 form, either coupon, registered or book entry, carry any conver-
27 sion or registration privileges, have any rank or priority, be exe-
28 cuted in any manner, be payable in any coin or currency of the
29 United States which at the time of payment is legal tender for the
30 payment of public and private debts at any place or places within
31 or without the State, and be subject to any terms of redemption
32 by the trust or the holders thereof, with or without premium, as
33 the resolution or resolutions may provide. A resolution of the
34 trust authorizing the issuance of bonds, notes or other obligations
35 may provide that the bonds, notes or other obligations be secured
36 by a trust indenture between the trust and a trustee, vesting in
37 the trustee any property, rights, powers and duties in trust con-
38 sistent with the provisions of this act as the trust may determine.

39 d. Bonds, notes or other obligations of the trust may be sold at
40 any price or prices and in any manner as the trust may determine.
41 Each bond, note or other obligation shall mature and be paid not
42 later than 20 years from the effective date thereof, or the certified
43 useful life of the project or projects to be financed by the bonds,
44 whichever is less.

45 All bonds of the trust shall be sold at such price or prices and in
46 such manner as the trust shall determine, after notice of sale,
47 published at least three times in at least three newspapers published
48 in the State of New Jersey, and at least once in a publication carry-
49 ing municipal bond notices and devoted primarily to financial news,
50 published in New Jersey or the city of New York, the first notice
51 to be at least five days prior to the day of bidding. The notice of
52 sale may contain a provision to the effect that any or all bids made
53 in pursuance thereof may be rejected. In the event of such rejection
54 or of failure to receive any acceptable bid, the trust, at any time
55 within 60 days from the date of such advertised sale, may sell such
56 bonds at private sale upon terms not less favorable to the State
57 than the terms offered by any rejected bid. The trust may sell
58 all or part of the bonds of any series as issued to any State fund
59 or to the federal government or any agency thereof, at private sale,
60 without advertisement.

61 e. Bonds, notes or other obligations of the trust may be issued

62 under the provisions of this act without obtaining the consent of
63 any department, division, board, bureau or agency of the State,
64 and without any other proceedings or the happening of any other
65 conditions or things, other than those consents, proceedings, con-
66 ditions or things which are specifically required by this act.

67 f. Bonds, notes or other obligations of the trust issued under
68 the provisions of this act shall not be a debt or liability of the
69 State or of any political subdivision thereof other than the trust
70 and shall not create or constitute any indebtedness, liability or
71 obligation of the State or any political subdivision, but all these
72 bonds, notes and other obligations, unless funded or refunded by
73 bonds, notes or other obligations, shall be payable solely from
74 revenues or funds pledged or available for their payment as au-
75 thorized in this act. Each bond, note and other obligation shall
76 contain on its face a statement to the effect that the trust is obli-
77 gated to pay the principal thereof or the interest thereon only
78 from its revenues, receipts or funds pledged or available for their
79 payment as authorized in this act and that neither the State, nor
80 any political subdivision thereof, is obligated to pay the principal
81 or interest and that neither the faith and credit nor the taxing
82 power of the State, or any political subdivision thereof, is pledged
83 to the payment of the principal of or the interest on the bonds,
84 notes or other obligations.

85 g. The trust may issue bonds for refunding purposes, whenever
86 the refunding shall be determined to result in a debt service savings,
87 as hereinafter provided:

88 (1) Upon the decision by the trust to issue refunding bonds,
89 and prior to the sale of those bonds, the trust shall transmit to the
90 Joint Appropriations Committee's Subcommittee on Transfers or
91 its successor, a report that a decision has been made, reciting the
92 basis on which the decision was made, including an estimate of the
93 debt service savings to be achieved and the calculations upon which
94 the trust relied when making the decision to issue refunding bonds.
95 The report shall also disclose the intent of the trust to issue and
96 sell the refunding bonds at public sale and the reasons therefor.

97 (2) The Joint Appropriations Committee's Subcommittee on
98 Transfers, or its successor, shall have the authority to approve or
99 disapprove the sales of refunding bonds as included in each report
100 submitted in accordance with paragraph (1) of this subsection. The
101 subcommittee shall notify the trust in writing of the approval or
102 disapproval as expeditiously as possible.

103 (3) No refunding bonds shall be issued unless the report has been
104 submitted to and approved by the Joint Appropriations Com-

105 mittee's Subcommittee on Transfers, or its successor, as set forth
106 in paragraphs (1) and (2) of this subsection.

107 (4) Within 30 days after the sale of the refunding bonds, the
108 trust shall notify the Subcommittee on Transfers of the result of
109 that sale, including the prices and terms, conditions and regula-
110 tions concerning the refunding bonds, the actual amount of debt
111 service savings to be realized as a result of the sale of refunding
112 bonds, and the intended use of the proceeds from the sale of those
113 bonds.

114 (5) The subcommittee shall review all information and reports
115 submitted in accordance with this subsection and may, on its own
116 initiative, make observations to the trust, or to the Legislature, or
117 both, as it deems appropriate.

118 h. Each issue of bonds, notes or other obligations of the trust
119 may, if it is determined by the trust, be general obligations thereof
120 payable out of any revenues, receipts or funds of the trust, or
121 special obligations thereof payable out of particular revenues, re-
122 ceipts or funds, subject only to any agreements with the holders
123 of bonds, notes or other obligations.

124 i. The trust shall not issue any bonds, notes or other obligations,
125 or otherwise incur any additional indebtedness, on or after 20
126 years from the effective date of this act.

1 7. In any resolution of the trust authorizing or relating to the
2 issuance of any of its bonds, notes or other obligations, the trust,
3 in order to secure the payment of the bonds, notes or other obliga-
4 tions and in addition to its other powers, may by provisions therein
5 which shall constitute covenants by the trust and contracts with
6 the holders of the bonds, notes or other obligations:

7 a. Secure the bonds, notes or other obligations as provided in
8 section 6 of this act;

9 b. Covenant against pledging all or part of its revenues or re-
10 ceipts;

11 c. Covenant as to any bonds, notes or other obligations to be
12 issued by the trust, and the limitations thereon, and the terms and
13 conditions thereof, and as to the custody, application, investment
14 and disposition of the proceeds thereof;

15 d. Covenant as to the issuance of additional bonds, notes or other
16 obligations of the trust or as to limitations on the issuance of ad-
17 ditional bonds, notes or other obligations and on the incurring of
18 other debts by it;

19 e. Covenant as to the payment of the principal of or interest on
20 bonds, notes or other obligations of the trust, as to the sources and
21 methods of payment, as to the rank or priority of the bonds, notes

22 or other obligations with respect to any lien or security or as to
23 the acceleration of the maturity of the bonds, notes or other obli-
24 gations:

25 f. Provide for the replacement of lost, stolen, destroyed or
26 mutilated bonds, notes or other obligations of the trust:

27 g. Covenant against extending the time for the payment of bonds,
28 notes or other obligations of the trust or interest thereon:

29 h. Covenant as to the redemption of bonds, notes and other obli-
30 gations by the trust or the holders thereof and privileges of ex-
31 change thereof for other bonds, notes or other obligations of the
32 trust:

33 i. Covenant to create or authorize the creation of special funds
34 or accounts to be held in trust or otherwise for the benefit of holders
35 of bonds, notes and other obligations of the trust, or of reserves for
36 other purposes and as to the use, investment, and disposition of
37 moneys held in those funds, accounts or reserves:

38 j. Provide for the rights and liabilities, powers and duties aris-
39 ing upon the breach of any covenant, condition or obligation and
40 prescribe the events of default and terms and conditions upon
41 which any or all of the bonds, notes or other obligations of the
42 trust shall become or may be declared due and payable before
43 maturity and the terms and conditions upon which the declaration
44 and its consequences may be waived:

45 k. Vest in a trustee or trustees within or without the State any
46 property, rights, powers and duties in trust as the trust may de-
47 termine which may include any or all of the rights, powers and
48 duties of any trustee appointed by the holders of any bonds, notes
49 or other obligations of the trust pursuant to section 15 of this act,
50 notes or other obligations of the trust and the right by suit or action
51 to foreclose any mortgage pledged pursuant to the resolution or
52 trust indenture for the benefit of the holders of the bonds, notes or
53 other obligations, and to limit or abrogate the right of the holders
54 of any bonds, notes or other obligations of the trust to appoint a
55 trustee under this act, and to limit the rights, duties and powers
56 of the trustee:

57 1. Pay the costs or expenses incident to the enforcement of the
58 bonds, notes or other obligations of the trust or the provisions of
59 the resolution authorizing the issuance of those bonds, notes or
60 other obligations or of any covenant or agreement of the trust
61 with the holders of the bonds, notes or other obligations;

62 m. Limit the rights of the holders of any bonds, notes or other
63 obligations of the trust to enforce any pledge or covenant securing
64 the bonds, notes or other obligations: and

65 n. Make covenants other than or in addition to the covenants
 66 authorized by this act of like or different character, and make
 67 covenants to do or refrain from doing any acts and things as may
 68 be necessary, or convenient and desirable, in order to better secure
 69 the bonds, notes or other obligations of the trust, or which, in the
 70 absolute discretion of the trust, would make the bonds, notes or
 71 other obligations more marketable, notwithstanding that the cov-
 72 enants, acts or things may not be enumerated herein.

1 8. Any pledge of revenues, receipts, moneys, funds, or other
 2 property or instruments made by the trust shall be valid and bind-
 3 ing from the time when the pledge is made. The revenues, receipts,
 4 moneys, funds or other property so pledged and thereafter re-
 5 ceived by the trust shall immediately be subject to the lien of the
 6 pledge without any physical delivery thereof or further act, and
 7 the lien of any pledge shall be valid and binding against all parties
 8 having claims of any kind in tort, contract or otherwise against the
 9 trust regardless of whether the parties have notice thereof. Neither
 10 the resolution nor any other instrument by which a pledge under
 11 this section is created need be filed or recorded, except in the records
 12 of the trust.

1 9. a. The trust shall establish a reserve fund into which shall be
 2 deposited any funds dedicated to the purpose of the cleanup and
 3 mitigation of hazardous discharge sites and appropriated to the
 4 trust by the Legislature, or other funds appropriated by the
 5 Legislature for deposit in the reserve fund. The trust shall use the
 6 reserve fund to secure debt issued by the trust.

7 b. The trust may establish any reserves, funds or accounts as
 8 it may determine necessary or desirable to further the accomplish-
 9 ment of the purposes of the trust or to comply with the provisions
 10 of any agreement made by or authorized in any resolution of the
 11 trust.

1 10. Neither the directors of the trust nor any person executing
 2 bonds, notes or other obligations of the trust issued pursuant to
 3 this act shall be liable personally on the bonds, notes or other
 4 obligations by reason of the issuance thereof.

1 11. The State does pledge to and covenant and agree with the
 2 holders of any bonds, notes or other obligations of the trust issued
 3 pursuant to authorization of this act that the State shall not limit
 4 or alter the rights or powers vested in the trust to perform and
 5 fulfill the terms of any agreement made with the holders of the
 6 bonds, notes or other obligations, including the obligation, the
 7 principal of and interest and premium on those bonds, notes or
 8 other obligations, with interest on any unpaid installments of

9 interest, and all costs and expenses in connection with any action
10 or proceedings by or on behalf of the holders.

1 12. The State and all public officers, governmental units and
2 agencies thereof, all banks, trust companies, savings banks and
3 institutions, building and loan associations, savings and loan asso-
4 ciations, investment companies, and other persons carrying on a
5 banking business, all insurance companies, insurance associations
6 and other persons carrying on an insurance business, and all
7 executors, administrators, guardians, trustees and other fiduciaries,
8 may legally invest any sinking funds, moneys or other funds
9 belonging to them or within their control in any bonds, notes or
10 other obligations issued pursuant to this act, and those bonds,
11 notes or other obligations shall be authorized security for any and
12 all public deposits.

1 13. All State agencies and governmental units, notwithstanding
2 any contrary provision of law, may lease, lend, grant or convey
3 to the trust at its request upon any terms and conditions as the
4 governing body or other proper authorities of the State agencies
5 or governmental units may deem reasonable and fair and without
6 the necessity for any advertisement, order of court or other actions
7 or formality, other than the authorizing ordinance of the governing
8 body concerned, any real property or interest which may be neces-
9 sary or convenient to the effectuation of the purposes of the trust.

1 14. All property of the trust is declared to be public property
2 devoted to an essential public and governmental function and
3 purpose and the revenues, income and other moneys received or
4 to be received by the trust shall be exempt from all taxes of the
5 State or any political subdivision thereof. All bonds, notes and
6 other obligations of the trust issued pursuant to this act are
7 declared to be issued by a body corporate and politic of the State
8 and for an essential public and governmental purpose and those
9 bonds, notes and other obligations, and interest thereon and the
10 income therefrom and from the sale, exchange or other transfer
11 thereof shall at all times be exempt from taxation, except for
12 transfer, inheritance and estate taxes.

1 15. a. If the trust defaults in the payment of principal of, or
2 interest on, any issue of its bonds, notes or other obligations after
3 these are due, whether at maturity or upon call for redemption,
4 and the default continues for a period of 30 days or if the trust
5 defaults in any agreement made with the holders of any issue of
6 bonds, notes or other obligations, the holders of 25% in aggregate
7 principal amount of the bonds, notes or other obligations of the
8 issue then outstanding, by instrument or instruments filed in the

9 office of the clerk of any county in which the trust operates and
10 has an office and proved or acknowledged in the same manner as
11 required for a deed to be recorded, may direct a trustee to repre-
12 sent the holders of the bonds, notes or other obligations of the
13 issuers for the purposes herein provided.

14 h. Upon default, the trustee may, and upon written request of
15 the holders of 25% in principal amount of the bonds, notes or other
16 obligations of the trust of a particular issue then outstanding shall,
17 in his or its own name:

18 (1) By suit, action or proceeding enforce all rights of the holders
19 of bonds, notes or other obligations of the issue, to require the
20 trust to carry out any other agreements with the holders of the
21 bonds, notes or other obligations of the issue and to perform its
22 duties under this act;

23 (2) Bring suit upon the bonds, notes or other obligations of the
24 issue;

25 (3) By action or suit, require the trust to account as if it were
26 the trustee of an express trust for the holders of the bonds, notes
27 or other obligations of the issue;

28 (4) By action or suit, enjoin any acts or things which may be
29 unlawful or in violation of the rights of the holders of the bonds,
30 notes or other obligations of the issue;

31 (5) By action or suit, foreclose any mortgage pledged pur-
32 suant to the resolution or trust indenture for the benefit of the
33 holders of the bonds, notes or other obligations of the issue;

34 (6) Declare all bonds, notes or other obligations of the issue due
35 and payable, and if all defaults are made good, then with the
36 consent of the holders of 50% of the principal amount of the bonds,
37 notes or other obligations of the issue then outstanding, to annul
38 the declaration and its consequences.

39 c. The trustee shall, in addition to the foregoing, have those
40 powers necessary or appropriate for the exercise of any function
41 specifically set forth herein or incident to the general representation
42 of holders of bonds, notes or other obligations of the trust in the
43 enforcement and protection of their rights.

44 d. The Superior Court shall have jurisdiction over any suit,
45 action or proceeding by the trustees on behalf of the holders of
46 bonds, notes or other obligations of the trust. The venue of any
47 suit, action or proceeding shall be in the county in which the prin-
48 cipal office of the trust is located.

49 e. Before declaring the principal of bonds, notes or other obliga-
50 tions of the trust due and payable as a result of a trust default
51 on any of its bonds, notes or other obligations, the trustee shall

52 first give 30 days notice in writing to the trust and to the Governor,
53 State Treasurer, President of the Senate and Speaker of the
54 General Assembly.

1 16. Sums of money received pursuant to the authority of this
2 act, whether as proceeds from the sale of particular bonds, notes
3 or other obligations of the trust or as particular revenues or re-
4 ceipts of the trust, are deemed to be trust funds, to be held and
5 applied solely as provided in the resolution or trust indenture
6 under which the bonds, notes or obligations are authorized or
7 secured. Any officer with whom or any bank or trust company
8 with which those sums of money are deposited as trustee thereof
9 shall hold and apply the same for the purposes thereof, subject to
10 any provision as this act and the resolution or trust indenture
11 authorizing or securing the bonds, notes or other obligations of
12 the trust may provide.

1 17. a. The Commissioner of the Department of Environmental
2 Protection shall develop for each fiscal year a list of hazardous
3 discharge site projects which are to be funded in whole or in part
4 by the trust. The project list shall include the name and location
5 of each hazardous discharge site and the amount to be expended
6 on cleanup or mitigation. The project list for the ensuing fiscal
7 year shall be submitted to the Legislature on or before January 15
8 of each year on a day when both houses are in session. The
9 President of the Senate and the Speaker of the General Assembly
10 shall cause the date of submission to be entered upon the Senate
11 Journal and the Minutes of the General Assembly, respectively,
12 and shall cause the project list to be introduced in each House in the
13 form of legislative appropriations bills, and shall refer these bills
14 to the Senate Energy and Environment Committee and the General
15 Assembly Committee on Environmental Quality, or their suc-
16 cessors, for their respective consideration.

17 b. Within 60 days of the referral thereof, the Senate Energy
18 and Environment Committee and the General Assembly Committee
19 on Environmental Quality shall, either individually or jointly, con-
20 sider the legislation containing the project list, and shall report the
21 legislation, together with any modifications, out of committee for
22 consideration by each House of the Legislature. On or before April
23 1 of each year, the Legislature shall approve an appropriations
24 act containing the project list, including any amendatory or
25 supplementary provisions thereto, which act shall include the
26 authorization of an aggregate amount of funds of the trust to be
27 expended for the specific projects, including the individual amounts
28 therefor, on the list, as modified by the Senate Energy and Environ-

29 ment Committee and the General Assembly Committee on Environ-
30 mental Quality.

31 c. The trust shall not expend any funds during a fiscal year for
32 the cleanup or mitigation of a hazardous discharge site unless the
33 expenditure is authorized pursuant to an appropriations act enacted
34 pursuant to the provisions of this section.

1 18. On or before May 15 of each year, the trust shall submit to
2 the Legislature a financial plan designed to implement the financ-
3 ing of the projects on the project list approved pursuant to section
4 17 of this act. The financial plan shall contain an enumeration of
5 the bonds, notes or other obligations of the trust which the trust
6 intends to issue, including the amounts thereof and the terms and
7 conditions therefor. The financial plan shall also set forth a
8 complete operating and financial statement covering its proposed
9 operations during the forthcoming fiscal year, including amounts
10 of income from all sources.

1 19. a. The trust shall submit the financial plan required pursuant
2 to section 18 of this act to the President of the Senate and the
3 Speaker of the General Assembly on a day when both houses are in
4 session. The President and the Speaker shall cause the date of
5 submission to be entered upon the Senate Journal and the Minutes
6 of the General Assembly, respectively .

7 b. Unless the financial plan as described in the submission is
8 approved by adoption of a concurrent resolution of both houses
9 within the time period prescribed in this subsection, the financial
10 plan shall be deemed disapproved and the trust shall not undertake
11 any of the proposed activities contained therein. The President and
12 the Speaker shall cause a concurrent resolution of approval of the
13 trust's financial plan to be placed before the members of the respec-
14 tive houses for a recorded vote within the time period. The time
15 period shall commence on the day of submission and expire on the
16 forty-fifth day after submission or, for a house not meeting on the
17 forty-fifth day, on the next meeting day of that house.

1 20. No funds from State sources or State bond issues used to
2 capitalize the trust shall be available for use by the trust unless
3 appropriated by law to the trust. No operating expenses of the
4 trust shall be available for use by the trust unless appropriated
5 by law to the trust. Unless required to be otherwise applied pur-
6 suant to law, funds generated by the operation of the trust, includ-
7 ing, but not limited to proceeds from the sale of the trust's bonds,
8 notes or other obligations, and revenues derived from investments
9 by the trust may thereafter be applied in accordance with the pro-
10 visions of this act for any corporate purpose of the trust unless

11 appropriated by law.

1 21. a. The trust shall cause an audit of its books and accounts
2 to be made at least once in each year by certified public accountants
3 selected by the State Treasurer and the cost thereof shall be con-
4 sidered as an expense of the trust and a copy thereof shall be filed
5 with the Governor, State Treasurer, Senate and General Assembly.
6 Notwithstanding the provision of any law to the contrary, the State
7 Auditor or his legally authorized representative may examine the
8 accounts of books of the trust.

9 b. All officers, departments, boards, units, divisions and com-
10 missions of the State are authorized to render any services to the
11 trust as may be within the area of their respective governmental
12 functions as fixed or established by law, and as may be requested
13 by the trust. The cost and expense of those services shall be met
14 and provided for by the State governmental units, rendering the
15 services.

1 22. The trust shall adopt pursuant to the "Administrative Pro-
2 cedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), any rules and
3 regulations as it deems necessary to implement the provisions of
4 this act.

1 23. It is the intent of the Legislature that if there is any conflict
2 or inconsistency between the provisions of this act and the pro-
3 visions of any other laws pertaining to matters herein established
4 or provided for, or between any rules and regulations adopted
5 under this act and the rules and regulations adopted under any
6 other law, to the extent of the conflict or inconsistency, the pro-
7 visions of this act and the rules and regulations adopted hereunder,
8 shall be enforced and the provisions of the other laws, and the
9 rules and regulations adopted thereunder, shall be of no effect.

1 24. There is appropriated from the General Fund to the New
2 Jersey Hazardous Discharge Site Cleanup Trust, the sum of
3 \$250,000.00 to implement the provisions of this act.

1 25. There shall be annually appropriated to the trust the moneys
2 in the fund established in the General Fund and dedicated to the
3 cleanup or mitigation of hazardous discharge sites pursuant to
4 Article VIII, Section II, paragraph 5 of the Constitution of the
5 State of New Jersey.

1 26. This act shall take effect upon the approval by the voters of a
2 proposed Amendment to the Constitution of the State of New
3 Jersey (now pending before the Legislature as Senate Concurrent
4 Resolution of 1986).

STATEMENT

This bill would establish the New Jersey Hazardous Discharge Site Cleanup Trust, an independent authority designed to provide financing for the State's hazardous discharge site cleanup program. A companion bill to this bill (Senate Concurrent Resolution No. of 1986) would propose an amendment to the Constitution of the State of New Jersey dedicating \$90 million per year for 20 years from revenues derived from the Corporation Business Tax to a special fund to be used to finance the cost of the cleanup or mitigation of hazardous discharge sites. The moneys in this fund would be annually appropriated to the trust, and the trust would be authorized to borrow against this stable and dedicated revenue source and would thus be able to provide cleanup funds without affecting the State's debt profile as would the issuance of general obligation bonds.

(Subject) HAZARDOUS WASTE (Cleanup)
(Description) Hazardous waste cleanup—financing
(Synopsis) Establishes a Hazardous Discharge Site Cleanup Trust to finance the cleanup of hazardous discharge sites.

[FOURTH OFFICIAL COPY REPRINT]

SENATE, No. 2011

STATE OF NEW JERSEY

INTRODUCED APRIL 7, 1986

By Senator LESNIAK

Referred to Committee on Energy and Environment

AN ACT ***[concerning the financing of the cleanup of hazardous discharge sites, and amending]*** *****[*to amend*]***** ****to increase the revenue available for hazardous discharge site cleanup, imposing a surtax upon corporations under the Corporation Business Tax Act, and supplementing**** P. L. 1945, c. 162 ****(C. 54:10A-1 et seq.)***.*

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

1 *****[1. Section 5 of P. L. 1945, c. 162 (C. 54:10A-5) is amended to**
2 **read as follows:**

3 5. The franchise tax to be annually assessed to and paid by each
4 taxpayer shall be the sum of the amount computed under subsec-
5 tion (a) hereof, or in the alternative to the amount computed under
6 subsection (a) hereof, the amount computed under subsection (f)
7 hereof, and the amount computed under subsection (c) ***[and sub-**
8 **section (g)]*** hereof:

9 (a) That portion of its entire net worth as may be allocable to
10 this State as provided in section 6, multiplied by the following
11 rates: 2 mill per dollar on the first \$100,000,000.00 of allocated
12 net worth; $\frac{1}{10}$ of a mill per dollar on the second \$100,000,000.00;
13 $\frac{3}{10}$ of a mill per dollar on the third \$100,000,000.00; and $\frac{2}{10}$ of a
14 mill per dollar on all amounts of allocated net worth in excess of
15 \$300,000,000.00; provided, however, that with respect to reports
16 covering accounting or privilege periods set forth below, the rate
17 shall be that percentage of the rate set forth in this subsection for
18 the appropriate year:

EXPLANATION—Matter enclosed in bold-faced brackets **[thus]** in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted May 19, 1986.

**—Senate committee amendment adopted June 9, 1986.

***—Senate amendments adopted September 15, 1986.

****—Senate amendments adopted October 20, 1986.

| Accounting or Privilege Periods Beginning on or After: | | The Percentage of the Rate to be Imposed Shall Be: |
|--|--|---|
| 19 | April 1, 1983 | 75% |
| 20 | July 1, 1984 | 50% |
| 21 | July 1, 1985 | 25% |
| 22 | July 1, 1986 | 0 |
| 23 | (b) (Deleted by amendment, P. L. 1968, c. 250, s. 2.) | |
| 24 | (c) 3¼% of its entire net income or such portion thereof as may | |
| 25 | be allocable to this State as provided in section 6; provided, how- | |
| 26 | ever, that with respect to reports covering accounting or privilege | |
| 27 | periods or parts thereof ending after December 31, 1967, the rate | |
| 28 | shall be 4¼%; and that with respect to reports covering account- | |
| 29 | ing or privilege periods or parts thereof ending after December 31, | |
| 30 | 1971, the rate shall be 5½%; and that with respect to reports cov- | |
| 31 | ering accounting or privilege periods or parts thereof ending after | |
| 32 | December 31, 1974, the rate shall be 7½%; and that with respect | |
| 33 | to reports covering accounting or privilege periods or parts thereof | |
| 34 | ending after December 31, 1979, the rate shall be 9%*; and that | |
| 34A | <i>with respect to reports covering accounting or privilege periods or</i> | |
| 34B | <i>parts thereof ending after December 31, 1986, the rate shall be</i> | |
| 34C | <i>9.5%; and that with respect to reports covering accounting or priv-</i> | |
| 34D | <i>ilege periods or parts thereof ending after December 31, 1991, the</i> | |
| 34E | <i>rate shall be 9%*.</i> | |
| 35 | (d) Provided, however, that the franchise tax to be annually | |
| 36 | assessed to and paid by any investment company or real estate | |
| 37 | investment trust, which has elected to report as such and has filed | |
| 38 | its return in the form and within the time provided in this act and | |
| 39 | the rules and regulations promulgated in connection therewith, | |
| 40 | shall, in the case of an investment company, be measured by 25% | |
| 41 | of its entire net income and 25% of its entire net worth, and in the | |
| 42 | case of a real estate investment trust, by 4% of its entire net in- | |
| 43 | come and 15% of its entire net worth, at the rates hereinbefore | |
| 44 | set forth for the computation of tax on net income and net worth, | |
| 45 | respectively, but in no case less than \$250.00, and further provided, | |
| 46 | however, that the franchise tax to be annually assessed to and paid | |
| 47 | by a regulated investment company which for a period covered by | |
| 48 | its report satisfies the requirements of Chapter 1. Subchapter M, | |
| 49 | Part I, Section 852 (a) of the federal Internal Revenue Code shall | |
| 50 | be \$250.00. | |
| 51 | (e) The tax assessed to any taxpayer pursuant to this section | |
| 52 | shall not be less than \$25.00 in the case of a domestic corporation, | |

53 \$50.00 in the case of a foreign corporation, or \$250.00 in the case
54 of an investment company or regulated investment company.

55 (f) In lieu of the portion of the tax based on net worth and to
56 be computed under subsection (a) of this section, any taxpayer,
57 the value of whose total assets everywhere, less reasonable reserves
58 for depreciation, as of the close of the period covered by its report,
59 amounts to less than \$150,000.00, may elect to pay the tax shown
60 in a table which shall be promulgated by the director.】***

1 ***1. In addition to the franchise tax paid by each taxpayer under
2 subsection (c) of section 5 of P. L. 1945, c. 162 (C. 54:10A-5),
3 every taxpayer shall be assessed and shall pay a surtax equal to a
4 percentage rate established pursuant to section 2 of this 1986
5 supplementary act applied to its entire net income or such portion
6 thereof as may be allocable to this State as provided in section 6 of
7 P. L. 1945, c. 162 (C. 54:10A-6). The surtax imposed under this
8 section shall be due and payable in accordance with section 15 of
9 P. L. 1945, c. 162 (C. 54:10A-15). The surtax shall be administered
10 pursuant to the provisions of P. L. 1945, c. 162 (C. 54:10A-1
11 et seq.).

1 2. The Director of the Division of Taxation, in the Department
2 of the Treasury shall, on or before May 30, 1988 and annually
3 thereafter, review the ****most recent annual**** revenue collec-
4 tions ****[for the immediately preceding calendar year]**** in
5 order to estimate the revenue collections from the franchise tax
6 paid pursuant to subsection (c) of section 5 of P. L. 1945, c. 162
7 (C. 54:10A-5), attributable solely to changes in federal income tax
8 laws effectuated by the "Tax Reform Act of 1986," Pub. L.

9 (now pending before the Congress as H. R. 3838), which estimate
10 shall be made in multiples of \$1,000,000.00. The director, on or
11 before May 30, 1988 and on or before May 30 annually thereafter,
12 shall provide a certification of the estimate of these revenues to the
13 Legislature. The surtax rate in section 1 of this 1986 supple-
14 mentary act shall be determined pursuant to the following formula:

15 ****[$R = .5\% \times (60,000,000 - FA / 60,000,000)$]****

15A **** $R = .5\% \times ((CA - FA) / 60,000,000)$ ****

16 where: R is the surtax percentage rate, which shall not be less than
17 zero; ****[and.]**** FA is the corporate business tax revenue
18 amount, estimated by the director, attributable solely to changes in
19 federal income tax laws effectuated by the "Tax Reform Act of
20 1986," Pub. L. (now pending before the Congress as H. R.
21 3838)****; and, CA is equal to 40,000,000 for the first certification
22 year, 45,000,000 for the second certification year, 50,000,000 for

23 the third certification year, \$5,000,000 for the fourth certification
24 year, and \$5,000,000 for the fifth certification year****.

25 The rate of surtax determined shall only be for the report cover-
26 ing the accounting or privilege period ****[or part thereof]****
27 ending on or after ****[December]**** ****July**** 31 of the
28 calendar year ****[next succeeding the calendar year]**** in
29 which ****[his]**** ****the**** certification is made ****but no
30 later than June 30 of the calendar year next succeeding the
31 calendar year in which the certification was made****.

1 ****[3.]**** ****4.**** Except as otherwise provided in this
2 section, commencing July 1, 1987 and annually thereafter until
3 June 30, 1992, an amount of ****[\$60,000,000.00]****
4 ****\$40,000,000.00 for fiscal year 1988, \$45,000,000.00 for fiscal year
5 1989, \$50,000,000.00 for fiscal year 1990, \$45,000,000.00 for fiscal
6 year 1991 and \$45,000,000.00 for fiscal year 1992**** from the
7 General Fund shall be credited annually to the "Hazardous Dis-
8 charge Site Cleanup Fund" established pursuant to section 1 of
9 P. L. 1985, c. 247 (C. 58:10-23.34). This amount of
10 ****[\$60,000,000.00]**** ****\$40,000,000.00 for fiscal year 1988,
11 \$45,000,000.00 for fiscal year 1989, \$50,000,000.00 for fiscal year
12 1990, \$45,000,000.00 for fiscal year 1991 and \$45,000,000.00 for fiscal
13 year 1992**** shall be annually reduced by the amount of surtax
14 collected pursuant to sections 1 and 2 of this 1986 supplementary
15 act. It is the intent of the Legislature that this act assures the
16 annual appropriation of at least ****[\$60,000,000.00]****
17 ****\$40,000,000.00 for fiscal year 1988, \$45,000,000.00 for fiscal
18 year 1989, \$50,000,000.00 for fiscal year 1990, \$45,000,000.00 for
19 fiscal year 1991 and \$45,000,000.00 for fiscal year 1992**** to the
20 "Hazardous Discharge Site Cleanup Fund" for the purpose of
21 providing a stable funding source for hazardous discharge clean-
22 up.***

23 *[(g) .5% of its entire net income or such portion thereof as may
24 be allocable to this State as provided in section 6 of P. L. 1945, c.
25 162 (C. 54:10A-6). The director shall deposit, on a quarterly basis,
26 all revenues collected pursuant to this subsection in the "Hazardous
27 Discharge Site Cleanup Fund" established pursuant to section 1
28 of P. L. 1985, c. 247 (C. 58:10-34). No tax revenues shall be collected
29 pursuant to this subsection after January 1, 1992.]*

1 ***[2.]*** ****[****4.****]**** ****5.**** This act shall take
2 effect immediately **but shall remain inoperative until the enact-
3 ment of P. L. , c. (C.) ***[(now pending
4 before the Legislature as Senate Bill No. 899 of 1986), the enact-
5 ment of P. L. , c. (C.) (now pending before

6 the Legislature as Senate Bill No. 2012 of 1986), and until the
 7 Legislature has agreed to the amendment to Article VIII, Section
 8 II of the Constitution of the State of New Jersey proposed by
 9 Senate Concurrent Resolution No. 82 of 1986**】*** (now pend-
 10 ing before the Legislature as Senate Bill No. 2012 of 1986 or
 11 Assembly Bill No. 2701 of 1986) and P. L. 1986, c. (C.
 12) (now pending before the Legislature as Assembly
 13 Committee Substitute for Assembly Bill No. 2698 of 1986)****【,
 14 and the surtax imposed in section 1 shall apply to accounting or
 15 privilege periods or parts thereof ending after December 31,
 16 1988】****. This act shall expire commencing with accounting or
 17 privilege periods or parts thereof ending after ****【Decem-
 18 ber】**** ****June**** ****【31】**** ****30****, 1993**** *【, and
 19 shall apply to accounting or privilege periods beginning on or after
 20 December 31, 1986】*.

HAZARDOUS WASTE (Cleanup)

Creates a surtax on the corporate business tax and increases
 revenues available for hazardous discharge cleanup.

[THIRD OFFICIAL COPY REPRINT]

SENATE, No. 2012

STATE OF NEW JERSEY

INTRODUCED APRIL 7, 1986

By Senator DALTON

Referred to Committee on Energy and Environment

AN ACT authorizing the creation of a debt of the State of New Jersey by issuance of bonds of the State in the sum of \$200,000,000.00 to provide moneys for the identification, cleanup and removal of hazardous discharges; **authorizing the issuance of refunding bonds;** providing **the** ways and means to pay **[the interest on the debt and also to pay]** and discharge the principal **and interest** thereof; providing for the submission of this act to the people at the general election; and making an appropriation.

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

1 1. This act shall be known and may be cited as the "Hazardous
2 Discharge Bond Act of ***[1985]* *1986***."

1 2. The Legislature finds and declares that the improper, irre-
2 sponsible, and often illegal discharge of hazardous substances
3 presents a grave threat to the public health and safety, and to the
4 environment, that the dangers posed by these discharges can be
5 minimized only by prompt identification, cleanup and removal of
6 these hazardous discharges, that existing funding sources are not
7 adequate to finance these identification, cleanup and removal op-
8 erations, and that it is therefore in the best interests of all citizens
9 of this State to provide a funding mechanism to finance the prompt
10 identification, efficient cleanup and removal of discharges of haz-
11 ardous substances.

1 3. As used in this act:

1A **a. "Bonds" means the bonds authorized to be issued, or issued,*
1B *under this act;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted May 19, 1986.

**—Senate committee amendment adopted June 9, 1986.

***—Senate amendments adopted September 15, 1986.

2 ***[a.] *b.*** "Cost" means the interest or discount on bonds; cost of
 3 issuance of bonds; the cost of inspection, appraisal, legal, financial,
 4 and other professional services, estimates, and advice; and the
 5 cost of organizational, administrative and other work and services,
 6 including salaries, supplies, equipment, and materials necessary to
 7 administer this act;

7A ***c.** "*Government securities*" means any bonds or other obligations
 7B which as to principal and interest constitute direct obligations of,
 7C or are unconditionally guaranteed by, the United States, including
 7D obligations of any federal agency to the extent those obligations are
 7E unconditionally guaranteed by the United States of America and
 7F any certificates or any other evidences of an ownership interest in
 7G those obligations of, or unconditionally guaranteed by, the United
 7H States or in specified portions of those obligations which may con-
 7I sist of the principal of, or the interest on, those obligations;*

8 ***[b.] *d.*** "Hazardous discharge" means the actual or imminent
 9 release, spill, leak, emission or dumping of any hazardous substance
 10 into the environment which represents a threat to the public health
 11 and safety of the environment;

12 ***[c.] *e.*** "Hazardous substances" means those elements and
 13 compounds, including petroleum products, which are defined as such
 14 by the New Jersey Department of Environmental Protection, after
 15 public hearing, and which shall be consistent to the maximum extent
 16 possible with, and which shall include, the list of hazardous sub-
 17 stances adopted by the federal Environmental Protection Agency
 18 pursuant to section 311 of the "Federal Water Pollution Control
 19 Act Amendments of 1972," Pub. L. 92-500 (33 U. S. C. § 1321), as
 20 amended by the "Clean Water Act of 1977," Pub. L. 95-217 (33
 21 U. S. C. § 1251 et seq.), the list of toxic pollutants designated by
 22 Congress or the Environmental Protection Agency pursuant to
 23 section 307 of the former act (33 U. S. C. § 1317) and, to the extent
 24 they are not otherwise included, any substance defined as hazardous
 25 pursuant to section 101 of the "Comprehensive Environmental
 26 Response, Compensation, and Liability Act of 1980," Pub. L. 96-510
 27 (42 U. S. C. § 9601 et seq.); except that sewage and sewage sludge
 28 shall not be considered as hazardous substances for the purpose
 29 of this act.

1 4. The Commissioner of the Department of Environmental Pro-
 2 tection shall adopt, pursuant to law, rules and regulations neces-
 3 sary to ***[carry out] *implement*** the provisions of this act. The
 4 commissioner shall review and consider the findings and recom-
 5 mendations of the New Jersey Commission on Capital Budgeting

6 and Planning in ***the administration of*** *implementing* the pro-
 7 visions of this act.

1 5. Bonds of the State of New Jersey are authorized to be issued
 2 in the aggregate principal amount of \$200,000,000.00 for the pur-
 3 pose of financing the cost of identification, cleanup and removal of
 4 hazardous discharges ****but said bonds shall not be issued until*
 5 *the enactment of P. L. , c. (C.) (now pending*
 6 *before the Legislature as Assembly Committee Substitute for*
 7 *Assembly Bill Nos. 2699 and 270 of 1986 or a bill of substantially*
 8 *similar effect) or P. L. , c. (C.) (now pend-*
 9 *ing before the Legislature as Assembly Committee Substitute for*
 10 *Assembly Bill No. 2698 of 1986 or a bill of substantially similar*
 11 *effect), or both***.*

1 6. The bonds authorized under this act shall be serial bonds, term
 2 bonds, or a combination thereof, and shall be known as "Hazardous
 3 Discharge Bonds ****of 1986****." These bonds shall be issued from
 4 time to time as the issuing officials herein named shall determine,
 5 and may be issued in coupon form, fully-registered form or book-
 6 entry form. These bonds may be made subject to redemption prior
 7 to maturity and shall mature and be paid not later than 35 years
 8 from the dates of their issuance.

1 7. The Governor, the State Treasurer and the Director of the
 2 Division of Budget and Accounting in the Department of the
 3 Treasury, or any two of these officials, herein referred to as "the
 4 issuing officials," are authorized to carry out the provisions of this
 5 act relating to the issuance of bonds, and shall determine all mat-
 6 ters in connection therewith, subject to the provisions of this act.
 7 If an issuing official is absent from the State or incapable of acting
 8 for any reason, the powers and duties of that issuing official shall
 9 be exercised and performed by the person authorized by law to act
 10 in an official capacity in the place of that issuing official.

1 8. Bonds issued in accordance with the provisions of this act
 2 shall be direct obligations of the State of New Jersey, and the faith
 3 and credit of the State are pledged for the payment of the interest
 4 thereon when due and for the payment of the principal thereof at
 5 maturity. The principal of and interest on the bonds shall be
 6 exempt from taxation by the State or by any county, municipality
 7 or other taxing district of the State.

1 9. The bonds shall be signed in the name of the State by means
 2 of the manual or facsimile signature of the Governor under the
 3 Great Seal of the State, which seal may be by facsimile or by way
 4 of any other form of reproduction on the bonds, and attested by

5 the manual or facsimile signature of the Secretary of State, or an
 6 assistant Secretary of State, and shall be countersigned by the
 7 facsimile signature of the Director of the Division of Budget and
 8 Accounting in the Department of the Treasury and may be man-
 9 ually authenticated by an authenticating agent or bond registrar,
 10 as the issuing officials shall determine. Interest coupons, if any,
 11 attached to the bonds shall be signed by the facsimile signature of
 12 the director. The bonds may be issued notwithstanding that an
 13 issuing official signing them or whose manual or facsimile signature
 14 appears thereon has ceased to hold office at the time of issuance,
 15 or at the time of the delivery of the bonds to the purchaser thereof.

1 10. a. The bonds shall recite that they are issued for the pur-
 2 poses set forth in section 5 of this act, that they are issued pursuant
 3 to this act, that this act was submitted to the people of the State at
 4 the general election held in the month of November, ***[1985]***
 5 ***1986***, and that this act was approved by a majority of the legally
 6 qualified voters of the State voting thereon at the election. This re-
 7 cital shall be conclusive evidence of the validity of the bonds and of
 8 the authority of the State to issue them. Any bonds containing this
 9 recital shall, in any suit, action or proceeding involving their valid-
 10 ity, be conclusively deemed to be fully authorized by this act and to
 11 have been issued, sold, executed and delivered in conformity here-
 12 with and with all other provisions of laws applicable hereto, and
 13 shall be incontestable for any cause.

14 b. The bonds shall be issued in such denominations and in such
 15 form or forms, whether coupon, fully-registered or book-entry and
 16 with or without provisions for the interchangeability thereof, as
 17 may be determined by the issuing officials.

1 11. When the bonds are issued from time to time, the bonds of
 2 each issue shall constitute a separate series to be designated by
 3 the issuing officials. Each series of bonds shall bear such rate or
 4 rates of interest as may be determined by the issuing officials, which
 5 interest shall be payable semiannually; except that the first and
 6 last interest periods may be longer or shorter, in order that inter-
 7 vening semiannual payments may be at convenient dates.

1 12. The bonds shall be issued and sold at such price or prices and
 2 under such terms, conditions and regulations as the issuing officials
 3 may prescribe, after notice of the sale, published at least once in
 4 at least three newspapers published in this State, and at least once
 5 in a publication carrying municipal bond notices and devoted pri-
 6 marily to financial news, published in this State or in the city of
 7 New York, the first notice to appear at least five days prior to the

8 day of bidding. The notice of sale may contain a provision to the
 9 effect that any bid in pursuance thereof may be rejected. In the
 10 event of rejection or of failure to receive any acceptable bid, the
 11 issuing officials, at any time within 60 days from the date of the
 12 advertised sale, may sell the bonds at a private sale at such price
 13 or prices and under such terms and conditions as the issuing officials
 14 may prescribe. The issuing officials may sell all or part of the bonds
 15 of any series as issued to any State fund or to the federal govern-
 16 ment or any agency thereof, at a private sale, without advertise-
 17 ment.

1 13. Until permanent bonds are prepared, the issuing officials may
 2 issue temporary bonds in such form and with such privileges as to
 3 their registration and exchange for permanent bonds as may be
 4 determined by the issuing officials.

1 14. The proceeds from the sale of the bonds shall be paid to the
 2 State Treasurer, to be held thereby in a separate fund, which shall
 3 be known as the "Hazardous Discharge Fund of 1986." The pro-
 4 ceeds of this fund shall be deposited in such depositories as may be
 5 selected by the State Treasurer to the credit of the fund.

1 15. a. The moneys in the "Hazardous Discharge Fund of 1986"
 2 are specifically dedicated and shall be applied to the cost of the
 3 purposes set forth in section 5 of this act, and all such moneys are
 4 appropriated for those purposes, and no such moneys shall be ex-
 5 pended for those purposes, except as otherwise authorized in this
 6 act, without the specific appropriation thereof by the Legislature,
 7 but bonds may be issued as herein provided, notwithstanding that
 8-9 ***[The]** **the** Legislature has not adopted an act making a specific
 10 appropriation of any of the moneys.

11 b. At any time prior to the issuance and sale of bonds under this
 12 act, the State Treasurer is authorized to transfer from available
 13 money in any fund of the treasury of the State to the credit of the
 14 "Hazardous Discharge Fund of 1986," such sums as he may deem
 15 necessary. The sum so transferred shall be returned to the same
 16 fund of the treasury by the State Treasurer from the proceeds of
 17 the sale of the first issue of bonds.

18 c. Pending their application to the purposes provided in this act,
 19 the moneys in the "Hazardous Discharge Fund of 1986" may be
 20 invested and reinvested as are other trust funds in the custody of
 21 the State Treasurer, in the manner provided by law. Net earnings
 22 received from the investment or deposit of the fund shall be paid
 23 into the ***[General Fund]*** ***** *Hazardous Discharge Fund*
 24 *of 1986** *****.

1 16. If any coupon bond, coupon or registered bond is lost, mutilated or destroyed, a new bond or coupon shall be executed and delivered of like tenor, in substitution for the lost, mutilated or destroyed bond or coupon, upon the owner furnishing to the issuing officials such evidence satisfactory to them of the loss, mutilation or destruction of the bond or coupon, the ownership thereof and the security, indemnity and reimbursement for expenses connected therewith, as the issuing officials may require.

1 17. The accrued interest received upon the sale of the bonds shall be applied to the discharge of a like amount of interest upon the bonds when due. Any expense incurred by the issuing officials for advertising, engraving, printing, clerical, authenticating, registering, legal or other services necessary to carry out the duties imposed upon them by the provisions of this act shall be paid from the proceeds of the sale of the bonds by the State Treasurer, upon the warrant of the Director of the Division of Budget and Accounting in the Department of the Treasury, in the same manner as other obligations of the State are paid.

1 18. Bonds of each series issued hereunder shall mature, including any sinking fund redemptions, not later than the 35th year from the date of issue of such series, and in such amounts as shall be determined by the issuing officials. The issuing officials may reserve to the State by appropriate provision in the bonds of any series the power to redeem any of the bonds prior to maturity at such price or prices and upon such terms and conditions as may be provided in the bonds.

1 *19. The issuing officials may at any time and from time to time issue refunding bonds for the purpose of refunding in whole or in part an equal principal amount of the bonds of any series issued and outstanding thereunder, which by their terms are subject to redemption prior to maturity, provided the refunding bonds shall mature at any time or times not later than the latest maturity date of that series, and the aggregate amount of interest to be paid on the refunding bonds, plus the premium, if any, to be paid on the bonds refunded, shall not exceed the aggregate amount of interest which would be paid on the bonds refunded if the bonds were not so refunded. Refunding bonds shall constitute direct obligations of the State of New Jersey, and the faith and credit of the State are pledged for the payment of the principal thereof and the interest thereon. The proceeds received from the sale of refunding bonds shall be held in trust and applied to the payment of the bonds refunded thereby. Refunding bonds shall be entitled to all the bene-

17 fits of this act and subject to all its limitations except as to the
18 maturities thereof and to the extent herein otherwise expressly
19 provided.】*

1 *19. *The issuing officials may issue refunding bonds and in an*
2 *amount not to exceed the amount necessary to effectuate the re-*
3 *financing of all or any bonds issued pursuant to this act, at any*
4 *time and from time to time, for the purpose of refinancing any*
5 *bond or bonds issued pursuant to this act, subject to the following*
6 *provisions:*

7 *a. Refunding bonds may be issued at such time prior to the*
8 *maturity or redemption of the bonds to be refinanced thereby as*
9 *the issuing officials shall determine; and*

10 *b. Each series of refunding bonds may be issued at a sufficient*
11 *amount to pay or to provide for the payment of the principal of*
12 *the bonds to be refinanced thereby, together with any redemption*
13 *premium thereon, any interest accrued or to accrue on such bonds*
14 *to be refinanced to the date of payment of such outstanding bonds,*
15 *the expense of issuing such refunding bonds and the expenses, if*
16 *any, of paying such bonds to be refinanced; and*

17 *c. No refunding bonds shall be issued unless the issuing officials*
18 *shall first determine that the present value of the aggregate*
19 *principal of and interest on such refunding bonds is less than the*
20 *present value of the aggregate principal of and interest on the*
21 *bonds to be refinanced thereby; provided, for the purposes of*
22 *this limitation, present value shall be computed using a discount*
23 *rate equal to the yield of such refunding bonds, and yield shall be*
24 *computed using an actuarial method based upon a 360-day year*
25 *with semi-annual compounding and upon the price or prices paid*
26 *to the State by the initial purchasers of such refunding bonds; and*

27 *d. Any refinancing authorized hereunder may be effected by*
28 *the sale of the refunding bonds and the application of the proceeds*
29 *thereof to the immediate payment of the principal of the bonds to*
30 *be refinanced thereby, together with any redemption premium*
31 *thereon, any interest accrued or to accrue on such bonds to be*
32 *refinanced to the date of payment of such bonds, the expenses of*
33 *issuing the refunding bonds and the expenses, if any, of paying*
34 *such bonds to be refinanced, or, to the extent not required for such*
35 *immediate payment, shall be deposited, together with any other*
36 *moneys legally available therefor, in trust with one or more*
37 *trustees or escrow agents, which trustees or escrow agents shall*
38 *be trust companies or national or state banks having powers of*
39 *a trust company, located either within or without the State, to be*

40 applied solely to the payment when due of the principal of, redemp-
41 tion premium, if any, and interest due and to become due on the
42 bonds to be refinanced on or prior to the redemption date or
43 maturity date thereof, as the case may be. Any such proceeds or
44 moneys so held by such trustees or escrow agents may be invested
45 in government securities, including government securities issued
46 or held in book-entry form on the books of the Department of
47 Treasury of the United States; provided, such government secu-
48 rities shall not be subject to redemption prior to their maturity
49 other than at the option of the holder thereof. Except as otherwise
50 provided in this subsection, neither government securities nor
51 moneys so deposited with such trustees or escrow agents shall be
52 withdrawn or used for any purpose other than, and shall be held
53 in trust for, the payment of the principal of, redemption premium,
54 if any, and interest on the bonds to be refinanced thereby; provided
55 that any cash received from such principal or interest payments
56 on such government securities deposited with such trustees or
57 escrow agents, to the extent such cash will not be required at any
58 time for such purpose shall be paid over to such trustees or escrow
59 agents, and to the extent such cash will be required for such pur-
60 pose at a later date, shall, to the extent practicable and legally
61 permissible, be reinvested in government securities maturing at
62 times and in amounts sufficient to pay when due the principal of,
63 redemption premium, if any, and interest to become due on the
64 bonds to be refinanced on and prior to such redemption date or
65 maturity date thereof, as the case may be, and interest earned
66 from such reinvestments to the extent not required for the payment
67 of bonds shall be paid over to the State, as received by such trustees
68 or escrow agents. Notwithstanding anything to the contrary con-
69 tained herein: (1) such trustees or escrow agents shall, if so
70 directed by the issuing officials, apply moneys on deposit with such
71 trustees or escrow agents pursuant to the provisions of this section
72 and redeem or sell government securities so deposited with such
73 trustees or escrow agents and apply the proceeds thereof to the
74 purchase of the bonds which were refinanced by the deposit with
75 such trustees or escrow agents of such moneys and government
76 securities and immediately thereafter cancel all such bonds so
77 purchased or the purchase of different government securities; pro-
78 vided, however, that the moneys and government securities on
79 deposit with such trustees or escrow agents after such purchase
80 and cancellation of such outstanding bonds or such purchase of
81 different government securities shall be sufficient to pay when due

82 the principal of, redemption premium, if any, and interest on all
 83 other bonds in respect of which such moneys and government
 84 securities were deposited with such trustees or escrow agents on or
 85 prior to the redemption date or maturity date thereof, as the case
 86 may be; and (2) in the event that on any date, as a result of any
 87 purchases and cancellations of such bonds or any purchases of
 88 different government securities as provided in this subsection, the
 89 total amount of moneys and government securities remaining on
 90 deposit with such trustees or escrow agents is in excess of the total
 91 amount which would have been required to be deposited with such
 92 trustees or escrow agents on such date in respect of the remaining
 93 bonds for which such deposit was made in order to pay when the
 94 principal of, redemption premium, if any, and interest on such re-
 95 maining bonds, such trustees or escrow agents, shall, if so directed
 96 by the issuing officials, pay the amount of such excess to the State.
 97 Any amounts held by the State Treasurer in a separate fund or
 98 funds for the payment of the principal of and interest on bonds to
 99 be refinanced, as provided herein, shall, if so directed by the issuing
 100 officials, be transferred by the State Treasurer for deposit with one
 101 or more trustees or escrow agents as provided herein to be applied
 102 to the payment when due of the principal of, redemption premium,
 103 if any, and interest to become due on such bonds to be refinanced,
 104 as provided in this section, or be applied by the State Treasurer
 105 to the payment when due of the principal of and interest on re-
 106 ***[demption premium, if any, and interest to become due on the
 107 bonds to be refinanced on and prior to such redemption date or
 108 maturity date thereof, as the case may be, and interest earned
 109 from such reinvestments to the extent not required for the payment
 110 of bonds shall be paid over to the State, as received by such trustees
 111 or escrow agents. Notwithstanding anything to the contrary con-
 112 tained herein: (1) such trustees or escrow agents shall, if so
 113 directed by the issuing officials, apply moneys on deposit with such
 114 trustees or escrow agents pursuant to the provisions of this section
 115 and redeem or sell government securities so deposited with such
 116 trustees or escrow agents and apply the proceeds thereof to the
 117 purchase of the bonds which were refinanced by the deposit with
 118 such trustees or escrow agents of such moneys and government
 119 securities and immediately thereafter cancel all such bonds so
 120 purchased or the purchase of different government securities; pro-
 121 vided, however, that the moneys and government securities on
 122 deposit with such trustees or escrow agents after such purchase
 123 and cancellation of such outstanding bonds or such purchase of

different government securities shall be sufficient to pay when due the principal of, redemption premium, if any, and interest on all other bonds in respect of which such moneys and government securities were deposited with such trustees or escrow agents on or prior to the redemption date or maturity date thereof, as the case may be; and (2) in the event that on any date, as a result of any purchases and cancellations of such bonds or any purchases of different government securities as provided in this subsection, the total amount of moneys and government securities remaining on deposit with such trustees or escrow agents is in excess of the total amount which would have been required to be deposited with such trustees or escrow agents on such date in respect to the remaining bonds for which such deposit was made in order to pay when due the principal of, redemption premium, if any, and interest on such remaining bonds, such trustees or escrow agents, shall, if so directed by the issuing officials, pay the amount of such excess to the State. Any amounts held by the State Treasurer in a separate fund or funds for the payment of the principal of and interest on bonds to be refinanced, as provided herein, shall, if so directed by the issuing officials, be transferred by the State Treasurer for deposit with one or more trustees or escrow agents as provided herein to be applied to the payment when due of the principal of, redemption premium, if any, and interest to become due on such bonds to be refinanced, as provided in this section, or be applied by the State Treasurer to the payment when due of the principal of and interest on re-funding bonds issued hereunder to refinance such bonds. The State Treasurer is authorized to enter into any contract or contracts with one or more trust companies or national or state banks, as provided herein, to act as trustees or escrow agents as provided herein, subject to the approval of the issuing officials.

e. Notwithstanding the provisions of section 12 hereof, any series of refunding bonds issued pursuant to this section shall mature at any time or times not later than five years following the latest scheduled final maturity date, determined without regard to any redemptions prior thereto, of any of the bonds to be refunded thereby, and in no event later than 35 years following the date of issuance of such series of refunding bonds, and such refunding bonds may be sold at public or private sale at such prices and under such terms, conditions and regulations as the issuing officials may prescribe. Refunding bonds shall be entitled to all the benefits of this act and subject to all its limitations except as to sale provisions and to the extent therein otherwise expressly provided.

166 *f. Upon the decision by the issuing officials to issue refunding*
 167 *bonds pursuant to this section, and prior to the sale of those bonds,*
 168 *the issuing officials shall transmit to the Joint Budget Oversight*
 169 *Committee, or its successor, a report that a decision has been made,*
 170 *reciting the basis on which the decision was made, including an*
 171 *estimate of the debt service savings to be achieved and the calcula-*
 172 *tions upon which the issuing officials relied when making the de-*
 173 *cision to issue refunding bonds. The report shall also disclose the*
 174 *intent of the issuing officials to issue and sell the refunding bonds*
 175 *at public or private sale and the reasons therefore.*

176 *g. The Joint Budget Oversight Committee, or its successor, shall*
 177 *have the authority to approve or disapprove the sales of refunding*
 178 *bonds as included in each report submitted in accordance with sub-*
 179 *section f. of this section. The committee shall notify the issuing*
 180 *officials in writing of the approval or disapproval as expeditiously*
 181 *as possible;*

182 *h. No refunding bonds shall be issued unless the report has been*
 183 *submitted to and approved by the Joint Budget Oversight Com-*
 184 *mittee, or its successor, as set forth in subsection g. of this section;*

185 *i. Within 30 days after the sale of the refunding bonds, the*
 186 *issuing officials shall notify the Joint Budget Oversight Committee,*
 187 *or its successor of the result of that sale, including the prices and*
 188 *terms, conditions and regulations concerning the refunding bonds,*
 189 *the actual amount of debt service savings to be realized as a result*
 190 *of the sale of refunding bonds, and the intended use of the proceeds*
 191 *from the sale of those bonds;*

192 *j. The committee, or its successors, shall, however, review all in-*
 193 *formation and reports submitted in accordance with this section*
 194 *and may, on its own initiative, make observations and recommenda-*
 195 *tions to the issuing officials, or to the Legislature, or both, as it*
 196 *deems appropriate.*

1 *20. Any bond or bonds issued hereunder shall no longer be*
 2 *deemed to be outstanding, shall no longer constitute a direct obli-*
 3 *gation of the State of New Jersey and the faith and credit of the*
 4 *State shall no longer be pledged to the payment of the principal*
 5 *of and interest on the bonds, and the bonds shall be secured*
 6 *solely by and payable solely from monies and government secur-*
 7 *ities deposited in trust with one or more trustees or escrow agents,*
 8 *which trustees and escrow agents shall be trust companies or*
 9 *national or state banks having powers of a trust company, located*
 10 *either within or without the State, as provided herein, whenever*
 11 *there shall be deposited in trust with the trustees or escrow agents*

12 as provided herein either monies or government securities, includ-
13 ing government securities issued or held in book-entry form on
14 the books of the Department of Treasury of the United States, the
15 principal of and interest on which when due will provide money
16 which, together with the monies, if any, deposited with the trus-
17 tees or escrow agents at the same time, shall be sufficient to
18 pay when due the principal of, redemption premium, if any, and
19 interest due and to become due on the bonds on or prior to the
20 redemption date or maturity date thereof, as the case may be;
21 provided, the government securities shall not be subject to re-
22 demption prior to their maturity other than at the option of the
23 holder thereof. The State of New Jersey hereby covenants with
24 the holders of any bonds for which government securities or
25 monies shall have been deposited in trust with the trustees or
26 escrow agents as provided in this section that, except as otherwise
27 provided in this section, neither the government securities nor
28 monies so deposited with the trustees or escrow agents shall be
29 withdrawn or used by the State for any purpose other than, and
30 shall be held in trust for, the payment of the principal of, redemp-
31 tion premium, if any, and interest to become due on the bonds;
32 provided that any cash received from the principal or interest
33 payments on the government securities deposited with the trus-
34 tees or escrow agents, to the extent the cash will not be required
35 at any time for the purpose, shall be paid over to the State as
36 received by the trustees or escrow agents free and clear of any
37 trust, lien, pledge or assignment securing the bonds; and to the
38 extent the cash will be required for the purpose at a later date,
39 shall, to the extent practicable and legally permissible, be rein-
40 vested in government securities maturing at times and in amounts
41 sufficient to pay when due the principal of, redemption premium,
42 if any, and interest to become due on the bonds on and prior to
43 the redemption date or maturity date thereof, as the case may be,
44 and interest earned from the reinvestments shall be paid over to
45 the State, as received by the trustees or escrow agents, free and
46 clear of any trust, lien or pledge securing the bonds. Notwithstand-
47 ing anything to the contrary contained herein: a. the trustees or
48 escrow agents shall, if so directed by the issuing officials, apply
49 monies on deposit with the trustees or escrow agents pursuant
50 to the provisions of this section and redeem or sell government
51 securities so deposited with the trustees or escrow agents and
52 apply the proceeds thereof to (1) the purchase of the bonds which
53 were refinanced by the deposit with the trustees or escrow agents

54 of the monies and government securities and immediately there-
 55 after cancel all bonds so purchased, or (2) the purchase of different
 56 government securities; provided, however, that the monies and
 57 government securities on deposit with the trustees or escrow
 58 agents after the purchase and cancellation of the bonds or the
 59 purchase of different government securities shall be sufficient to pay
 60 when due the principal of, redemption premium, if any, and interest
 61 on all other bonds in respect of which the monies and govern-
 62 ment securities were deposited with the trustees or escrow agents
 63 on or prior to the redemption date or maturity date thereof, as the
 64 case may be; and b. in the event that on any date, as a result of any
 65 purchases and cancellations of bonds or any purchases of different
 66 government securities as provided in this sentence, the total amount
 67 of monies and government securities remaining on deposit with
 68 the trustees or escrow agents is in excess of the total amount
 69 which would have been required to be deposited with the trustees
 70 or escrow agents on the date in respect of the remaining bonds
 71 for which the deposit was made in order to pay when due the prin-
 72 cipal of, redemption premium, if any, and interest on the remain-
 73 ing bonds, the trustees or escrow agents shall, if so directed by
 74 the issuing officials, pay the amount of the excess to the State free
 75 and clear of any trust, lien, pledge or assignment securing the re-
 76 funding bond.

1 21. Refunding bonds issued pursuant to section 19 of this act
 2 may be consolidated with bonds issued pursuant to section 6 of this
 3 act or with bonds issued pursuant to any other act for purposes
 4 of sale.*

1 ***[20.]*** 22.* To provide funds to meet the interest and principal
 2 payment requirements for the bonds ***and refunding bonds***
 3 issued under this act and outstanding there is appropriated in the
 3a order following:

4 a. Revenue derived from the collection of taxes under the "Sales
 5 and Use Tax Act," P. L. 1966, c. 30 (C. 54:32B-1 et seq.), or so
 6 much thereof as may be required; and

7 b. If, at any time, funds necessary to meet the interest and prin-
 8 cipal payments on outstanding bonds issued under this act, are
 9 insufficient or not available, there shall be assessed, levied and
 10 collected annually in each of the municipalities of the counties of
 11 this State, a tax on the real and personal property upon which
 12 municipal taxes are or shall be assessed, levied and collected, suffi-
 13 cient to meet the interest on all outstanding bonds issued here-
 14 under and on the bonds proposed to be issued under this act in the

15 calendar year in which the tax is to be raised and for the payment
 16 of bonds falling due in the year following the year for which the
 17 tax is levied. The tax shall be assessed, levied and collected in the
 18 same manner and at the same time as other taxes upon real and
 19 personal property. The governing body of each municipality shall
 20 pay to the treasurer of the county in which the municipality is
 21 located, on or before December 15 in each year, the amount of tax
 22 herein directed to be assessed and levied, and the county treasurer
 23 shall pay the amount of the tax to the State Treasurer on or be-
 24 fore December 20 in each year.

25 If on or before December 31 in any year, the issuing officials, by
 26 resolution, determine that there are moneys in the General Fund
 27 beyond the needs of the State, sufficient to meet the principal of
 28 bonds falling due and all interest payable in the ensuing calendar
 29 year, the issuing officials shall file the resolution in the office of the
 30 State Treasurer, whereupon the State Treasurer shall transfer
 31 the moneys to a separate fund to be designated by him, and shall
 32 pay the principal and interest out of the fund as the same shall
 33 become due and payable, and the other sources of payment of the
 34 principal and interest provided for in this section shall not then
 35 be available, and the receipts for the year from the tax specified
 36 in subsection b. of this section shall be considered part of the
 37 General Fund, available for general purposes.

1 ***[21.]*** *23.* Should the State Treasurer, by December 31 of any
 2 year, deem it necessary, because of the insufficiency of funds col-
 3 lected from the sources of revenues as provided in this act, to meet
 4 the interest and principal payments for the year after the ensuing
 5 year, then the State Treasurer shall certify to the Director of the Di-
 6 vision of Budget and Accounting in the Department of the Treasury
 7 the amount necessary to be raised by taxation for those purposes,
 8 which is to be assessed, levied and collected for and in the ensuing
 9 calendar year. The director shall, on or before March 1 following,
 10 calculate the amount in dollars to be assessed, levied and collected
 11 in each county as herein set forth. This calculation shall be based
 12 upon the corrected assessed valuation of each county for the year
 13 preceding the year in which the tax is to be assessed, but the tax
 14 shall be assessed, levied and collected upon the assessed valuation
 15 of the year in which the tax is assessed and levied. The director
 16 shall certify the amount to the county board of taxation and the
 17 treasurer of each county. The county board of taxation shall in-
 18 clude the proper amount in the current tax levy of the several
 19 taxing districts of the county in proportion to the ratables as as-
 20 certained for the current year.

1 ***[22.]*** *24.* For the purpose of complying with the provisions of
 2 the State Constitution, this act shall be submitted to the people at
 3 the general election to be held in the month of November, 1986. To
 4 inform the people of the contents of this act, it shall be the duty of
 5 the Secretary of State, after this section takes effect, and at least 15
 6 days prior to the election, to publish this act in at least 10 news-
 7 papers published in this State and to notify the clerk of each county
 8 of this State of the passage of this act; and the clerks respectively,
 9 in accordance with the instructions of the Secretary of State, shall
 10 have each of the ballots printed as follows:

11 If you approve of the act entitled below, may a cross (X), plus
 12 (+) or check (✓) mark in the square opposite the word "Yes."

13 If you disapprove of the act entitled below, make a cross (X),
 14 plus (+) or check (✓) mark in the square opposite the word "No."

15 If voting machines are used, a vote of "Yes" or "No" shall be
 16 equivalent to these markings respectively.

| | | |
|--|------|---|
| | Yes. | HAZARDOUS DISCHARGE BOND ACT OF 1986 Should the "Hazardous Discharge Bond Act of 1986" which authorizes the State to issue bonds in the amount of \$200,000,000.00 for the purpose of financing the cost of identification, cleanup and removal of hazardous discharges, providing ways and means to pay the interest on the debt and also to pay and discharge the principal thereof ***, <i>which bond issuance shall be conditional on the enactment of other revenue-raising measures for the funding of hazardous discharge cleanup</i> ,*** be approved? |
| | No. | INTERPRETIVE STATEMENT Approval of this act would authorize the sale of \$200,000,000.00 in bonds to be used to identify, cleanup and remove hazardous discharges *** <i>which sale is conditioned on the enactment of other revenue-raising measures for the funding of hazardous discharge cleanup</i> ***. |

17 The fact and date of the approval or passage of this act, as the
 18 case may be, may be inserted in the appropriate place after the
 19 title in the ballot. No other requirements of law as to notice or
 20 procedure, except as herein provided, need be adhered to.

21 The votes cast for and against the approval of this act, by ballot
 22 or voting machine, shall be counted and the result thereof returned
 23 by the election officer, and a canvass of the election had in the same
 24 manner as is provided for by law in the case of the election of a
 25 Governor, and the approval or disapproval of this act so deter-

mined shall be declared in the same manner as the result of an election for a Governor, and if there is a majority of all votes cast for and against it at the election in favor of the approval of this act, then all the provisions of this act not made effective theretofore shall take effect forthwith.

[23.]* *25. There is appropriated the sum of \$5,000.00 to the Department of State for expenses in connection with the publication of notice pursuant to section ***[22]* *24*** of this act.

[24.]* *26. The Commissioner of Environmental Protection shall submit to the State Treasurer and the New Jersey Commission on Capital Budgeting and Planning with the Department of Environmental Protection's annual budget request a plan for the expenditure of funds from the "Hazardous Discharge Fund of ***[1985]* *1986***" for the upcoming fiscal year. This plan shall include the following information: a performance evaluation of the expenditures made from the fund to date; a description of programs planned during the upcoming fiscal year; a copy of the regulations in force governing the operations of programs that are financed, in part or in whole, by funds from the "Hazardous Discharge Fund of ***[1985]* *1986***"; and an estimate of expenditures for the upcoming fiscal year.

[25.]* *27. Immediately following the submission of the Legislature of the Governor's annual budget message, the Commissioner of Environmental Protection shall submit to the General Assembly ***[Agriculture and Environment]* *Environmental Quality*** Committee, the Senate Energy and Environment Committee, or their successors, and the ***[Subcommittee on Transfers of the Joint Appropriations]* *Joint Budget Oversight*** Committee, or its successor, a copy of the plan called for under section ***[24]* *26*** of this act, together with such changes therein as may have been required by the Governor's budget message.

[26.]* *28. No less than 30 days prior to entering into any contract, lease, obligation, or agreement to effectuate the purposes of this act, the Commissioner of Environmental Protection shall report to and consult with the ***[Subcommittee on Transfers of the Joint Appropriations]* *Joint Budget Oversight*** Committee, or its successor.

[27.]* *29. This section and sections ***[22]* *24*** and ***[23]* *25*** of this act shall take effect immediately~~***~~**[**]**, *but shall remain inoperative until the enactment of P. L. _____, c. _____ (C. _____) (now pending before the Legislature as Senate Bill No. 899 of 1986) and the enactment of P. L. _____, c. _____ (C. _____)*

6 *(now pending before the Legislature as Senate Bill No. 2011 of*
7 *1986) and until the Legislature has agreed to the amendment to*
8 *Article VIII, Section II of the Constitution of the State of New*
9 *Jersey proposed by the Senate Concurrent Resolution No. 82 of*
10 *1986,**]*** and the remainder of this act shall take effect as pro-*
11 *vided in section ***[22]*** *24*.*

HAZARDOUS WASTE (Cleanup)

Authorizes \$200,000,000.00 in State bonds for hazardous discharge
site cleanup.

SENATE CONCURRENT RESOLUTION No. 73

STATE OF NEW JERSEY

INTRODUCED JANUARY 21, 1986

By Senator GORMLEY

Referred to Committee on Energy and Environment

A CONCURRENT RESOLUTION proposing to amend Article VIII,
Section II of the Constitution of the State of New Jersey.

1 BE IT RESOLVED *by the Senate of the State of New Jersey (the*
2 *General Assembly concurring)*:

1 1. The following proposed amendment to the Constitution of
2 the State of New Jersey is agreed to:

PROPOSED AMENDMENT

3 Amend Article VIII, Section II by adding the following para-
4 graph:

5 5. There shall be credited annually to a special account in the
6 General Fund from the revenues derived from the "Corporation
7 Business Tax Act (1945)," P. L. 1945, c. 162 (C. 54:104A-1 et seq.),
8 the sum of \$90,000,000.00; provided, however, that the dedication
9 and use of these revenues, as provided in this paragraph, shall be
10 subject and subordinate to all appropriations of revenues derived
11 from the "Corporation Business Tax Act (1945)" made by laws
12 previously enacted pursuant to Article VIII, Section II, paragraph
13 3 of the Constitution of the State of New Jersey in order to pay the
14 principal and interest on bonds of the State presently outstanding
15 or authorized to be issued pursuant to these laws. The amount
16 dedicated pursuant to this paragraph shall be annually appro-
17 priated by the Legislature for the sole purpose of financing the
18 mitigation or cleanup of hazardous discharge sites in this State.
19 The Legislature shall not borrow, appropriate, or use this amount,
20 or any part thereof, for any other purpose, under any pretense
21 whatsoever. The provisions of this paragraph shall be of no effect
22 after 20 years from the date on which this amendment becomes part
23 of the Constitution of the State of New Jersey.

1 2. When this proposed amendment to the Constitution is finally
 2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
 3 it shall be submitted to the people at the next general election
 4 occurring more than three months after such final agreement and
 5 shall be published at least once in at least one newspaper of each
 6 county designated by the President of the Senate and the Speaker
 7 of the General Assembly and the Secretary of State, not less than
 8 three months prior to the general election.

1 3. This proposed amendment to the Constitution shall be sub-
 2 mitted to the people at that election in the following manner and
 3 form:

4 There shall be printed on each official ballot to be used at the
 5 general election, the following:

6 a. In every municipality in which voting machines are not used,
 7 a legend which shall immediately precede the question as follows:

8 If you favor the proposition printed below make a cross (X),
 9 plus (+) or check (✓) in the square opposite the word "Yes."
 10 If you are opposed thereto make a cross (X), plus (+), or check
 11 (✓) in the square opposite the word "No."

12 b. In every municipality the following question and interpretive
 13 statement:

| | | |
|--|------|--|
| | | <p>DEDICATION OF A PORTION OF THE STATE CORPORATION BUSINESS TAX REVENUES TO THE CLEANUP OF HAZARDOUS DISCHARGE SITES IN THIS STATE</p> <p>Do you approve amending Article VIII, Section II of the Constitution of the State of New Jersey to dedicate \$90 million per year for twenty years from the revenues generated by the "Corporation Business Tax Act (1945)" which have not been previously dedicated, to a special account in the General Fund, and authorizing the Legislature to appropriate monies from this account for the sole purpose of paying or financing the cost of the cleanup or mitigation of hazardous discharge sites in this State?</p> |
| | Yes. | |
| | No. | <p>INTERPRETIVE STATEMENT</p> <p>Approval of this proposed constitutional amendment would dedicate \$90 million per year for twenty years from the revenues generated by the "Corporation Business Tax Act (1945)" to a special fund, which could be used only to pay for the cleanup or mitigation of hazardous and toxic waste sites in this State.</p> |

STATEMENT

This concurrent resolution would amend the Constitution of the State of New Jersey to dedicate \$90 million per year for twenty years from the revenues generated by the "Corporation Business Tax Act (1945)," P. L. 1945, c. 162 (C. 54:10A-1 et seq.) to a special fund which could be used only to fund the cleanup or mitigation of hazardous discharge sites in this State. Pursuant to the provisions of companion legislation establishing the "New Jersey Hazardous Discharge Site Cleanup Trust," (Senate Bill No. of 1986), the monies dedicated by this proposed constitutional amendment would be annually appropriated by the legislature to the trust, which would use these funds to provide financing for the State's hazardous discharge site cleanup program.

HAZARDOUS WASTE (Cleanup)

Hazardous discharge site cleanup, constitutionally dedicated funds. Dedicates \$90 million per year for twenty years from the State Corporation Business Tax revenues to be used for hazardous discharge site cleanup.

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SENATE CONCURRENT RESOLUTION No. 82

STATE OF NEW JERSEY

INTRODUCED APRIL 7, 1986

By Senator LESNIAK

Referred to Committee on Energy and Environment

A CONCURRENT RESOLUTION proposing to amend Article VIII,
Section II of the Constitution of the State of New Jersey.

1 BE IT RESOLVED *by the Senate of the State of New Jersey (the*
2 *General Assembly concurring):*

1 1. The following proposed amendment to the Constitution of
2 the State of New Jersey is agreed to:

PROPOSED AMENDMENT

3 Amend Article VIII, Section II by adding the following para-
4 graph:

5 5. There shall be credited***[** on a quarterly basis, to the "Haz-
6 ardous Discharge Site Cleanup Fund" established pursuant to
7 section 1 of P. L. 1985, c. 247 (C. 58:10-34) all revenues collected
8 pursuant to subsection (g) of section 5 of the "Corporation
9 Business Tax Act (1945)," P. L. 1945, c. 162 (C. 54:10A-5 (g)).**]***
10 **annually from the General Fund to a special account in the*
10A *Department of the Treasury the sum of \$60,000,000.00.* The
10B amount dedicated pursuant to this paragraph shall be annually
11 appropriated by the Legislature for the sole purpose of financing
12 the mitigation or cleanup of hazardous discharge sites in this
13 State. The Legislature shall not borrow, appropriate, or use this
14 amount, or any part thereof, for any other purpose, under any
15 pretense whatsoever. The provisions of this paragraph shall be
16 of no effect after five years from the date on which this amendment
17 becomes part of the Constitution of the State of New Jersey.

1 2. When this proposed amendment to the Constitution is finally
2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
3 it shall be submitted to the people at the next general election

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.**

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted May 19, 1986.**

occurring more than three months after such final agreement and shall be published at least once in at least one newspaper of each county designated by the President of the Senate and the Speaker of the General Assembly and the Secretary of State, not less than three months prior to the general election.

3. This proposed amendment to the Constitution shall be submitted to the people at that election in the following manner and form:

There shall be printed on each official ballot to be used at the general election, the following:

a. In every municipality in which voting machines are not used, a legend which shall immediately precede the question as follows:

If you favor the proposition printed below make a cross (X), plus (+) or check (✓) in the square opposite the word "Yes." If you are opposed thereto make a cross (X), plus (+), or check (✓) in the square opposite the word "No."

b. In every municipality the following question and interpretive statement:

| | | |
|--|------|--|
| | Yes. | <p>DEDICATION OF *[A PORTION OF THE STATE CORPORATION BUSINESS TAX REVENUES]* *\$60,000,000.00 PER YEAR* TO THE CLEANUP OF HAZARDOUS DISCHARGE SITES IN THIS STATE</p> <p>Do you approve amending Article VIII, Section II of the Constitution of the State of New Jersey to dedicate for five years *[the revenues generated by an increase in the rate of the tax under the "Corporation Business Tax Act (1945)" from 9% to 9½%]* *\$60,000,000.00 per year from the General Fund* to a special account, and authorizing the Legislature to appropriate monies from this account for the sole purpose of paying or financing the cost of the cleanup or mitigation of hazardous discharge sites in this State?</p> |
| | No. | <p>INTERPRETIVE STATEMENT</p> <p>Approval of this proposed constitutional amendment would dedicate for five years *[the revenues generated by increasing the rate of the tax under the "Corporation Business Tax Act (1945)" from 9% to 9½%]* *\$60,000,000.00 per year from the General Fund* to a special fund which could only be used to pay for the cleanup or mitigation of hazardous and toxic waste sites in this State.</p> |

HAZARDOUS WASTE (Cleanup)

Dedicates for five years \$60,000,000.00 from the General Fund to hazardous discharge site cleanup.

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* * * * *

(Hearing Transcribed by J & J Court Transcribers)

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SENATOR DANIEL J. DALTON (Chairman): I'd like to get the hearing started. I have a very brief statement to make and then we'll receive testimony. The hearing today is on hazardous waste discharge site cleanup financing. The subject of the hearing is the issue of stable and long-term public financing for the New Jersey Hazardous Discharge Site Mitigation and Cleanup Program.

About a year ago this Committee held a public hearing on this same issue and on bills virtually identical to some of the bills under consideration today, when the enormous cost of cleaning up the State's toxic waste was first receiving public attention. It seemed possible that the cleanup program in financial trouble by the end of 1986 in that a funding source was of absolute necessity. Unfortunately we made little progress structuring a financing mechanism last year. However, the Legislature did appropriate \$115 million from the general fund as a stopgap measure to insure that the cleanup program would continue.

Given the inability of Congress to agree on the reauthorization of the Federal Superfund Program, and the restrictions placed on the use of our own Spill Fund by the use by the U. S. Supreme Court, the decision to dip into the general fund was more foresighted than we knew at that time. I think that we all knew that in the foreseeable future we would not be able to rely on existing general fund revenues to fund the cleanup program. This year's budget is tight and the full force of the anticipated Graham/Rudman federal budget cuts will be felt by the states beginning next year.

Thus it is imperative that we establish a stable, long-term funding source for hazardous waste cleanup this year so it will be generating revenues by 1987 when, if the cleanup program proceeds as expected, the existing major funds will be depleted. Two funding proposals have been put forward to date. One is sponsored by myself and Senators Contillo and Lesniak would raise about \$120 to \$130 million per year for five years through

a mix of State general obligations bonds, an increase in the rate of the corporate business tax from 9 to 9.5%; a deduction of this increase to cleanup financing for five years; and a doubling of the existing rates of the Spill Fund tax on petrochemicals and the imposition of the tax on hazardous waste. This package includes legislation directing DEP to consolidate its cleanup activities under the authority of an assistant commissioner.

Senator Gormley has also advanced a proposal which consists of a 20-year deduction of \$90 million per year from the corporate business tax revenues which a newly established hazardous discharge site cleanup trust would be authorized to borrow against to provide cleanup funding.

These two approaches are obviously different. Yet, the difference should not hide the more important fact that the goal of each is the same; the detoxification of every hazardous waste site in the State. I should emphasize that neither of these programs should be considered as being in final form. The U. S. Supreme Court ruling on the Spill Fund pre-emption issue stated that any special state hazardous waste cleanup fund cannot be used for cleanup activities at Superfund sites. Therefore, these spills will require technical amendments to provide that all New Jersey cleanup money be routed through the general fund, which is not restricted by the pre-emption clause of the Superfund law.

In this regard I think that we hope that the conference committee, which is now trying to reconcile the differences in the State House Superfund Reauthorization Bill proceeds and deletes the pre-emption clause which has caused states like New Jersey so much trouble.

While there is room for change and compromise in many aspects of the cleanup financing, I think we should state our commitment not to ask the general taxpayers to foot the bill for the cleanup program. Since 1976 the State has raised \$270 million in cleanup funds, \$100 million in 1981 Hazardous Discharge Bond Act, \$150 million from the 1985 General Fund appropriation, in it \$120 million and that's ten years of

Soill Fund revenues. Thus far about 2 1/2 times as much has come from the general taxpayers as from industry sources.

As we contemplate funding, a \$200 million per year program, this ratio should not be continued. Business and industry in general benefited economically from the haphazard disposal practices of the past, and now as we try to find a way to pay for our mistakes I hope that the business and industry will come forward to contribute their fair share. Business and industry recently supported a \$15 million per year litter tax on business to finance the cleanup of cans and candybar wrappers along the roadside. I hope that they are much more generous in their support for a more serious cleanup program.

I hope that today's meeting is the start of the discussion which will produce a cleanup funding package this year. I hope that the DEP can provide us with cleanup cost figures for both Superfund and non-Superfund sites and at least estimates for operation and maintenance costs at the more serious sites. We're all aware that there are many uncertainties. Will there be a second Superfund? How big will the new Superfund be? How much will New Jersey receive from the new Superfund? Will pre-emption remain? How much will responsible parties contribute and who will pay, and how much for operation and maintenance? How can we estimate the cost of something which has never been done? All these uncertainties were present a year ago. Many of them may be present a year from now, for it is possible that Congress could keep the anemic Superfund program alive with a series of 60 day transfusions.

In the midst of all this confusion, however, we should keep our eyes on the central fact: We are facing the requirement to fund a potential \$2 billion program over the next 10 to 15 years. The Federal government will help us when it can, but we have seen too often that the Federal government often takes care of its own financial problems first, often to the detriment of the State. We have to assume that we in New Jersey will be footing the lion's share of our State's cleanup bill and we

should start how we're going to pay for it today.

With that in mind, I'd like to ask Senator Ray Lesniak, one of the sponsors of this package bill, to come forward and provide us with his testimony. Ray.

SENATOR RAYMOND LESNIAK: Thank you, Dan.

Mr. Chairman, Senator Dalton, I want to thank you for this opportunity to speak on this package. I'm going to be very brief. I think everyone in this room or anyone who is going to read the transcript of this hearing knows very well my position on this subject as it has been established since 1978.

Briefly I just want to touch on three points. First of all, I applaud you for taking this initiative in establishing this as a priority item on your agenda. Recently in Sunday's papers we see where the Governor has mentioned three items as his legislative priority; auto insurance reform, civil service reform, and college autonomy. I think that he's overlooked one serious problem and that's cleaning up hazardous waste in this State and that ought to be the priority, only possibly matched by auto insurance reform. Certainly hazardous waste cleanup ought to be a priority of this administration and I would urge Governor Kean to join with you and with us in a bipartisan effort to clean up hazardous waste in the State of New Jersey and provide a stable funding source for that program.

Secondly, I think we have to realize and understand that leveraging just doesn't work in this situation because we're going to need, everyone admits, and you know that we're going to need approximately \$100 million a year for the next 20 years, especially when you're talking about operation and maintenance of the Superfund sites. Ninety plus sites, many of which will not even be reached by Superfund money. So anybody who thinks that this problem can be solved by a leveraging proposal that's going to leave us in the lurch by a 20 year source of funding that's only going to provide money for a short period of time, is really mortgaging the future of the State of New Jersey when it comes down to cleaning up hazardous waste.

The third point I think we all have to emphasize, and as you stated, which is in conformance with my opinion, that none of these proposals are etched in stone. But one thing is etched in stone. I think we all agree that everyone has to contribute. This is a problem that encompasses all aspects of society. Basically up to this point we've been relying much too much on the everyday taxpayer out there to pay for this problem. And that many of the businesses who have benefited by cheap and unsafe disposal practices, many businesses that generate hazardous waste and contribute to the problem have not been contributing to the solution. So anything that -- any proposal that brings everyone in to solve this massive problem is going to help us deal with the future with the State of New Jersey, not only in an environmental way, but also in an economic development way. I think we know through the results of ECRA that you can't have economic development without good environmental protection. No business, no people are going to want to locate in a state that has a very serious environmental protection problem that they're not dealing with. I think that's been one of the great attractions to the State of New Jersey over the last five years that we have programs in place that have been dealing with the environmental problems of the State. If we don't continue to deal with that we're going to see that impression fade and the reverse occur. So we must take that next step. In New Jersey there's no doubt that legislation that you and I have sponsored has been number one in the country in dealing with this problem. We have to take that next step in order to keep us number one, and I applaud you for your effort.

Thank you, Mr. Chairman.

SENATOR DALTON: Thank you, Ray.

The next person to testify is John Gaston, from the New Jersey Department of Environmental Protection. John, what's your title now?

J O H N G A S T O N: I am still the Director of the Division of Water Resources, but I'm also Special Assistant to

Commissioner Dewling.

SENATOR DALTON: Okay.

MR. GASTON: For the last few months I've had four or five specific assignments, one of which is to look into the question of hazardous waste financing. So we've been trying to do our homework on the subject. We also are appreciative of you putting this on your list of things that has to be done, and scheduling this hearing today.

My purpose in being here is to present DEP's perspective on the cleanup funding needs and particularly to provide some dimension to the need and the possibility, from a financial standpoint, the answers. To begin the conversation I think it's useful to first understand what the universe of sites to be cleaned is as we're defining them. I'll ask Robin O'Malley (phonetic), who has been working with me on this, to put up a board that we've shown in three different media types thus far, but the numbers have remarkably stayed about the same.

Significant corrective actions are contemplated at a total of 600 sites in the planning work that we've been doing. That breaks down as follows: NPL sites, of course there are 99, 9% of the total of 1150, which is the grand total that we've been tracking. We're contemplating adding about 25 more future NPL sites, which represents 2% of the total. At non-NPL sites we've got 54 that are on our management list and they're actively under some form of activity, 5% of the total. In the future we're expecting to add another 50 over the five year planning horizon that we're working on. RCRA sites, 76 and those are non-CERCLA sites, meaning non-Superfund RCRA sites, which is 6% of the total. Then at enforcement we have some 296 sites that represent activity centers for a total of 600 that we expect to have some form of significant corrective action take place over our five year planning horizon. In addition, there are another 436 sites where minor corrective action is going to be required in one form or another and 114 where we don't expect corrective action to take place at. So the total is 1150 sites that we're tracking.

Now 1150 sites today, could be somewhat different later on, but for purposes of planning what we're really saying is that in a financial sense the first four items in the significant corrective action column, total of 228 sites, are what we're targeting as the sites that are going to require public funds of one form or another. And it's upon that list of 228 that our cost estimates are derived. RCRA and regular enforcement, another 372 sites that we expect will be dealt with in that mode of operation. So that's a breakdown of the universe and how we have gotten to the planning assumption that about 228 sites are going to require some form of public funding or we are planning to have public funding as a back-up for those sites.

Estimating the cost of the program no one has been through is no easy task as you've, Senator, noted in your remarks. We've made certain assumptions to estimate costs for the next phase of our cleanup program. If Robin will put that exhibit we can talk to it.

First assumption is that we're working on a five year planning horizon. In part, that five year planning horizon acknowledges that we are facing a considerable number of uncertainties and our ability to project beyond that period of time gets to be fuzzier and fuzzier. So we have a five year planning horizon over which time issues such as ONL financing, etc. can be better understood, and certainly the major capital needs during that five year planning horizon will need to be addressed.

Second assumption is that Superfund dollars will only be available for 60% of the eligible sites. Now, we have struggled with this assumption for some time. We could take the most optimistic assumption and that is every time a site comes up for Superfund dollars we're going to have those dollars available to us. In the recent past we've seen that that isn't quite the case and until Congress dumped \$150 million on the table for the 60 day arrangement that was made, we were in a position where we were contemplating reverse letters of credit so that we could

keep our program moving. So we have concluded for purposes of planning that only 60% of the necessary Superfund dollars will be available. What that does, of course, is it makes this need for State dollars all the more important. It causes the need of State dollars to be larger.

This is one of these perverse assumptions that by assuming that we are going to need more money we may need less dollars from two perspectives. One, by having sites ready to go when Superfund money does become available we're in line to take advantage of it. So that's a significant positive attribute. Second, by having adequate State dollars available, as we've proved by having the general fund money -- which I agree with you has had much more of the benefit in terms of the cleanup program than any of us could have ever projected -- we're likely to get more cleanup enforcement agreements entered into than we might if we all had to wait until that critical time when the legal system has run itself to a conclusion.

Third assumption is that enforcement/cost recovery will result in 1/3 of our needs being addressed at all NPL and non-NPL sites. That assumption is also a reasonably conservative assumption. From the list of 99 Superfund sites we expect about 25% of them, with what we know right now, to be going private party. For the list of 59 NPL sites more than 2/3 of them are going private party based on what we know right now. So we've kind of married those two pieces of information and made a conservative assumption that the list of volunteers for our universe of 228 sites would be about 1/3.

Fourth, and significantly, we've planned that the State will spend approximately \$15 million per year on water line replacements. Commissioner Dewling has said that in many instances the most visible action we can take to protect the public health and safety at and around Superfund sites is to insure that nobody is drinking groundwater that has questions associated with it. So up-front in our planning program we've assumed \$15 million a year of State money will be put into this

very significant and important activity.

Fifth, I guess, the sites will move through the investigation, design, construction phases at average rates. Of course, with so many projects moving along we've had to do some averaging to project out the needs on an annual and then on a five year basis.

Lastly, long-term O and M is not provided here. If there is O and M during the five-year period it has been included in our projections and been counted, but, obviously, as you've indicated, there will be a need to address the long-term O and M issue over the 20-year period. I might add that one of the other benefits of the Superfund bill being reauthorized is some possible redefinition of what O and M is, to consider the portion of O and M that's so important to us, which is the treatment of water that's pumped from the ground. So number two, we've covered, what are the planning assumptions.

Number three, we want to look at what the State costs are projected to be over a five-year period. Site Mitigation program costs FY '87 to FY '91 includes all sites, NPL, non-NPL, and water supply replacement. All dollars are in millions and we have them going out from '87 to '91 based on State's contribution, what we project to be the Federal contribution, private dollars going into the pot, and the total dollars that are needed. The significant figures are that the total dollars needed during that five-year period is about \$1.55 billion, shared on a 29/29/41% basis among the private, Federal and State parties who are the relevant actors. State need during that five-year period, \$642 million and that State needs over the five-year period which represent initiations of projects during that five-year period show one of the problems that we're facing and that is that the needs are not level during the five-year period. We expect in '88 and '89 to have the high years of initiation of projects and we need a way to be able to have adequate money to meet those high years as well as to have adequate dollars to fund the total program.

Now, there are various ways to fund the State share of this program and each technique has both a fiscal element, i.e. how much money it raises, and a policy element, is the method appropriate, and what are its side effects? As given, at least for purposes of discussion, we are assuming that the Spill Fund at \$15 million a year would be accelerated to something that we could look to and we're also expecting that the \$100 million in bond authority will eventually be unencumbered and become something that we can utilize on our time schedule to deal with projections that will be necessary to be dealt with in the period of time between now and October of '87, when our current resources are going to be fully committed. Senator Contillo's bill and Assemblywoman Donovan's bill do this, and of course, we're pleased that these bills are moving along.

Over the five years, then, this leaves about \$467 million in additional money that's needed. In purely fiscal terms, just to provide some dimensions for the conversation, \$467 million could be generated in general obligations bonds, but, of course, sufficient bonding at this level may crowd out other important needs. So that is not likely to be the answer in and of itself.

Again in fiscal terms, \$467 million would result in \$94 million in general tax funds or revenues above the Spill Fund being sufficient. So if we did just a straight dollars per year, what would be necessary? About \$94 million a year would be required. Similarly to the Transportation Trust Fund whereby a dedicated tax is used to support revenue bonding, we would require \$55 million to be dedicated for ten years to meet the goals of our five-year plan. And, again, I'm just speaking in financial terms.

Senator Gormley's proposal would provide additional funding to meet this need as well as other needs that we have not spoken to in our presentation. The Lesniak, Dalton, Contillo bill, which entails a combination taxes, bonds, and waste end tax would provide sufficient money. So the things that are on the

table for discussion are certainly adequate in terms of their financial capability to address the needs that we are projecting.

Other ideas, such as piggy-backing a State tax onto a new Federal cleanup excise tax could provide significant funds if the Federal law is changed through this process of Superfund reauthorization to make them legal. At this point we're not picking a particular piece of legislation. We hope that further discussions will be held among all the parties that are involved to come up with a package that can provide the dollars that we need in time for October of '87, which is really when our critical need will take place.

We can, as you did, Senator, comment on the workability and potential problems of some of the techniques. Dedication of taxes for cleanup purposes outside the Superfund is illegal unless we do some gymnastics with the way in which it's conducted because of the Exxon case, (word inaudible) issue. General obligation bonding of and by itself is a problem in that it creates crowding for other important State needs, many of which our Department is involved with. Waste end taxes are administratively very difficult and don't really raise that much dollars. So they have to be looked at carefully. We're particularly concerned about them if they are piggy-backed on top of the waste manifest system, which after many, many soits and starts is getting up some momentum and beginning to work better and to produce better information than it has in the past.

What these comments result in, from a practical standpoint, is a conclusion that coming up with the amount of money is likely to require a mix of sources. Certainly we have before us that mix of sources and the financial wherewithal to produce dollars to meet the needs that we are projecting to solve our needs to keep the hazardous waste program moving. This process would benefit materially from action on Superfund in Washington, where we could stop having to always have that as a variable as we conduct our aggressive discussions here in New Jersey to keep the program moving. Of course, issues such a

one-emotion and the precise form of Superfund revenue development, I think, will put us in a better position to go and to examine the best set of options available.

Just one last point, our forecast indicates assuming that the \$100 million hazardous waste bond issue becomes uncoupled this year, that we will have enough revenue to keep the program moving aggressively through October of '87, but at that time we'll obviously need to have the funding mechanism in place to keep our progress on track that we're projecting. So with that I've given you our projection of the sites, the financial needs, some comments on the proposals that are on the table. I'm available to try and answer any questions that you might have.

SENATOR DALTON: Senator Gormley, do you have a question?

SENATOR GORMLEY: First of all, I'd like to excuse us to the people who were here earlier. We had a Judiciary Committee meeting and Senator Laskin is still there so we're balancing two committees at the same time. We were in the building.

With regard to the \$642 million number, the moneys available starting October of '87, we have Spill money. What do you factor in a year in that State share that is ongoing Spill money that is now on the books?

MR. GASTON: Fifteen million a year.

SENATOR GORMLEY: Fifteen.

MR. GASTON: So assuming that the accelerator stays in place--

SENATOR GORMLEY: All right, so you have \$15 million a year. With the passage of the Contillo bill you would tend to be, shall we say, intensive with that \$100 million over the next 17 months. That would be your main source of income?

MR. GASTON: Well, we have that and we're-- I guess I should have said that more clearly. We're expecting to have the Contillo bill, the \$100 million decoupling utilized as one of the

first things that we would use for the program.

SENATOR GORMLEY: Are you talking post '87 or pre?

MR. GASTON: Post.

SENATOR GORMLEY: Post '87. So we are able then to factor in that \$100 million and that \$15 million a year, so consequently that's where you get up with the 460--

MR. GASTON: Four sixty-seven.

SENATOR GORMLEY: Just so we're clear how we got to the 460 number. So in '88 and '89, let's call them our peak years, we would be talking-- How much of the bond money would be spent in '88 do you project of the \$100 million?

MR. GASTON: That's really a matter of the kind of revenues that we expect. If we just work with what we have and don't have anything else to work with we'd have to commit Spill Fund in '87 and a portion of the bond.

SENATOR GORMLEY: What is your ideal? Twenty-five million a year, is that what you're talking about? Thirty million a year for three years?

MR. GASTON: I think that when we have conversations with the Treasurer they would like us to have some kind of a level program for utilizing the bond funds and from our standpoint we would probably would like to use the bond funds to make sure that we have adequate dollars from other mechanisms available.

SENATOR GORMLEY: Well, let me ask the question another way. The '88 number, if you had to give me a number, if you had the ideal spending level for the bond issue plus the flat \$15 million a year, how much are you short in '88 -- \$140 million?

MR. GASTON: Well, we're short-- We'd have about \$50 million of bond money in '88 and about \$15 million of Spill Fund money with the givens that we have now. So we'd be short about 1/10.

SENATOR GORMLEY: Wait a second.

MR. GASTON: We'd use 15 from Spill Fund in '87 plus about 50 of bond money.

SENATOR GORMLEY: So you're about 100 million.

MR. GASTON: And we'd do the same thing again. Okay, you're right.

SENATOR GORMLEY: So you're 100 million short in '88 and then you're 110 million short in '89? Something--

MR. GASTON: No, we're going to have to use the bond money, 50 million in '87, 50 million in '88.

SENATOR GORMLEY: So then we're really short in '89.

MR. GASTON: Right.

SENATOR GORMLEY: We're about 162 million short.

MR. GASTON: The numbers add up rather rapidly, and of course, these numbers are obligations, getting things started. We can't enter into contracts to get any work going unless we have the dollars in the bank to back up the contracts. The spending, the cash flow on this will be moved over several quarters and maybe more than a year, and we'd have to show you another diagram. But for purposes of financial planning your question to us is when do you need the money to keep the program moving? These are the appropriate numbers to be utilizing.

SENATOR GORMLEY: Just on an unrelated but related topic, it's related on the basis of aquifer, do you have any idea on the municipal landfill closure costs?

MR. GASTON: The Governor has committed us and we've committed ourselves to having improved numbers on landfill closure cost around June, July.

SENATOR GORMLEY: Just for the record, there is no source of funding for those municipalities whatsoever.

MR. GASTON: The limit of landfill closure was the creation of the fund and the depositing of 8 million in the fund last year during the legislative process.

SENATOR GORMLEY: None of those municipalities, very few of them, have any escrow accounts of any magnitude.

MR. GASTON: I don't have the numbers on the top of my head, but the needs are far greater than the availability of money in the escrow accounts.

SENATOR GORMLEY: Okay. No other questions at this time.

SENATOR DALTON: John, you're looking at your chart there. The Federal dollars that you'll have available, what assumption is that based up? In other words, what level is Superfund at then?

MR. GASTON: What level of Superfund enactment in Washington?

SENATOR DALTON: Yes. In other words, you have that Federal dollars there. What is that based upon?

MR. GASTON: We've assumed in the Federal dollars that they pay 100% of the feasibility and design and we pay -- and they pay 90% of those sites that they decide that they're able to fund on the schedule that we want to have them funded. We pay the other 10%. We have assumed of those situations that are ready to go on a 90/10 basis, that only 60% of them would get the money on a timely basis. So we have committed ourselves in a fiscal planning sense to prefunding a number of the Superfund projects to keep the momentum of the program moving. We have not gone back a step further and analyzed what share we're going to get out of the Federal pot at President's level or at the Senate or the House levels that are there. But in a sense, we've addressed that by using a 60% assumption and by having adequate State moneys to keep us in front of the program.

When \$150 million was released two weeks ago, New Jersey got about 18% of that because we had the projects ready to be funded. In fact, we pulled back some projects that we planned to go on a reverse funding basis in order to take advantage of the Federal dollars. So part of our overall strategy is to have projects that are right on the doorstep and ready to go and that we are then able to get our share plus out of the Federal coffers.

SENATOR DALTON: Sixty percent assumption is based upon what level of Federal funding or Federal reauthorization?

MR. GASTON: We did not take that into account per se.

SENATOR DALTON: So you don't know how many dollars you're going to get from the Feds?

MR. GASTON: I think it's safe to say that the way this program is run, since they don't have an allocation formula in any of the bills, it's run on a first-come, first-serve basis. We plan on learning from what the experience that our communities in New Jersey had on the construction grant program, when there were lots of dollars available project number 300 got funded off the list because it was ready to go. So our program and the way it has been operated is ideally suited to take advantage of the way the Federal program has evolved. When you're ready, you get funded. If you're not ready, you can't pull the dollars to New Jersey. So we wanted to make sure that we had adequate State money available to keep the program running flat out in terms of its speed so that we could get as much money as possible. That's why I said it's kind of a perverse situation. If you have too much money you're likely to get more than you might if you have too little money out of the Federal coffers.

SENATOR DALTON: Under Federal, your line on there, Federal -- that is the anticipated dollars that you expect to get from the Federal government?

MR. GASTON: Right.

SENATOR DALTON: And as I see in 1988 and 1989 are your big years as far as your ability to pull down Federal dollars. I suspect given your answer to the past question it is because of the fact that you will have so many sites ready to go.

MR. GASTON: That's right.

SENATOR DALTON: In 1990, however, there's a fairly significant drop-off. What is that? Are we to attach any assumption to that?

MR. GASTON: Well, the schedules are driving by our commitment to get all 99 feasibility studies underway this year. As you get them underway they begin to march through the system and completion of the feasibility studies, conducting of the design work leads you to the need to have commitments, heavy

commitments in '88 and '89 to meet the universe that we are projecting, which is the universe of 99 Superfund sites and 54 non-NPL sites as well as additions to those two groups at the rate of five per year for NPL and ten per year for non-NPL. So we have a progression of activity that's taken place and because the initial pool, 99 plus 54, is fairly large, within two years you see the large dollar commitments needing to be made. That's why '88 and '89 are so large. As you move on into '90 and '91 you're working with less large commitments that are needed to be made and that's why they're going down.

At the same time O and M is beginning to take shape and beyond five years certainly O and M will be larger. I think that the O and M we've projected in State need for '91 was about \$36 million, \$38 million. But that's something that will trend upward as sites come into operation if we have as much continuing on-site involvement as we had expected. We have said and we still think that many of the sites will be pumping groundwater and treating it for as much as 20 years, plus or minus 20 years. So the cost that goes along with that will be costs that will have to be addressed. But we think we'd be a lot smarter if we were here five years from now with the number of sites that have made it through the process, gone into O and M and will have actual numbers to be working with as opposed to assuming numbers which we're working with in this analysis.

SENATOR DALTON: So O and M is not even assumed in this analysis?

MR. GASTON: No, it's assumed within the five-year period. Those numbers are included in the projections we have through '91, but only in '91 does it begin to become significant as the construction projects that have been committed in '87, '88, and '89 begin to go into operation.

SENATOR DALTON: Okay. The private dollars that you have listed there. How much private moneys have you received thus far?

MR. GASTON: Well, it's really a matter of looking at

two pots of private money that we've benefited from. The private money that's exclusively cost recovery we're getting the answer to that for one of your colleagues, but it's a few million dollars. In other words, money that we have spent, done something to correct the site and then come out and through a cost recovery action brought people in.

On the other side, however, private dollars to cleanup sites through consent agreements where financial assurances are provided, those dollars are very, very substantial. I don't have a number on it right here, an exact number -- we're also getting that -- but it's in the neighborhood of 50 to \$100 million of commitment that have been made in that area. The Whitco, the Ciba-Geigy, down in your area, Monsanto made a substantial commitment, Diamond Shamrock in Newark, American Cyanamid, we're in the final stages of coming to agreement with them and they've set aside \$40 million for their Bound Brook facility along with, I don't know, another 75 or \$100 million out of their earnings to take care of these sites. So some of the major companies are beginning to plan for long-term remediation of their sites and we have conservatively planned for a third of the sites and the dollars that go along with that to be coming through these direct agreements and direct financial commitments to clean up the sites.

SENATOR DALTON: How many dollars have you gotten up to now?

MR. GASTON: From the private parties? Well, it's not so much -- that's where I get into bifurcation of the issue. Dollars coming back -- not too many -- for moneys that we've spent to cleanup sites. The amount of money, dollars that are being spent under agreements with us are very significant. And I'm sure that it's more than \$50 million -- 50, 75, or 100. Just naming the sites that I've named for you gets us into that realm of commitment.

SENATOR DALTON: And you're looking at then 123.3 for '88 and 144.6 for '89. Given the amount of money that you've

collected thus far from private parties, is that a valid assumption?

MR. GASTON: Well, it's -- by having adequate funding of the State program where State initiated actions can take place, we have a much higher success rate in sitting down and negotiating private party agreements because the decision making there is do you want to do it or should we do it? As opposed to getting into interminable litigation that doesn't lead to any expenditure of money, and more importantly, doesn't lead to any cleanup. So to answer your question, those levels of commitment are levels that we think are achievable.

SENATOR DALTON: Given the fact that you've collected very little in the past from private parties?

MR. GASTON: We've gotten rather large commitments on the part of companies. That's why I used the words "cost recovery" and "enforcement recovery." Because every time a private party commits itself to spend 3 million, 5 million or 10 million of their dollars to cleanup the site is every bit as good as us spending 3, 5, or 10 million of State dollars and then going into a cost recovery action to get the money back. As a matter of fact, there are some benefits that go along with the company doing it under the proper set of controls administered by the Department, or, in fact, by the EPA. In some instances that's the way it happens.

SENATOR DALTON: The whole issue of projections, I know, is difficult. In the beginning of the year we listened to the State of the State Address by the Governor. There was an indication that we had to move forward now with some sort of proposal. However, in his budget message he seemed to indicate that we were in fairly good shape until at least January of '87. Given those types of mixed signals what can we do to get a better handle on the moneys that will be needed by the State in order to address this issue, because we don't seem to have a very good handle presently?

MR. GASTON: Well, things and conditions change. We

were assuming that we weren't going to be getting the kind of money that we have just in the recent past from the EPA. When the President agreed with Congress to put \$150 million on the street, New Jersey got \$20 million. That \$20 million or \$10 million allowed us to not draw down on the general funds that the Legislature provided last year. So the number that we were working on, which was about 56 million, had added to it 18 million and we were up to 74 million as a reserve. So some things have, in a financial sense, haven't quite gone in the same sense. I think that additionally there have been some delays in terms of the rate at which commitments couldn't have been made, and that has put us back a slight bit in terms of our planning.

We will make available all the data upon which these projections are based. We've got spread sheets and tallies. We've tried to ask ourselves whether or not we knew all the ingredients that went into the numbers, realizing that none of us have crystal balls and that the only thing that we can say about the numbers are that they're wrong in a projection sense. But for planning purposes we think they're reasonable and we think our assumptions on 60% Superfund money is a conservative assumption. We think that our assumption of 1/3 of the cases that become publically funded cases being handled in a remediation mode, private party remediation mode, is a conservative number. Thirdly, that puts us in a position to feel that we're going to have adequate money to fund the five-year program, and to take full advantage of the Federal money that's available on one hand, and private party money which is available on the other hand. In that sense to say it the third time, by having more than adequate amounts of money we maximize our prospects of getting Federal money, we maximize our prospects of getting private dollars. We've tried, in our projections, to put ourselves in that position.

SENATOR DALTON: I think there's a need, however, to-- The concern that I have, and I think the members of the Legislature on both sides of the aisle were a little taken aback

to say the least in that two month space, and I don't even know if it was that long, between the State of the State and the Budget Message, there seemed to be a shift, a clear shift that a lot of us recognized, not only in the Legislature but also in industry and the general public, as to when money was needed. What I'm suggesting is that it certainly calls into question the credibility of the Department in making these projections. I think what we need to do is we need to -- at least this Committee and I think a lot of us need to -- spend a lot more time with you as far as analyzing this data. That is a commitment that I'll make to you on behalf of the Committee. Because of the fact that we have to have a better-- If we're going to ask people to come forward with dollars, whether it be business and industry, the general public, whatever, we're going to have to zero in a lot better on these numbers than we have in the past.

MR. GASTON: We've been zeroing in on them for the last few months and every Monday morning when we come in, we asked ourselves the question, have the numbers changed? And for the last month or so the numbers haven't been changing and the assumptions haven't been changing. So I think we have a pretty good grasp on the numbers and we have a fair recognition that there are some things that we can't control in the projections and the development of the numbers. We're willing to share them with you as we have tried to identify them for our own benefit in putting together the fairest representation that we felt we could of these numbers.

SENATOR DALTON: Okay. Thanks, John. I appreciate it.

The next speaker will be Jim --

JAMES C. MORFORD: I'd like to hold, if I could, Mr. Chairman.

SENATOR DALTON: You'd like to hold if you could. Okay.

How about New Jersey B and I, Business and Industry? Do you want to hold, Jim, or do you want to come forward?

MR. GASTON: Senator, before I leave you--

J I M S I N C L A I R: I'll come forward. We have a lot to say.

MR. GASTON: Let me just leave with you copies of the charts that we have as well as copies of the stack of information that we put together of the Appropriations Committee, which has more background information relative to these numbers. Certainly the staff would be willing to sit down and go over the questions as they develop relative to numbers and anything else.

SENATOR DALTON: Thanks, John. Appreciate it. Jim Sinclair is itching to go, so whenever you're ready, Jim.

MR. SINCLAIR: For months we've been ready.

J I M K I E L: Senator, hello. My name is Jim Kiel, Chairman of the Environmental Equality Committee of the New Jersey Business and Industry Association. I am the manager of safety and environmental affairs and utility operations for the B. F. Goodrich Company in Red Bank, New Jersey.

In addition to speaking for the Association on proposed legislation, I can also answer questions about the impact of the existing New Jersey Soil Tax on my plant's economic viability in an increasingly competitive international marketplace. With me is Jim Sinclair, Vice President of the New Jersey Business and Industry Association.

The New Jersey Business and Industry Association is the largest employer association in New Jersey. We are a statewide organization that represents the interests of 11,000 retailers, manufacturers, and service area businesses.

Today in our testimony on the process of financing the cleanups of hazardous waste sites we'd like to clearly articulate the position of the broadest and most representative section of New Jersey's business community. Our position on the proposed legislation can be summarized as follows: We question the need for any tax increase at the present time based on information that has been made available to the Association by the NJ DEP

aproximately two weeks ago. We will offer suggestions on the State can get more money from the responsible parties at an accelerated pace and in a more cooperative manner. We oppose the arbitrary doubling of the existing New Jersey Spill Fund. We oppose a waste end tax in its present form and believe it to be economically counterproductive and an ineffective way to raise money. We strongly recommend that the Legislature not raise the corporate business tax at this time and start to undo the progress that New Jersey has made in improving its economic climate. We support a flexible trust system that would allow the State government to access the funds it needs for the cleanup process when it needs them. We also support the consolidation of the State management system for cleaning up these sites.

If there has to be an additional revenue source to finance the hazardous waste cleanup process we support a small, dedicated increase in the gasoline tax. Last but certainly not least, we support a process of organizational reform which will provide better management information for the key policy-makers in the Administration and the State Legislature.

Last year New Jersey voters identified the hazardous waste cleanup problem as the number one public issue. Governor Kean impressed television audiences by donning a space suit and entering a site in Newark. Candidate Peter Shapiro also bravely promised not to seek reelection if DEP fails to clean up half of the Superfund sites. The attention of both candidates to the problem of cleaning up these sites is ample testimony to the fact that they know the public believes that this is an important issue which deserves adequate, official attention.

These hazardous waste sites have resulted from a variety of past practices and decisions in the public as well as the private sector. Some of the sites are the result of criminal wrongdoing and should be recognized for what they are, and those responsible should be prosecuted to the fullest extent of the law. Other sites are the product of industrial and municipal engineering and waste disposal practices which are no longer

acceptable. Many of the sites with improper practices by today's standards were licensed, approved, and regulated by the Department of Environmental Protection, its predecessor organizations, or the local governmental equivalence. The waste deposited at some of these sites came from out-of-state sources and in some cases it was a by-product of the war effort. Or it came from companies which are no longer in business.

We also know that some of these sites were operated by or used by major companies which are currently engaged in business in New Jersey. The NJ DEP has identified some of the companies who have sent material to these disposal sites. These companies are being asked to pay for not only their share of the problem but in the case of companies that have substantial resources or deep pockets they are being asked to pay for the entire cost of cleaning up the ghost shares on these sites. The basic unfairness of this joint and several liability question has forced companies to use every available legal remedy. The present system encourages local confrontation and is not fair or productive. We should abandon the concept of going after the deep pocket and ask those deep pockets to join in a cooperative program of putting in their fair share, and maybe a little bit more, at the front of the cleanup process. If the State had the money today we wouldn't need to be thinking about raising additional revenue in the near future.

This is an opportunity for creative legislation that will provide a window of time for responsible corporate entities to come forward and volunteer to pay for their fair share of the cleanup process. It might disappoint some of the lawyers on both sides of the issue, but it would delight the taxpayers.

Beyond the identified responsible parties, who is responsible for dealing with this problem? Many people would like to view this as a problem for somebody else to solve. It has generated an opportunity for a lot of self-serving rhetoric. It is an easy opportunity to generate publicity by saying, "Let the polluter pay" while meaning let's double the existing Spill

Fund. On companies like my own plant, which will pay over \$450,000 into the New Jersey Spill Fund this year, and historically we only generate a few drums of hazardous material a year.

The New Jersey Spill Fund, which was originally developed to pay for offshore oil spills has been a major source of State funds for cleanups. The Spill Fund is a specialized tax on a small number of businesses and not necessarily the businesses which are involved in cleanup problems. Raising the Spill Fund to the limits proposed in this legislation places an unfair burden on a narrow sector of the State's economy. These companies, which are important to New Jersey's economy, will be paying an unfair share of the cost of cleaning up these sites. An increased New Jersey tax will place the industries at a disadvantage vis-a-vis other plants in other states, and coupled with proposed Federal tax increases will place an entire industry in peril due to foreign competition.

Perhaps this is a good time to mention these new Federal taxes which will be placed on New Jersey businesses. Ninety percent of the existing U. S. Superfund has been paid for out of tax on industry. Under both proposals for the new expanded U. S. Superfund before the House and Senate, industry would pay for the entire program. A conservative estimate of the Federal share of Superfund sites next five years is \$750 million. This figure is based on a 7.5 billion U. S. Superfund program, with New Jersey getting a modest 10%. Over 66% of the cleanup costs of these sites will be directly borne by New Jersey industry through payment into a national Superfund tax. Responsible parties will pay for an additional 20% of the cleanup costs.

The Department's own studies have shown that a waste end tax will, at best, only partially work. It won't generate the revenue that is projected and it discourages safe handling practices. The New Jersey Hazardous Waste Disposal Siting Commission is trying to site new hazardous waste disposal

facilities in the State. It doesn't make sense to negatively impact an existing operational facility, such as the massive liquid hazardous waste treatment facility at DuPont Chambers Works. We believe that a waste end tax should be dropped from the package.

Senator Lesniak has recommended that the cost of cleanup could be passed on to the business community by raising the business corporation tax. We believe that this approach has several very negative consequences. It sends out the wrong message on several levels, whether intentionally or unintentionally, making statements such as, "make the polluters pay," then increasing the general business tax points a figure of blame at the entire New Jersey business community for something that has not been collectively responsible. Other allusions to a 50/50 split in the cost of cleanups is not fair or accurate. It doesn't recognize total business input at the National or State level into the funding equation. Raising the business corporation tax to an all-time high is a simplistic solution reminiscent of the 1970s which saw a series of tax increases of businesses that gave us a 9% corporate tax rate in a series of anti-business and anti-jobs taxes. This view of business as a source of unlimited resources is divorced from reality.

The truth is how well New Jersey business functions is directly related to how well we live. At the end of the '70s we had an opportunity to objectively look at how New Jersey compared with the rest of the country in terms of its economic climate for attracting and maintaining manufacturing jobs. According to the Alexander Grant Company, New Jersey had a business climate score which ranked 47th of the 48 continental states. The Legislature and the Governor saw that the economic health of the State was fragile and dependent upon enlightened governance. In 1981 Governor Kean campaigned on a platform of reducing the business corporation tax by 2%. He has been unable to move forward on that campaign pledge, but in other areas there has been progress. The 1980s has been a time of positive change and cooperation.

This has been a period of bipartisan cooperation and business and labor cooperation. Reforms in worker compensation, unemployment insurance, the net worth tax, and loss carried forward have been instrumental in showing that New Jersey is a State which encourages business development. Our business climate score is now 24th of the 48.

What does this mean to the average citizen? Our unemployment rate is now approximately 4.5%, down from 9% in the early '80s. A good business climate means that New Jersey gets new jobs and retains existing jobs. There has been a shift in public consciousness. It supports a healthy business climate because it means full and productive employment. It knows that oppressive business tax policy drives opportunity out, and also knows that most taxes are shifted to the consumer.

Today we have the luxury of focusing our attention and concern on the remediation of past environmental practices instead of the economy. If we need a tax increase, why not examine a slight increase in the gasoline tax? The price of gasoline has fallen dramatically, perhaps as much as 50 cents on a gallon. I am sure that if the public were given an opportunity they would agree to give as much as two cents on a gallon to assure that the number one public problem was solved. One argument against an increase in the tax is that gasoline prices won't stay this low. This would appear to be an argument for rapid action, not inaction. New Jersey now has the lowest gasoline tax in the region. The other state taxes are as follows: New York State, 11 cents a gallon; New York City, 14 cents a gallon; Connecticut, 15 cents a gallon; Pennsylvania, 12 cents a gallon; and New Jersey, 8 cents a gallon.

The potential exists for moving this tax more in line with the region. We believe that the public would be willing to pay as much as two cents a gallon for constructively dealing with the number one public issue. A two cents a gallon increase would generate \$75 million per year.

Last year when we discussed how to finance hazardous

waste cleanup Senators Dalton and Lesniak sat before the hearing room and confessed they made their estimates based on a crystal ball. Perhaps this is a rhetorical question. But this year have you been supplied with better information? We are not faulting the Department. This is complex process with lots of open-ended variables. But in reality there has been a dearth of hard data from which we can draw conclusions. The numbers presented today are somewhat different from the numbers discussed two weeks ago at DEP. The allocation of projected cost for cleanup is a serious process, that if passed in the form being discussed today will have a negative impact upon New Jersey industry, especially in the parts of the manufacturing sector that have had the weakest rebound.

However the State portion of these cleanups is financed, this exercise which we have gone through should inform us and motivate us to build a better management and information system for the development of State policy, especially where it involves the expenditure of over a billion dollars. New Jersey is one of the first states to embark on this level of design and construction activity, and that means we can anticipate that there will be a natural inclination to over design and over build the initial projects. Given the political and public pressure to move ahead, the New Jersey DEP will be too concerned with doing the projects rather than objectively examining its own procedures, standards, effectiveness, and management control system. It has to design, construct, supervise, finance, operate and inspect these projects. These overlapping and conflicting requirements could facilitate ineffective and inefficient management.

To date it is clear that the decision makers in the administration and the Legislature have been hampered by a lack of information and data that has been used to make informed policy decisions. Unless there is an independent mechanism established and adequately funded, this program is heading for fiscal disaster. We believe that an independent evaluation

mechanism could save as much as 10% of the projected cost of this program. In a \$2 billion program we could realize \$200 million in savings. In addition, effective management of the limited physical resources for the program would allow for a faster total cleanup process.

We recommend spending approximately \$1 million per year on a comprehensive evaluation process which would externalize the analysis of the management and decision making process within the Department of Environmental Protection and provide relevant information to the key decision makers in the administration, the Legislature, and the public. We believe that a comprehensive, independent audit process could be administered by the Office of Legislative Services. The actual research process could be monitored by an evaluation review committee comprised of representatives of the Department, Director of Office of Management and Budget, the State Auditor, the NJ DEP, Chairman of the State Senate Energy and Environmental Committee, Chairman of the Assembly Environmental Quality Committee, and representatives of the academic, business and environmental community. The Committee would review and critique the evaluation process with the Legislative Services Office. The Committee would report annually to the Legislature on the operation and effectiveness of the evaluation process. The Legislative Service Offices would be empowered with the advice of the Committee to contract with independent consultants in science, engineering, management, law, and finance to perform spot, ongoing, and annual audits of the entire process of cleaning up hazardous waste sites in New Jersey. The NJ DEP would be required to provide complete access and cooperation to the Office of Legislative Services and its representatives concerning all aspects of the cleanup process. NJ DEP would be required to extend reasonable and prudent access to all records, testimony, and staff memos concerning the negotiation and settlement process. The Office of Legislative Services would be directed to develop a work program to the annual evaluation, which would include the cost of administering

this program, as well as the cost of consulting services.

If this process were instituted by 1987 both the NJ DEP and the Legislature would have better information about the cleanup process in order to shape funding mechanisms and develop better program management.

In conclusion, we would request that you consider our suggestions and make a careful evaluation of the actual need for any kind of new tax program. Given the Commissioner's statement that there is currently no identified site represents an imminent hazard to the public and because of the unknowns in the tax picture, for the Federal Superfund we would request that you not rush in to put New Jersey tax program into place. Moreover, any urge to raise business taxes should be tempered by the knowledge that higher taxes may blunt the forward momentum of the State's economy and will especially harmful to the many industrial plants whose profitability continues to be marginal. In short, this tax bill could become a plant-closing act of 1986 by accident. Thank you.

SENATOR DALTON: Thank you very much, Mr. Kiel. Questions for Mr. Kiel from members of the Committee? Senator Contillo.

SENATOR CONTILLO: Mr. Kiel, you don't really believe that there's no imminent hazard to all these terrible toxic hazardous waste sites that we have throughout the State?

MR. KIEL: No, the Commissioner has made this statement.

SENATOR CONTILLO: Do you believe -- I mean, is that part of your statement?

MR. KIEL: Yes.

SENATOR CONTILLO: That there's no imminent hazard?

MR. SINCLAIR: We believe what the Commissioner says. I mean, we're relaying to you what the Commissioner has said.

SENATOR DALTON: Where do you believe what the Commissioner says? On that statement or other statements? I mean is that a general statement, Jim, that you believe what the

Commissioner says?

MR. SINCLAIR: I always--

SENATOR GORMLEY: But you still want him out of it.

MR. SINCLAIR: I always believe what the Commissioner says, but he says what--

MR. CONTILLO: When it dovetails with what you say. I mean that's shocking to me.

MR. SINCLAIR: I say that to you, that that is a statement that the Commissioner has made before the Legislature, before the Joint Appropriations Committee or one of the appropriation committees.

MR. CONTILLO: All I'm saying, is that your statement then that you believe the State of New Jersey right now, as we sit here talking, is not in a terrible crisis situation with the hazardous and toxic waste sites we're dealing with.

MR. KIEL: We believe that based upon the DEP studies, again repeating that there is no imminent hazard, we feel that there is time to totally analyze the situation, develop a mechanism and continue to move forward.

SENATOR CONTILLO: I think we've been talking about that for a decade now. Sores have festered. You know, maybe you believe in a stitch in time saves nine. I don't know. We can play with words here.

The other party, I led the litany of that taxes you do not want. You're suggesting that we simply take the dollars from the State appropriations and bond the balance. And possibly pay for it through the gasoline tax.

MR. SINCLAIR: And an increased program -- an approved program of getting responsible parties to pay up front. We believe that if you look at the cash flow equation here that if you could get that money from the so-called responsible parties, if you get that in the beginning we'd have that umpf.

SENATOR CONTILLO: Jim, are you saying let the polluters pay now?

MR. SINCLAIR: Yes, sir. That's please. We're saying

let the polluters pay please.

SENATOR CONTILLO: Okay. I think there will be controversy over that, but I think they have to pay and the State has to also assume that responsibility where that's not happening, and has to happen now and I'm not sure that the money should come out of the general appropriations, or certainly bonding it over the next half a decade or three decades, whatever they decide to do with it.

MR. SINCLAIR: I think, to sum up really what we're saying here is the whole question of who should pay for hazardous waste cleanups is a question that obviously the person that should pay is the person that did it. That's let the polluters pay. And we agree, you know, the Association stands behind that. That's number one.

Number two is who else should pay? Industry should pay and what we're saying is industry is paying a lot of money if you take a look at the Superfund. What's going to go into the National Superfund, this is money that doesn't come from out-of-state. We're not importing this money. This is coming from New Jersey industries into the Superfund whatever scenario you use, and that is the major hunk of what the payment process is. So we have the Superfund, we have the responsible parties, and then we have the other party. And how do we pay for the other party? I think what we've said in the testimony that Jim said is that this is an important public issue. The public thinks it is an important issue. It is possibly -- and I'll speculate -- it's probably more important than 50% that we have in the existing budget. I mean, it's a priority and it should be put in the budget as a priority and if it means that something else has to be taken out, that's a political decision.

SENATOR CONTILLO: Well, that's--

MR. KIEL: On a dollar-by-dollar basis, the industries in New Jersey that contribute into the Federal Superfund, those dollars just roll right back. It's almost an equal balance based on the number of identified sites in New Jersey.

SENATOR CONTILLO: Yes, except that it's my understanding that the dollars we talk about are those dollars we need on top of the Federal dollars -- that the large amount of dollars necessary in this State are on top of the Federal dollars.

MR. KIEL: That's right, but they're dollars--

SENATOR CONTILLO: And there are areas, very important areas where the Superfund doesn't even involve itself.

MR. SINCLAIR: My job, like yours, is to know what is happening in this environmental area. I'm paid to do that by the Business and Industry Association and I'm telling you that based on the information that I have available to me, I couldn't sit up there and make the decision that you're making. The information to make these kind of decisions is just not there in a digestible form at the present time. That's a problem with the information system. That's one of the things why we spent the most time in Jim's testimony is on how do we gather information to make sound decisions?

Mr. Gaston said, "Well, five years from now we'll be able to tell you how much we spent," and then they can tell you how much more there is to spend. It's easy to spend money. I mean, you can spend the money, but how you spend the money is sort of the question that we're arguing here. We think that the system the way it is presently set up is designed to spend money. It's designed to have legal confrontation. It's designed to encourage, you know, give more clout to the attorneys, and maybe you need that. But I think that talking to a number of industries in New Jersey, those businesses that are in business and plan to stay here for a while, they would love to get out from underneath this by contributing to the process of cleaning up. And they would love to contribute at the front end. And if they don't, then maybe we need more legal powers for the ones that don't, but I think that we should give them a window of opportunity here to participate. I think that calls for some sort of creative legislation.

SENATOR CONTILLO: You understand, too, that the drop in the price of gasoline has stimulated many other worthwhile ideas as to how that tax money could be spent. In effect, you're really taking it out of the general appropriation to some degree if you take it out of the gasoline tax.

MR. SINCLAIR: Yes.

SENATOR CONTILLO: And that you're really not dealing with the problem of -- again, if you agreed with the idea of let the polluters pay in one sense--

MR. SINCLAIR: Yes, but bakeries are not polluters and attorneys are not the polluters and travel agents are not the polluters and insurance agents are not the polluters. All these other little businesses are not the polluters. Every business in New Jersey is not a polluter. And you're saying, "Okay, let the polluters pay." We disagree with that. We say, "Yes, let's identify who the polluters are and make them pay, but let's not just--"

SENATOR CONTILLO: But then you also have--

MR. SINCLAIR: Let's just not arbitrarily say let's let, you know, every corporation, you know, and we're talking about little corporations now, you know, lawyers--

SENATOR CONTILLO: You also don't agree with the idea if you identify those agencies that produce hazardous and toxic waste that they, indeed, should pay more either. You object to the hazardous waste end tax. You object to the increase in the Spill Fund. Those don't affect the travel agent. They don't affect the attorneys or the accountants.

MR. SINCLAIR: Well--

SENATOR CONTILLO: So you object, really object to any tax on business to pay for this and you can simply identify either bonding, appropriations from general appropriations, or possibly a gasoline tax which really falls on the consumer.

MR. SINCLAIR: We're saying that business is paying its fair share of the cleanup process right now given the tax structure the way it is and the way it will be at the national

level. That's a statement that we're making.

UNIDENTIFIED SPEAKER FROM AUDIENCE: I would like to make--

SENATOR CONTILLO: We'll have plenty of other opportunities here.

MR. KIEL: I think, as I mentioned in the testimony, we're also dealing with the problem that involved many people, many companies outside of the State of New Jersey. It's just unfortunate historically that New Jersey did have some landfill operations and a lot of states in the immediate area used to put waste in here. Some of these companies are no longer in business, too.

SENATOR DALTON: Mr. Kiel-- Is that all, Senator?

SENATOR CONTILLO: That's enough.

SENATOR DALTON: Okay. New Jersey has raised since 1976 \$370 million for the cleanup of hazardous waste sites in this State. How much has your company put into that \$370 million fund?

MR. SINCLAIR: Senator, are you talking about the Spill Fund? How much have they contributed to the--

SENATOR DALTON: To the Hazardous Discharge Bond Act, 1985 General Fund appropriation and to the Spill Fund up until that point.

MR. KIEL: Approximately \$1.3 million.

SENATOR DALTON: So of the money raised, of the \$370 million raised you put in 1.3 million to the State?

MR. KIEL: That's strictly through the Spill tax.

SENATOR DALTON: Okay. So-- I mean, I don't know, it's 1.3 of 300 million, over \$300 million then, is that correct?

MR. KIEL: That's right.

SENATOR DALTON: Okay.

MR. KIEL: You have to put that in perspective, too. The tax that we pay is based on the raw material that we use vinyl chloride, which is considered a hazardous substance under the definitions of the Spill Control Act, which it falls under

the section 306, I believe, of the Clean Air Act. And this material is converted virtually 100% into a non-hazardous material, polyvinyl chloride plastic. We have designed out the environmental problems. We do not generate a lot of hazardous waste. We're only talking about a few drums of solvent, other cleaning materials, and we feel that we're paying more than our fair share. And also we're a relative--

SENATOR DALTON: You feel that \$1.3 million of over \$370 million that was raised is more than your fair share?

MR. KIEL: Considerably more, yes.

SENATOR DALTON: Considerably more than your fair share. Okay. The whole issue of equity is one that's going to be raised over and over again. Do you feel that in the past the way New Jersey has funded its cleanup program is an equitable situation?

MR. KIEL: Personally, no.

SENATOR DALTON: Okay. Why do you feel it is inequitable?

MR. KIEL: It's an extremely complex issue. Again, where I work in Pedricktown, New Jersey, which is located in Bridgeport Salem, I drive past the Bridgeport Oil Rental facility, which I'm not sure what the number is, but it's up very high on the list. I've been driving past that facility for a number of years, going on about 18 years now. That facility, I question the need for that facility and how that facility was operated. The facility was operated under the proper licensing, I believe, of the DEP, and now that facility is on Superfund list. It looks like it's going to be the most expensive site in the entire nation to clean up, projected now at \$50 million, and they've been doing studies on it and it's questionable when that process will begin.

SENATOR DALTON: My question was, do you think that the way we have financed hazardous waste cleanup as a State has been equitable and you said, "No." I asked you why not?

MR. KIEL: I feel that the financing should be as

broad based as possible. I think the companies that have contributed -- which are causing the problem should be brought forward and required to pay their fair share. And as I pointed out in testimony, in some cases be willing to pay a little bit more. I think we should clean up the problem and get on with it, but the taxing should be as broad based as possible. I think the public would support that.

SENATOR DALTON: Okay. Now, let me ask you this: You are proposing a two cent increase in the gasoline tax?

MR. KIEL: Yes.

SENATOR DALTON: How much of that would business pay -- of the total collected for the year would business pay?

MR. SINCLAIR: I've heard the figures of around 30% of the fuel tax is paid by business but I--

SENATOR DALTON: So it would be--

MR. SINCLAIR: Please don't take that as an accurate thing.

SENATOR DALTON: You're proposing it, Jim. Okay. So roughly it would be, your suggestion would amount to 70% of the tax being footed by the general taxpayer and 30% being footed by business.

MR. SINCLAIR: Of this particular aspect of the cleanup process. What we're talking about is 85% is being paid by business and it's the other 14%-- What percentage of the 14% is going to be paid by the general taxpayer and what by business?

Let me just run-- If you take the Superfund sites, if 66% is coming directly out of taxes, and I think that's what the numbers are up there, under the national, you know, under the Superfund tax, and 20% is coming from responsible parties, that's 66 and 20 is 86. That leaves 14% and of that 14%, 30% is paid for by business. So it leaves about 10% being paid for by the State taxpayers.

SENATOR DALTON: Of the one to two billion dollars that this State needs, okay, to meet its cleanup program, you propose a two cent increase on the gas tax. You indicated that 70% of

that gas tax is paid for by the general taxpayer, 30% by the business, is that correct?

MR. SINCLAIR: Uh-huh.

SENATOR DALTON: Okay. Let me ask you this. You also indicated that the gas tax, okay, you indicated the inequity -- or actually the level of gas tax in Connecticut, Pennsylvania and New York, and you indicated that New Jersey was lower. What is the level of corporate business taxation in those three states?

MR. SINCLAIR: I don't know that. I could find that out.

SENATOR DALTON: Would you believe that New Jersey is lower?

MR. SINCLAIR: I would -- that would speak very well for us and probably reflect that fact that we have moved first in the region in terms of the business climate score and that our economy is doing so well vis-a-vis our neighbors.

SENATOR DALTON: Would you believe that if we raised it a half a percent, still we wouldn't be higher than any of the three states that you mentioned?

MR. SINCLAIR: I would believe that, but I would have to take a look at the other taxes that are on business.

SENATOR DALTON: Okay. So what we're doing here is we're saying that the gas tax is a better way to go, and that the -- and it's a better way to go based upon the Federal moneys that are paid out by your organization. By the way, your organization is made up of a number of corporations, right?

MR. SINCLAIR: Right.

SENATOR DALTON: Not only just the chemical industry.

MR. SINCLAIR: We have 11,000 member companies.

SENATOR DALTON: Of those 11,000 how many are members of the petrochemical industry?

MR. SINCLAIR: If I had to make a rough guess I would say 20, 30.

SENATOR DALTON: Twenty to 30 companies?

MR. SINCLAIR: In petroleum and probably in the

chemical industry maybe another 100 or 200.

SENATOR DALTON: Okay. So roughly 130 companies of your 1,100 membership--

MR. SINCLAIR: Eleven thousand.

SENATOR DALTON: Eleven thousand.

MR. SINCLAIR: Yes.

SENATOR DALTON: So of the over 10,000 companies that are not petroleum or chemical companies, how much are they paying for hazardous waste cleanup, either on a Federal or on a State level?

MR. SINCLAIR: I believe in the existing program, in the existing Superfund program, they are not in the existing Superfund program. But in the proposed Superfund program, manufacturers would be.

SENATOR DALTON: Manufacturers of what? Any manufacturer?

MR. SINCLAIR: I believe that it's a fairly broad text that the one tax, the House tax--

MR. KIEL: The House version of the Superfund tax.

MR. SINCLAIR: No, it's the Senate version of the Superfund tax that is the broadest one, which would cover most of our members.

SENATOR DALTON: Okay. Isn't there a limit, a gross receipts limitation on that?

MR. SINCLAIR: Yes.

SENATOR DALTON: How many of your companies would be affected by that, the Senate version?

MR. SINCLAIR: I don't know, but I could run those numbers.

SENATOR DALTON: Okay. Bill?

SENATOR GORMLEY: Let me ask you a question. You've endorsed the gas tax and suppose there's a shortfall in the Transportation Trust Fund for the last year. What mechanism would you use? I'm just-- Just as a hypothetical because know that, let's face it, that looks like that's going to happen and

the gas tax appears to be the logical nexus when a few of us do it. They say in the ads that we voted for this tax and that tax. Now when that shortfall happens, what do you recommend?

MR. SINCLAIR: Isn't there-- I thought, and I'm not an expert on the Transportation Trust Fund, but I thought that part of the Transportation Fund was a dedicated portion of the gas tax.

SENATOR GORMLEY: It is dedicated, but now we have a shortfall from last year from the Federal end. That's the testimony that we've been getting in front of the Committees. I'm just saying, now it's not locked in stone, but if, in fact, there's a shortfall we have to look to a funding mechanism to make up that difference. Where would you look?

MR. SINCLAIR: I don't know, but if you -- if you ask me which is the number one public problem, the polls said clearly the cleanup of the hazardous waste sites--

SENATOR GORMLEY: Oh, and by the--

MR. SINCLAIR: --is the number one issue.

SENATOR GORMLEY: Wait a second now.

MR. SINCLAIR: And therefore if you were going to decide what you want to do, I'd go for the hazardous waste cleanup.

SENATOR GORMLEY: I'm just curious about your priorities. So you would opt for this priority for the gas tax usage over the Transportation Trust?

MR. SINCLAIR: I'm not prepared to make that statement today for the Association.

SENATOR GORMLEY: I just was checking -- I wanted to check your priority list. I'm sorry. Would you prefer, if there has to be movement in the gas tax would you prefer it with the Transportation Trust or would you prefer it with the cleanup program? I'm just-- I want to get your priorities.

MR. KIEL: Based on the number one public concern, we'd have to put this at a higher priority.

SENATOR GORMLEY: Okay. So you would place that ahead

of the Transportation Trust.

MR. SINCLAIR: We're not prepared to make that statement. The Association-- We'd have to discuss that.

SENATOR GORMLEY: Okay. I'd be curious. You can poll the members and see which is their priority.

SENATOR DALTON: Is that it then?

SENATOR GORMLEY: Pardon?

SENATOR DALTON: Any more questions?

SENATOR GORMLEY: That's enough, I think. But having the poll done--

SENATOR CONTILLO: Just go back. I'm not sure. In other words, you do not support the concept then, or do you -- I'm unsure now where we're at -- of appropriating \$90 million out of general appropriations to pay for the concept of the bonding for the cleanup? Is this in addition to the sales tax or in lieu of the tax on gasoline?

MR. SINCLAIR: The tax on gasoline is offered as a vehicle for whatever the numbers that are necessary to make up that portion of it. We said to you, quite honestly, based on sitting down with numbers that we've seen from DEP, we couldn't tell you what it is that they need because it's not hard data. It keeps moving around.

SENATOR CONTILLO: Well, do you support Senator Gormley's proposal for the bonding?

MR. SINCLAIR: We support a broad a public input into this process as possible, and bonding, we would support that, yes.

SENATOR CONTILLO: In addition to the gasoline tax or in lieu of the gas tax?

MR. SINCLAIR: I would say that first and then take a look at the gas tax on what it is we need. Whether we need one cent, which would give us \$37.5 million dollars a year, whether we need two cents, whether we need a penny and a half, whether we have to take a portion of that and allocate it to the Transportation Trust Fund, I don't know. There's room to play

with the gas tax to bring it in line with the region. It seems to be a good opportunity to do it. We're looking for how to fund hazardous waste cleanup, our number one problem. We offered that as a suggestion.

SENATOR CONTILLO: Final question--

MR. SINCLAIR: I would prefer just come right out of the budget. I mean, that would probably be our preference, would be to take the number one problem and put it into the budget and then drop something else out that was not that important.

SENATOR CONTILLO: Final question. You know, I'm somewhat surprised that an organization comprised of businessmen would advocate raising what looks like almost \$2 billion in order to spend \$900 million on a project. In other words, via the vehicle of bonding, as opposed to paying as we go.

SENATOR GORMLEY: I'll start that. We don't want to get into that debate.

MR. SINCLAIR: We think that-- Let me just talk about the need to be flexible in the process. Obviously DEP peaks--

SENATOR CONTILLO: Did he direct you not to answer that question? I'm unsure what just happened.

SENATOR GORMLEY: Your numbers are wrong. I'll answer for them.

MR. SINCLAIR: There should be a way that DEP could come forward and handle a big need for cash when they need it, and that's, maybe, sort of the bottom line. I guess we all agree with that. If the appropriations process was flexible enough to allow them to do that, we'd support that. But you can see from their chart that they have humps of when they need things, and we need to know how to address that.

SENATOR DALTON: Thank you very much.

MR. SINCLAIR: Thank you.

SENATOR DALTON: The next speaker will be Mr. Jim Lanard, of the New Jersey Environmental Lobby.

J A M E S L A N A R D: Thank you. Senator Dalton, members of the Committee, my name is Jim Lanard. I represent the New Jersey

Environmental Lobby, which is a statewide environmental lobbying organization. I think that it is fair to characterize my testimony as being very, very different, significantly different from the testimony that you just heard. I think that with the previous testimony and the Environmental Lobby's testimony you will now have the range of choices which this Committee is going to have to struggle with when it comes up with funding hazardous waste cleanup.

Our position certainly is that the polluter must pay. We believe that the citizens of New Jersey should not be called upon to pay one cent of their additional funds for the damage caused by the pollution related to improper waste disposal. The State's industries and businesses caused the pollution and now it is time for them to pay for the cleanup.

What I would like to present to the Committee is a list of possible funding mechanisms that you can choose from. In that list we'll talk about what we think the potential revenue-raisers are. Obviously you're going to have to decide exactly how much you need to raise each year, but as you do that you'll have an idea of the different choices, and I think, the different amounts of money that can be raised.

Where we do agree with Business and Industry Association is that we think that the polluter should pay and that responsible parties are the first choice for receiving moneys for the cleanup of our hazardous waste sites. The problem is that the Department of Environmental Protection has not been successful when it comes to making the responsible party pay. I didn't quite understand all of the Department's testimony. I did understand that they've received a few million dollars from responsible parties and that they project other savings. I don't see anywhere in their testimony, however, how they're going to staff 296 enforcement cases against the polluters. One of the issues that we would like to see investigated is what funds they've appropriated or budgeted for enforcement staff? How many more lawyers are they going to hire? How many more field

investigators, toxicologists? How many investigators overall are they going to hire to work on these 296 sites? As I understand it their staff capacity is overtaxed currently.

Therefore, we don't place much hope in having responsible parties pay for the cleanup, although we think that that is definitely the way to go.

I think the rest of my testimony really does relate to the issue of equity. I agree with you, Senator Dalton, that this is the issue that your Committee and everybody is going to have to deal with -- how to access equitable distribution of fees and taxes to cleanup New Jersey's hazardous waste.

The first choice that we have after responsible parties is to increase the Spill Fund. Now, the range, obviously, is tremendous, what you could do with the Spill Fund increase. But let me suggest that if you were to take the one cent a barrel tax, and move it to 10 cents a barrel, just straight out 10 cents a barrel, which is a ten-fold increase, which is an incredible amount, you would raise an additional \$90 million of taxes. Not suggesting that you do that, but just to get a range, for every penny of tax increase to the Spill Fund each year you raise an additional \$10 million. So that for every penny up it's \$10 million more. Your question is how much more money do you want from the Spill Fund? Do you want 10 million more, do you want 20, do you want no more? That's a question.

But there are other ways to do that that won't impact on the existing taxpayers within the Spill Fund, and I think that's one of the equity questions. So another way to do it is, instead of just raising the tax on the per barrel transfer would be to expand the taxpayer base by expanding the types of chemicals covered, which would raise more money but would not expose industries to too much more tax liability.

Another possibility -- and this has to do directly with equity -- would be to tax the chemicals according to their frequency of occurrence in Superfund and non-Superfund sites. If we're finding that certain chemicals are occurring tremendously

more frequently, these chemicals are causing the most problem. I'm going to hand out to the Committee members a chart that talks about frequency of occurrence and see if we can't work some of these issue through.

SENATOR CONTILLO: I hope you've got a summary of this.

MR. LANARD: I'm going to do three pages, Senator.

SENATOR DALTON: I've already read this at home.

(Laughter)

MR. LANARD: Senator, one day I'll figure out how to get your attention and keep talking about it.

SENATOR DALTON: You have my attention. I give you a lot of attention.

MR. LANARD: Okay. If we turn to page 5-24. It's about in the middle of the book. This book, by the way, is called "The Analysis of New Jersey's Hazardous Discharge Site Cleanup Program" by the New Jersey Hazardous Waste Advisory Council, and it was commissioned by the ICF Incorporated, and a subcontractor, R. F. Westing, Incorporated (phonetic). It's dated December 1985.

EXhibit 5.6, which is on page 5-24, does an analysis of chemicals at New Jersey sites. If you look to the bottom of that page, look at benzene, for instance. It's occurred at 44 sites. The next column asks the question, is this chemical subject to the New Jersey Transfer Tax? And if you look through the next four or so pages you'll see that virtually every chemical that does appear in one of these sites, at a New Jersey site, is covered by the Spill Transfer Tax, except for about 20 or so that recur somewhat infrequently but are not taxed currently. In fact, most of them aren't even taxed by the Superfund law. So when we talk about expanding the types of chemicals that could be taxed, we see at least 20 chemicals that are potential taxable items and we also see that we're not really so inequitable when it comes to taxing the chemicals that end up in Superfund.

Now, we heard testimony a little while ago about a company that pays \$450,000 in taxes into the Superfund but

generates a very minimal amount of hazardous waste. The question is how much of the waste or how much of the chemicals that they generate end up in the waste facilities?

Just to give you a couple percentages here to look at some numbers. According to the ICF report, 71% of regulated wastes in 1981 were generated by the chemical and petroleum industry. Seventy-one percent of regulated waste were generated by the petroleum and chemical industry. However, one percent of those waste generators generated 90% of the regulated waste. One percent of the waste generators generated 90% of the waste generated. The question then becomes should we make this tax much broader when one percent of the population is making 90% of the waste, or should we, in all fairness and equity, keep the tax as narrow as possible. When you look at this, overall, again, 1981 figures, that 71% of the regulated waste comes from chemical and petroleum industries, that of that 71%, 90% of it comes from one percent of the waste generators. I'm perfectly comfortable in suggesting that we keep the tax narrow.

SENATOR CONTILLO: Are you following a text in this book now?

MR. LANARD: That data that I just gave you is summerized from it, and if you like right after I have in my notes what page it occurs on. I might be able to pull it out. It looks like it's around page 5.9.

SENATOR CONTILLO: Okay. I should have asked Senator Gormley, he has it memorized.

SENATOR GORMLEY: Paragraph 3, 5.9, line 4.

MR. LANARD: Senator Gormley, it is line 4, but it's on page 5-10.

SENATOR DALTON: He just wanted to see if you knew it, Jim.

MR. LANARD: Just testing. It's on the top of page 5-10.

Now, another study that we see from the United States Environmental Protection Agency indicates that 41 of the 50 most

frequently identified chemicals at Superfund sites, 41 of the 50 most frequently occurring chemicals at national priority list sites are feed stock chemicals. Now, they didn't get there, necessarily, from the manufacturers of those chemicals, but from the users. The chemicals sort of got passed through and then others disposed of it. But when you try to look at an equitable and fair system in collecting that tax since, of course, the tax we know is going to be passed through on the Superfund issue specifically, we know that it's equitable to keep that tax base small. Forty-one of the 50 chemicals are coming from feed stock chemicals.

The next issue has to do-- So we've given you a range here, from raising the Spill Fund tax from one cent to 10 cents, expanding the types of chemicals that are currently taxed, or expanding the tax on different chemicals that occur most frequently at the sites. All equitable proposals. All would not result in unfair increase to tax liability for Spill Fund taxpayers.

The next issue has to do with increasing the corporate business tax. Senator Gormley, we support your concept of having corporate business taxes pay for the cleanup of hazardous waste in New Jersey. The difference that we have with your concept is rather than take it from existing appropriations we'd like to take it from additional appropriations. Other than that, we're with you and we would love to support an additional tax on the corporate business tax. Which, if we raised it -- and again this is a range -- right now it is a 9%. If we took it to 9.975%, that's just under 10%, but 9.975%, it would raise an additional \$75 million per year according to my figures -- and my data is not real good -- but a range of around 75 million.

If you took my proposal and cut it in half to, say, 9.5%, which I think is closer to what Senator Lesniak's may be, you get around \$37 million dollars or so. So again, you have a range there. Is it equitable for corporate business tax taxpayers to pay for the cleanup of hazardous waste? There's

travel agents, there are law firms, there are bakeries and that. My answer to you is, "Yes." It's not great, it's not a terrific concept, but it's better than having the general taxpayer pay it. Corporations benefit and many more corporations benefit from using chemicals than those paying in the Spill Fund. So the beneficiaries of chemical manufacturing in New Jersey is a set somewhere larger than the Spill Fund companies and smaller than the corporate business tax companies, but certainly as far as users of chemicals are concerned, we should try to limit it to those closest to the waste generation. That's why we would think that the corporate business tax is a logical step so that we don't put all the burden through the Spill Fund.

The next issue, Senator Dalton, we have a minor disagreement with you on, I think, and that has to do with bond moneys for future cleanup expenses. We support the idea of issuing bonds for payment for cleanup, but we would suggest instead of general obligation bonds, that you issue special tax bonds that are refunded and paid back by some type of business tax over the years. And the thing that I find intriguing about special tax bonds with industries, say, that use hazardous chemicals, is that it's a way of looking at the Exxon case, the United States Supreme Court case which slightly revised the New Jersey Spill Fund law, because you wouldn't necessarily have to have a dedication. Or if you did have a dedication in this tax, you could say that quite clearly that this money pays the 10% share which we know that New Jersey is allowed to pay for Spill Fund moneys, or for non-Superfund for the match -- I'm sorry -- the State match. In addition this money could be used for the non-Superfund sites where there is no limitation imposed by the United States Supreme Court.

So we like the idea of special tax bonds as another option. How much could you raise there? As much as the voters would approve. Yours, right now, is for \$200 million. It's not one of our favorites, but with the special tax bond I think we'd be strongly behind that.

The experimental waste end tax, you've heard a lot of testimony about that. They don't work real well in states that have enacted them. I'm interested in a quote that I got from the National Solid Waste Management Association. The National Solid Waste Management Association is also against waste end taxes. They said that, "The Superfund tax that the companies are paying amounts to 1/10 of 1% of the annual revenues of the chemicals companies. That the Superfund tax that raises 87% of the industry money right now costs the companies 1/10 of 1%, the chemical companies, of their revenues."

Now, here I really want to disqualify my comments. I can't remember the source. I read this last night. Apparently under the national tax laws, chemical companies have tremendous depreciation, write-offs and all sorts of other depletion allowances. In the past few years their net corporate tax payments were negative 17%. I don't know exactly what that means. I read it. Sounded like they don't pay very much taxes at all, and I'll be glad to substantiate the document there if that's a question to you.

I don't think we're being inequitable at all when it comes to looking at a small group of taxpayers to pay.

Two others that I'll mention very briefly. One has to do with something that we call a hazardous substance transportation tax. This has not been tried in New Jersey. To my knowledge it hasn't been discussed. If you were to tax every transportation, every movement of hazardous substances at \$10 a movement, every time you have a manifested documentation that this waste moved at \$10 my guess you should be able to raise a substantial amount of money. Now the question here is whether that's equitable? I think that it's still closer to the users of these chemicals. I don't know what it would raise, but the DEP can look at their manifest system and come up with a quick analysis.

There's also something called a waste discharge tax. Every company that's permitted to dump pollution into the

community air or into the community water supplies through NEGRP (phonetic) permits or whatnot, could be taxed on a per time or per permit basis. A waste discharge tax would be another way of tying the cleanup into the polluters.

Now you're going to hear testimony a little bit later that does an analysis that the Spill Fund companies don't end up with the waste themselves as responsible parties. You're going to see an analysis that says that responsible parties are much broader, including Rutgers University and the DEP itself, than just the Spill Fund companies paying into that tax. And therefore, it's not equitable. Taxing the waste end isn't equitable either because waste disposers today are not those directly responsible for waste disposal five and ten years ago when these problems occurred. So when you hear an argument to shift from the front end to the back end, the question is, did either of these directly cause the waste that we're trying to clean up now? The question is probably equally so, but certainly waste end generators are no more responsible for the waste that ended up in the disposal sites 15 and 10 years ago because many of them weren't even in business back then.

We would like to go on record to oppose the gasoline tax. The gasoline tax proposal is something that takes the money directly out of the citizens' hands and pays for cleanup. This money should not be segregated for this purpose. You might as well just have a general appropriation if you're going to go that route.

I think these concepts can be worked out to satisfy the Exxon case, the United States Supreme Court case and I think that you have lots of options so that if you just pick and choose between them you can come up with the moneys that you need without having to go to general revenues, without having to ask the citizens to pay through other types of taxes. So what I'd like to do is give you a summary of these comments and I'll leave those books with you, if I may.

SENATOR DALTON: Thanks, Jim. Questions from the

members? No questions.

SENATOR GORMLEY: Let me ask you a question. Is there any position on a trust concept to be used for bonding?

MR. LANARD: Senator Gormley, I don't understand the trust concept for hazardous waste cleanup. I don't know how it gets refunded and I also don't understand leveraging at all to how that would raise additional moneys.

SENATOR GORMLEY: Okay. Fine.

SENATOR DALTON: Thank you, Jim. I appreciate it.

We'll have, I think, one more piece of testimony before we break for lunch. So why don't we hear from the New Jersey Petroleum Council, and then we will break for lunch. We'll break for between 45 minutes and an hour for lunch after this.

JAMES BENTON: Mr. Chairman, members of the Committee, my name is James E. Benton. I'm the Executive Director of the New Jersey Petroleum Council. We're a trade association representing the major oil companies that are involved in refining, marketing, research, and international trade in the State of New Jersey. We're located immediately across the street at 150 West State Street. Joining me this morning is James. C. Hook, Refinery Manager of Exxon's Bayway Refinery in Linden, New Jersey, and Dale E. Choate, Refinery Manager at Mobil's facility at Paulsboro. As two of the principals involved in the petroleum refining industry here in New Jersey Mr. Hook and Mr. Choate have specific comments on Senate Bill 899 before you today.

Before they deliver this testimony I wish to, however, briefly highlight and summarize the position of the New Jersey Petroleum Council. As you are keenly aware the reauthorization of the Federal Superfund plays a large role in the funding of abandoned hazardous waste sites. This five-year program has yet to be reauthorized by Congress and the member companies of the New Jersey Petroleum Council have worked to support a stable, broad-based funding package that would be included in the Superfund law.

The chart is included in your package there. But I

think it's important to take just a very brief look at the-- Because it helps you put into perspective some of the taxes that you may be considering today.

SENATOR CONTILLO: Is it in the package?

MR. BENTON: Yes, sir. It's right in here. It's the chart. You'll note that there are three versions; the Senate passed version, which was supported by Senators Bradley and Lautenberg, which expands the Superfund revenue raising base, while the House is listed as two versions. One, the package that was released by the House Ways and Means Committee and then the one which ultimately passed the Senate which was amended by Congressman Downey which passed by a narrow margin of 14 votes, which would, as you can see from the chart here, dramatically impact the present feedstock tax which is solely paid by two segments of the manufacturing community, the petroleum and chemical industries. As I said earlier, this is included in your chart, but it gives you a perspective on what the House and Senate conferees are wrestling with and the differences in their plans as they move to reauthorize the present Superfund.

While the petroleum industry continues to support the Senate version of the Superfund, we would encourage this Committee to actively review the funding mechanisms as they would carry a significant revenue implication for the State of New Jersey. I'd be happy to answer questions you might have on the Superfund reauthorization later.

The New Jersey Spill Fund originally enacted under the sponsorship of now Senate President John Russo was to provide money for the perceived threat from oil and gas drilling and exploration off the coast of New Jersey. It was broadened in its application to include hazardous and abandoned discharge site cleanups. During the ten years there have been considerable changes in the petroleum refining industry here in New Jersey since that law was originally passed. Mr. Hook and Mr. Choate are prepared to address that.

At this time I'd like to introduce to you Mr. Jim Hook

of the Exxon Refinery at Bayway, Linden, New Jersey. Jim.

J A M E S H O O K: Thank you, Jim. The last three or four people up here have been all Jims, so we may have to use last names.

Plainly speaking, the proposed legislation that we're talking about today is going to raise the cost of running the refinery in the State of New Jersey, and it's not going to raise the cost of running refineries in other states who are our competition. To understand that, I have to give you brief description of where we refinery managers are today in terms of the business we face.

There's been a lot of changes in our industry in the last six years. Demand for petroleum products have dropped and the effects of conservation continue to see reduced demand today. This decrease in demand has resulted in spare capacity in the U. S. refining industry, and similar demand decreases have created a worldwide surplus of refining capacity. As a result in this country over 100 refineries have shut down since 1981, and there still exists about 20% spare capacity refining in this country. Offshore there's a similar capacity and some oil producing nations are now constructing modern, efficient refineries for refined product import into this already depressed industry.

Now to bring that down to what it means to us in the State of New Jersey you've got to understand the simple fact. The total New Jersey demand for gasoline, heating oil, and other refined products can be supplied by other regions of the United States and by offshore imports. There's no reason from a supply standpoint to have a refinery in the State. The only reason there are some operating refineries in the State of New Jersey is because they can still somewhat economically compete with competitor refineries. As I mentioned, new refineries are coming on stream offshore all the time.

Within the U. S. we of New Jersey are competing with refineries just across the Delaware in Pennsylvania and in the State of Delaware. There's also a very efficient pipeline that

can bring refined products up from Texas and Louisiana to refining centers. In fact, only about a third of the products consumed on the East Coast come from refineries on the East Coast. The rest are delivered by pipeline and tanker from the Gulf Coast and from offshore.

The elements of this economic competition we face are very diverse. We, the refiners within the State, do enjoy a proximity to the ultimate consumer. However, our competition in the Gulf Coast has the advantage of lower energy costs, which are about half the costs of running a refinery, and lower contract and mechanical labor rates. At this time these result in a very delicate economic balance, a balance on which hinges the ultimate of all the refineries within the State of New Jersey.

To summarize then, Dale and I and the other refinery managers in the State of New Jersey are in an economic competition that is too close to call. We already pay more, in our judgment, for environmental cleanup than our competition as a result of the existing feedstock tax in the State. We're urging you not to increase our competitive disadvantage with an additional feedstock tax. More jobs could be lost and supply uncertainties could increase. Dale.

D A L E C H O A T E: Jim has described the intense economic situation that refineries in New Jersey are facing. I would like to address some more specifics about refining close to my heart -- the Mobil Refinery at Paulsboro on the Delaware River across from the Philadelphia Airport.

Originally built in 1916 Paulsboro has proudly served Mobil and New Jersey well over the years. The Paulsboro refinery is very complex, capable of running a gamut of types of oils, and over the years has been capable of running a full slate of consumer products from motor oil and industrial lubricants to super gasoline. But the refinery has aged and many of its vital organs were or are in sad shape. Mobil recognized as long ago as in 1960 that to continue to be a viable operation, Paulsboro had to be modernized. Unfortunately, just as a major modernization

project was started in the early 1970s the Arab oil embargo took place, creating tremendous uncertainties and resulting the Paulsboro modernization project being scrubbed.

As we approached the late 1970s a piecemeal modernization was slated. Mobil upgraded some facilities which have been completed and gone on stream in the past few years. However, even with these facility's improvements, plus a market dedication by our employees to work hard and be more flexible in their work habits, we have only achieved a minimal level of being competitive with the weaker segment of the refining industry.

In fact, in the early 1980s the Paulsboro Refinery was doing so poorly it was one of the least competitive refineries still operating in the United States. Like any other good business person, if Mobil is going to invest in the future of the Paulsboro Refinery and in turn, the future of New Jersey, we must have the right business climate and an attitude of support. A tax such as this, levied on a particularly industry, substantially affects the ability of that industry to compete with out-of-state refiners and raises questions about whether the right business climate exists. Answers to these questions affect not only Mobil and its employees, but also those outside our facility. The bottom line is that legislation such as this affects the future of our Paulsboro Refinery, its employees, and the community surrounding us.

I ask that you legislators fact this into your decisions and provide a reasonable and competitive regulatory environment for us and the other New Jersey refineries. A positive attitude will allow the refining industry in New Jersey to continue to provide good jobs, provide ratables for the communities where we are located, and to help meet the basic energy needs of the New Jersey residents and businesses.

MR. BENTON: In summary, it should be stated that the revenue generated by the Spill Fund tax, which is included in a chart that we presented to the Committee today, continues to be overly dependent on the one cent per barrel paid by the petroleum

industry with little financial contribution from the firms that generate an enormous amount of abandoned waste that threatens New Jersey's environment. In spite of this disproportionate share borne by the petroleum industry the experience generates -- the experience demonstrates that the industry in use of this money for cleanup petroleum discharges has been minimal. A review of the experience of the oil industry with the Department of Treasury and now the Department of Environmental Protection indicated that the overwhelming majority of cleanups that necessitated expenditures from the Spill Fund for sites were involving emissions, discharges or abandoned site cleanups of hazardous substances.

This was evidenced by the fact that twice during the 1980s the escalator tax on the manufacturers of hazardous substances was invoked due to a deficiency primarily caused by abandoned site cleanup of hazardous substances. While the Spill Fund Hazardous Substance Tax was enacted, amending the original act to raise approximately \$7 million from taxpayers, only when the revenue was escalated to .8% of fair market value did that generate an amount of revenue equal to or exceeding the amount originally anticipated under the law.

Further, testimony delivered by the Department of Environmental Protection's Division of Hazardous Waste Management at a previous legislative hearing in Trenton indicated that the petroleum industry clearly understood the liability surrounding discharges and had taken steps appropriate to negate environmental consequences. However, when accidents did occur, cleanups were instituted by that responsible petroleum company to avoid the liability that is present in New Jersey manufacturing.

During the debate on how to finance the extended and expanded State fund, the sponsors of this legislation should recognize that since 1977 the State's abandoned hazardous waste sites have been cleaned up largely by contributions from the petroleum industry. Supplemented by a hazardous substances manufacturers tax, by a feedstock tax, which the petroleum also

pays into, this money has financed 100% of cleanup activity by moneys generated from industry sources. The State's abandoned hazardous waste formula should be broadened to include a broad section of the industrial community. According to EPA data, more than 6000 potentially responsible parties, from virtually every United States manufacturing industry, have disposed of waste in the past at sites that are now abandoned. The petroleum and chemicals companies together only represent 15% of identified parties at the sites.

We've also included in your package a listing of various companies that were present at several New Jersey Superfund sites by industry category. You'll see that in your testimony. For example, we took a site, Renora (phonetic) Incorporated, located in Edison Township, and we categorized the various responsible parties by industry category. We did the same with Dwaine Marine (phonetic) in Perth Amboy. Again, listing them not by company, but by industry category. And finally the third, Sump (phonetic) Oil in Pennsauken Township in Camden County, was listed again, by industry category. We think-- Those were just three quick samples of recognized Superfund sites where responsible parties are present.

SENATOR CONTILLO: Jim, you indicate here that 11% of the money in the Spill Fund was paid for by the petroleum and refining industry according to your pie chart.

MR. BENTON: No, excuse me. That's the waste generated, Senator.

SENATOR CONTILLO: Okay. I guess I'm not reading it right then.

MR. BENTON: Okay. That's generation of manifested waste by industrial group.

SENATOR CONTILLO: Okay.

MR. BENTON: Specifically in light of today's economic climate in the petroleum industry, because of the dramatic fall of oil prices and shrinking revenues, the domestic petroleum industry is going through a stringent retrenchment, nowhere more

prevalent than in the State of New Jersey. As a result of sharply lower oil prices, oil companies nationwide have reduced employment rolls by thousands, cut back exploration and production, shut in and plugged marginal oil wells, canceled contracts with drillers and other support industries, and taken other drastic measures.

It would be contrary to the national interest to force the industry to continue to pay a disproportionate share of even greater abandoned site cleanup costs. The inequity would be even more glaring in light of the fact that the decline in oil prices by reducing manufacturing costs through most sectors of the economy is benefiting enormously the very industries that are currently escaping their fair share of Superfund costs.

We wish to restate the following principles that have remained the constant part of the reform we believe essential to the State's abandoned cleanup funds. Number one, as stated, those broad range of firms that generate and have generated waste must bear proportional responsibility for funding mechanisms with abandoned site cleanup. These companies must share a financial responsibility that equities the abandoned site problems in New Jersey.

Point number two, the State must continue to actively pursue attempts to recover funds from responsible parties. The exceedingly large amount of revenue from the State taxpayers to clean up these abandoned sites must be matched equally by attempts to aggressively recover this money in the form of damages as now mandated under State law. We encourage the formation of a committee to examine the avenues for collecting and putting to use moneys from these responsible parties. We've written the Chairman of the Committee a letter concerning that, and contrasting the EPA record of recovering money from responsible parties to the State. As of yet we have not had a response.

Point number three, a list of taxpayers from the Spill Compensation and Control Fund should be released quarterly. This

would be modeled after the tax reporting mechanisms utilized by the State Motor Fuel Tax, which is published monthly by the Division of Taxation.

Four, this reform should be authorized for a specific period of time. If adopted this legislation could be reviewed when the Federal Superfund is reenacted or extended -- reauthorized in Washington.

Point number five, clearly this significant amount of revenue must be accompanied by a superior fiscal audit reporting system, superior to the one now in place, designed to provide taxpayers and citizens with an opportunity for assessing the effectiveness of abandoned hazardous waste cleanup activities. This has been an element of neglect lacking in the present Spill Fund administration.

The New Jersey Petroleum Council recognizes the proposals before you today to increase the revenue to the State of New Jersey for abandoned site cleanup is very complex. Compounding this difficult problem is the uncertain reauthorization of the Federal Superfund. During a period of nationally weak petroleum demand, significant over refining capacity, depressed refining conditions and growing international competition, the impact that any additional Spill Fund tax places squarely on the New Jersey refiners must be carefully weighed.

We continue to offer our involvement to the New Jersey Legislature in participating in the development of appropriate funding mechanisms. Such formulas should have the benefit of creating policy that would seek to lessen the problems caused by abandoned and toxic waste disposal rather than exacerbating present difficulties that are faced by the New Jersey petroleum manufacturing community.

Thank you very much. On behalf of the three of us, we appreciate your attention. Be glad to answer any questions you might have.

SENATOR DALTON: Senator Gormley, do you have any questions?

SENATOR GORMLEY: No questions.

SENATOR CONTILLO: Just to say that you've raised some legitimate questions in your testimony and I really can't disagree with your final five points. I have a couple of minor questions, though. Did you say, in effect, that the petroleum industry generates 11% of the waste problems and according to your other chart way more than half of the tax that's paid on the Spill Fund?

MR. BENTON: That's correct, Senator.

SENATOR CONTILLO: And what you want to do is get a better balance?

MR. BENTON: That's correct.

SENATOR CONTILLO: That seems like a legitimate request. Okay.

MR. BENTON: You will see that the money -- excuse me -- that was generated in the chart that accompanies the petroleum fund goes back to 1977. I recognize it was hard to read. We've paid over \$53 million. It must also be noted that part of the hazardous substance tax also impacts on petroleum refining here in the State.

SENATOR CONTILLO: You know, and you talked about the offshore competition, but if the Federal tax on import oil is implemented, that should go a long way towards solving some of your problems -- competition from over the water.

MR. HOOK: That is not a tax we support. We think that the free market works better than that. What we're trying to avoid--

SENATOR CONTILLO: You do not support the Federal tax on imported oil?

MR. HOOK: No, sir.

SENATOR CONTILLO: Because Exxon has drilling capacities outside the United States?

MR. HOOK: No, not necessarily. We just feel that trade barriers of any kind really don't help you in the international community. We wouldn't support an oil import tax.

although it might currently be profitable to some people.

I think the real concern, Senator, is that the problem of disproportionate tax burden among the states in this country. When a refinery in one state has to pay a higher portion, if you will, of taxes than his competitor just across the Delaware. That's what really concerns us.

Dale, would you like to answer that?

MR. CHOATE: Just, as far as the import tax, really -- at least the reason that we're against it is that we feel that we don't want to disadvantage U. S. industries. Disadvantaged enough already, and then to have a higher cost for petroleum products, the energy source of most of the industry, and we don't believe is a fair thing for the U. S.-- It's fair, maybe, for people in Texas.

SENATOR CONTILLO: In your testimony you constantly refer to being opposed to this tax. I was unsure which you meant by this tax.

MR. BENTON: In Senate Bill 899 the penny per barrel tax assessment on the oil industries is proposed to be increased to two cents.

SENATOR CONTILLO: Okay.

MR. CHOATE: We're opposed to that increase.

SENATOR CONTILLO: You mean I'm the only one here? I have no further questions. I'm going to adjourn the meeting to eat. We will return in 45 minutes according to the Chairman, Mr. Dalton.

RECESS

AFTER RECESS

SENATOR DALTON: We want to begin the hearing again. We'll now hear from Fred Sacco from the New Jersey Fuel Merchants Association. Fred.

F R E D S A C C O: Yes, sir. Fred Sacco, Fuel Merchants

Association of New Jersey. We have about 430 fuel oil distributors and about 70 of our members are in the gasoline wholesale business. We market nearly 20% of all the gasoline that's sold in New Jersey through about 1200 service stations, most of which are independently operated by small businessmen.

First of all, when I heard the proposal of a two cent gasoline tax this morning by the New Jersey Business and Industry Association I'd like to go on record as an organization opposed to the increase of motor fuels taxes to address this problem. We'd be opposed to that. We're finally getting a break in reduced energy costs and we'd like to hold it for as long as possible.

Looking at the Transportation Trust Fund and its problems, of course, we would reconsider that position and take a different look at it to deal with a different kind of a problem.

We are concerned with that aspect and the aspect of an import fee. You addressed that a little bit this morning, Senator, and I noticed the refinery managers from Exxon and Mobil responded negatively. We would as well. The reason we would is because any imposition of an import fee would impact on this region of the country most dramatically because of our being tied to imported product and imported energy in all aspects. Not only heating oil to some degree, gasoline to a large degree and the petroleum needed for electric generation in this part of the country, a good part of that is distillate fuel oil that comes from foreign sources. So that would impact dramatically on the Northeast, so we're opposed to that.

Getting to your Senate Bill 899, which is the one that I was most interested in responding to. First of all, in opposition to increasing the per gallon, the per barrel tax from one cent to two cent, and I didn't want to echo Jim Benton's group, but we do and we have paid at least our fair share of the Spill Compensation Revenue since '76, '77 period. The reason I say, "we" is because we buy almost all of our product through either the refinery gates or a terminal that is owned by a major

oil company. So in essence they talk about they've paid the tax and we, the fuel oil industry and the gasoline industry, could say, yeah, well, we pay the tax because it gets passed through. Ultimately we all know that it was the consumer that really paid the tax when push comes to shove because we all have our business expenses and we pass it back through. But the penny as it stands, we feel, would be representative of a significant share of income to meet the problem of dealing with hazardous waste, most of it of which is not petroleum.

The other thing that troubles me is -- and I don't know why someone has counseled you, Senator, to move the 400 gallon threshold down to 50,000 gallons to define a major facility. That's on page three of your act. The reason that we have so much trouble with that is if somebody is counseling you that that is an opportunity to increase the revenues under the Spill Fund, they're terribly misleading. Let me try to expand on that. The people who pay the tax on the Spill Compensation Fund are first, transfer, and so if you're buying in large quantities from an outside importer or from an outsider refinery you would be buying -- the smallest buy you would be making would be about a 5000 barrel barge. Now, if you buy a 5000 barrel barge, you're buying 200,000 gallons. So you've got to have a facility that is much larger than any 50,000 gallon or any 100,000 or even a 200,000 gallon facility in order to have someplace to put the product that you're talking about. So the opportunity for you to increase revenue dropping the threshold is almost minimal, if not nonexistent. If you are a 50,000 gallon storage facility you buy all of your product-- By the way, let me just back up very quickly. Seventy percent of all of the members of the Fuel Merchants Association are less than 2 million gallons a year and most of them have no storage at all. They go buy under a rack, we call under a rack, either at a refinery gate or at a terminal. Now, if you have a 50,000 gallon storage facility, and there are some of them around the State, he would fill up his inventory by using 9000 gallon tankers and he would go out with a tank truck

and bring it in, and then that's how he would fill up his storage over time. That tax to the Spill Fund would already be paid by that facility that he purchased his product from, be it a, say, it be Paulsboro gate or Exxon's gate at Linden, or say Apex or somebody like that in one of the terminals up on Doremus Avenue in Newark, being a major facility under already existing legislation -- under the existing definition of 400,000. So I don't see any great opportunity to increase the revenue to the Spill Fund by lowering that threshold, that 400,000 gallons. I don't know why or what the counseling was to arrive at that. We don't think it prudent because all you're going to do is generate a lot of paper in registrations and things like that, but no real source of revenue.

If you're looking at some kind of registration, I suggest to you that they're moving these 9000 gallon rigs around the State and they're already covered by the Hazardous Material Transportation Regulations out of a bill that you enacted about a year and a half ago. It was-- I remember it was Senator Lesniak's bill and it came out of this Committee and then subsequent to that, there have been regulations passed by New Jersey. So we do regulate the transportation of hazardous materials already. We already file for NJ DEPES permits, which are the New Jersey Pollution Discharge Elimination Systems. We already file those documents.

You're going to get us under the underground tank regulations that your bill will provide for in probably six or seven months down the road. So we're kind of at a loss as to why there was a feeling of necessity to reduce the 400,000. All you're doing is bringing a lot of people into this, but I don't see you increasing your revenue at all, sir.

SENATOR CONTILLO: You say it's a duplication here or is it just that we're picking up smaller dealers?

MR. SACCO: Yeah, you're picking up-- You're out a whole lot of small companies under the provisions of the act. I thought it was for the purpose of raising revenues, but they are

not going to be taxpayers because they're buying from a facility that's already paying. They are a second transfer rather than an initial transfer into New Jersey. So that really was the trouble that we had, trying to, when we read the bill-- There was really two things we're concerned about. The increase in the tax we would be opposed to because it is a cost of doing business and why you would go down to such small facilities when they wouldn't be taxpayers anyhow.

But your idea of the bill and continuing the tax, we have difficulty arguing to eliminate the tax because there's a problem that has to be addressed. This has been a vehicle to address the problem.

SENATOR CONTILLO: That discussion is not even open, to eliminate the tax.

MR. SACCO: Well, I've heard some discussion here today about doing some other--

SENATOR CONTILLO: There's no bill before the Committee to do that.

MR. SACCO: There was a lot of discussion this morning about other ideas and I know you're going to take an amalgam of pieces of legislation and redesign something. I'm sure that you're going to do that.

SENATOR CONTILLO: I will take, as you say, into consideration-- I would ask you a question.

MR. SACCO: Surely, Senator.

SENATOR CONTILLO: You made me fully aware of what you don't want. Would you make a suggestion to this Committee as to how you see us solving the problem, how we would raise the money to deal with the problem?

MR. SACCO: Well, we would probably prefer that it came out of the general operating budget of the State. We know that's a difficult problem to address. You're already getting-- I guess you got about, something like \$86 million I think you've gotten out of this since its inception. That's going to provide for you several million dollars a year to keep going.

We just had difficulty with the tax concept and the bonding concept intrigued me but I didn't understand the idea how you can take something and double it, and triple it down the road. It's intriguing. It's exciting. If it's a viable way to go, then we would find that somewhat acceptable.

SENATOR CONTILLO: If it was a viable way to go maybe the Transportation Trust would have worked, too.

MR. SACCO: I'm sorry, Senator, I--

SENATOR CONTILLO: I said, if it was a viable way of going maybe the Transportation Trust would have worked better.

MR. SACCO: I understand that's in trouble and that's why I have reserved judgment on the Motor Fuels Tax to solve a different problem, because I have a feeling that you as the Legislature, are going to come back to try to solve a different problem and we as an industry are going to respond. And the Motor Fuels Tax may be a way to go to solve that problem.

SENATOR CONTILLO: You have no positive suggestion as to how we raise the money?

MR. SACCO: Other than to--

SENATOR CONTILLO: General revenues.

MR. SACCO: Other than spread the wealth.

SENATOR CONTILLO: In lieu of what program? In other words, there's so many dollars there. Which program would you suggest we abolish to generate that 80 or 90 million?

MR. SACCO: I really don't have a solid answer for you, Senator.

SENATOR CONTILLO: Okay.

MR. SACCO: I'm going to go back and rethink it and I will have a letter on your desk with an alternative suggestion.

SENATOR CONTILLO: Okay.

SENATOR DALTON: Thank you, Fred.

SENATOR CONTILLO: Thank you, Senator.

SENATOR DALTON: Is Mr. Philibar (phonetic) here from Rowlands?

T O M B L A N C: I'm going to present his testimony.

SENATOR DALTON: Okay.

MR. BLANC: Thank you very much, Mr. Chairman, for the opportunity to appear here today. I'm standing in for Bill Philibar who is the vice chairman of the Rowlands board. My name is Tom Blanc (phonetic). I'm vice president of external affairs for Rowlands Environmental Services. I'm going to address a rather narrow focus issue, so I should be very brief.

Rowlands operates three of the five major commercial incinerators nationally. In the past years we've incinerated about half the material that has been directed into commercial incineration across the country. For the past 17 years--

SENATOR DALTON: Is that resource recovery or just incineration?

MR. BLANC: That's incineration.

SENATOR DALTON: Pure incineration?

MR. BLANC: Pure incineration. We wait with baited breath when we can do cogeneration in our Logan Township facility. We look at doing it for Atlantic City Electric and with oil prices the way they are that's not an attractive option from a cost-effective point-of-view at this time.

For the past 17 years we've operated the only major commercial incinerator in the northeastern United States in Logan Township, Gloucester County, New Jersey. We believe during that period of time we've provided an important service to the New Jersey industrial base, especially the petrochemical and pharmaceutical industries.

But in more recent years our services have diversified and expanded to include services to government, and industry, specifically in the remediation of problem sites in New Jersey and across the country. In the past 12 months Rowlands has cleaned up more than 450 problem sites nationally. We are currently engaged as the contractor at one of this State's largest remediation projects that's been undertaken to date. That's the cleanup of the Scientific Chemical Processing site or SCP site in Newark. Rowlands is also the contract to the NJDEP

to take hazardous waste for which the State becomes responsible resulting from emergencies and other one-time type containment actions.

We believe that the decisions that the Committee is considering today will impact heavily on our future. We are New Jersey's major hazardous waste disposal company. We serve large companies, the State and the Federal government, and have already begun serving small and medium size generators who for the first time will have their waste regulated come this September. Our personnel have handled over 9000 different kinds of waste streams since we opened 17 years ago.

The point of reciting this, however, is that with all the responsibility that is incumbent on us to operate in a safe fashion, the controversy about commercial hazardous waste operation, the general attention paid to it, and the scrutiny of the commercial waste disposal industry in general, only a very small quantity of the hazardous wastes produced nationally is disposed of commercially. According to the EPA companies like Rowlands dispose of only about 5% of all hazardous wastes that are produced. The balance is disposed of at the site of generation. Therefore, any waste end tax proposal which impacts only the commercial disposal industry will ignore 95% of the hazardous waste that's generated.

We believe, since we're expected to serve large, medium, and small industries, and all levels of government, that any proposal that singles out the commercial industry for special treatment vis-a-vis taxation is inequitable and should be reconsidered by the Committee. Earlier today we heard the DEP make comments as to the waste end tax and to what relationship it would have to the manifest system. That is something that would also be of concern to us. In terms of the double check, in terms of monitoring whether or not the tax is being fairly collected, whether there was avoidance -- that sort of thing -- it would almost be incumbent on the State to rely on the manifest system. In many instances waste is produced on site and disposed of on a

particular generator site isn't manifested. Therefore there's not really a way to get an handle on precisely what quantity of waste that is.

The other thing is whenever the subject of a waste end tax comes up, we review those kinds of proposals with trepidation because it concerns us in general that the marketplace is already doing what this sort of a tax might do. What I mean by that specifically is the biggest competition the commercial waste disposal industry faces right now is the on-site, off-site decision that our customers are going through. Any large company, any large chemical company, any large petroleum company that operates in this State and is a customer of ours is going through the decision making process right now whether he wants to be a customer of ours over the long-term or whether it is in his best financial interest to develop his own on-site disposal capacity. That's without creating some sort of a system of taxation that's going to encourage him to go off in a different direction. It's the number one issue for companies like the one I represent in their businesses right now.

The other thing is that if you look at RCRA, what we've found is that oftentimes government wishes to encourage a certain sort of behavior regarding hazardous waste disposal and hazardous waste management. We think that it probably does a better job oftentimes than it thinks it does. And the example that we cite is in RCRA. RCRA adopted a policy where it wanted to nationally encourage recycling, recovery, and reclamation of hazardous waste. That became policy when the Federal government -- when the Congress passed and the President signed the RCRA reauthorization in 1984. In our business we began to see the effects of that policy beginning to take place. We saw our customers begin to invest in recycling kinds of equipment and technology, to make that kind of capital investment. We saw them recover the BTUs, the energy containing values of their waste streams and go into these reclamation kinds of things. We began to see that because the nature of our business changed. We began

to see more solids and sludges coming into our plant as opposed to liquid hazardous waste. Liquids are the kind of material that are most readily available to this sort of technology. So we began to see industry respond even before it was voted upon and signed positive policy. We are in the position now, of still handling these kinds of materials, although it is more and more difficult for us because we don't have the energy content in these wastes.

So to the extent that the issue of waste end tax is to encourage on-site disposal of hazardous wastes as opposed to transportation and disposal at a commercial facility, you may already be accomplishing that. In fact, that's what I'm presenting to you to consider. If a waste end tax is aimed at achieving that goal, you're already getting there without encouraging it and writing it into the law and writing a set of regulations to go with it.

We are already experienced as a tax collector. Under the Hazardous Waste Facility Siting Act we do collect a gross receipts tax. It amounts to 5% of our gross revenues, which we give to -- the intent is to give it to the local township for the risk that a hazardous waste facility presents. That is an easy tax to administer. And the point I'm trying to make is that if you do consider a waste end tax, give some consideration to the ease of administration. We come down to the end of the year, we conduct an audit, an outsider auditor, as we're required to because we're a publically held corporation, and whatever amounts the 5% is the 5%. A check get written and the check gets transferred. In our own internal administration it's very simple for us to simply show that as a line item on our invoices to our customers, which is, in fact, what we do. Five percent gross receipts tax goes on the bottom line on all the invoices that we send out. We are relieved, thusly, from having to hire extra people and incur extra costs ourselves in the administration and collection of that tax.

In terms of the amount as proposed in 899, that amounts

to a penny a pound. That's a significant price increase, but it's -- we accept that you need to take some action and it's hard to consider a tax rate at less than that. We don't think it would have an overall significant impact on our business, but bear in mind, it would be a pass-through. Many of the gentlemen that you've heard testify here today would be the ones that would wind up having to pay that sort of waste end tax simply as a pass-through, another line item on the invoices that my company would send out.

We fully understand the sensitivity of the in-state versus out-of-state issues. In our case, at least 50% of all the waste that we handle is generated in the State of New Jersey and the balance is from neighboring states, and most assuredly is not from all over the country. Given that in order to see the Spill Fund achieve its objectives companies like Rowlands will be part of the answer to all of that, we urge the Committee not to impose an inequitable version of any waste end tax. As you probably know, in the Federal system they have created or intend to create a treatment option system. They wish to encourage a certain kind of behavior, as I mentioned. Treatment technology, such as incineration, are taxed at a lower rate than are in-the-ground kinds of land disposal options.

Once again, I'd suggest that we began to see that that is not as onerous to the disposer, the generator, as you might suspect for the simple reason that before that goes into place these companies are going to already have made some adjustment. Within the last five years they began to switch more toward incineration to get rid of the liability. Before the Federal government acted, before the EPA acted, landfilling was quickly becoming a thing of the past. We could see that in the demand for our incineration services around the country. And that was for liability reasons. These companies saw the liability that was out there and it wasn't-- You know, we're going to put in a Federal waste end kind of tax a system to encourage certain behavior, but in our mind that's not going to be a cataclysmic

event, because the marketplace is already going to have affected that kind of a behavior.

If, you know, once again, if this waste end kind of a tax is to become part of the solution, we would suggest that it should not reject 95% of its potential taxable base, and that it should be devised in such a way as not to be burdensome to administer. We acknowledge and accept the need to do something and we accept that, along with other New Jersey businesses, Rowlands will be impacted. We, however, want the impact to be an evenhanded one, and given that it likely will be, we're as anxious as many in the DEP and in the Legislature to get on with the job of cleaning up these problem sites around the State. Thank you very much.

SENATOR DALTON: Thank you very much. Senator Contillo, any questions?

SENATOR CONTILLO: How far away do you bring toxic waste in from?

MR. BLANC: Principally New England and other contiguous states to the State of New Jersey. The limiting factor is transportation costs. In other words, we can be competitive with other disposal companies and then it becomes a factor of where is the waste located. If it's in Pittsburgh, Pennsylvania it's a question of is it cheaper to get to Chicago to an incinerator or to a landfill in Ohio or upstate New Jersey or bring it to New Jersey to Rowlands. We are, our service area is strictly limited by how far -- by that transportation cost. We are not rail served in Logan Township, which means that we're totally dependent on truck transportation. That's another limiting factor. If we were railed, our geographic reach, very frankly, would be further than it, in fact, is.

SENATOR CONTILLO: Are you such a rare bird that you would draw a circle 200, 300 mile circle around your plant, say you can draw from that area?

MR. BLANC: It is likely that if you drew that circle you would have some place beyond 75% of the material that

Rowlands handles within that circle.

SENATOR CONTILLO: Okay.

SENATOR DALTON: Okay. Thank you very much.

MR. BLANC: Thank you.

SENATOR DALTON: Jim, are you ready?

MR. MORFORD: Thank you, Mr. Chairman. I'm James C. Morford, vice president, New Jersey State Chamber of Commerce. Thank you for the opportunity to discuss with you today our views with respect to the package of bills being offered to raise funds to finance the cleanup or mitigation of hazardous discharge sites in New Jersey. The goal, Mr. Chairman, is meritorious. Most would agree there needs to be more money spent within our State for hazardous waste cleanup. We would commend the sponsors for their recognition that hazardous waste cleanup is, in fact, a societal problem and that, therefore, at least some portion of the cleanup costs should appropriately be borne by the general public.

Our DEP continues to assert that it has adequate funds through October of 1987. We would therefore respectfully suggest that there really is no need to rush to tax. We do, however, recognize that there must be adequate funding mechanisms put in place for future needs. S-1814 by Senator Contillo would free up money from the 1981 Hazardous Discharge Bond Fund and, which we are pleased to note, is now moving through the Legislature, the Senate at least. It's cleared the Senate and we hope it will pass the Assembly quickly. Your S-2012, Mr. Chairman, would provide \$200 million through a bond issue, and we would support this proposal.

There are questions that arise, however, in our minds with respect to S-899 by Senator Russo. Specifically, before the Spill Fund is expanded and increased the Legislature and the public deserve to have an accounting of who currently pays into the Spill Fund. Perhaps this Committee could compel that information, which has been denied since 1977. You could then determine if this tax is being effectively collected, and if not,

adequate enforcement might produce a substantial need of revenues.

In addition, we would request that an independent audit of the Spill Fund and its expenditures be instituted. We've asked for this for years. A number of organizations have. Not only should this basic business procedure apply to government, but we feel it might produce some enlightenment about how effectively taxpayer dollars are being spent. We feel that such an independent audit might also reveal whether or not excessive tax dollars are going to so-called administrative expenses within DEP.

We would urge that with any new or increased tax, that it not be collected until reasonable programs and timeliness are demonstrated, for the additional revenue to fund the cleanups. If, in fact, we move ahead with some tax program to put it in place so that we know moneys will be there when we need it, when DEP can certify and demonstrate that those funds can effectively be spent on some timeline, that, we think should trigger then the collection of such funds and revenues.

The State Chamber is very much concerned with proposals to increase the corporate business tax and to constitutionally dedicate the income.

New Jersey currently owes at least some substantial portion of its economic good times to the favorable corporate tax position in which we find ourselves with respect to our competing neighbors. An increase in this tax would, in our view, be unwise.

Secondly, we steadfastly oppose the dedication of revenue. Our 1949 Constitution specifically prohibits Legislative dedication for good reason. The management of our State's budget needs must remain flexible to be responsible.

We would suggest that in the event an additional tax is determined to be needed the Legislature consider the advantages of an increase in the gasoline tax that is paid at the pump, again, to be triggered by program and planned need.

in conclusion, we again commend the sponsors for offering a program which recognizes that all citizens must share a portion of the responsibility for hazardous waste cleanup. It's not just the chemical companies, or the petroleum companies, or the other manufacturers. Our hospitals, our institutions of higher education, our municipalities, our State, yes, even our own DEP have been cited as contributors to our problem of abandoned hazardous waste sites. Thank you, Mr. Chairman.

SENATOR DALTON: Thank you. Paul, any questions?
(negative response) Thanks, Jim. Hal?

H A L B O Z A R T H: Thank you, Mr. Chairman.

Mr. Chairman, members of the Committee, since many of the items that I wanted to spend some time on were discussed by other speakers, I'll just touch on them lightly and try to tell you, without reading from a prepared script, that there is a broad perspective to be looked at. I guess if I come out of this hearing with those of you involved in this legislation having learned something about the existing situation, regardless of what the final outcome is on what taxes are proposed and passed. I'll feel much better. I've spent, I guess it's going on six years now, waiting for this issue to become legislative reality. When I first started with the Chemical Industry Council it was at that point going to be the next big battle. A lot of things came between that battle and today.

But foremost in the minds of the 87 member companies which I represent has always been this issue. The reason my group is worried about this issue is very simple. It's because they don't believe that they, and I, have been doing a good enough job in explaining to those policy makers such as yourself what the situation is today and why the steps that you'll take will have an impact. Doing those initiatives, in all good conscience, still there are some economic problems that lie down the road if you're not as educated as I possibly can.

Let me just tell you from my perspective that I'll be talking about equity and I'll be talking about just about every

speaker that's preceded me has talked about, and that is, "Let the polluter pay." I know that there are arguments that go on the other side of what I'm going to say. I think we have a position which is very tenable, and which we can back up with facts. I'd like to give you some of the facts in as clear and concise a way I can without boring you.

You have in front of you a list of companies put together by the Environmental Protection Agency out of Washington of all the companies by name who are identified responsible parties at abandoned hazardous waste sites somewhere in the nation. As you read through that list the first thing you see, or you should see, is that there are chemical companies who are on that list. That's what predicates our position that the chemical industry, which has been by far, as I'll point out, one of the largest taxpayers to this problem, if not the largest, is prepared to endorse a proposal which will put it in a position of paying for its fair share. But if you take a look at those names as you go down the list while I'm listing some facts about New Jersey, and then some New Jersey companies, maybe I can make it clear to you why my Council is so worried about not doing a good enough job educating you.

In New Jersey there are approximately if you take a look at the approximately NPL sites, that the top 20 sites -- and I have a list for you if you wish -- nine of them are sanitary landfills containing a vast majority of municipal waste. Only three sites out of 20 are primarily chemical company sites. One of those three will be paid for as a responsible party cleanup. What that means is that if you have an abandoned site on your property which has been designated as a Superfund site, you and you alone, that company will pay for the cleanup once it's having been identified.

Nationally we know that there are 6000 businesses identified in that list that you've got in front of you, Senator. Thirty-three major industrial manufacturers, including individual, State, Federal government, other agencies have

already been pointed out. Twenty-two percent of those names on that list are chemical companies. If you look at the list of New Jersey sites where there are identified responsible parties, approximately 27% of the names at the New Jersey sites are chemical companies. What that means in the Federal case, and in the State case, is that the remaining percentages of companies which have been found to through improper disposal in the past have not paid, nor will they pay, one penny toward a cleanup problem that the chemical and petroleum companies have been paying for since 1977 in New Jersey and 1980 at the Federal level. If you look at that list of New Jersey sites -- and I won't read all the names of people who are responsible parties responsible for dumping hazardous waste in an abandoned site -- but I'll tick off a couple to show you the flavor from where I come. Ethan Allen Furniture Company, Ford Motor Company, General Electric Company, Holiday Inn, IBM, Monmouth Medical Center, RCA, Polaroid, Seton Hall University, White Rose Tea, American Standard and Burroughs; those people are just some of the responsible parties found in, I believe, it's the Kin-Buc Landfill. If you look at the Lone Pine Landfill in Monmouth County, I believe, these are just some of the companies who have been identified by government agencies as having improperly disposed of waste; Coca-Cola, Johnson and Johnson, Maxwell House, McGraw-Hill, Nestle Company, Revlon, GTE Sylvania. The list goes on and on and on.

The Federal government in its wisdom recognized a couple things, as did the original framers of the Spill Fund. What they recognized was we could find identified parties of these abandoned sites and we could go after those people to pay for the damage that they had inadvertently or advertently caused, but that there is another scope of the problem out there which is called the orphan share -- that share of an abandoned waste site which we can't identify responsible companies for. Waste is there, doesn't have a name on it, there was no manifest 30 years ago when they put it in there so we can't carry it back. It's

just not identifiable. It's orphaned. And Superfund was supposed to be money to pay for that orphaned share. Superfund comes from what we call a front end fair market value tax. It's a tax on chemical companies. 87% of the fund is paid into -- Superfund now -- by chemical companies and it has raised and disbursed in five years, as you know, \$1.6 billion.

Out of that-- If you look at that fund, companies have raw materials, as Jim Kiel from Goodrich pointed out. Depending on the value of that material, they pay a fair market value tax on that. That's applied nationally and everybody who is in the game, except our foreign competitors, pay for that. Spill Fund also recognized the need to take care of abandoned, orphaned shares. And it also took the front end fair market value tax. What it did was it said if you have raw material A and its value is "X" then if the escalator is in you pay a tax of 8/10 of one percent of the fair market value of all the material that you've used. It was originally, frankly, sponsored as a good idea, crude and original though it was, by the group that I represent back in 1978 as probably a fair way to solve this abandoned site problem. It turns out that in the first four years of the tax 67 companies paid money and up to the latest figures that I have, less than 200 companies in New Jersey pay the Spill Fund tax.

So if you look at a situation like B. F. Goodrich, who Jim Kiel so eloquently spoke about, he pays a couple of ways. He pays a Federal Superfund tax. He pays a State Spill Fund tax, and heaven forbid if he's identified as a responsible party at any site in New Jersey, he pays for whatever the Department and the AG's office can get from him. And, as I'll point out later on, they want 100% regardless of the size of his contribution to that site. So there's three times that the 87 member companies that I represent in this State are hit all for the same purpose.

Now, all those companies that I talked about at those two sites, as I said before, not one of those companies -- and the vast majority of those companies in that handout that we gave you have never paid a penny in Superfund; have never paid a penny

in Spill Fund, and have caused a proportionate share in much of the problem we're looking at, than the companies I represent. Don't let me get out of that without saying again that we're willing to pay for our fair share. If they find us and identify us, we pay. We pay Federal Superfund and we pay for the State Spill Fund. Our equity argument is very basic, and I think one which I hope you'll come to see the logic in. It is unfair to double the existing fair market value tax here in New Jersey on the chemical companies. Oil pays a penny a barrel on the other side. Spill Fund is two sides. Both sides raise about \$7 million depending on the year, \$15 million. But what happens to B. F. Goodrich if you double that? It will probably put them greatly at risk if not run them out of the State because their competitors across the Delaware do pay Federal Superfund, but don't have the commensurate state tax. So whatever their tax is in New Jersey, B. F. Goodrich has got to eat that tax.

Now, it makes sense from a simplistic point, and probably why we were originally wrong in proposing it, it simplistically made sense. And that is if you tax the beginning material that ends up in the abandoned waste sites there's a cause and effect relationship. I'm here to tell you that that's not necessarily so. The fellow from Rowlands said that 95% of the waste is treated and taken care of on-site. That's true because the vast majority of the people that I represent have spent millions of dollars in treatment facilities to take care of their own waste so they don't have to go outside the plant gate. Where they have, rightly, wrongly, they've run into problems. They've paid through the nose for that problem. However, we're only talking about a universe of very small numbers of companies. We're talking -- and we don't even know at this point who pays the Spill Fund tax because DEP doesn't know because Treasury won't tell them because nobody has asked Treasury because who knows who pays that tax? All we know is they have this money, regardless of where it comes from.

Funny, quick story, and Senator Dalton will remember

this. First couple years of the Spill Fund tax they got all of 42 people to pay into it, and those 42 who were screaming and yelling, saying, "What about my neighbor down the street? He's got the same thing I've got." Well, Treasury's problem was that they didn't think it was really their job to go out and collect the tax. If people sent it in, it was fine, it was one thing, but they weren't really going to go look for this money. So then we got a letter saying now we're put to 67 and the latest guess 200, but who pays the tax? I don't know. I know the members that I represent who did pay the tax because they tell me, but there are a lot of people out there, I would submit to you, not having any data, that should be paying the tax that are paying the tax, the tax as it is, not what it, in my estimation, it should be.

But back to equity, back to equity for a second. Let's look at one of the worst sites in New Jersey, and I'm trying to draw an inference here. The site is called PJP Landfill. This is one of my favorite stories. Already out of Spill Fund the Department has set aside and is starting to spend in excess of \$20 million to clean it up. Now to me PJP Landfill is probably full of waste from a lot of companies. Not so. It's probably full of unidentifiable waste, an orphan's share. Maybe that's why Spill Fund should be used, or Superfund. Not so. Guess who owns the site? A viable, very wealthy entity owns PJP Landfill. And you know what? They haven't paid the Spill Fund tax ever, they haven't paid the Superfund tax, and they refuse to clean up their own site, and for some reason we can't get them to the table to pay for the site, so those poor chemical companies, "poor," will have to pay. Interested in knowing who owns the site? The Diocese of Newark owns the site. Now you can't tell me that there is a cause and effect relationship between Jim Kiel's B. F. Goodrich tax, which goes into the Spill Fund to pay up PJP Landfill because it was a simplistically good answer.

My examples, and I won't give you any more of those, go on ad infinitum, time after time, site after site. People say,

"Poor municipalities. They owned this landfill and now they can't pay it to clean it up because they don't have any money." The problem, if we looked at it originally and we had foresight like we had hindsight, would be that those towns wouldn't have allowed people, the Ford Motor Companies, the IBMs, the Polaroid Corporation, to dispose of their waste in that site because it was hazardous. It might get in someone's drinking water. But now the towns were pretty negligent in that. They said, "if you want to pay, bring it in. We'll take it." And now we're back to the source of how are we going to clean it up and the answer is Spill Fund. Doesn't everybody pay into Spill Fund? No. It is a fair tax? Certainly not. Is it predicated on some sound rationality and as part of the problem our group originally, I'll say, "No." There's got to be some equity brought into the situation. We're willing to pay a fair share.

You keep asking the question, Senator, you told me what you're against, what are you for? I'm for a broad-based business tax. I'm for a dedication of the existing broad-based business tax, specifically to fund abandoned waste site cleanup. If it needs to be raised, as Jim Lanard points out, maybe that should be looked at. I'm for looking at a gasoline tax. I'm looking for maybe some trust funds generated by maybe payments by a broad group of industry to get it going. I think we have answers. I think we have things to say about how the issue should be debated and who should pay the tax. But my bottom line is that if you continue to tax the chemical companies, and the chemical and the oil companies alone, you run into an equity problem that makes my people very nervous.

And I know there's a question about whether or not oil companies should continue to pay because they're really-- You know, the Spill Fund is for chemical company problems. If you look at those sites that becomes blatantly untrue. If you look at just four of the newspaper headlines that I brought about oil contaminated sites around the State, and I didn't want to bring two piles of these things. They get heavy to carry. It goes on

and on -- leaking underground storage tanks. I don't want to cast dispersions at other industries. We have enough problems, the chemical industry. All I'm saying is that it's time the oil and the chemical companies had someone look at the issue of future taxation from an equity standpoint. We're willing to pay our fair share. We're willing to support something that nobody who spoke before me is willing to support, and that's an increase in the broad based business tax. We'll pay that. It may be that some of my companies will pay more under that tax than they will under the Spill Fund. However, the concept of equity is one that I've been empowered by people to bring to this table today.

We're not asking to get out from under it. We're getting hit three times now. All we're asking is a little equity to be put into the situation so that we can have some feeling that these people that I've listed and that you've looked through for 20 pages of names, the vast majority of which are not chemical companies, are also contributing to solve the problem, frankly, that is a societal problem. I'm not ashamed to say that there should be general revenues in this funding mix. I'm not ashamed to say there should be chemical company money in here. For every argument that says, "But you chemical companies benefited by improper disposal in the past, therefore you and you alone should pay for this," I say, "That for every chemical company that benefited the population as a whole benefited and didn't really pay for the life style to which it should have cost if there was better disposal at the time." That's stretching a little bit, just like saying that B. F. Goodrich in Pedricktown should pay for PJP Landfill in Newark to be cleaned up when there's an indentifiable, responsible party there.

I didn't mention the K Marts, or the Knight Ridder Newspapers, Diamond Crystal Salt, Wilson Sporting Goods, Bausch and Lomb, Sears and Roebuck, the Edison Township Health Department. I didn't mention any of those because to mention all the non-chemical and non-oil companies who have contributed part of this problem would take too much time. And I know you really

are short on time. I appreciate your forbearance, Senator.

Let me just mention a couple of other things that have been passed over quickly. I talked about, in effect, an order to find who the taxpayers are. Somewhere in my fading memory in these days I remember you folks passing legislation which said, in effect, that on a yearly basis the DEP would provide for an audit of Spill Fund expenditures. And again, to my poor recollection, I've yet to see to one of those, and I know Chairman Bennett from your compatriot committee, has yet to see it and has been asking for it.

There is an audit of the Spill Fund. It's done by the Office of Legislative Services. It tells how much money came in, how much was held, and how much was left after you've spent it. It doesn't show the breakdown of the cost. It doesn't show, for instance, how much administrative cost, something that Senator Dalton historically has been interested in. Commissioner Dewling said at a meeting the other day of the Senate Appropriations Committee -- let me make sure that I've got my figures correct -- that out of \$100 million in Spill Fund moneys collected at a certain point DEP spent \$18 million for salaries and expenses. Now, it would seem to me that that would make a heck of a dent in PJP Landfill or Lone Pine or GEMS or Bridgeport Oil Rental or something. I understand they have to have some money to run the program. I understand that they have to have people to go get the Federal dollars. Ironically we got a couple of years ago up to 40% of all the Superfund moneys that companies around the nation paid into came back into New Jersey. And some people would say that's Federal money. That's true, but if you look at it closer all the companies in New Jersey were paying the Superfund money paid for that money. So again, we've got three against--

SENATOR CONTILLO: Is that an accurate figure, 40% of the Spill Fund money came from New Jersey?

MR. BOZARTH: Yes, Superfund money.

SENATOR CONTILLO: Superfund.

MR. BOZARTH: During 1983 40% of all the funds allocated by EPA came into the State of New Jersey for our cleanup. The Department gets some credit for that.

SENATOR CONTILLO: No, payment. The payment was from-- What percentage of the payment came from New Jersey's chemical industry?

MR. BOZARTH: It's very difficult. I'll give you an estimate and tell you up front it's an estimate. Because of the way companies' tax situations are structured they pay sometimes if they've got nine facilities in New Jersey, they may pay out of St. Louis. The closest I can come to an actual percentage figures is the percentage of the industry that we have in the nation. We know we've got about 12 and 1/2% of the chemical industry located nationally here in New Jersey. So if you take that rather gross figure and apply it to amount of moneys coming in from Federal Superfund you're going to be close. And again, I wouldn't want to be held to that, but at least it gives you some parameters within which to work.

So we've gotten up to a certain point more money back in from Federal Superfund than our companies have sent out, which is very, very good. In addition, we've got the Spill Fund, which is also taxing our people, and then there are these supposed increases that are coming down the line.

I'd be glad to answer any questions. I know it's been a long day for you. I think you understand what I'm trying to say from an equity standpoint, and that is we don't want to get out from under a burden which we have contributed to, admittedly, in the past through improper disposal, in some cases very poor judgment. Some cases probably illegality, for which I'm sure each one of the people caught in that case will be paying a large share to get out from under that. However, there's a lot of people out there that contributed a lot to that problem which you're asking just the chemical and oil industry to solve again.

I would ask and through to the mercy of the Committee the situation on equity. Is there a way out of it? Is there

another way to structure it? I've got technical people who would love to talk about ways of lowering the threshold on Spill Fund, instead of 250,000 gallon storage capacity, how about 50,000? Don't tax the waste twice, as Freddie Sacco says. How about more chemicals on the list of substances that are now taxed? How about making sure that there's some way to get all those people whose names I have rubbed through the hazardous waste here today to pay something into the fund?

If it is too difficult, then maybe we ought to look at a broad-based business tax, because I'll tell you what, BIA notwithstanding, although lawyers probably generate very little in the way of hazardous waste, we have yet begun to look at the issue of small quantity generator disposal. And once we begin to look at that we're going to see that the problem is certainly not a medium or a large size company problem. We're talking about the smallest companies, the smallest businesses, whether they're printing companies or whatever they are, who have contributed, in many cases, to a large part of the problem that we have. Neither the State governments nor the Feds have really looked at the small quantity issue, and that's something that we should. But once we see those names start coming forward you're going to see an even wider broad-based nature of this problem. I guess that's what I'm saying; there has to be a way to consider the cause and effect relationship.

We, at one time, Senator, thought it would be a good idea to have a waste end tax because we looked at-- We sent some technical people to look at the manifest system which tracks waste from where it's generated to where it's disposed. The DEP says there are 1500 companies in the State of New Jersey that generate and transport across the roads hazardous waste. We do a better job in this State than any other state in the manifest system. Out of those 1500, at the maximum 200 pay a tax. We thought it was a great idea and we came to the Legislature with Senator Lesniak's help and said let's substitute the inequitable fair market value tax for a waste end tax. It would just be an

even switch. It would have brought in about the same amount of money. There are a lot of questions raised. The Department couldn't support it. There are a lot of other people who thought that systematically and programatically there'd be some problems.

When the ball game changed, when we started talking about these big numbers we had some more technical people at a look at the waste end tax, even though we were the first ones to suggest it as a way of helping to solve the problem. And it seems that there are more negatives to the waste end tax than there are positives. I'm about to the point where I'm about to agree with that, even though we supported it vociferously originally. We don't want to find ourselves as an industry in the same position we did after 1978 when the chemical industry came to the Legislature and at their request said, what's the best way to raise money and the CIC said a front end fair market value tax. We were wrong then. We don't want to be in the same position ten years down the line as we are now with the front end tax, with the waste end tax. So we're saying as a part of the matrix of funding formulas, that's probably one that is going to be -- has been a lot of problems, very difficult, and I don't know whether you're going to get the bang for your buck, to coin a phrase or turn a phrase, that you would want. Again, just from a technical standpoint, although at one time I made, I thought, one of the greatest arguments in the world for substituting one for another, just simplistically on the surface made great sense. I think our knowledge and background has moved away from that, so we're very leery about that. But there are other taxes. Again, our main thrust at that point was make it an equitable tax that you're going to trade for.

Senator Lesniak agreed at one point, as did other people, that there had to be something done with the front end fair market value tax because it was inequitable. It's not right for Jim Kiel's company, even or the chemical company, to pay, because the value of their raw material, almost 5% of the yearly Spill Fund taxes of the State when they generate no hazardous

waste -- little or none -- and they've never been found to be a responsible party in an abandoned waste site in New Jersey. It's not fair. B. F. Goodrich is willing to say, "Look, we're a chemical company. Even though we've not been part of the problem retrospectively, and even though because of our products we won't be a problem prospectively, we're willing to pay something for the overall good and benefit of the State, and that's to clean up these sites. It's the worst thing that's ever happened to the industry that I represent the world has ever seen. We're blamed for all this, and we take the bad rap for all this, and we'd like to see it cleaned up as soon as you all would. We're trying to get out of it.

One of our problems -- and this is a little bit tangential -- is that we have companies on a site, let's say, with 100% waste that they're identified for 20%. They're willing to come forward and pay for their 20%, but because the way the liability section of the Spill Fund is worded the Department says, "I'm not taking your 20% unless you agree to pay 100% of the cleanup, because I've got you under joint, several, and strict." So, in effect, we're slowing down the cleanup process. I understand why they want to have that hammer, but all I'm saying is if you've got companies who are willing to come to the table and pay some money, why not work a mechanism liabilitywise that will allow them to at least get part of the site cleaned up, or at least start the process. It doesn't make any sense to me, but again that's tangential.

SENATOR CONTILLO: That's Senator Dalton's other committee.

MR. BOZARTH: Right. We're hopeful that that gets to the other committee. I know Chairman Bennett is looking at the issue of joint, several and strict liability for generators on the Assembly side. It's a very difficult issue. No one wants to say, "Less liability for polluters."

SENATOR CONTILLO: This Committee did for cleanup.

MR. BOZARTH: Sure, for cleanup contractors.

SENATOR CONTILLO: Okay. We made a first move.

MR. BOZARTH: Sure, and in effect, what's going to happen? The cleanup contractors will be out with little or no liability. The municipalities and their employees, well, you know, they can't pay for any problems so we'll indemnify them against their problems. And all you're left with are the companies that are generators of this waste who have been, in effect, told by the Department, if we find one barrel of your waste at a site with 3000 drums, and none of the rest are identifiable but your one is, we're going to force you to clean up all 3000 plus the contamination, plus operation and maintenance for 20 years. And the Department rails at us because we won't come to the negotiations table. A man would be a fool to come to the table with those kind of cards stacked against him. It just doesn't make any sense.

But anyway-- I digressed, and I apologize, Senator. I know you've heard a lot of this before. I wanted to try to talk about the equity issue because, for us, given the fact that we're probably the only ones in the room willing to pay a new tax, or willing to at least say they'll pay a new tax, at least we would ask that you look at the present situation from an equity standpoint.

SENATOR DALTON: Senator Contillo, any questions?

SENATOR CONTILLO: Well, you know, the first name you threw at us was the Ethan Allen Furniture Company. They weren't dumping woodchips, were they?

MR. BOZARTH: No, they weren't.

SENATOR CONTILLO: They were dumping a chemical product, and each of these companies that was the vast majority which you gave us to read here, are really companies that were using chemical--

MR. BOZARTH: A hazardous substance of some sort.

SENATOR CONTILLO: Yes. So it's really the use of your product that we're talking about.

MR. BOZARTH: That's right. But what it also is,

Senator, it's the improper or illegal disposal of our products. We didn't dispose of it there. Why should we pay for it, is the bottom line.

SENATOR CONTILLO: What you're suggesting, then, is that there be a broader base to those that contribute to the Spill Fund?

MR. BOZARTH: I'm suggesting that as a possible alternative. I'm saying-- We don't know how many are in, but let's say there's 200 just for the sake of argument. I'm saying that's probably not enough under the existing situation.

SENATOR CONTILLO: No, no. As it stands by itself, the Spill Fund today. You're suggesting that there are a number of people who should be included in that to make it fair and equitable.

MR. BOZARTH: I'm suggesting two things. I'm suggesting equity on two different planes. One is an overall plane of how much is an equitable share for the chemical industry which manufactured the product, and then the other is an equity share on what's the best way of putting together a tax payment which will share in that equitable distribution. So I'm saying something a little different than you were saying. I'm saying that if you look at -- if it comes down to point where you have look at the Spill Fund and say, frankly, this is the only vehicle, then there are things that you can do in those small and narrow parameters of expanding the base of taxpayers and getting more substances on, which will bring people in. But what you haven't asked yourself, and what that exercise doesn't do, is address the basic issue of equity. Is it fair?

SENATOR CONTILLO: I don't think that you believe there's enough money that's going to be generated by the Spill Fund to be the only vehicle.

MR. BOZARTH: No, no. I'm sorry. I didn't mean to imply that. I meant--

SENATOR CONTILLO: It will be an element in a plan.

MR. BOZARTH: Right, that's correct.

SENATOR CONTILLO: So it's not about to be exchanged for something else.

MR. BOZARTH: I understand.

SENATOR CONTILLO: The Spill Fund will continue to exist. It seems to me you're suggesting that it seems that there are those who you might consider should be included in it rather than just to two groups that are now paying into it. Provided other--

MR. BOZARTH: From the surface-- Yes. On the surface, yes, but the problem is by expanding the parameters of however you do the Spill Fund tax, do you get those people that are on that list of 6000, who are the ones who have been responsible for the dumping of hazardous and toxic materials into abandoned waste sites? I would submit to you, I doubt it. The short parameters of just the Spill Fund tax--

No matter how you structure Spill Fund you're not going to get Maxwell House--

SENATOR CONTILLO: Well, the waste end tax seems--
Excuse me.

MR. BOZARTH: --you're still not going to get Maxwell House. Now, Maxwell House may have done some major damage to an aquifer. Strictly its own fault, let's just say for a second, hypothetically.

SENATOR CONTILLO: You mean get them in for what they've done in the past? Or prevent them from doing it in the future?

MR. BOZARTH: Well, see, that's the whole question. Who is paying for what and for why? There is no real cause and effect relationship between the existing Spill Fund and the problem.

SENATOR CONTILLO: Well, if you could get your accounting, that you're certainly entitled to, and all of us are, it might make the whole project much easier. Certainly it's a legitimate request. There's no question about that.

MR. BOZARTH: Thank you.

SENATOR CONTILLO: Until you get some of the facts to lay on the table it's going to make it more difficult.

MR. BOZARTH: It is. I can tell you that the companies that I'm aware of that are paying the Spill Fund now are chemical companies, and I would also bet my I guess maybe half a dollar the people that you see on this list, anyway, with the CIC logo are not.

SENATOR CONTILLO: Let me ask you another question. You indicated that imported chemicals are not taxed?

MR. BOZARTH: That's correct. We have a couple of ways of economic disincentive. If B. F. Goodrich has a plant on this side of the Delaware, and its competitor--

SENATOR CONTILLO: When you say imported, I assumed overseas importation.

MR. BOZARTH: I'll get to that, too, same thing. And across the river on the Delaware where B. F. Goodrich is, he's got a PBC manufacturer. Those two guys are in direct competition for the same people as customers. B. F. Goodrich pays 5% of the State's Spill Fund tax, the other guy doesn't pay a thing. He's making money. Who can continue business?

Now, from a national standpoint what we see happening now, with the cheap price of oil and what they call offshore oil.

SENATOR CONTILLO: Let's take one thing at a time. You're talking about interstate commerce first.

MR. BOZARTH: Right.

SENATOR CONTILLO: That was your first comment.

MR. BOZARTH: First. Now I'm talking about international.

SENATOR CONTILLO: I would hope other states are finally going to become enlightened and join the State of New Jersey. You know, as well as I do, that it's going to happen, is happening today little by little. I would say within a short period of time the so-called advantage of being in another state or certainly-- There's no question in my mind that if that state is in close proximity to New Jersey there will be no

advantage in just going across the river. That's going to evaporate. But I'm also concerned that you're talking about imported chemicals seem to be excluded for these taxes.

MR. BOZARTH: Yes. Leaving that argument across the river aside for a second, offshore chemical producers are now making what are called intermediaries. Rather than shipping the basic raw materials into the country and having our people do the intermediary work, what they do is they're setting up their own chemical plants over in Saudi Arabia, wherever, shipping those intermediaries here. And that shipment not only takes away from our customer base, but it also avoids Superfund tax and it certainly avoids State Spill Fund tax.

SENATOR CONTILLO: But it does-- You've made two very strong arguments, it seems to me, for the waste end tax. The one you've just made now and the one as it relates to those companies that we can't quite get at.

MR. BOZARTH: Let me say this to you, sir. I only say this because I've watched this issue for a long time. If you agree that the waste end tax is the way to go what you're saying is really what I'm saying. That is if you're involved in abandoned waste site disposal you ought to help pay to clean it up. That's all I'm saying. I'm just saying that the vehicle of the waste end tax is not necessarily good.

SENATOR CONTILLO: I agree it's the way to go, but what I'm trying to say, each one of these taxes is a separate element in a package.

MR. BOZARTH: I understand.

SENATOR CONTILLO: It's not one as replaced to the other. It's the Spill Fund plus the waste end, plus whatever else it is we have to do to clean up the State.

MR. BOZARTH: I agree. I think equity ought to be applied to all the taxes in the mix. Someone ought to look at it from the sense is this fair, is this right? That's basically all we're saying. Again, from a technical standpoint I'm not sure. The waste end concept is good because then you have a causal

nexus between the problem at the site and who made the site, and who made the problem.

And what you're saying is that you agree with my basic underlying philosophy that the polluter should pay.

SENATOR CONTILLO: I've been educated.

MR. BOZARTH: All I'm saying to you is the existing Spill Fund tax doesn't do that.

SENATOR CONTILLO: We agree with that.

MR. BOZARTH: Thank you.

SENATOR DALTON: Thank you. That concludes the list of people that we had to testify on the issue today. We would be willing to accept written testimony in the next two weeks before we close off the transcripts. Thank you very much.

(HEARING CONCLUDED)

