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PUBLIC HEARING

before

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

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

May 2, 1991
Room 407
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Robert G. Smith, Chairman
Assemblyman Neil M. Cohen, Vice-Chairman
Assemblyman Thomas J. Duch
Assemblyman Arthur R. Albohn
Assemblyman Jack Collins

ALSO PRESENT:

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

* * * * *

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Hearing Unit
State House Annex
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Trenton, New Jersey 08625

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PUBLIC HEARING

before

ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

Assembly Speaker Joseph V. Borasi, Jr.
Environmental Management Accountability Plan

May 2, 1991

Room 201

State House Annex

Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Robert A. DeLoe, Chairman

Assemblyman Neil M. Cohen, Vice-Chairman

Assemblyman Thomas J. Dunn

Assemblyman Alfred A. Rinaldi

Assemblyman Jack Collins

Also Present:

Raymond E. Gannon

Office of Legislative Services

Attn: Assembly Energy and Environment Committee

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

New Jersey State Legislature
ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625-0068
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NOTICE OF A PUBLIC HEARING

The Assembly Energy and Environment Committee will conduct a public hearing on Thursday, May 2, 1991 at 10:00 A.M. in room 418, State House Annex, Trenton, New Jersey.

This hearing is the first of several regarding Speaker Doria's Environmental Management Accountability Plan.

The Committee will receive testimony from representatives of entities regulated by the New Jersey Department of Environmental Protection regarding the review of permit applications and other aspects of the regulatory process.

The Committee will focus on specific procedural and administrative problems experienced in the department's review of permit applications and other approvals. The Committee will also be seeking testimony on the environmental and economic consequences of inefficiencies appearing in the regulatory process.

The public may address comments and questions to Raymond E. Cantor or Spiros J. Caramalis, Aides to the Assembly Energy and Environment Committee. Persons wishing to testify should contact Elva Thomas, committee secretary, at (609) 292-7676.

Issued 4/23/91

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ASSEMBLYMAN ROBERT G. SMITH (Chairman): Would everyone take their seats, please? Okay. This is a little bit like church. Let me ask that we not have people standing when they could be sitting. So, if you'd like to participate or listen to today's hearing, please take a seat. Let's do that. There's no extra charge for seats. (laughter) No collection either.

Let me call to order our first meeting of the Assembly Energy and Environment Committee on the topic of Speaker Doria's Environmental Management Accountability Plan. As all of the parties in the room are aware, as well at future hearings, we are going to review the operation of the Department of Environmental Protection to see if there is a better way to do it; if there is a way in which we can assist the Department in doing its job better and at the same time help our economy to move forward in an expeditious fashion.

I'd like to publicly thank Speaker Doria for putting forth these proposals which are very imaginative and go, I think, a long way toward working toward the solution to the problem. And with that, we have our Speaker, Joe Doria, present. Speaker, take it away.

ASSEMBLY SPEAKER JOSEPH V. DORIA, JR.: Thank you very much, Mr. Chairman. I want to thank Chairman Robert Smith, and the members of the Committee: Assemblyman Cohen, Assemblyman Collins, and Assemblyman Albohn, for giving me the opportunity to be here, and I want to commend the Chairman and the Committee on the fine work that they have been doing, and the effort that they've placed in this very important area of environment and energy.

Obviously, this is a very important issue. Last October, I called for legislative action to restore accountability and rationality to a bureaucracy at the Department of Environmental Protection that over the years has grown increasingly unresponsive and inefficient.

Unfortunately, our efforts to promote economic development and maintain high environmental standards have both been compromised by a philosophy that sometimes -- not always, let me emphasize -- equates bureaucratic procrastination with environmental protection. There are many people in the Department who are conscientious and are doing a great job. There are also, unfortunately, some people who may not have the same goals and the same purposes in mind.

At the time, I said that DEP's administrative problems deserved our full attention as State policymakers, and that many parties were culpable in the more than 20-year development of some of the DEP's problems. The Legislature, the regulated community, the professionals who complete permit applications, Civil Service administrators outside the Department, the senior managers in DEP, all, in their own respective ways, have contributed somewhat to the disarray that characterizes many of the Department's actions.

Today, I am pleased to tell you that all of the parties involved, even those who are reluctant to support the EMAP proposal, are working to find a common solution.

My sense is that many groups, for many different reasons, want DEP to work as well as any environmental agency in the nation so that the citizens of New Jersey can benefit from the workings of an efficient and effective Department.

Here in New Jersey, we have done as much as any other state to ensure that our waters, air, and lands are protected from pollution and environmental harm. We should take pride in recognizing that New Jersey's environmental standards are the toughest in the nation.

We have made major strides in ensuring that polluters are liable and held accountable for damages that they may cause.

We have undertaken the nation's most ambitious hazardous waste site cleanup program.

We have the strictest ocean water quality testing program on the entire East coast.

Our curbside recycling program has been a model not only for the nation, but for foreign countries.

And for all of these things we should commend, obviously, the members of this Committee and the Legislature, past Legislatures, and also the Department of Environmental Protection.

We should all take pride in our environmental accomplishments. But while we, in the Legislature, had the vision to enact aggressive environmental laws, we should recognize that we were shortsighted by not being specific as to how the bureaucracy must carry out these bold initiatives. This has led to many problems.

The first problem involves the DEP bureaucracy and its internal troubles with effectively carrying out new or revised public policy mandates.

Just this week, DEP Commissioner Scott Weiner told the Assembly Appropriations Committee that DEP has become a "confederation of divisions," some of which are too close to the Commissioner, and some of which are too far away.

As a result, divisions don't talk to one another. Permit applicants are given inconsistent instructions. There is no integration of enforcement actions and permit reviews.

Unless we work to fix these problems, bureaucracy will rule our environmental programs.

Bureaucracy's role is to carry out laws and policies with efficiency and accountability. This role must be reemphasized at the DEP.

The second problem I am trying to address is the quiet crisis of environmental litigation. A number of adverse court decisions have rendered many of our environmental standards mute. There has also been a growing trend toward appeals of DEP's enforcement and permit decisions.

Let me just make a few points.

According to the DEP, roughly 790 enforcement and permit cases are pending in the Office of Administrative Law. That is an overwhelming caseload, and it is growing. Obviously a problem for our administrative law offices.

At the same time, the courts have issued opinions that have made it more difficult to ensure a healthy environment for future generations.

In the HUB Recycling Center case, the judiciary blocked DEP's efforts to stop HUB's operations and held that DEP had insufficient authority to order a shutdown. I don't need to remind you -- any of you -- what followed from that decision.

In Last Chance vs. Kean, the court found that DEP had exceeded its statutory authority in regulating developments of less than 24 units in the coastal region.

The court found that the 1973 CAFRA statute and the 1914 Waterfront Development Act, did not authorize the Department to extend its regulatory activity into small upland development.

I submit these examples not to criticize the court or to prod for more legislative remedies, but only to remind us that we in the Legislature must do more to make our bills tighter and clearer with respect to administrative process and judicial interpretation.

We need to make sure that when we pass a piece of legislation the regulations that are then developed to implement that legislation actually reflect the law and as such, are tight enough to withstand any type of challenge.

We must also act to refine the permit system, so that costly and unnecessary litigation can be solved.

The third problem we need to address involves financing.

Over the past decade DEP has become a fee supported agency. The Governor's recommended budget for Fiscal Year 1992, for instance, includes a DEP budget that will be funded primarily by fee and other off-budget revenues. Only 23% of the Department's budget will come from the General Fund, and the bulk of this 23% will go to Parks and Forestry.

I call this a crisis of sorts because of the process that is involved in raising revenues for our environmental programs.

DEP is -- and should continue to be -- an environmental management agency, not an economic development agency.

The Department raises its fees because it believes that funds are needed to enhance or maintain enforcement, inspections, permitting, and compliance review activities.

But DEP is not really equipped to judge whether the State as a whole can afford to pay another \$12 million for water pollution, another \$19 million for solid waste, another \$1 million for recycling, another \$5 million for hazardous waste, all in one year.

The Department is not in a position to fully assess what its fee proposals will cumulatively do to the municipal sector or to the private sector.

Indeed, the Department has not been able to assess or control the financial impact of its fee schedules upon regulated entities that are critical to the success of the State's public policies.

Let me offer an example:

One dairy found that its water pollution control permit fees had increased in a one-year period of time, from \$300,000 to \$1.5 million, even though that dairy was a critical component in the preservation of dairy farms and open space in our State.

EMAP, which is my proposal to address these problems, is defined as the "Environmental Management Accountability Plan." EMAP would require DEP to do several things to make the permit system more accountable and more organized.

The key elements of the plan are:

1) A checklist for permit systems to guide regulators and the regulated community in completing applications.

2) A small permit management staff to keep the Commissioner informed of permit activities in DEP's various divisions; again, a management system to guarantee that we know where the permits are.

3) Technical manuals setting forth clear standards for approval and disapproval of permit applications. It's beyond my comprehension why these manuals don't presently exist.

4) Audits of fee supported programs. We should know what the fees are, how much are being taken in and how they're spent. Are they being spent effectively?

5) Authorization for the Commissioner to use outside consultants in reviewing permit applications.

The use of outside consultants will only take place when there was such pressure on the Department that they could not handle those permits in an expeditious manner. We would have specific requirements for consultants who would be licensed beforehand by the Department to work in this area, and there would be a list to draw upon.

6) Notification to committee chairpersons of pending rule adoptions, so that the Chairman of this Committee -- or other related committees, like the Agricultural Committee -- would have knowledge of rules being made, when they were going to be made, and see that they are related to the legislation.

7) Changes in the way fee revenues are appropriated.

8) Classification of permits to ensure that significant environmental permits are given a commensurate level of attention in the review process.

What we should not have happening is when someone comes in for a clean water permit, or a clean air permit, or someone wants to control the emissions from a smokestack, they should not have to wait two years to protect the environment. They should, rather, have an expedited process which allows them to take care of the problem to improve the environment in an expedited manner. And that, unfortunately, is not taking place.

It is rare when the Legislature focuses its efforts on issues that are essentially administrative in nature, but I believe it is our right and our duty to tackle the administrative and managerial problems of DEP so that laws we craft will be executed efficiently and as we intended.

When all is said and done, we pay the bills. We pass the bills that allow fee increases, and we provide the general appropriations that allow DEP programs to operate.

We are also the first to hear from the public when government agencies are not responsive to members of the public.

Moreover, I am not persuaded by the argument that the chronic problems that have existed in DEP will best be handled by administrative action alone. They cannot be handled only by administrative action. I am not persuaded because the problems of DEP arise from sources that are not totally under the control of the Commissioner or other executive branch officials.

And let me say that past commissioners, including the present Commissioner, Commissioner Weiner, are aware of the problems, are trying to address those problems, and trying to address them effectively. Commissioner Weiner has moved towards a reorganization and has concerns about many of the problems that we are discussing today. I am very confident that he will be able to work with us to deal with these problems. But I also feel that we could help him by providing some of the tools that he would need through legislation to

give him the type of authority necessary to enforce what we feel is necessary at DEP.

The Commissioner has no control over the passage of bills or the laws that lack sufficient regulatory guidance; one of our big problems, not only in the area of environmental legislation, but in all areas. We have allowed those sections that deal with the rule-making authority in the executive branch to be too broad. One of the things that I have now emphasized to the Committee Chairman and to staff, is that we should in all areas begin to demand more specificity in the rule-making authority that is provided in the legislation we pass.

The Commissioner has very little control over Civil Service requirements imposed by the State. He has to deal with a system that he is not directly involved in and that he has no direct control over.

The Legislature has a clear mandate and responsibility to assist in the resolution of the DEP problem, and we should do our best to make a prudent and helpful contribution.

Before closing, I want to emphasize that New Jersey is on the cutting edge nationally in trying to refocus and redefine our system of environmental management.

In Pennsylvania for instance, Governor Casey's administration has a program that gives permit applicants an opportunity to comment on the performance of the environmental staff who conduct the review of permit applications.

Pennsylvania has also established permit coordination positions in its regional offices to ensure that permits are handled efficiently, and to guarantee that enforcement officials and permit officials coordinate their actions -- similar to what we are trying to do here.

For your consideration I have asked the staff to give the Committee a copy of Pennsylvania's user guide for environmental permit applications -- similar to the technical

guide we are talking about. To my knowledge, we have nothing like this in New Jersey at the present time. The staff will be giving Committee members copies of this Pennsylvania document.

In Massachusetts, regulatory agencies are required to act on a permit application within a fixed time period or lose the fee revenue provided. Massachusetts' regulatory agencies also focus their attention on the major resources of pollution, and develop a more appropriate review system for applications involving minor sources.

Our failure to be creative, adaptive, and committed to an improved environmental management process will hurt us now and in the future. Our inability to effectively implement programs will compromise the quality of our environment: And I want to emphasize that. A great deal of the problems that we have will result in the degradation to the environment, and that is very important. It will also put New Jersey in an economically disadvantaged position with other states more organized in environmental management strategies -- and that's very important.

Mr. Chairman and members of the Committee, I want to thank you for the time you have pledged to review this package -- because I consider this to be a very important package -- and for your commitment to addressing the many issues that we have discussed this morning.

Commissioner Weiner needs our support. He is trying to get the job done in the Department, and it is not an easy job. We should do whatever we can to make his job easier, and to work and cooperate with him in this process.

This issue is one that deserves full legislative attention. It touches on human health and safety; it touches upon the livelihoods of the citizens of the State; and it touches upon our precious natural resources and our environment.

I want to thank all of you for your attention and for your concern. I know that you will review this package

carefully. I feel that the Committee process -- as I've always said -- is a process in which we should review and make changes to make legislation better. That's why I know the fine work that this Committee has done in the past, and you will continue to do that. And I'm hopeful that these bills, when they come out, will be the type of legislation that we can all be proud of.

I want to thank all the people present; all the various groups that are going to be here to testify. I want to thank them for their concern -- the individuals who have the concern. I want to thank everybody who I've spoken to and our staff has spoken to. I want to thank our staff, especially. I want to thank two of the staff members who have worked very hard on this: John Spinello, the staff aide to the Committee, and Joe Devaney. I want to thank Adam Kaufman, who's riding herd on it for me in my office.

I want to just say that I think this is an important issue. Important, number one, to the environment, important to economic development, but important to the Legislature -- and the role of the Legislature -- in dealing with the executive branch as it relates to the environment, and as it relates to all legislation. We cannot continue to allow legislation to pass this House that is so broad that in the end, the rules and regulations don't even reflect the major intent of that legislation. That has happened too often in the past, whether it be in the past administration, in this administration, or in administrations going back. The Legislature has to maintain its prerogatives and maintain its authority in developing specifics over bills that are passed that become law.

I want to wish you well in your efforts on this package and thank you for giving me the opportunity to testify. If you have any questions, I'd be happy to respond.

ASSEMBLYMAN SMITH: Mr. Speaker, let me, on behalf of the Committee, thank you for coming in today to give us that

introduction to the bill package. Certainly you've given us much to think about and consider, and I can pledge to you on behalf of the members of the Committee, that we will be spending all of the time that's necessary to review this package to make sure it's had that kind of public consideration input that you want it to have -- and that this Committee wants it to have -- and hopefully, within the next 30 to 45 days we will have a bill package ready for you.

ASSEMBLYMAN DORIA: Thank you very much, Mr. Chairman, and thank you members of the Committee.

ASSEMBLYMAN SMITH: Thank you, Mr. Speaker. Mr. Collins had a question.

ASSEMBLYMAN COLLINS: Not a question, a comment. As we've alluded to already, Mr. Speaker, coming to South Jersey as often as you have, I really like what we're doing for you because your premise here is just so cogent with regard to us, as a Legislature, having to tighten up this legislation and assert -- under your leadership in our House -- exactly what we want done with our pieces of legislation. Your comments have really brightened my day, and I thank you for them.

ASSEMBLYMAN DORIA: Thank you.

ASSEMBLYMAN SMITH: Thank you, Mr. Speaker. Oh, I'm sorry, Mr. Albohn.

ASSEMBLYMAN ALBOHN: Not so much a question for Mr. Doria as a general question to the audience. How many people are here from DEP? (no response)

ASSEMBLYMAN SMITH: All right, let me be helpful. Today's hearing is solely from the regulated community. We will have the DEP and environmental groups at the next hearing which we anticipate--

ASSEMBLYMAN ALBOHN: Well, I'll tell you this. If I were a commissioner, or a vice-commissioner, or even a janitor for DEP, I'd see to it that somebody was here to find out what

was going on. I think the lack of a show of hands is indicative of the problem that we have.

ASSEMBLYMAN SMITH: Well, we are developing a hearing transcript which will be available to them.

ASSEMBLYMAN DORIA: Thank you. Thank you very much.

ASSEMBLYMAN SMITH: Mr. Speaker, thank you for coming by today.

Our next speaker will be Jim Morford, New Jersey SEED.

J A M E S M O R F O R D: Good morning, Mr. Chairman, thank you very much. I'm privileged to follow the distinguished Speaker, because we wish to commend him for bringing this package to the Assembly.

Our business/labor coalition, New Jersey SEED, promotes a balanced, responsible approach to New Jersey's economic and environmental needs. Indeed, I see -- and I think you will hear from -- some other trustees of New Jersey SEED this morning. Pat O'Keefe, New Jersey Builders, is here, as is Jeff Horn from the National Association of Industrial Office Parks, and I see Jim Benton from the Petroleum Council. I thought I might see Pete Smith from the Firefighters Union here. We're very, very much interested in the Speaker's goal, and that of the sponsors of this legislation, to bring about greater efficiency in the operations of this very, very important Department.

A while back I served on the Study Commission on Regulatory Efficiency -- SCORE -- and the Commission, Mr. Chairman, had to resist the momentum to bash DEP. So many who testified before that Commission on problems with regulatory agencies in the State, chose to focus on the problems within the Department of Environmental Protection. So, should there be any doubt in anyone's mind -- and I'm sure there isn't -- these issues certainly long predate the current occupant of the Commissioner's chair.

The outline of this proposed reform was originally set forth by Speaker Doria during his address to the annual New Jersey SEED Governmental Affairs Seminar in Atlantic City, last October. Much of the focus of the proposal is on reforming DEP's cumbersome permit review process. When permit applications can languish for months and even years, something has to be done, and this package of bills offers a ray of hope. Too many permit applications -- far too many permit applications -- for example, get returned or rejected for technical reasons. The Speaker's recommendations to require DEP to conduct seminars for the preparation of permits for applicants, and the development of a technical manual to guide in the preparation of permits, would be of welcome assistance.

New Jersey SEED also likes A-4520, to require all new rule proposals to be sent to appropriate legislative committee chairs. Such a procedure would, at least in our view, enable the Legislature to insert into the record a comment on how the rule measures up to legislative intent. We recognize the constitutional and other problems that we've had with the Legislature's role in oversight, but if this one little step could permit even a committee of the Legislature, let alone the Legislature itself, to insert into the record a clarifying statement with respect to the legislative intent, or, to how that rule meets the legislative intent, we think that that could prove very helpful in what might be a subsequent litigation, surrounding a rule once it has been adopted.

The Speaker referred to the weight of the bureaucracy. I think it was Czar Nicholas who said, "I do not rule Russia. Ten thousand clerks rule Russia." And, we have more than 10,000 clerks ruling New Jersey.

The DEP is not expected by SEED or by the State Chamber -- my other more familiar hat -- to be an economic development advocate in our State, but it must assume greater responsibility for the impact its narrow perspective has on the

total picture of our State's economy. It must recognize, as a Department, that it is a player in a total scenario, not just one very narrow and limited area.

Accordingly, accountability through an annual public audit of the collection and spending of fees, as addressed by A-4523, is a most important part of this package. And, indeed, A-4522's inclusion in the DEP budget review anticipated fee revenue and related data -- this to become a part of the budget review process -- we think is long overdue.

Commissioner Weiner has demonstrated a will to address desperately needed reorganization and reforms within DEP, and he is to be commended for that.

The bills in this package, we think, are a step in the right direction to give him some of the tools that can help further that worthy goal, and we urge their enactment.

I know you have many speakers to hear from this morning, Mr. Chairman. We just wanted to lend our support to the efforts of the Speaker. Thank you.

ASSEMBLYMAN SMITH: Thank you, Mr. Morford.

From the Chemical Industry Council we have Hal Bozarth. We have Rick Tabakin from American Cyanamid and Jack-- Is it Kace? (affirmative response) If all three would come forward-- Just grab another chair there, Hal. Welcome, gentlemen.

H A L B O Z A R T H: Thank you, Mr. Chairman. We also appreciate the opportunity to be with you here today. For the record, my name is Hal Bozarth. I'm the Executive Director of the New Jersey Chemical Industry Council.

In a second I'll introduce, through brief bios, the two experts I've brought with me today to talk to you about the issue. I just wanted to preface our remarks with a little bit of my philosophy and their philosophy, at this point.

I want to say some positive things, because I know as the Committee goes on there will be many who will cast stones

at the DEP -- in some cases, deservedly so. But I think that the record should bear out the fact that there are many committed and dedicated people within the Department, who are really not part of the problems that we'll talk about today, but who are trying to do the best job possible. And I think you'll see from our testimony that many of those good, hard, dedicated workers are, in effect, stymied by the same problems that we're stymied by. So we want to say at the outset, at least from our viewpoint, this not an opportunity to come in and rant and rave. We're looking at this from a very practical point of view. We have tremendous problems that exist. We would like, in a good-faith effort, to work with the Committee and the Speaker, and all parties involved, to solve some of those problems.

You hear me all the time in front of this Committee advocating points of view in a confrontational atmosphere. Today, we don't want to do that. We'd like to try, as I said, in a good-faith manner, to solve the problems that exist without pointing blame. There's more than enough blame to go around. The Speaker pointed out that it's shared by a multiplicity of groups. We want to move beyond that and explain to you all why the problems that exist in the regulatory framework impact, in a negative way, our ability to do business.

As most of you know, our organization represents about 105 member companies throughout the State in the chemical and allied products industry. We represent about 119,000 jobs and \$31 billion a year in sales. Those numbers are extraordinarily large, and I want to impress upon you from our viewpoint the need for us to keep as many of those dollars and jobs here as we can. I think that with a package like this, and the kind of attention that you all -- by looking at the package -- will focus on the issue, will go a long way to keeping those here.

Let me introduce the two gentlemen who will talk to you today. First, to my far right is Dr. Jack Kace. He's an Assistant Vice President and Director of Environmental Affairs at Hoffmann-La Roche. He joined Roche in 1979 as a Manager of Environmental Engineering, and is responsible for forming the company's corporate environmental group. Prior to joining Roche, he managed environmental programs at the St. Regis Paper Company and Monsanto Enviro-Chem Systems. Dr. Kace holds a Doctorate of Engineering Science degree in Chemical Environmental Engineering from Columbia University. He is a member of the American Institute of Chemical Engineers, past Chairman of the Pharmaceutical Manufacturers Association's Environment Committee, and he established the New Jersey Health Products Council Environment Committee. And, parenthetically I might note, his company Hoffmann-La Roche, just this past week, won the Governor's Pollution Prevention Award. Dr. Kace has years and amazing in-depth experience within the DEP's process. He's worked hand in glove with them over the years in the areas he'll talk about. I would consider Dr. Kace to be one of the preeminent folks in the industrial community with an understanding of where the problems exist. Dr. Kace, if you would?

J A C K K A C E, Ph.D.: Thank you very much, Hal. Mr. Chairman, members of the Committee, I appreciate the opportunity to speak to you today. I'm not going to address any particular bill in the package of bills, but rather talk about some of the experiences we have had with DEP and some of the areas where we think improvements can be made. Some of these issues are addressed in the legislative package that you have in front of you, and some of them are not.

First, I'd like to address the uncertainty in the permit process because that's really the key to, I would guess, 85% or 90% of our concerns. Not only are we, in the regulated community, uncertain about what the DEP requirements are, but

the DEP permit writers themselves are uncertain as to what is approvable and what's not approvable in a permit application. I can give you a couple of examples of that to help bring this problem more to the table.

A number of years ago, we submitted an air permit application for a small pathological incinerator at our facility in New Jersey. The application went into the normal approval chain: sat on someone's desk for a while, and then was reviewed. It was returned to us and refused. We were told that it did not meet the requirements for state-of-the-art pathological incinerators. Now, there was a regulation in the Administrative Code which specified what kind of pollution limitations applied to incinerators, and we made sure that that application indicated that our unit would exceed those regulated levels. Nevertheless, it was turned down. We had a subsequent meeting with DEP and determined that they had used a different criteria to judge the permit. We had further discussions on it, and it was determined that the internal agency guidelines that DEP had used to reject this permit application was not appropriately applied. It applied to certain incinerators, but not to batch pathological units. So eventually the permit was approved as originally submitted, but we had a delay of about six months' time while this occurred.

There are issues where changes are made to these internal agency guidelines without the opportunity for public comment and public input. The air group has been regulating methylene chloride emissions as if it were listed as a toxic volatile organic substance under subchapter 17 of the "Air Pollution Guidelines." However, methylene chloride is not a listed substance under that section. It is currently regulated, or should be regulated, as a volatile organic substance under subchapter 16. But the agency has developed an internal agency guideline which states methylene chloride

emissions will be treated as if it were toxic, and is reviewing all permit applications in that manner.

We were fortunate enough in our company to find out about this change through the grapevine. That's a hell of a way to have to do it. Many other companies were not so lucky. They submitted permit applications and they languished within DEP and then were rejected because they didn't meet the board's stringent requirements for a toxic volatile organic substance.

I'm not really here to debate whether methylene chloride should be a volatile organic substance or a toxic volatile organic substance. That's really irrelevant. The issue is, when a change is going to be made within the agency, the public should be afforded the opportunity to comment on that change, and then the change should be implemented in regulations. Now, when I read the Administrative Procedures Act, it seems pretty crystal clear to me that that was the intent of the Legislature when that Act was passed, but it's certainly not the way things were run within the agency.

A simple solution to this problem is to essentially just do away with these internal agency guidelines and issue regulations under the Administrative Procedures Act which will allow for public comment and public input before they're finalized. Then we, in the regulated community, will know clearly what is approvable when we submit a permit application to DEP, and the permit writers, when they are reviewing it, will know what's approvable, and they will be able to act more quickly on reviewing permit applications.

One other issue that keeps cropping up with regard to air permits is a phrase in the original legislation which talks about the requirement of the agency to incorporate advances in the state-of-the-art technology as they are developed. We think that concept is a fine one. However, I think the way that that concept is being implemented within the agency can certainly be improved.

Right now, every permit application that is submitted to the air group has the potential of being reviewed for determination of whether it meets the state of the art. So when a permit writer gets through reviewing a permit application, he often has to kick it upstairs to see whether its state-of-the-art review is necessary. Now, I don't believe that that was the original intent in the legislation, and I would offer a solution that I think is a very reasonable one.

When advances are made in state-of-the-art pollution control technology, the DEP should issue a proposed revision to the regulations, allow for public comments and public input, and then promulgate a regulation. Once the final regulation is in effect, all applications submitted after that point in time should be required to meet that requirement. Again, it will be an issue where it is clear to the regulated community what is expected of us, and it will also be clear to the permit writers as to what is approvable when they approve permits.

We are experiencing undue delays in permit approval, and I'd like to address that issue with you because I think there are some improvements that could be made there. The most significant delays we're experiencing right now are in wastewater permits where the approval time is normally more than a year, and in a type of air permit called a batch air permit, where the approval time is exceeding eight months.

A batch air permit-- I think I should describe that for you a little so you'll have a better feel for it. That's a permit where you use a certain set of equipment to manufacture a number of different products. You may manufacture one product for two weeks, and reconfigure the equipment and manufacture another product for two months, and then reconfigure it again. The batch permit allows you the flexibility to do that, and switch between products. The problem that happens when you need to make a major change to that and make a new product, for example, with that equipment,

is, you then have to modify your batch permit. To modify your batch permit sometimes takes between eight months and a-year-and-a-half.

We had a recent situation occur where we wanted to make a modification to our batch permit. We were told we can't manufacture that product for that amount of time -- eight months to a-year-and-a-half. We said we can't live with that. What are the alternatives? The only alternative available to us was to cancel our batch permit, apply for individual vent permits for that equipment, then reapply for a batch permit once the whole thing was done. That would have doubled our work in terms of preparing permit applications. It would double the permit fee, and then it would double the review time on DEP's part. The only reason we would have had to do that is because of the delay in approval of batch air permits.

Let me talk about delays and how we, in industry, handle delays when we come up with them. We know there are problems with turnover in the DEP staff. We know that there are because we have those same problems in our industry. But what we do is to find other people to fill in, and we find other ways to get the work done.

In the air permit group, for a period of time over the last couple of years, they have employed outside engineers on a temporary basis to review air permit applications and reduce the backlog. When they've done this, it has worked very well, and the backlog has been reduced. They've been able to get in experienced process engineers who know what they're doing and can review these applications quickly, and this has worked very effectively. We think this same technique should be used throughout DEP and it should be used on a regular basis within the air group. It's very easy to set a target when your permit backlog exceeds two months, or one month, or whatever criteria you want to use. You then seek additional outside help to come in and do the work. We, in industry, end up paying for this

anyway, through the permit fees and we, in industry, have no objections to paying reasonable permit fees to have those permits approved in a timely fashion. We would encourage the agency to do this.

Another problem that I'd like to talk about that results in undue delays is the nature of the DEP permit forms, and this pretty much cuts across-the-board, whether it's an air permit, a water permit, or a hazardous waste permit. Let me give you the air permits as an example: You use the same permit application in this State for a source that emits one pound a year as you do for a source that emits a million pounds a year. Now, it's obvious to me that for the one pound a year situation, we're asking a little bit too much information on those forms, and DEP is spending a little bit too much time reviewing them. You know, the easiest analogy I can draw is to IRS forms. The full 1040 is required when someone's income is significant, the deductions are significant, and it deserves a detailed review by IRS. I think that holds for large emission sources. The DEP has to go the whole nine yards; ask all the questions and get all the answers and do all the reviews.

I think when the emissions are smaller, that a simplified permit form can be developed, much like the 1040A or 1040EZ, so that we in the regulated community don't need to spend so much time putting the permit application together, and the DEP, on their side, does not have to spend so much time in reviewing the permit applications.

On top of this, the DEP seems to be looking for a lot of additional minor sources to regulate. Right now they're initiating a major new permitting effort for laboratory hoods. Now, I don't have to tell you gentlemen how many people in this State are involved in research and development, and the number of laboratory hoods that we have in the State is astronomical. If the DEP is seriously considering a requirement that laboratory hoods be registered, from my perspective, the amount

of paperwork this is going to generate is phenomenal, and the amount of environmental improvement that could possibly result from this has got to be minimal. I think this program has to be reexamined. DEP should take a hard look at getting involved in any new massive permit programs like this until they get the permit programs they have already under their grasp under better control.

I suspect today you're going to hear an awful lot about permit fees. Assemblyman Doria has already touched on the subject and talked about large fee increases. We've seen two things happen on permit fees this year: One is that a lot of DEP employees who were formally not in permit fee-funded programs are now being shifted into permit fee programs so that they're not subject to manpower cuts under budget restraints that the agency has. A lot of other speakers will talk to you about whether that's fair or not, but I'm going to address a slightly different issue.

The Legislature has told the DEP to establish permit fees that are reasonable to cover the administrative costs of running the program. And to me that's rather clear. You and I understand what those words mean, and I interpret them one way. But part of the DEP is interpreting in one way, and part of DEP is interpreting another way. You look at their permit fee programs. Every program except the water program is doing that -- the hazardous waste program, the air emission program, the TCPA program. All these other programs charge permit fees that are based on a calculation of the amount of time expended by the permit writer in reviewing it, by the inspector in inspecting the facility, and distributing the overhead costs appropriately.

The water permits are based on a formula that is supposed to be a negative incentive to pollute. Now, the concept is definitely not authorized by the legislation, and my problem with it is that in practice it doesn't work fairly. We

have a site in New Jersey that last year paid \$27,000 for their annual NJPDES fee. That's a discharge fee for discharging to surface water. This year the same permit fee is \$211,000. Now, this is especially frustrating to us in that there has been absolutely no change in that manufacturing operation and no change in the discharge of wastewater from that manufacturing operation. The only change has been to the fee formula that the DEP is using.

Let me suggest a solution to this: This is one that we've suggested to the agency because it's one that we use in industry. It's one that law firms use, consulting firms, and a lot of other people. It's a simple time card system, where a person working on a permit tracks the permit number of the permit he's working on. At the end of the year, you figure out how much time was charged to a particular permit, you add on the appropriate overheads, and you issue a bill. We have no problem in paying our fair share. We want permits issued in an expeditious manner. We understand that we're going to have to pay the costs for doing that, but for some reason the agency keeps telling us that they can't implement a time card system, even though we've been told that they do have a time card system in certain parts of the agency.

Another issue I'd like to discuss is manpower constraints within the agency. There's a large variation in experienced permit writers. Some of them do the job very well; some of them don't do the job very well. Some of them are still learning. The agency has difficulty in hiring new permit writers and they have a lot of open positions that they've been unable to fill. I'd like to urge them again to use outside staff when necessary -- outside engineers, outside scientists -- to act as permit writers, fill in for staff openings when they have them, and get the job done.

One area where this has worked very well, I feel, is in the Toxic Catastrophe Prevention Act staff. They've done

two unique things there: One is that they've gone out and hired experienced people who have been able to step right in and do the job without a lot of extensive training, and this has worked very well. The second thing is that they're using the same staff -- the same staff member -- to do the permitting and to do the inspection. In all of the other permit programs, the permit writer is one individual and the inspector is another individual. So there are at least two people within the agency that have to be familiar with that particular site, and there's a certain duplication of effort that results from that. In the TCPA program having the same individual do the permit and the inspection ensures that you have someone familiar with the site who does the inspection and, quite frankly, they do a better job.

In summation, I'd like to say that the key issue that we feel affects our ability to do business with the DEP is the uncertainty in the permit process, and we would urge you to really emphasize changes that could be made in that area.

On the issue of manpower constraints, we certainly stand willing, as a company, to help out in anyway we can in terms of helping DEP to train their people. About three years ago, through the Health Products Council Environmental Committee, we invited a number of DEP permit writers to our facilities to actually see control devices, see how we had them hooked up. We went over how we did the calculations that we included in our permit application.

So, any way we can be of assistance to the agency, we'll be very willing to do that. Thank you.

ASSEMBLYMAN SMITH: Thank you very much.

MR. BOZARTH: Mr. Chairman, our next speaker is Rick Tabakin with American Cyanamid. He has 20 years of environmental experience. Currently, he is the Manager of Environmental Remediation at American Cyanamid, but just as importantly, and maybe more importantly, the previous six years he spent as a Plant Manager for American Cyanamid at its Linden facility.

He has other environmental background. I'll come back to the plant manager part. He has a B.S. in Chemical Engineering, an M.S. in Environmental Engineering, and an M.B.A. The interesting thing here, between Rick's background and his plant activity as a Plant Manager, is the synergism that he's been able to see with the agency's inability to do certain things and the impact that it has had on his operation -- in somebody's legislative district. Rick?

R I C H A R D B. T A B A K I N: Thank you, Hal. Mr. Chairman and members of the Committee, I'd like to start off by saying that my intent here is to provide constructive criticism. I'm not intending to come here and bash the agency, but rather to try to point to some of the problems that we, as industry, have encountered with the NJDEP.

I also think the point needs to be made that the DEP has a very, very difficult job to do. They have to bring forward the regulations -- enforce the regulations -- that are appropriate to the legislation being passed on the State level, as well as legislation and regulations that are passed down by the EPA for the State to enforce. They've got to balance that, while trying to keep the State industrial community happy and moving, and keep the Environmental Lobbyist Committee and group happy.

The largest problem as I see it -- and I'll use a slightly different term than Jack had used -- is predictability. For industry to survive in this State, we have to have a clear understanding of what's expected of us in a permit application, for that application to be considered complete, both administratively and technically. We have to have a good idea of how that process is going to work in the review and how long that's going to take. Business makes decisions based on those predictions.

If, for example, a new product has to come to the marketplace within a 30-day to 45-day period, I think it's

pretty clear that in most cases, industry would not consider trying to manufacture that product in the State of New Jersey. We don't have the flexibility of getting permits approved in that kind of a time frame. There is no option for that. In fact, you really can't even predict how long it will take for a permit application to be reviewed.

Again, I'm not saying that the review has to be a favorable review, but the agency should be able to come back to you within a very, very discrete, reasonable time frame and tell you, whether your application is complete or whether it is not complete. If it is not complete, what does it need, and what the basis for action will be?

Turnaround times, as Jack has also alluded to-- Again, we in industry are working in a globally competitive atmosphere. For industry to survive, we have to be competitive. To be competitive we have to be able to get out in the marketplace with new products, new process changes, quickly, and that means that we have to have some way of knowing how the process is going to work in terms of permit modifications and what the timing is going to be.

There have been some examples of different branches, within the DEP which, upon their own initiative, have tried to do things in that regard. I'll point to one example in the ECRA program: ECRA, when it first came on board, was a total disaster. Applications went in and they sat. The agency didn't know how to deal with them. They were flooded with them, and there was a huge backlog.

The agency set up a checklist, a two-tier checklist. The first tier was to look and see if the application was administratively complete. That could be done in a fairly reasonable time frame. Did you have all of the information that was required submitted? Did you sign where it's appropriate? Did you submit the check? And they came back to you in fairly short order and told you whether you were

administratively complete or not, with a copy of the checklist, and if you weren't, you knew what you had to do.

The next step was a technical completeness review. That's where someone would start going through the information and make sure that it satisfied the intent of the ECRA regulations and legislation. Again, the intent there was to have a checklist so the permit reviewer knew exactly what he had to look for. It would help and aid him in that process, and also expedite the process, because this could come back to the permit submitter and he could know what he did right, what he did wrong, and what he needed to do to modify the situation.

They also provided for conferences between the permit writer and the person who was trying to seek a permit, so that the two could meet one-on-one and get a better understanding of what the specifics of the site and the specifics of the application were all about, and walk away with a better understanding of each other's needs. That process, unfortunately, has not been carried out in other branches of the DEP.

ASSEMBLYMAN SMITH: You would like to see the ECRA model used in the other divisions?

MR. TABAKIN: I'm just suggesting that checklist type model, as one example, where there is a technical completeness and an administrative completeness review that could be done in short order.

ASSEMBLYMAN SMITH: Okay.

MR. TABAKIN: There's been a lack of consistency and moving targets within some of the branches of the DEP. Jack alluded to one, and I think it is so important that we need to come back to it again; specifically, the air permit program. They do have language that refers to the state-of-the-art review.

The state-of-the-art review is not defined. There is no way that industry, or anybody who is in the regulated

community, could know what state of the art for a given situation is. It changes from day-to-day, week-to-week, reviewer-to-reviewer, and there's no way that we can compete in a business atmosphere without knowing up front what it is that we have to do. As a result, the applications go in, they're turned down on state of the art. You're going to have to wheel and deal with the agency to try to find out what state of the art is, which may be reasonable or may be unreasonable.

I can cite one example where the agency had had a reviewer who read an article in a technical journal that talked about a concept. It was unproved. It was strictly a laboratory experiment to do something that would prove to be higher efficiency in pollution control. But it was not yet commercially available. This reviewer said, "Hey, that's state of the art. That's where things should be." I doubt very much that industry could afford to go out and put a full-scale plant on line, when it has only been a laboratory noncommercialized process.

Technical competence: I think the DEP -- and, again, Jack alluded to the same example I will use -- has recognized that there are several programs that require technically competent staff and they have attempted, in many cases, to try to match specific individuals with given jobs. A very good example of that is TCPA. The agency recognizes the expertise in understanding what a hazard inoperability review is, what an operating instruction is, and what preventive maintenance programs are all about.

That expertise was not within the agency. As a result, they went out and hired people from outside of the agency. I'm not trying to say yes or no to the program, but I think everybody in the regulated community is very, very satisfied with the competency of the people who are coming out and doing the field work. They understand their job. And as a result of that, they are not only doing a good job in terms of

permitting, but they're actually making some good, solid recommendations to make the environment and safety better, because they understand.

That has not happened in a lot of the other groups within DEP. There's been some discussion, in one of the bills mentioned before, about guidance manuals for the regulated community. I'm not knocking that. I think that's a good idea. But I think there also needs to be training in guidance manuals for the permit writers and staff within DEP. Perhaps even taking it a step further, maybe they need to take a qualification test after they've had their training, to ensure that they can do the job that they're being asked to do.

If they don't understand the technical aspects of what they're being asked to do, then they can't make a logical decision. I think that leads to a lot of the delays and a lot of the frustration on the part of industry.

Bureaucracy: The word was mentioned before. I have a slightly different notion here. There's a lack of flexibility within the agency. Very often there are times when industry and the agency come to loggerheads because someone has some little written clause that he feels needs to be followed. In a specific or industrial application, that may not fit. You need some kind of relief or slight modification over that clause, to be able to survive.

The agency, in many cases, is unwilling to sit and meet and try to resolve those issues. In some cases they've tried. Again, pointing to TCPA, the agency met with industry on the TCPA regulations, a lot of really in-depth technical meetings. The result of that was four recommendations that the agency agreed were improvements that would actually make TCPA a better and more effective law. But those have not been implemented. The bureaucracy of getting changes in regulations within the Department just doesn't flow very well.

There are also people in the agency who are imposing technical requirements in permits that don't, in fact, have any basis in fact. Again, I think some of this is due to bureaucracy. They don't understand the process enough, and they have this thing in front of them that they feel has to absolutely fit in every single case.

In some cases, the agency has moved above and beyond the authority that the regulations and legislation afford. Again, I think there's been some discussion about that. The legislation and the regulations should be very specific as to what the requirements are, so that the regulated community knows what's expected of them.

There have been cases where the agency has imposed requirements in permits for which there is no protocol. We've questioned, how could you do that? How do you want us to do that? There's no protocol. And the answer that we get is, "Well, we don't know, but you've got to do it." How do you live with a permit where no one can tell you what it is you're supposed to do? If we propose something, all we run into is a stumbling block.

I think in recent times there's been a real serious unavailability of attorneys within the DEP to deal with the routine administrative type functions that normally would be held within the agency. I think this is probably due to the fact that a lot of the attorneys have been transferred over to the Attorney General's Office and to the Environmental Prosecutor's Office to help with the enforcement activities.

I recognize that the enforcement activities will continue. However, by taking the attorneys out of the DEP, the ability to review draft language in regulations has really been hindered. Again, TCPA is one example.

It's also hindered the adjudicatory hearing process. When you reach a stumbling block with the agency, such as that protocol problem I mentioned before and you go back to the

agency and you say, "I want an administrative hearing; I want to meet with somebody other than just a permit writer and try to see if we can come to some resolution on this issue," the way to do that is to apply for a adjudicatory hearing. But there are no attorneys available to deal with those hearings. That's why there's a huge backlog of these cases. These things would normally have been handled routinely, in the agency, in a reasonable time frame.

Typically, if you would have applied for an adjudicatory hearing, within 30 days you would have heard from the agency and they would at least have given you a timetable of when they'd meet with you, and probably hold a couple of informal discussions -- at least by phone -- so that they could understand the issues. I have had an adjudicatory hearing request on file for nine months, and have heard boop from the agency. I keep on calling them and writing them: "Hey, come on. We want to get this thing resolved." Nothing.

Last, but not least, I wanted to mention something about computer tracking. I think everybody recognizes that we're in a computer age. Computers can play a very, very significant role in management in tracking of the permit system. They're an excellent tool in that regard. I think DEP has started, successfully in some programs, to utilize computers to track programs and see where they are, and allow the permit community to find out where they are in the process by calling in and finding out where you are on the computer tracking system. Unfortunately, the cases where the system has been implemented are few and far between.

The air program -- again, just as an example -- is one that is woefully behind the times in getting a computer system up, and up to speed in terms of being current. They issue permits, but they don't appear in the system until six to 12 months after the permit has been issued. The agency has recognized this as being a major problem. What they have done

about it is, they've had the permit writer actually issue a confirmation to the regulated source that their permit has been issued. But there is no permit, and it's not in the system. And if you try to track where you are, you can't.

Again, I want to thank you for this opportunity. And I'm not trying to bash, but rather to point to examples of where some improvements are appropriate. I think a lot of the legislation that's being proposed is intent on addressing some of those issues. The only addition that I'd like to make at this point in time, is some kind of internal training for DEP personnel to ensure that they know how to do their jobs, and perhaps even qualification testing. Thank you.

ASSEMBLYMAN SMITH: Thank you very much.

MR. BOZARTH: We'll be glad to take questions, Mr. Chairman.

ASSEMBLYMAN SMITH: I thought a number of your comments were right on target. We certainly appreciate them. Are there any questions from the members of the Committee?

ASSEMBLYMAN COHEN: Mr. Chairman?

ASSEMBLYMAN SMITH: Mr. Cohen?

ASSEMBLYMAN COHEN: In terms of the training, do you have a feeling that when well-intentioned employees come into the facilities they do not know the substance of what they're doing, or are they going through a learning process with regard to your facilities?

MR. TABAKIN: I think it's a combination. There are many who have never been to industrial facilities before and do not really know what they're looking at -- don't understand it -- as well as some who are in training and will ultimately get up to speed. There also are some people, particularly on the staff side in terms of permit writers, who just don't have the technical expertise to really deal with writing a permit.

ASSEMBLYMAN COHEN: Do you think that that's an inherent problem that a-- The State can't afford to pay

certain technical experts, or the amount of technical experts that are necessary to deal with your problems. Much of it, I would imagine, would have to be a learning process; that being an inherent problem in the system. Would you agree?

MR. TABAKIN: I think that your point is well-taken, but I think the agency, itself, needs to do something to help train its employees. That can be done, perhaps, in conjunction with industry. Perhaps it can be some program where DEP employees train for a certain period of time at an industrial facility to try to get a better understanding of what the terminology and permit process is all about.

DR. KACE: There's something I'd like to add, too: There's another way of looking at this. We in the regulated community end up paying the salaries of these people anyway, through our permit fees. The permit fees are based on the cost of administering the permit program. We are not adverse to hiring competent, experienced people to do the permits.

I think that you can't just take an individual out of school and say, "Okay, we want you to write air permits, and we want you to write water permits." You need experience. And you have to have a blend in your staff of experienced people and inexperienced people who can learn from the more experienced staff. I think we've already stated that the TCPA program appears to be one that's working well. And we think that that's a model that should be followed by the other parts of DEP.

ASSEMBLYMAN COHEN: I'm curious whether there are any sessions between DEP staff and the industry on any kind of basis, or whether there should be on a regular basis seminars, conferences -- something that will-- You need to know what you have to do to comply, so that you can be productive.

MR. BOZARTH: There aren't enough, is the direct answer to your question. Various companies and organizations have, at times, entered into those kinds of dialogue with the

regulating agency. There's always a natural fear of an ongoing relationship, and I can understand that. But, I think the point is that there has to be dialogue. We have to have permit writers who have seen an industrial facility. We have to have people who understand the impetus on business to get quick responses. I think one of the only ways to do that is to have intermingling of the two in a setting which does not compromise the integrity of the Department, and still allows the Department employees to understand what these fellows go through.

DR. KACE: I mentioned that about three years ago we had some DEP permit writers come to some of our facilities in the pharmaceutical industry, to see what our equipment looked like and what our pollution controls looked like. We also do that same kind of thing with the FDA on a national basis. FDA inspectors and people who are involved in issuing FDA approvals come to visit our plant site and spend some time there to learn what's going on, how we do our things, how we do our calculations, and how we do our manufacturing operations.

ASSEMBLYMAN COHEN: I'm concerned about this internal guideline process, this sight unseen underbelly of regulation which is unknown to those who have to comply, and those who have to know the scope of how their conduct should be guided. That's more disturbing. That also is probably inherent in any process. How you handle something internally is knowledge that you should know, but it also should be something which is evident to those that have to comply.

MR. BOZARTH: Certainly. No one in the public really needs to know the process by which they do their jobs, assuming that they're going to do them correctly. However, if one is going to be regulated by internal memos that are applicable to the permit that he wants, then the Administrative Procedures Act is clear that those internal memos must go through the process, must have the benefit of a public hearing, and must --

from the industry's point of view -- have the knowledge of knowing: a) they exist; and b), what they are.

To ask someone to comply with any regulation and not give them the guidance, the documentation, and the rules of the game, is asking something very strange. One of the reasons why we have so much in the way of problems relative to New Jersey to other states, is these kinds of problems. When the manufacturers say to themselves, as Mr. Tabakin pointed out, "Where am I going to make product 'X,' I need to do it quickly?"-- If you don't know what the rules of the game are in New Jersey but you know what they are in Pennsylvania, and you know what they are in Massachusetts, because of the nature of the business community, you're going to dismiss New Jersey because it's such an unknown.

Again, to the point that Dr. Kace made regarding predictability; some kind of a time frame where you know what you're entering into and know the rules of the game, whatever they are, before the game begins. None of us play games. None of us are involved in activities. The rules according to evidence are extremely clear. There are no internal memos that the judge looks at and doesn't tell you, as counsel, to deal with. You know the rules of evidence. You know the rules of court.

ASSEMBLYMAN SMITH: The point has been made.

MR. BOZARTH: In the environmental process you ought to know those same things.

DR. KACE: I agree, completely. I think that has to be at least 85% of the problem.

ASSEMBLYMAN SMITH: There should be no hidden agendas. The rules should be well-known by everyone. I don't think anybody can disagree with that principle or concept.

Gentlemen, I'll ask you to stay in the room. We may need to ask you some additional questions, but we have to move on with our list of witnesses.

MR. BOZARTH: Thank you, Mr. Chairman.

ASSEMBLYMAN SMITH: Thank you for your testimony. It's been very helpful. Our next witness will be Patrick O'Keefe, Executive Vice President of New Jersey Builders Association, or Executive Director?

P A T R I C K J. O' K E E F E: Executive Vice President, Mr. Chairman.

ASSEMBLYMAN SMITH: Also a University of Scranton graduate.

MR. O'KEEFE: Yes, Mr. Chairman.

Good morning, Mr. Chairman and members of the Committee. I am, as the Chairman indicated, Patrick O'Keefe, the Executive Vice President of the New Jersey Builders Association. I appreciate the opportunity to appear before you today.

Mr. Chairman, we have submitted our prepared remarks for the record. What I will try to do in the interest of time, is just skip through these, if you'll bear with me. Then I'll respond to any questions, if there are any.

ASSEMBLYMAN SMITH: Great.

MR. O'KEEFE: Let me begin by commending you, Speaker Doria, and the bipartisan sponsors of all of the bills that comprise the comprehensive environmental accountability and reform initiative, for addressing an issue that is adversely affecting the economic vitality and the quality of life of all of New Jersey.

Representing, as I do, an industry that is in the depths of a depression -- we have just recently experienced the worst year that we've had since 1947, and have lost in excess of 55,000 jobs over the past 18 months -- I am here to testify to you that the proposals before you are absolutely essential, if New Jersey's economy is to rebound.

While no one factor accounts for the significant decline that our State's economy is currently experiencing,

there is virtual unanimity that the DEP is a part of the puzzle. The DEP has become a millstone around the neck of the State's economy, discouraging entrepreneurial activity, increasing costs, and diminishing our ability to compete regionally, nationally, and globally.

Mr. Chairman, it is to be noted that the problems that draw our attention today did not arise suddenly. They reflect several years of managerial laxity and administrative indifference. And, like the preceding speakers, I'd like to be diplomatic and say that we're all here to make constructive criticism. I think like all of the preceding speakers, I would emphasize that this is not a conversation that just began today. It is very obvious to all of us that the agency is not listening.

Further, Mr. Chairman, this is not a debate about the State's environmental policies; it is not about the merits or demerits of specific statutes. It is, instead, a discussion of efficiency and efficacy, or rather a lack of both. It is about an agency that has become a regulatory sinkhole that is consuming the energy and resources of those with whom it comes in contact.

ASSEMBLYMAN SMITH: Patrick?

MR. O'KEEFE: Yes, sir?

ASSEMBLYMAN SMITH: Respectfully, as a fellow University of Scranton graduate, let me ask that your remarks be constructive -- how can we improve the situation? -- rather than pejorative.

MR. O'KEEFE: I will avoid perjoratives, Mr. Chairman.

ASSEMBLYMAN SMITH: Please.

MR. O'KEEFE: Let me focus my remarks on five generic problems, and I'll emphasize that all of these are problems of administration and management. Each of these issues are addressed, at least partially, by the bills that are before you.

Our first concern lies in the agency's arrogation of authority that has not been conferred on it by the Legislature. We have heard repeatedly that many of the DEP's problems are the fault of the Legislature. It is asserted that you enact laws that are imprecise and administratively cumbersome.

As a longtime observer and sometime participant in the process, it appears to me that seldom, if ever, does DEP voice those objections prior to the adoption of the legislation. On the contrary, they're constantly before you, asking that you extend their authority, offering no objections regarding the precision of the language, and claiming that they have the resources to administer whatever initiative is under consideration. It is only after the fact that we hear the complaints about the Legislature's role in overburdening the agency.

In the packages that we've given you, Mr. Chairman -- in the interest of time, I'll just report -- there is a very detailed management analysis that we conducted on the Freshwater Wetlands Act, in which we went back and tracked the implementation of it and documented that in the first year of the implementation of that program a backlog of more than 2400 permits was achieved when we were told, throughout the debate on that legislation, that the agency had more than adequate resources to process what they anticipated.

The DEP has also, in numerous instances, arrogated to itself authority that the Legislature has not granted. The result of this has been the creation of regulatory gridlock. An example which you're familiar with, Mr. Chairman, is the co-permittee requirement with respect to on-site wastewater treatment facilities. In this instance, the DEP imposed a requirement on applicants without any legal basis. They did so in a way that required municipalities to assume financial liabilities without any support from the State.

When we crafted a compromise solution to the logjam that this regulation created -- a solution, I might add, that has already been reported favorably by this Committee -- the Department opposed our proposal. They offered neither substantive justification for their opposition nor did they offer an alternative to the problem. They simply opposed any resolution of that situation.

A second area of concern has to do with the timeliness of the agency's processing of applications. We in the building industry have been in a slump for more than three years. Last year, as I noted, we produced less housing than at any time since 1947. You would expect, based on the paucity of activity, therefore, that the DEP would have eliminated its permit backlogs.

They have not. Even with the economy in deep recession, the DEP continues to experience substantial backlogs -- even when you accept their definition of what constitutes a backlog. Through March 31 of this year, the Division of Water Resources reports a backlog in excess of 2000 applications; the Division of Coastal Resources has another 1100 applications that are, by their definition, overdue. In the midst of a recession, how can this be? What type of management system is producing these results?

A third general concern has to do with the quality and objectivity of DEP's staff. When remarking on DEP's staffing, one is struck by a very sharp dichotomy. There are within the agency some very fine examples of the best of the Civil Service; they are professional, knowledgeable, and objective. Unfortunately, these individuals are the exception to the norm.

More common among the DEP's staff are those who view their mission as stopping private sector activity and dictating the life-styles of New Jersey's citizens. They seek to implement a personal agenda, not to enforce the laws of the State.

A separate, compounding problem is that many of the agency's staff lack the professional credentials and experience necessary to fulfill their duties. All too often, DEP reviewers are simply not qualified to assess the applications that are before them. Confronted with a task that is beyond their means, they delay processing the applications by employing dilatory tactics such as asking irrelevant questions, demanding unnecessary information, or simply ignoring the application.

And what recourse does the applicant have? Agency personnel know that there is no meaningful management oversight. There is no Office of the Inspector General, so they have little to fear. The applicant, on the other hand, has the threat of retribution if he or she should complain. They know in the future they will have to bring other applications through that process, and they simply don't want to run the risk of having things rejected out of hand.

The Administrative Procedures Act is intended to protect the essential rights of citizens, while promoting governmental efficiency. It does so through a rule-making process that is both open and objective. While the DEP has over the past year made progress in improving its performance, overall, its adherence to the APA is weak.

Its promulgation of regulations is formalistic and unresponsive. There is no assessment of the economic impact of the agency's rules, nor consideration of alternative approaches to implementing the statute that may be economically less burdensome, and further, comments by the regulated community are dismissed almost derisively.

Perhaps more troubling, as was testified before, is the agency's continuing reliance on unpublished guidelines, procedures, and policies. These internal directives significantly influence the decisions of the agency, yet they

have never been exposed to public review and comment. Because that was discussed before, I'll move on.

Finally, the abuse of fee-charging authority by DEP and other agencies, has reached levels that deter normal economic activity. There is no argument that applicants should pay for the cost of processing their applications; but there is the expectation that the fees imposed will approximate the costs involved.

This is not the case in the DEP. I do want to emphasize, Mr. Chairman, that DEP is not entirely to blame for this, however. For several years, the Department of the Treasury has been siphoning funds out of the fee-financed programs and diverting them to other areas. Just last year, we identified over \$1 million that had been diverted from the Environmental Services Fund. Because the records to which we had access were incomplete, we could not estimate the full extent to which funds were being diverted.

As the economy has weakened, however, it appears that the DEP has increased its fee schedules to pay for staff that are not justified by current work loads. Since there is no independent audit of these accounts and since these funds are not reviewed by the Legislature, the use of fee-financed programs as profit centers to subsidize other activities continues to expand.

Beyond the legal and equity issues posed by this abuse, there are very real economic consequences. Fees in New Jersey are approaching -- or have reached -- the point where they discourage projects from moving forward. Just as many would-be home buyers are thwarted by their inability to accumulate a down payment, so, too, do many entrepreneurs forgo projects because they cannot put together the money to pay the fees to get their applications processed.

Mr. Chairman, the foregoing is just a quick summary of the problems associated with the administrative and managerial

weaknesses of the Department. These issues are critical and we are glad that you are looking into them.

For too long, the real costs of the way the DEP has been managed have injured the economy of this State. Thank you.

ASSEMBLYMAN SMITH: Pat, one question, if I might? What, in your opinion would-- You mentioned two programs in which there were significant permit backlogs. What specific action should we, as a Committee take, or the DEP take, to remove those backlogs?

MR. O'KEEFE: I think the first issue that has to be dealt with, Mr. Chairman, is the staffing and the fact that people are simply either not qualified, or not motivated to deal with those applications in a timely and professional way.

ASSEMBLYMAN SMITH: You know, as well, that under the current State budget, DEP staff is constricted.

MR. O'KEEFE: What we know is that on paper the staff is being reduced. We also know that there's been no reduction in the number of people on board. There's been no layoffs. And I think what has happened, as was testified to by the Speaker, is there's been a significant shift of agency personnel over to fee-financed programs.

ASSEMBLYMAN SMITH: All right. So your suggestion is not that more staff is needed?

MR. O'KEEFE: I don't think--

ASSEMBLYMAN SMITH: You're saying that the existing resources should be reallocated?

MR. O'KEEFE: Mr. Chairman, at least from my industry, given what we're doing right now, I can see no justification for increasing staffing.

ASSEMBLYMAN SMITH: Okay. Thank you, Mr. O'Keefe, for your testimony. Our next speaker will be Ellen Gulbinsky from the Association of Environmental Authorities. Ellen may I ask a favor? I understand we have two people with time problems:

Ellen is one, and John from NAIOP is the other. John, are you here?

J E F F R E Y A. H O R N: Jeff.

ASSEMBLYMAN SMITH: Jeff. Let me put you both at the table, if I might. We'll get you both up. When do you each have to be out of here by?

E L L E N G U L B I N S K Y: I guess I'll say 12:15.

ASSEMBLYMAN SMITH: And when do you have to be out?

MR. HORN: I have a 12:00 meeting.

ASSEMBLYMAN SMITH: All right, well you have the earlier time. You go first. Go ahead, Jeff.

MR. HORN: Thank you, Mr. Chairman.

My name is Jeffrey A. Horn. I am the Executive Director of the New Jersey Chapter of the National Association of Industrial and Office Parks. NAIOP has over 7000 members nationwide and 300 members in New Jersey. Our members are actively engaged in the development, ownership, and management of commercial properties throughout the State. A key attribute of our membership is their continued involvement with their projects and properties long after the completion of the development phase. We continue to retain equity interest in the majority of our projects and take the long view in our economic outlook.

You all have my testimony before you, and I'm going to try and cut some of it short.

ASSEMBLYMAN SMITH: We certainly hope that you will try to cut it short (laughter), especially if you have to be out of here by 12.

MR. HORN: Exactly. I have a bit in my testimony.

ASSEMBLYMAN ALBOHN: Mr. Chairman, just one moment.

ASSEMBLYMAN SMITH: Yes?

ASSEMBLYMAN ALBOHN: We don't have his testimony before us.

ASSEMBLYMAN SMITH: There's some extras over here; let's make sure that you do. And Jeff, if you have extra copies, leave them before you leave, please.

MR. HORN: Oh, that's the testimony that I was going to use as an example. Let me give you something-- I thought I had--

ASSEMBLYMAN SMITH: You have even more?

MR. HORN: This is a much shorter version.

ASSEMBLYMAN SMITH: Okay, thank you.

MR. HORN: Prior to serving as Executive Director of NAIOP's New Jersey Chapter, I served as an Assistant Vice President of Bellemead Development Corporation. My responsibilities included coordinating Bellemead's preconstruction permitting in seven states, as well as primary responsibility for obtaining permits for Bellemead's New Jersey projects, then involving eight active New Jersey locations.

Prior to joining Bellemead, I served in State government for ten years, of which the last eight-and-one-half years were with the Office of Business Advocacy, now in the Department of Commerce and Economic Development. My responsibilities during that period included assisting the business community in navigating the State permitting process.

I have been involved with the Cabinet and the Citizens' Committee on Permit Coordination since it was first formed by the Governor's Executive Order in 1977. My involvement has ranged from a member of the staff serving the Committee to my appointment to the Citizens' Committee on Permit Coordination, first by Governor Kean, and then my reappointment by Governor Florio.

I first want to express the appreciation of the membership of NAIOP to Speaker Doria and the many sponsors of this package of bills intended to reform the permitting process at the Department of Environmental Protection. Our purpose in testifying before you today is to discuss the problems that

exist within the DEP's permitting processes. I will leave a description of horror stories to others.

In our brief moment before you today, we want to provide our perspective on the problem against which you can weigh the solutions. Indeed, many of the solutions are embodied in the Speaker's ideas.

Our primary problems with the permitting process at the Department of Environmental Protection involve a lack of predictability with regard to the review of time frames and the ultimate outcome of permitting decisions. A second set of problems involves the costs involved in negotiating the DEP permit process; costs ranging from an ever-increasing permit processing fee to the costs required in engaging professionals to produce complex technical documents or studies which only yield marginally important information. Another set of problems involves the attitude of the regulators toward the regulated community.

Before I go into these problems in greater detail, I want to dispel the easy answer that a strong manager in the Commissioner's seat can make a significant difference in resolving these problems. In the history of the Department, we have seen many good and innovative managers, yet the problems in the permitting process have grown in an almost geometric fashion. When I first became involved in the permitting process in New Jersey during the early 1970s, a 50-acre business park could navigate the complete permitting process involving local, county, and State permits in 18 months or less. In the early 1980s, the process had grown more complex, and involved two, and perhaps as many as three, years of approval processing.

Today, the same project involves a multijurisdictional and redundant permitting process that requires between five and seven years to negotiate. Much of that permitting span involves time spent before a multitude of agencies within the

Department of Environmental Protection. One man or woman, as Commissioner of the Department, can only make a marginal difference in the process. Structural institutional changes requiring new statutory authority are absolutely necessary to make the agency more responsive to the Commissioner's policy directives.

DEP's permitting process lacks predictability. I think you've heard that many times today. A common complaint I hear from my members is that regulations often require measures that are contrary to, or not supported by, enabling legislation. Another consistent complaint in this category is that agency policies require submissions, design standards, or concessions that are not part of the regulation, but are part of the agency review process.

The problem involving regulations and their relevance to their enabling statute is a significant cause for concern. It's been addressed today, and I'm not going to go into it in great detail. A case in point is the freshwater wetlands regulations. I gave you a copy of our testimony that we just recently submitted in response to the Band-Aid regulations, as they were called by DEP. We had significant problems with them. You have 60 days under their rule, in that specific instance -- normally you have 30 days -- to comment.

The groups that work with the agency -- the advisory committees that are created -- don't receive any of the language that the agency is considering prior to their publication in the "New Jersey Register." Plus, we have the problem of responding to everybody on the issue; both sides. If there are more than two sides, all have problems in trying to meet the time frames in responding to the DEP. And then again, as Mr. O'Keefe aptly pointed out, it's questionable as to whether they were really listening in the first place.

With regards to the freshwater wetlands action, I think all of you are aware of the number of suits that have

been brought by various parties against the DEP's regulations. My organization -- NAIOP -- was one of the organizations that brought suit against specific provisions of the wetlands regulations. We were successful before the Appellate Court. In fact, the DEP appealed the unanimous decision of the Appellate Court to the Supreme Court, and the Supreme Court, in fact, denied the right of DEP to even appeal the earlier ruling.

I contrast this process to that which the Department of Transportation is employing in adopting the Highway Access Code pursuant to the State Highway Access Management Act. In that case, the Department has worked with its advisory group and has even created additional external groups to obtain more feedback in the creation of the regulation. All of the groups that participated in the process have been provided with the Department's current proposed language in advance of the forthcoming publication for the regulation in the "New Jersey Register."

It just makes sense to get as much input as possible in order to circumvent avoidable disputes. I ask the members of this Committee to think how many times you questioned whether the Department was following legislative intent in the Department's regulations implementing your efforts.

The Department's permitting process has long operated under a process that I have been given to call "policy du jour." Policies that are not contained within the regulations are used in determining if applications are complete or if more information is to be required in extracting concessions from an applicant, and in delaying applications. These policies are often the product of middle- or low-level management of the Department.

In some cases, these policies eventually find their way into regulation. In these cases, implementation of the policy may seek to actually gain acceptance of the provision, in order to justify a subsequent regulatory proposal. In

virtually all cases, the policies tend to expand the authority or requirement of the Department in ways which the regulated community can only determine long after entering the permitting process, when, in fact, it may be too late for change without extensive additional costs and time delays. These hidden policies are part of every Departmental regulatory program that the development community endures. They are a significant source of our frustration with the Department.

There is no efficient and effective method to contest the Department's arbitrary actions in this regard, short of taking the Department to court. When faced with the choices of delaying a multimillion dollar project -- which of course is heavily financed -- to wait for a legal challenge to be heard and decided, or to submit to the Department's probable illegal requirements, the applicant has little choice in reality. This consistent abuse of power by the Department has created an unhealthy estrangement between the Department and the regulated communities.

In a related vein, the attitude of the personnel in the permitting portions of the agency feeds this problem. Several years ago, the Cabinet and the Citizens' Committee on Permit Coordination sought to deal with a problem involving several DEP permitting programs. We wanted to utilize a methodology we employed in assisting another State agency to resolve a problem with its permitting program.

The DEP representative to the Cabinet Committee stated in response, "You have to understand, personnel in the Department of Transportation and the Department of Community Affairs see their mission in the approval process as processing permits. That is not the case with the Department of Environmental Protection. Many of our people in the permitting programs see their role as antagonistic to development. Your efforts to resolve the permitting problem through traditional methods will not work."

Thus spoke a representative of the Commissioner of the Department. I'm told Commissioner Weiner's immediate predecessor attempted to directly confront the attitude problem. I believe we know who won that confrontation.

The Legislature, in creating the 90-day law, sought to provide a system that would produce permit decisions in a reasonable amount of time and provide a mechanism for funding the review process. In essence, the regulated community agreed to pay for the decision mechanism in return for a reasonable turnaround in decision-making. The process is a good idea that has not worked. Permit fees continue to rise. I think Mr. O'Keefe has gone into that, and I certainly agree.

There is little wonder that this is the case when I am consistently told that applicants will get calls within the last few days of the permit process, asking for them to request an extension of time. To do otherwise would result in a permit denial. I'm aware of other cases where the Department, after 120 days, could still not render a decision, where the applicant is told: "The permit will be denied without prejudice. Simply resubmit, and the Department will render a decision within another 90 days."

The Department has developed significant expertise in circumventing the intent of the 90-day law. The agencies will employ strategies to delay applications in completeness checks and in tolling the decision time frame, through requests for additional information. These requests are often for information that is costly to produce and provides little, if any, meaningful information. Again, there is little, if any, recourse to the applicant but to comply. The Department is not held accountable for the time, the costs, or the delay's ultimate impact on the project in question.

Each element of the Department looks at a permit application from their own particular perspective. The

Division of Water Resources will review from their point of view, while the Division of Coastal Resources reviews from another.

It is unfortunate, but there are times when the respective policies of the agencies within the Department are in conflict. The applicant suffers. There are times when the policies of the agencies will conflict with the permit requirements of other State, regional, or local permitting agencies. The applicant suffers. There is no effective mechanism to resolve disputes with the applicant, let alone other permitting authorities. The lack of a comprehensive approach breeds these potential conflicts.

We again thank the Speaker for offering a meaningful legislative package that seeks to address many of the problems we described before you today.

New Jersey's commercial real estate industry is suffering as a result of a major economic slump. Our problems in New Jersey are compounded to a significant extent by our environmental permitting process. The small developer no longer has the means to survive the process, which leads to larger projects by larger developers, because only they can achieve the economies of scale necessary to wait out, and even confront the development permitting process. We are not sure this was the Legislature's original intent. However, this is today's reality.

Well-meaning, temporary solutions are not enough. Long-term structural solutions such as those contained within Speaker Doria's package are an important beginning.

ASSEMBLYMAN SMITH: Jeff, thank you for your testimony. Just for your information, I just noticed that Greta Kiernan is in the back of the room, from the Commissioner's Office. Greta, how long have you been here?

G R E T A K I E R N A N: Oh, I've been here for about

half-an-hour, but someone from the staff has been here taking notes the whole time.

ASSEMBLYMAN SMITH: We appreciate that.

MS. KIERNAN: Thank you.

ASSEMBLYMAN SMITH: Assemblyman Albohn had expressed his concern already that the DEP might be missing some of the comments.

MS. KIERNAN: I understand.

ASSEMBLYMAN SMITH: Jeff, thank you for your input.

MR. HORN: Thank you for the time.

ASSEMBLYMAN SMITH: Let me ask you--

ASSEMBLYMAN ALBOHN: Why didn't the note taker identify herself?

ASSEMBLYMAN SMITH: Greta, who is the person taking notes?

D E B R A L. M I L L E R: Here. I'm Debra Miller. I'm with the Office of Legislation, within DEP.

ASSEMBLYMAN ALBOHN: You didn't raise your hand when I asked if there was anyone here from DEP, did you?

MS. MILLER: No, I didn't. I'm sorry, I didn't.

ASSEMBLYMAN SMITH: I think I may have interrupted that a little too quickly, but in any case our next speaker is Ellen Gulbinsky, Association of Environmental Authorities.

MS. GULBINSKY: Good morning Mr. Chairman and members of the Committee. I thank you for focusing on this important topic today. As the Executive Director of the Association of Environmental Authorities, representing 141 public permittees who treat the water -- the potable water, the wastewater, and deal with the disposal of the solid waste in this State, we are very happy that the Committee is taking the time to take a look at the permitting issue. That's the way I would like to focus my comments today, on the permitting issue, as an overview that way.

There are two areas, I think, where comments can be made: One is regarding the administration of the permitting

system and the permitting process, and the other has to deal with some of the technical issues that deal with the permitting process.

First of all, I'd like to say one of the reasons that I am here alone today, without some of the members of my organization, is because there is a hearing in New Brunswick today on the Clean Water Enforcement Act Regulations pursuant to that Act, which will be going into effect in about 90 days.

This is the first set of regulations dealing with the Act, and we've been waiting for these. We needed these regulations to be in place by the deadline, so that we could be informed also as to how to conduct our business regarding our indirect dischargers into our systems. As you can tell by the date of the discussion of things, most likely those regulations are not going to be in place and there is going to be difficulty with being prepared for the July 1 deadline all the way around, from both the State's perspective and, I'm sure, from my members' perspective, as far as giving guidance to those indirect dischargers who discharge into our systems.

But that's the reason these folks are there in New Brunswick today: to try and iron out the first set of regulations that are in place.

There are also two or three other sets of regulations that are going to be heard all summer long, which are also very vital and important in the evolving process of changing the permitting system. Those issues and how those new regulations come about also impact on the overview of what we are discussing today. Hopefully, those regulations can do something to straighten out some of the problems that have been identified, but basically I think we are under the gun at this point to try and get those regulations in place with a law that is about to take effect on July 1. My prognosis -- and I really do hope that I am wrong -- is that it is unlikely that those regulations will provide clarity, but most likely will

provide some kind of confusion, based on the fact that they are being written throughout the Department in little enclaves, because up to this point we have had difficulty with management pulling everything together with strong leadership, to pull it together. So this is going to create a problem that already exists on top of a stressed permitting situation.

The best way, I think, to describe the situation we have within the NJPDES program today, is to say that we have Mercedes Benz expectations on a system that delivers on a Model T delivery system. I say that in all sincerity. One of my members has used that analogy. Basically what we have is that we want to deliver the highest quality standards. We can set high standards in our laws, but if we don't deliver on the system, then do we have those standards? That's the biggest issue, philosophically, dealing with the whole permitting system.

This year alone, I think numbers speak for themselves. The budget for DEP in the public sector permitting area has gone up 25%. Six million dollars is the portion that's paid by public permittees into the discharge elimination system program. To date in 1990, we have four permits issued this year -- four -- in a universe of 120. Now, this is the year that was most pivotal and important to us because we needed these permits in position for July 1, and we have four. Now, definitely something needs to be done administratively to move that around.

Some suggestions that the Association has been entertaining with each and every new manager that has stepped into the Department-- We have sat down, and we have gone over our perspective from the administrative end. For two years we negotiated with lower level people who are doing the permitting processes; with the Assistant Commissioners, and so forth, saying, "What should we do to improve the NJPDES program?" The Association put forward a white paper of 13 areas where the

permitting system could be improved by taking on some streamlining of the way permit limits were set in these 13 different areas.

We asked many of the same things that were brought out in testimony here today. We asked for manuals, standard operating procedures, memos, and policy statements. We asked basically the same thing: "Let's find out what we need to do, write it down, and we'll all do it." This is what we needed to have done.

In fairness to the Department, they have now developed a manual for how to fill out data management reports. My Association stepped in-- They were asked to come in and review the draft of the manual, and my members did that. In record time -- in four days -- they got in there, looked through a very large manual, and they gave their constructive criticism to the Department on that draft.

What I would like to say to you is that we aren't up here just taking potshots, but that the Association of Environmental Authorities has long been trying to improve this system constructively. We have been doing this for two years.

It got to the point where we needed to put in a petition for rule making for the Department on those 13 technical areas, because we were led to believe that to do this using the established procedure would mean that the Department could act on it. To date, the petition was submitted, and there is a certain period amount of time -- there is six months that the Department has to review a petition to say what it intends to do with it. That deadline was up on April 5, and we await a decision on what is going to happen to it. Basically we feel that if the Department would address those technical issues, they could go far in trying to get permits out in a more consistent manner and a clearer manner, and they could move forward and get rid of some of this backlog. The backlog and the lack of productivity is what is hurting the whole

system now. And you would have to agree, I believe, that it hurts the waters of this State, that we do not have good permits in place.

Along with this idea of delays, we need a system where we triage some of these modifications to permits. Right now there are 800 sitting within the Department that have not been acted on. Many of them belong to my public permittees.

Now, we need to know whether our permits are going to be modified, or we need a stay on the limits that are there, because of the public permittees, 26 of them are delegated local agencies, which means we have a responsibility to be enforcers over the dischargers into our systems. If we are to guide those indirect dischargers, and if we are to enforce on them, we have to have a valid permit that has limits in it that are defensible in court so that we may, also, take those into court and stand on those as the reason for us making requirements to the indirect discharger. So it's extremely important that those modifications be taken care of.

I have a member -- just as a typical example, and you wanted some stories today -- that inherited a plant, actually two small plants, and immediately found out that the permits that were in place were in conflict with the major overall plant, and therefore put in a modification. That has been sitting for over a year. That's a relatively simple one. There were no debatable issues on that one. It's simply a matter of, "Let's be consistent."

If we look at the big picture, we see a situation in which we are being asked to be more aggressive on the pretreatment level. The reason for that is because there is a push forward to have cleaner sludges, and there is a push forward to beneficially use those sludges. If we are going to do all those things, we have to have the permit in order.

We have to sort of decide how clean we want everything to be, and we have to also look at, again, nonpoint source

pollution. I noticed in this morning's paper that Mr. Neafsey from the Department is testifying in Congress on the reauthorization of the Clean Water Act; discussing this very issue, because we can no longer constantly go after the point sources while the nonpoint sources are completely unaddressed, because we have no scorecard for figuring out where we are going. Are we getting cleaner, or aren't we? We never measured before, so we don't know how clean we are now; we don't know where we're going on this. It's definitely something that has to be put into place.

One of the items that also needs some addressing on the administrative end, is consistency in the Department between those individuals who write construction permits for new facilities and the final discharge permit that those facilities will use. It is extremely embarrassing for public officials to put a brand-new plant on-line: to have constructed it to the best of their ability and to the best of their knowledge with what they thought would be a plant that was going to last for five or ten years to serve this community. You just about have the ribbon cutting finished, and you find out that there is a limit in the permit that this brand-new facility isn't meeting. There's something wrong in our permitting system when that can occur, and it's costing our taxpayers quite a bit of money to do that.

We have to take a look at other issues on the bigger picture, too. ECRA: We have some of our larger facilities that have been encouraged by the Department to take leachate from ECRA sites and from landfills, and we have a piece of legislation that, in effect, says, "If you exceed your discharge permit limits by any amounts, you are automatically fined," yet we have to figure out what we are going to do with that leachate and with that water that we need to regenerate. That situation is one in which we really don't know, at this point, what's going to happen. Because the public facility

that is taking that water -- and it's an unknown quantity; it's not an effluent like that which comes into the plants; it's a completely unknown quantity from day-to-day, or whatever-- We need to handle that situation, because those people will be paying fines, and they are actually performing a service to the community and to the State by cleaning up our hazardous waste areas and our contaminated waters. So, we need some flexibility here, in order to achieve clean water in the bigger picture.

ASSEMBLYMAN SMITH: Do you have a specific suggestion?

MS. GULBINSKY: Indemnification for that kind of situation on a permit limit, on a situation where someone is taking in leachate.

ASSEMBLYMAN SMITH: When you say "indemnification," or in effect "an immunity," you would be talking about substance specific immunity?

MS. GULBINSKY: Right, right.

ASSEMBLYMAN SMITH: If the ECRA site is known to have -- whatever it is, trichloroethylene -- and you can't take it out and then the parameters are exceeded, that's what you are looking for. Why don't you drop us a letter on that one?

MS. GULBINSKY: Okay.

ASSEMBLYMAN SMITH: Because we certainly want to see the wastewater treatment facilities of the State helping to solve the cleanup problems in the State. So, we would like something more specific on that; a little detailed proposal.

MS. GULBINSKY: It would need, I believe, a legislative change, because the lawyers in DEP reviewed that situation and felt that they were not in a position to write contracts which would allow any kind of flexibility at all. So, that would be true.

ASSEMBLYMAN SMITH: I think you should also include in that letter the suggestion that the ECRA site owner, in addition to paying the costs of treatment, perhaps should be

asked to help the authority with the capital costs if there is an additional treatment process that's required in order to remove the contaminant appropriately. I mean, I don't want to give you the impression that we want to see the contaminant go through the process, but you shouldn't be-- Obviously, you shouldn't be held responsible for a problem that you can't solve. We want to give you the tools to solve it. So, if you have your membership draft something specific, we would like to take a look at that.

MS. GULBINSKY: Okay. We'll be very happy to do that.

We have some no-win situations that are also in effect because of complications in permitting permits in other media -- okay?-- from different permitting systems. Let me give you just a couple of samples:

The one that we raised -- and you'll probably find this one very familiar because I've written to you many times about it during the Clean Water Enforcement Act discussions -- is the issue of what we do with coliform and chlorine residual. We have a situation where if the plant finds that you are exceeding coliform, you disinfect, so you would add more chlorine. But then we also have a requirement that you can't have chlorine residual left in the water. So therefore, what happens when a problem arises, is that you get a fine no matter what you do. One would have to ask, "Is that what we want our permitting system to do -- to ensure that a fine is issued when you take care of the situation?"

There are many examples of this. Let me give you another one: We talk about beneficial uses of sludge. We talk about there are groups who are touting the fact that we should compost everything in this State. We have state-of-the-art compost facilities, EPA award winning compost facilities, that have the latest technologies. And under the Clean Air Act, the way this is put together, when a citizen smells anything, catches any aroma in the air, and the health officer from the

community comes out and takes a whiff, he classifies the odor -- one, two, three, four, or five -- and he comes out and he finds a number one odor -- just indicating, "Yes, I do smell something."

ASSEMBLYMAN COHEN: Unless it's an LEPC.

MS. GULBINSKY: And we end up with this state-of-the-art, award winning facility receiving very heavy fines. And yet, this facility is doing what the public policy wants it to do, and--

ASSEMBLYMAN SMITH: God's work.

MS. GULBINSKY: Okay. So, we need some help here.

All right, let me see. Some final comments here.

Antibacksliding: The departments and the Federal government have issued a document about antibacksliding or antidegradation. It's been used in some cases as a reason not to move on certain issues. My experience was, I happened to attend a meeting in Washington with some Washington EPA officials on this subject, who basically felt that the states had more latitude in determining the way to handle this policy than we were given to believe they did. This particular antibacksliding policy is one that in some cases has been used to also maintain errors in the system, whereby there is a fear that to admit that maybe we should change something because it wasn't done well before -- that we can't change a mistake because that would be considered antibacksliding.

I think we need to change that thinking, because number one, the permitting system is not supposed to be 100% correct as far as when the permit comes out. You want to do the best that you can in writing the permit, but the law also says that the permit can be rediscussed at any time, which means that if the Department should overlook anything, and they find that out in between the five-year span when that permit is in effect, they may call the permittee in and have a renegotiation of that.

What I think the Department has done in the past when they were trying to issue permits, was to be so very, very perfect that that's why we have this low productivity. The point is that they can catch any of these errors, and they can change anything. Therefore, the important thing for us to look at is, do we have enough permits out there that are doing the job and maintaining the waters, and are they in place so that the public permittees may also carry out their responsibilities under the law?

I think that sums up just about what I need to say today, and thank you very much for listening.

ASSEMBLYMAN SMITH: Thank you, Ellen, very, very much.

Our next speaker will be Eugene DeStefano of the Society of Professional Engineers.

EUGENE DESTEFANO, P.E.: Good morning. I have copies of the testimony, which I will cut short, I guarantee you.

ASSEMBLYMAN SMITH: Brevity is the soul of wit.

MR. DESTEFANO: Good afternoon. I represent the New Jersey Society of Professional Engineers. I have handed out, as I said, written comments which are short, and I hope to the point.

We come here this morning to discuss the issues and the problems relative to the DEP management and administration, and not to talk about the people. We think that would be antiproduative.

First, let me say that when an application comes before the DEP for a specific project whether it be a public project or a private project the Department does not look at these projects as a whole. Each division and each branch of the DEP looks at it separately based on their own criteria. I don't have to get into the war stories that we heard this morning. I must say that the speakers who addressed you this morning did an admirable job of talking about the truth.

Therefore, there has to be something put in place that looks at a project based on its total worth -- worth relative to the environment, worth relative to the economy of the State, and to the future of the State of New Jersey. Therefore, something has to be put in place to do that.

Secondly, there has to be a better mechanism put into place relative to what the DEP wants and relative to what their standards are. What is required for a specific permit? How to set the criteria used in any of their permitting? These have to be put down in writing. The recommendations that we've heard from other speakers this morning are also recommendations that the engineers have talked about for many years, and we think there are ways of putting these things into effect.

Third, we all know that the DEP lives with voluminous regulations; regulations that were passed through the Legislature and legislation which they have to write regulations on. It's a very difficult battle on their part, and we have heard comments on that, also, this morning.

However, the war stories in these cases can really shake you. When a homeowner, who has a situation on his property where there is a stream, or perhaps a wetlands, who relative to the expansion to his home has to hire an attorney and an engineer to get a permit, something is wrong with the operation. Something is wrong with the operation when counties and municipalities in New Jersey cannot do maintenance work on waterways relative to stream clearance, relative to maintaining detention basins. They can't do it. They can't get permits to do it. These things turn into wetlands; therefore, they can't touch them.

Wastewater treatment plants that cannot expand where they should expand because of a wetlands situation: Ellen Gulbinsky made a very good point. And I tell you gentlemen today, the Clean Water Enforcement Act is going to be worse than ECRA; much worse than ECRA. It is going to cause

repercussions back to the fee payers -- the citizens of the State of New Jersey -- which are going to be enormous. I don't think the DEP is up to the enforcement of this issue.

Even beyond that, you have heard of "storm water permitting" that has come down from the EPA. The EPA can do the enforcement of these regulations which are coming into effect now for large cities and for industries, where rainwater can come into contact with pollutants on the ground. These regulations-- This is all part of the nonpoint source pollution which we have heard about, but this is the regulation that is going to enforce permitting for those activities.

This is the tip of the iceberg. This is an enormous project, and the DEP is going to be involved even if they say, "Let EPA handle it." That's basically what they are saying at this point, and it will not happen.

Fourth, for years the engineering community has tried to maintain a dialogue with the DEP. We have tried to be involved prior to regulations being promulgated. We have sat on many committees -- and I have done that also, on ad hoc committees -- to try to help and bring forth a regulation that makes sense. This has to continue and it has to mean something. We have to come to a point where meaningful dialogues are undertaken prior to regulation. You have heard that before this morning.

Relative to that issue, recently the New Jersey Society of Professional Engineers, along with the county engineers and the municipal engineers and the Consulting Engineers Council, have joined together, and we-- Through the Governor's Office, we got to the Commissioner, and on March 19 we held a one-day symposium at NJIT where we had a dialogue between the managers of the DEP and the engineering community, where we talked about our joint problems. They are listening.

I make no bones about the fact that the Governor and the Legislature know of the problems with DEP, and they are

trying, at this moment, to come to terms with some of those things. So, things are happening.

But I just wanted to let you know this morning that the engineering community is prepared to assist you and the DEP in making things better for the economic development of the State of New Jersey.

ASSEMBLYMAN SMITH: Gene, what's the engineering community's position on the bills in this package that relate to engineers?

MR. DeSTEFANO: We feel they are putting some restrictions on how engineering will be practiced in the future. However, they are probably needed in many ways, and therefore, I think we are taking a positive viewpoint of these things.

ASSEMBLYMAN SMITH: Very good.

Any questions for Mr. DeStefano? (no response) There being no questions, we also have on the list, Jim Sinclair, from the Business and Industry Association. Jim?

J A M E S S I N C L A I R, P.E.: Yes, sir.

ASSEMBLYMAN ALBOHN: Mr. Chairman, how many more speakers do we have?

ASSEMBLYMAN SMITH: I think Jim may be the last. Is there anyone else in the audience who came to testify today? (no response) That's it.

MR. SINCLAIR: Good. I'll read it all.

ASSEMBLYMAN SMITH: Let's see, it's 16 pages.

MR. SINCLAIR: Good anecdotes. Actually just on anecdote.

Jim Sinclair from the New Jersey Business and Industry Association. I'm not going to read it--

ASSEMBLYMAN SMITH: Thank you, Jim.

MR. SINCLAIR: --but I hope that you do--

ASSEMBLYMAN SMITH: Yes, we will.

MR. SINCLAIR: --because my wife was complaining about 2:00 this morning, when I was putting it into the computer: What was I doing?

I think it-- What I used is, I looked at Speaker Doria's package, and we've been working with him-- Of course, we commend him for what he is doing, and we commend you, I mean, the Legislature. This is a bipartisan effort, and God knows it's long overdue, because this really is something that you have not addressed. I will use my brief time here to address just three items.

The first is that the regulatory climate of the State of New Jersey has an impact on development. It has an impact on jobs. We've lost close to 100,000 manufacturing jobs over the last two years. This is a net loss of jobs. These are jobs that probably won't be replaced. That's a sad, sad commentary.

And why aren't they replaced? Why aren't people coming to New Jersey and building manufacturing facilities in New Jersey or expanding manufacturing facilities in New Jersey? You heard the litany this morning, and it goes well beyond that. And you're going to hear more about it, because the Governor's Economic Summit has keyed on this, and there is a lot of information that will be coming to you from there.

So this is not a trivial issue, but then again it is not all DEP, and that's what I-- Although I do have one anecdotal piece of information, because you asked for horror stories in your request. My horror story of the week is--

ASSEMBLYMAN SMITH: Actually, I thought we didn't do that. We asked for people not to do horror stories.

MR. SINCLAIR: Oh, okay. Everybody else gave horror stories. I thought--

ASSEMBLYMAN SMITH: Go right ahead, Jim. No problem.

MR. SINCLAIR: Then I'll give a quick horror story: This is a company, a manufacturing concern, that for five years

was doing a cleanup on its property. For five years, they have been waiting for an approval to do what amounts to a fairly simple cleanup on their property. They budgeted \$500,000 to do the cleanup. In the five years they have spent the \$500,000 on consultants, engineers, and lawyers; no approval from DEP.

Well, okay, so that's sort of the way the world works, except that they were having a discharge. Part of the initial things they had to do with DEP is discharge from this site into a creek. They had to get an NJPDES permit to do that. The cost of their NJPDES permit fee has gone up from around \$3000 to around \$300,000. That sounds weird and wacky, and the president and chief operating officer of the company is yelling at me on the phone. I'm the wrong person to be yelling at, so I gave him some telephone numbers he could call.

What I really want to use this time for is to talk about the role of the Legislature. I think the Speaker's package addresses a number of things on how the Legislature and this Committee fit into this process and are part of the problem and part of the solution.

We support the McEnroe bill which would require that the DEP must submit the new rule proposals. That sort of makes sense. We support the Speaker's decision to have the Assembly schedule a number of legislative oversight hearings. We think that's important. We support the Speaker's goal of having each new bill contain in the authorization rules for what is expected from the Department. We support the Speaker's request that they submit reports to you.

Those are all sort of good, but they just sort of scratch at the surface of what I think is the problem here. I have said this on a number of occasions. I think that probably one of the biggest problems we have in the legislative process is the lack of requirements by you on major pieces of environmental legislation for implementation plans, a simple

enough request of the administration, especially when they are on board on a piece of legislation.

When a bill passes one House, the environmental committee in the other House should ask the administration, "Well, if this bill is sort of passed in this way, or in the way that you anticipate it, what is your plan for implementing this? What do you expect is going to happen? How much is it really going to cost you to do? What kind of external factors are going to be in that? How would we judge performance?" And all the kinds of things that, if you were buying an automobile-- You would probably be asking the same kind of questions about what it is that you are purchasing.

We never get this, as you heard from the previous testimony. And if you had that information, then you would have a baseline information to come back the following year and simply ask the Commissioner how things were going. Then you would be able to compare it to what it is that they expected. And if they were not going well, you could make corrections. You could be part of that process, without the kind of sitting on the process like some of the proposals that we have had on regulatory oversight.

You should be in a policy guiding position. You know, we asked the question, "Why haven't you addressed ECRA?" you know, clearly a policy failure. Why haven't we collectively come back and done something about this? This is probably one of the biggest problems out there in terms of viewing New Jersey as a bad place to invest. It's not an administrative problem; it's a policy problem that needs to be focused on. We need to come to a conclusion on this and meet the goals in a better administrative way. That needs to be discussed.

There are a variety of problems out there that really are legislative problems and really send the wrong message. Part of that process is that New Jersey adopts standards of rules or procedures that are out of sync with what's happening

nationwide. There really should be sort of a baseline agreement that in New Jersey, when we exceed national standards, that we really do it for good reasons; that we understand what the economic considerations are, what the environmental considerations are, and what the administrative considerations are. That should be part of the policy, and we should focus on that exceedence.

Well, it's all there. I'll answer any questions.

We support this package. This is really a good step, and we'd like to see this as sort of the first step in an ongoing process.

ASSEMBLYMAN SMITH: We appreciate your comments. Any questions of Jim? (no response) There being none, this meeting is adjourned until May 9, Thursday morning, at 10:00, when we will be hearing from some other people.

Have a good afternoon.

ASSEMBLYMAN COHEN: Thank you, Mr. Chairman.

(HEARING CONCLUDED)

APPENDIX

TESTIMONY OF
HONORABLE JOSEPH V. DORIA, JR.
BEFORE
ASSEMBLY ENERGY AND
ENVIRONMENT COMMITTEE
ON EMAP
MAY 2, 1991

Mr. Chairman and Members of the Committee:

Thank you for allowing me to testify this morning on the Environmental Management Accountability Plan.

Last October, I called for legislative action to restore accountability and rationality to an bureaucracy at the Department of Environmental Protection that over the years has grown increasingly unresponsive and inefficient.

Unfortunately, our efforts to promote economic development and maintain high environmental standards have both been compromised by a philosophy that equates bureaucratic procrastination with environmental protection.

At the time, I said that DEP's administrative problems deserved our full attention as State policymakers and that many parties were culpable in the more than 20-year development of DEP's problems. The Legislature, the regulated community, the professionals who complete permit applications, civil service administrators outside the Department, the senior managers in DEP, all, in their own respective ways have contributed to the disarray that characterizes too many of the Department's actions.

Today, I am pleased to tell you that all of the parties involved, even those who are reluctant to support the EMAP proposal, are working to find a common solution.

My sense is that many groups for many different reasons want the DEP to work as well as any environmental agency in the nation so that all New Jerseyans can benefit from the workings of an efficient and effective Department.

Here in New Jersey, we have done as much as any other state to ensure that our waters, air, and lands are protected from pollution and environmental harm. We should take pride in recognizing that New Jersey's environmental standards are the toughest in the nation.

We have made major strides in ensuring that polluters are liable and held accountable for the damage they cause.

We have undertaken the nation's most ambitious hazardous waste site cleanup program.

We have the strictest ocean water quality testing program on the entire eastern coast.

Our curbside recycling program has been a model not only for the nation but for foreign countries.

We should all take special pride in our environmental accomplishments. But while we in the Legislature had the vision to enact aggressive environmental laws we should recognize that we were shortsighted by not being specific as to how the bureaucracy must carry out these bold initiatives. This has led to many problems.

The first problem involves the DEP bureaucracy and its internal troubles with effectively carrying out new or revised public policy mandates.

Just this week DEP Commissioner Scott Weiner told the Assembly Appropriations Committee that the DEP has become a "confederation of divisions," some of which are too close to the Commissioner and some of which are too far away.

As a result, divisions don't talk to one another. Permit applicants are given inconsistent instructions. There is no integration of enforcement actions and permit reviews.

Unless we work to fix these problems, bureaucracy will rule our environmental programs.

Bureaucracy's role is to carry out laws and policies with efficiency and accountability. This role must be reemphasized at the DEP.

The second problem I am trying to address is the quiet crisis of environmental litigation.

A number of adverse court decisions have rendered many of our environmental standards mute. There has also been a growing trend toward appeals of DEP's enforcement and permit decisions.

Let me offer just a few points.

According to the DEP, roughly 790 enforcement and permit cases are pending in the Office of Administrative Law. That is an overwhelming caseload, and it is growing.

At the same time, the courts have issued opinions that have made it more difficult to ensure a healthy environment for future generations.

In the HUB Recycling Center case, the judiciary blocked DEP's efforts to stop HUB's operations and held that DEP had insufficient authority to order a shutdown. I don't need to remind any of you of what followed from that decision.

In Last Chance vs. Kean, the court found that DEP had exceeded its statutory authority in regulating developments of less than 24 units in the coastal region.

The court found that the 1973 CAFRA statute and the 1914 Waterfront Development Act, did not authorize the Department to extend its regulatory activity into small upland development.

I submit these examples not to criticize the court or to prod for more legislative remedies, but only to remind us that we in the Legislature must do more to make our bills tighter and clearer with respect to administrative process and judicial interpretation.

We must also act to refine the permit system so that costly and unnecessary litigation can be avoided.

The third problem we need to address involves financing.

Over the past decade DEP has become a fee supported agency. The Governor's recommended budget for Fiscal Year 1992, for instance, includes a DEP budget that will be funded primarily by fee and other off budget revenues. Only 23% of the Department's budget will come from the General Fund, and the bulk of this 23% will go to parks and forestry.

I call this a crisis of sorts because of the process that is involved in raising revenues for our environmental programs.

DEP is -- and should continue to be -- an environmental management agency, not an economic agency.

The Department raises its fees because it believes that funds are needed to enhance or maintain enforcement, inspections, permitting, and compliance review activities.

But DEP is not really equipped to judge whether the State as a whole can afford to pay another \$12 million for water pollution, another \$19 million for solid waste, another \$1 million for recycling, another \$5 million for hazardous waste, all in one year.

The Department is not in a position to fully assess what its fee proposals will cumulatively do to the municipal sector or to the private sector.

Indeed, the Department has not been able to assess or control the fiscal impact of its fee schedules upon regulated entities that are critical to the success of the State's public policies.

Let me offer an example.

One dairy found that its water pollution control permit fees had increased in a one year period from \$300,000 to \$1.5 million, even though that dairy was a critical component in the preservation of dairy farms and open space in our state.

My proposal to address these problems is being referred to as the Environmental Management Accountability Plan or EMAP.

EMAP would require DEP to do several things to make the permit system more accountable and more organized.

The key elements of the plan are:

- A checklist for permit systems to guide regulators and the regulated community in completing applications.

- A small permit management staff to keep the commissioner informed of permit activities in DEP's various divisions.
- Technical manuals setting forth clear standards for approval and disapproval of permit applications.
- Audits of fee supported programs.
- Authorization for the Commissioner to use outside consultants in reviewing permit applications.
- Notification to committee chairpersons of pending rule adoptions.
- Changes in the way fee revenues are appropriated.
- Classification of permits to ensure that significant environmental permits are given a commensurate level of attention in the review process.

It is rare when the Legislature focuses its efforts on issues that are essentially administrative in nature.

But I believe that it is our right -- and our duty -- to tackle the administrative and managerial problems of DEP so that laws we craft will be executed efficiently and as we intended.

When all is said and done, we pay the bills. We pass the bills that allow fee increases, and we provide the general appropriations that allow DEP programs to operate.

We are also the first to hear from the public when government agencies are not responsive to members of the public.

Moreover, I am not persuaded by the argument that the chronic problems of DEP will best be handled by administrative action alone. I am not persuaded because the problems of DEP arise from sources that are not totally under the control of the Commissioner or other executive branch officials.

The Commissioner has no control over the passage of bills or the laws that lack sufficient regulatory guidance.

He has very little control over civil service requirements imposed by statute.

The Legislature has a clear mandate and responsibility to assist in the resolution of the DEP problem, and we should do our best to make a prudent and helpful contribution.

Before closing, I want to emphasize that New Jersey is on the cutting edge nationally in trying to refocus and redine our system of environmental management.

In Pennsylvania, for instance, Governor Casey's administration has a program that gives permit applicants an opportunity to comment on the performance of the environmental staff who conduct the review of a permit application.

Pennsylvania has also established permit coordination positions in its regional offices to ensure that permits are handled efficiently and to guarantee that enforcement officials and permit officials coordinate their actions.

For your consideration, I have asked the staff to give the committee a copy of Pennsylvania's user guide for environmental permit applications. To my knowledge, we have nothing like this in New Jersey.

In Massachusetts, regulatory agencies are required to act on a permit application within a fixed time period or lose the fee revenue provided.

Massachusetts regulatory agencies also focus their attention on major sources of pollution and develop a more appropriate review system for applications involving minor sources.

Our failure to be creative, adaptive, and committed to an improved environmental management process will hurt us now and in the future. Our inability to effectively implement programs will compromise the quality of our environment. It will also put New Jersey at economically disadvantaged position with other states more organized in environmental management strategies.

Mr. Chairman and members of the committee, I want to thank you for the time you have pledged in reviewing this package and for your commitment to addressing the many issues that I have discussed this morning.

The Commissioner Weiner needs our support, and we should do whatever we can to make his job easier.

This issue is one that deserves full legislative attention. It touches on human health and safety, it touches upon livelihoods throughout the State, and it touches upon our precious natural resources.

I wish you well in your efforts to improve this legislative package and the DEP.

Mr. Chairman and members of the Committee, I am Dr. Jack Kace, Assistant Vice President and Director of Environmental Affairs for Hoffmann-La Roche, Inc. -- thank you for the opportunity to share some of our observations about the New Jersey Department of Environmental Protection (NJDEP). I will not address any specific bill, but will describe for you some experiences we have had at Hoffmann-La Roche in our interactions with NJDEP and some suggestions we can offer to make the DEP regulatory process more efficient and effective.

UNCERTAINTY CAUSED BY UNPUBLISHED INTERNAL GUIDELINES

First, I would like to address the uncertainty in the permit process in the Agency. The uncertainty is primarily because the Agency uses unpublished internal guidelines rather than regulations to determine whether a permit is approvable. When we in the regulated community submit a permit application that complies with all the requirements of DEP's published regulations, we never know whether there is an internal guideline within the Agency that they will use to disapprove the permit. For example, for the last year methylene chloride emissions were regulated as if this chemical was a toxic volatile organic substance rather than merely a volatile organic substance. Air permit applications that did not treat methylene chloride as a toxic material were rejected. But, methylene chloride is not on the list of toxic volatile organic substances published in the New Jersey Administrative Code nor has a proposal ever been made to add methylene chloride to this list. We learned about this change within the DEP through the "grapevine" and we adjusted our permit applications accordingly. However, many other companies were not so lucky and this resulted in many permit delays. The basic problem with using unpublished internal guidelines rather than regulations for decisions about permitting is that the Agency makes decisions without the opportunity for public input.

Another example is a number of years ago we proposed the construction of a pathological incinerator at one of our facilities. We submitted an application in accordance with all published regulations and it was rejected by the DEP based on an internal guideline that required more stringent particulate standards. In our subsequent discussions with the Agency we found out about the internal guideline limits. We provided further information to the DEP that convinced them that the internal guideline particulate limits were not properly applied to a pathological incinerator and the Agency agreed to approve the permit as originally submitted. This story had a happy ending, in that our original application was approved, but there was a delay of approximately six months while these issues were sorted out.

UNCERTAINTY - STATE-OF-THE-ART

The uncertainty of the permitting process is compounded by the procedures used by DEP to determine whether the permit application submission represents the state-of-the-art of advances of pollution control devices as required by the Air Pollution Act. The Agency reviews each application to determine whether it meets the state-of-the-art requirement. As a result, if an advance in technology occurs after a permit application is received, but before it is reviewed, the application is rejected and sent back because it does not meet present state-of-the-art. In my opinion, the Agency is misconstruing the original legislative intent. When new technology develops that improves pollution controls that can be applied to a particular source, the Agency should propose a revision to the regulations regarding that source. This proposed revision should go through public comment as required by the Administrative Procedures Act and incorporated into final regulations. Once published as final regulations the new technology should be required on all permit applications submitted after the date of

publication of the final regulation. This would provide the regulated community with clear goalposts about what needs to be submitted to be approvable in an application to the NJDEP. It also would provide for public input and comment on all new regulations as required by the Administrative Procedures Act. Public comment is critical to assure that new regulations are fair and accurate.

We have had excellent turnaround, however, on pollution prevention permits for air emissions and for this we commend the Agency.

DELAYS IN PERMIT ISSUANCE

The next issue I would like to discuss is undue delays in the issuance of permits. The most significant delays we are experiencing presently are with wastewater permits. Many of our applications are in the Agency for more than one year before receiving an Agency action. The so called batch air permits, which allow you to permit one set of equipment to manufacture a number of different products, are now taking 8 - 10 months before review and approval. Let me give you one example of a problem we encountered recently concerning a batch air permit. We had a batch permit for a manufacturing operation and we wanted to manufacture a new product in that equipment. We contacted the Agency and determined that the turnaround time for a batch air permit revision would be at least 8 - 10 months. The turnaround time for more simple vent permits was approximately one month. When we explained our problem, it was suggested to us that we cancel the batch permit, submit individual vent permits and then resubmit the batch permit for approval at a later date. The individual vent permits could be approved more quickly allowing us to manufacture the product and the resubmitted batch permit could then be used to get everything back to snuff. Now, the repercussions in following that course of action is obvious, we would

have had to submit two sets of applications, paid two sets of air permit fees and the Agency would have had to spend twice the time to review these applications.

There are several solutions we can recommend to avoid some permitting delay problems. First and foremost we must avoid the uncertainty in the permit process that I referred to earlier. Internal agency guidelines only result in delays in permit approvals and appeals or adjudication of undesirable permit conditions. First and foremost the Agency must publish regulations so that the regulated community knows what is expected of them.

SIMPLIFICATION OF PERMIT FORMS

The Agency also should simplify their permit application forms. For example for air emissions, the same application form is required for a source that emits one pound per year as a source that emits one million pounds per year. Even the Internal Revenue Service (IRS) has realized that the tax form information requirements should roughly approximate the income derived by that individual. The IRS analogy is the simplest way to look at the situation. For large emission sources the State should require the equivalent of a full 1040 with all the supplements that are appropriate for it. For medium emission sources the State should require the form 1040A that requires much less time for the applicant and the reviewer. For small sources the State should require a form 1040EZ, a simple form that could be rapidly completed and rapidly reviewed.

A third recommendation for the Agency to avoid permit delays is to avoid undertaking major new efforts that will have minimal environmental benefit. One such effort is now starting up. The DEP is planning a program for registration of laboratory hoods in research and development laboratories. I don't have to

tell members of this legislature how important research and development is to New Jersey and how many citizens of the state are employed in research and development. The number of laboratory hoods in the state is astronomical and the number of laboratory hoods that could present any environmental problem at all is minuscule. Beginning a new program to regulate laboratory hoods will require tremendous manpower expenditure by both the regulated community and the department with negligible environmental benefits. This program should be stopped before it gets started.

PERMIT FEES

The next area I would like to discuss is the DEP Permit Fees. This is an area you have probably heard a lot about from the regulated community. This is especially true this year because almost across the board, permit fees are increasing because of DEP's efforts to attach their manpower to permit fee base programs so that they will not have to reduce staff as a result of departmental budget cuts. You probably going to hear a lot more about that topic from others providing testimony, so I would like to emphasize a specific permit fee issue that I think is particularly unfair. The legislature has directed DEP to establish permit fees that are necessary to recover the reasonable administrative cost of administering a permit. We in the regulated community think of this as proper and do not object to paying our fair share of the permit administration costs. You will note one thing that is very interesting when you compare the permit fees in the various programs administered by the DEP. The fees for the air permits, solid waste permits, hazardous waste permits, and toxic catastrophe prevention act permits are set based on the time required by the Agency to review the permit, inspect the sites, and the various overheads associated with those permit programs. The permit fee for the wastewater discharge permit or a NJPDES

permit, however, bears no relationship to the actual cost of administering the permit. The wastewater discharge permit fees are based on the idea of a negative incentive to pollute. The Agency develops a fee formula that seems to change every year, with various factors in it that seem to change as often, and they calculate your permit fee based on this formula. I have three problems with this approach. First, it goes against the expressed desires of the legislature to set a reasonable permit fee based on the cost of administering that permit. Secondly, it differs from all the other NJDEP permit fees systems, and third, it just doesn't work right. Let me give you an example of that. We have a Vitamin C manufacturing plant in Belvidere, New Jersey that has a tertiary wastewater treatment system that has been recognized by the EPA as one best in the pharmaceutical industry. We discharge the treated wastewater to the Delaware River. Last year's permit fee for an NJPDES permit for that site was \$27,000. This years permit fee based on the formula for this year is \$211,000. Now this is especially frustrating to us because there has been absolutely no change at all in any of the manufacturing operations at the site or any of the characteristics of our discharge. The change in dollar amount is based totally in the new fee formula used by NJDEP. Now we have discussed this situation with the Agency more than once and have never been able to resolve this issue. We have a rather simple, but elegant solution. The DEP should keep time cards like any industrial company, law firm or consultant and charge us the actual time spent in administering our permit and any overheads that are necessary to cover those costs. The Agency has repeatedly told us that a time card system is unworkable, yet, we have been told that certain parts of DEP already do use time cards to keep track of their manpower expenditures.

MANPOWER CONSTRAINTS

The last issue I would like to discuss today is the manpower constraints within the Agency. What we see in the regulated community is a wide variation in the experience of permit writers and inspectors, and the DEP has told us that they have difficulties in hiring new permit writers. Well, business encounters problems like that and we have solutions that we have used to allow us to get the job done. When necessary, we supplement our staff with outside temporary engineers. This has been tried by the DEP in the air permit area and from our perspective has worked very well. It has cut down on the turnaround time required for permit approvals and the outside temporaries that the Agency can hire have been technically qualified and quickly able to understand our applications. We strongly believe that this practice should be followed in all permit departments of the DEP when the backlog exceeds certain predetermined levels.

In the Toxic Catastrophe Prevention Act (TCPA) Program area the Agency has gone out and hired experienced process engineers to run the permitting and inspection aspects of that program. They have also tried a unique approach in that the permit writer is the same individual that inspects the facility. This is different from all other DEP administered programs in that the permit writer and the inspector are usually two different individuals. From industry's perspective the TCPA program is one that works well. The experienced process engineers on DEP staff can quickly gain an understanding of our manufacturing operations and do a through review of our operations. Because the permit writer and the inspector are the same individual leads to better inspections because the person doing the inspecting is the person intimately familiar with the details of the

permit application for the facility. It also avoids the duplication in training two people about what occurs at a plant site, one being the permit writer and the other being the inspector. We would urge the Agency to try to increase the experience level for individuals involved in permit writing in all groups as they have done successfully in the TCPA program and to consider combining the permit writing and inspection staffs to provide for greater efficiency. The inexperience of permit writers is an important factor, but certainly secondary to the uncertain limitations I discussed earlier. Both factors combine to delay permit issuance.

In closing, I would like to emphasize that permit delays affect both a company's ability to expand manufacturing operations and employment in the State as well as their ability to implement new pollution controls or pollution prevention concepts which will result in improved environmental quality.

Rich Taccari
Manager, Environmental
Division
Arthur C. Ryan

ENVIR. MGT. & ACCOUNTABILITY PLAN
5/2/91 HEARINGS

1. Intent of Testimony: intent is to provide constructive criticism by identifying areas that have been a problem or that need improvement; intent is not to "bash" NJDEP or to seek relaxation of environmental standards or cutback of NJDEP enforcement activity
2. Predictability: industry needs to have a clear understanding and expectation as to how long it will take to obtain a permit and exactly what will be required; business decisions cannot be reasonably made if industry cannot predict how long it will take to get a decision on an issue (whether favorable or unfavorable) and the basis for it
3. Turnaround Times: industry is generally working under short/tight action schedules either related to marketplace opportunities or specified by regulation/order (with stiff penalties or consequences for untimely action or delay); NJDEP has no established schedule for permit issuance although a few programs have initiated programs to track and expedite reviews (e.g. ECRA); some permit applications are in the system for unreasonable time periods (e.g. > 2 yrs on a batch air permit) w/o resolution; industry can't operate competitively w/o timely action to allow for changes in product formulation and processing
4. Lack of Consistency/Moving Target: the air permit program requires "state-of-the-art" review by the permit writer; NJDEP does not have documentation or written guidance on SOTA and it is often left to the discretion of the permit writer
5. Technical Competence: NJDEP has recognized that several of its programs require a technically competent staff and have attempted to match specific individuals to given jobs or have gone outside the Dept. (e.g. the hiring of the TCPA field staff); other NJDEP programs, however, have many civil service employees lacking the technical skills and understanding needed to make decisions - they are carried by the system regardless of their performance
6. Bureaucracy: there is a total lack of flexibility in several of the programs; need to be able to negotiate alternate approaches (protective of human health and the environment) when things don't make sense (e.g. need to revise TCPA certification requirement, allow grab rather than composite sampling for intermittent stormwater flows)
7. Above/Beyond Authority: draft permits sometimes contain requirements or provisions that exceed the current legislative and regulatory authority (e.g. permit limit to 1 bioassay specie when regulations allow choice, requirement for dye testing of stormwater outfalls when there is no established protocol)
8. Unavailability of Attorneys for Routine NJDEP Activities: assignment of NJDEP attorneys to the Attorney General/Environmental Prosecutor to enhance enforcement activities has created major delays in adjudicatory hearing/conflict issues (e.g. > 9 mos. w/o schedule for adjud. hearing); NJDEP's ability to revise regulations has also been significantly impacted (e.g. CIO/NJ negotiated amendments to TCPA regulations)
9. Computer Tracking: NJDEP starting to successfully use computers to track progress in permit reviews; several programs far behind and tracking is 6-12 mos. behind permit issuance

14 X

TESTIMONY OF THE
NEW JERSEY BUILDERS ASSOCIATION
ON THE
COMPREHENSIVE ENVIRONMENTAL ACCOUNTABILITY
AND REFORM INITIATIVE

PRESENTED TO
THE ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE
TRENTON, NEW JERSEY
MAY 2, 1991

Good morning, Mr. Chairman and members of the Committee. I am Patrick O'Keefe, Executive Vice President of the New Jersey Builders Association. I appreciate the opportunity to appear before you today.

The NJBA commends the Committee, Speaker Doria and the bi-partisan sponsors of the bills that comprise the Comprehensive Environmental Accountability and Reform Initiative for addressing an issue that is adversely affecting the economic vitality and the quality of life of New Jersey. Representing, as I do, an industry that is in the depths of a depression--having experienced the worst year since 1947 and having lost in excess of 50,000 jobs over the past 18 months--I am here to testify that the proposals before you are essential if New Jersey's economy is to rebound.

While no one factor accounts for the significant decline that our state's economy is experiencing, there is virtual unanimity that the DEP is a part of the puzzle. The DEP has become a millstone around the neck of the state's economy, discouraging

entrepreneurial activity, increasing costs and diminishing our ability to compete regionally, nationally and globally.

It is to be noted that the problems that draw our attention did not arise suddenly. They reflect several years of managerial laxity and administrative indifference.

This is not a debate about the state's environmental policies; it is not about the merits (or demerits) of specific statutes. It is, instead, a discussion of efficiency and efficacy--or rather the lack of both. It is about an agency that has become a regulatory sink hole that consumes the energy and resources of those with whom it comes in contact. It is about an agency that has, by its own admission, "grown like topsy"--lacking strategic direction and managerial discipline.

It is well documented that unnecessary and redundant regulation inflate New Jersey's housing costs by more than 25%. This is pure inefficiency; it results from inordinate delays, excessive design requirements, duplicative reviews, etc. While there are several sources of this inefficiency, the DEP is chief among them.

I will focus the remainder of my remarks on 5 generic problems, emphasizing again that these are issues of administration and management, not policy.

AGENCY AUTHORITY

Our first concern lies in the agency's arrogation of authority that has not been conferred on it by the Legislature. We have heard repeatedly that the DEP's problems are the fault of the Legislature. It is asserted that you enact laws that are imprecise and administratively cumbersome. This is offered, apparently, in defense of the problems that characterize the DEP.

This is an interesting defense of the agency's poor performance. As a long time observer and sometime participant in the legislative process, it appears to me that seldom, if ever, does the DEP voice those concerns prior to the adoption of legislation. On the contrary, DEP representatives are regularly before you supporting expansions of its authority, offering no objections re the imprecision of the legislative language and claiming that they have the resources to administer whatever initiative is under

consideration. It is only ex post that we hear the complaints about the Legislature's role in over-burdening the agency.

This is readily illustrated by the history of the Freshwater Wetlands Protection Act. Throughout the debate on that bill, the agency's representatives supported its every word; there was not one complaint regarding ambiguity. Throughout the debate, the DEP asserted that it had more than adequate resources and repeatedly under-estimated (in our view) the workload inherent in the bill. After the fact, a different story emerges; there are complaints regarding the statute's ambiguity. And what of their often touted work-load estimates?

A little more than one year after the wetlands program was fully operational, we commissioned a management review of it. Our findings? In its first year, the program achieved a backlog of 2400 applications. The report made numerous recommendations regarding the administration of the program and was provided to the Department. I am not aware how, or whether, it was used in improving the management of the program.

The DEP has also, in numerous instances, arrogated to itself authorities that the legislature has not granted. The result has been the creation of regulatory grid lock. An example of this with which you are familiar, Mr. Chairman, is the co-permittee requirement with respect to on-site wastewater treatment facilities. In this instance, the DEP imposed a requirement on applicants without any legal basis. They did so in a way that required municipalities to assume financial liabilities without any support from the state. When we crafted a compromise solution to the log jam that the DEP had created, a solution that has been favorably reported by this Committee, the Department opposed our proposal. They could offer neither substantive justification for their opposition nor an alternative; they simply opposed any resolution of a problem that they had created by adopting a regulation that lacks statutory basis.

TIMELINESS

A second area of concern has to do with the timeliness of the agency's processing of applications. The state's building industry

has been in a slump for more than three years; last year we produced less housing than in any year since 1947. You would expect, based on the paucity of activity, that the DEP would have eliminated its permit backlogs.

They have not. Even with the economy in deep recession, the DEP continues to experience substantial backlogs--even when you rely on their definition of what constitutes a "backlog". Through March 31 of this year, the Division of Water Resources reports a backlog in excess of 2000 applications; the Division of Coastal Resources has another 1100 applications that are, by their definition, over due. In the midst of a recession, how can this be? What type of management system produces such results?

STAFFING

Yet a third general concern is the quality and objectivity of the DEP's staff. When remarking on the DEP's staffing, one is struck by a sharp dichotomy. There are within the agency some very fine examples of the best of the Civil Service; they are professional,

knowledgeable and objective. Unfortunately, these individuals are the exception, not the norm.

More common among the DEP's 4000 staff--a number equivalent to about one-half the size of the US Environmental Protection Agency, which has nationwide responsibilities--are those who view their mission as stopping private sector activity and dictating the lifestyles of New Jersey's citizens. They seek to implement a personal agenda, not to enforce the laws of the State.

A separate, compounding problem is that many of the agency's staff lack the professional credentials and experience necessary to fulfill their duties. All too often, DEP reviewers are not qualified to assess the applications before them. Confronted with a task that is beyond their means, they delay processing the applications, employ dilatory tactics (e.g., asking irrelevant questions, demanding unnecessary information, etc.) or simply ignore the application.

And what recourse does the applicant have? Agency personnel know that there is no meaningful management oversight,

no Office of the Inspector General, so they have little to fear. Further, the threat of retribution against any applicant who complains is real and present--so applicants wait, while costs rise and projects die.

Does this sound implausible? Consider the responses that your colleagues, fellow legislators, have received from the DEP. How about the Assemblymember who received the DEP letter saying that inquiries on behalf of constituents were the reason that permit backlogs developed. Or how about the Senator whose constituent was informed that he would never get his permit because the constituent had asked the Senator to inquire about its status?

ADMINISTRATIVE PROCEDURES

The Administrative Procedures Act (APA) is intended to protect essential rights while promoting efficiency. It does so through a rulemaking process that is to be open and objective. While the DEP has, over the past year or so, made some progress in this area, its overall adherence to the APA is weak, at best.

The DEP's promulgation of regulations is formalistic and unresponsive. There is no assessment of the economic impacts of the agency's rules. Further, comments by the regulated community are dismissed almost derisively.

Perhaps more troubling is the agency's continuing reliance on unpublished guidelines, procedures and policies. These internal directives significantly influence the decisions of the agency, yet they have never been exposed to public review and comment. Seeking to divine the agency's secret expectations and unpublished requirements has significant economic implications; it costs time and consultant services and often requires project redesign.

FEES

Finally, the abuse of the fee-charging authority of the DEP-- and other agencies -- has reached levels that deter normal economic activity. There is no argument that applicants should pay for the cost of processing their applications; but there is the expectation that the fees imposed will approximate the actual costs involved.

This is not the case in the DEP. I must emphasize that the DEP is not entirely to blame for this, however. For several years, the Department of Treasury has been siphoning funds out of the fee-financed programs and diverting them to other areas. Just last year, we identified over \$1 million that had been diverted from the Environmental Services Fund. Because the records to which we had access were incomplete, we could not estimate the full extent to which funds have been diverted.

As the economy has weakened, it appears that the DEP has increased its fee schedules to pay for staff that are not justified by current workloads. Since there is no independent audit of these accounts and since these funds are not reviewed by the Legislature, the use of fee-financed programs as profit centers to subsidize other activities continues to expand.

Beyond the legal and equity issues posed by this abuse, there are very real economic consequences. Fees in New Jersey are approaching--or have reached-- the point where they discourage projects from moving forward. Just as many would-be homebuyers

are thwarted by their inability to accumulate a down payment, so too do many entrepreneurs forgo projects because they cannot put together the money to pay the fees of the many agencies involved.

Conclusion

Mr. Chairman, the foregoing is just a quick summary of the problems associated with the administrative and managerial weaknesses of the DEP.

That you are now examining these issues is welcome. The need for action is compelling.

The DEP permeates every aspect of this state's economy. To the extent that it is ineffectual and inefficient, it inhibits the economic vitality and competitive position of all other sectors. While the DEP has a vital mission, its managerial ineptitude cannot be allowed to suffocate other equally important functions.

The DEP has, for far too long, imposed real costs on the citizens of New Jersey in ways that have not benefitted those citizens. The inflated housing costs, the lost jobs and the reduced standards of living attributable to the inefficiency of DEP are in no

one's interest. In moving on the Comprehensive Environmental Accountability and Reform Initiative, you will take a first step toward making the DEP an efficient and effective entity; one that enforces the laws and enhances the quality of life for all citizens.

We wish you well as you seek to untie this Gordian Knot.

Thank You.



**A REGULATORY REPORT CARD
ON THE NEW JERSEY DEPARTMENT
OF ENVIRONMENTAL PROTECTION**

Prepared by the New Jersey Builders Association

May, 1991

Regulatory Report Card
Legend

<u>GRADE</u>	<u>EXPLANATION</u>
A	Excellent Performance
B	Good Performance
C	Mediocre Performance
D	Poor Performance
F	Atrocious Performance
I	Incomplete
NA	Not Applicable

<u>CATEGORY</u>	<u>EXPLANATION</u>
Objectivity	Program is administered uniformly, consistently, predictably, coherently, and, where appropriate, based on scientific (or other impartial) criteria.
Timeliness	Program processes applications, responds to inquiries and manages its workload consistent with statutory or regulatory deadlines, or without undue delays.
Staffing	Staff has appropriate qualifications and experience; is accessible, courteous, and responsive; is unbiased and reasonable.

New Jersey State Library

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REGULATORY REPORT CARD

DEPARTMENT OF ENVIRONMENTAL PROTECTION

<u>Subject Program</u>	<u>Category</u>			<u>Remarks</u>
	Object	Time	Staff	
Freshwater Wetlands	D	D	C-	*Exceed Statutory authority. *Significant backlogs. *Rely on unpublished policies.
Stream Encroach	C	B	C	*Implementation of FWA has improved administration of program.
CAFRA	D	D	C-	*Highly subjective administration. *Average processing time is 216 days.
Waterfront Develop.	D	D	C-	*Program has been used politically. *Highly subjective administration.
208	C-	C	C-	*Planning Process is dysfunctional. *Regulations are cumbersome. *Process is very slow. *Agency has attempted to make program more comprehensible.

Sewer Extension	B	B	C	<p>*Program works, <u>except</u> if project requires a plan amendment.</p> <p>*Approximately 1/2 of all POTWs are under ban.</p> <p>*Wastewater plans are inconsistent with local land use plans, causes long delays.</p>
Wastewater Management Planning	D	F	I	<p>*Lacks statutory authority.</p> <p>*Duplicates other programs.</p> <p>*Imposes de facto bans with no environmental benefits.</p>
Co- Permittee	F	F	F	<p>*Lacks statutory authority.</p> <p>*DEP imposed requirements that cannot be met in most circumstances.</p>
Realty Improve. (50+)	F	F	F	<p>*No published regulations.</p> <p>*DEP has issued contradictory guidance.</p> <p>*Applications languish.</p> <p>*Staff is non-responsive.</p>
Pinelands	C	D	D	<p>*Commission has usurped approval authority beyond law.</p> <p>*Plan is anti-growth, per statute.</p> <p>*Review procedures dilatory and cumbersome.</p> <p>*Staff is inaccessible and biased.</p>

NJPDES

F

F

F

*Policies are in
constant flux.
*Standards are
outmoded.
*Inordinate delays in
reviews.
*Staff is inaccessible
arrogant and biased
against development.

Chapter
199
(septics)

F

N
A

C

*Standards are
excessive and unduly
expensive.
*Staff is generally
accessible.

**Testimony of the
New Jersey Chapter of the
National Association of
Industrial and Office Parks
before the
Assembly Energy and Environment Committee
May 2, 1991**

Introduction

My name is Jeffrey A. Horn. I am the Executive Director of the New Jersey Chapter of the New Jersey Chapter of the National Association of Industrial and Office Parks ("NAIOP"). NAIOP has over 7000 members nationwide and 300 members in New Jersey. Our members are actively engaged in the development, ownership and management of commercial properties throughout New Jersey. A key attribute of our membership is their continued involvement with their projects and properties long after the completion of their development phase. We continue to retain equity interests in the majority of our projects and take the long view in our economic outlook.

Prior to serving as Executive Director of NAIOP's New Jersey Chapter, I served as an Assistant Vice President of Bellemead Development Corporation. My responsibilities included coordinating Bellemead's preconstruction permitting in seven states, as well as primary responsibility for obtaining permits for Bellemead's New Jersey projects, then involving eight active New Jersey locations. Prior to joining Bellemead, I served in state government for ten years, of which the last eight and one-half years were with the Office of Business Advocacy in the Department of Commerce and Economic Development. My responsibilities during that period included assisting the business community navigate the state permitting process.

I have been involved with the Cabinet and Citizens Committees on Permit Coordination since they were first formed by a Governor's Executive Order in 1977. My involvement has ranged from a member of the staff serving the committees to my appointment to the Citizen Committee on Permit Coordination by Governor Kean and my recent reappointment by Governor Florio.

I first want to express the appreciation of the membership of NAIOP to Speaker Doria and the many sponsors of this package of bills intended to reform the permitting process at the Department of Environmental Protection. Our purpose in testifying before you today is to discuss the problems that exist within DEP's permitting processes. I will leave a description of "horror" stories to others. In our brief moment before you today, we want to provide our perspective on the problem against which you can weigh the solutions. Indeed, many of the solutions are embodied in the Speaker's ideas.

Our primary problems with the permitting process at the Department of Environmental Protection involve a lack of predictability with regard to review time frames and the ultimate outcome of permitting decisions. A second set of problems involve the costs involved in negotiating the DEP permit process; costs ranging from

ever increasing permit processing fees to the costs required in engaging professionals to produce complex technical documents or studies which only yield marginally important information. Another set of problems involves the "attitude" of the regulators toward the regulated community.

Before I go into these problems in greater detail, I want to dispel the "easy" answer that a strong manager in the Commissioner's seat can make a significant difference in resolving these problems. In the history of the Department, we have seen many good and innovative managers, yet the problems in the permitting process have grown in an almost geometric fashion. When I first become involved in the permitting process in New Jersey during the early 70's, a fifty acre business park could navigate the complete permitting process involving local, county and state permits in eighteen months or less. In the early 80's, the process had grown more complex and involved two and perhaps as many as three years of approval processing. Today, the same project involves a multijurisdictional and redundant permitting process that requires between five to seven years to negotiate. Much of that permitting span involves time spent before a multitude of agencies within the Department of Environmental Protection. One man or woman, as Commissioner of the Department, can only make a marginal difference in the process. Structural institutional changes requiring new statutory authority are absolutely necessary to make the agency more responsive to the Commissioner's policy direction.

Lack of Predictability

DEP's permitting process lacks predictability. A common complaint I hear from NAIOP members is that regulations often require measures that are contrary to or are not supported by enabling legislation. Another consistent complaint in this category is that agency policies require submissions, design standards or concessions that are not part of the regulation, but are part of the agency review process.

The problem involving regulations and their relevance to their enabling statute is cause for concern. An increasing number of organizations and individuals have taken the Department to Court to challenge provisions contained within the rules. Under current jurisprudence, the Department is always accorded a presumption of validity. It is significant that the Courts of late have taken to siding with appellants in a number of challenges to Department regulations. A major problem is the manner in which the Department prepares and adopts rules under the Administrative Procedures Act.

A case in point involves the rules implementing the Freshwater Wetlands Protection Act ("FWPA"). A number of organizations played a role during the legislative

debate which led to the passage of the FWPA. I am proud to remind the Committee that NAIOP played a significant role in supporting the Penn-Ogden bill which passed the Assembly. However, even while the Department created an advisory committee (a concession by the Department during the Senate deliberations on the final bill), the committee has never been shown any measures contained within the hundreds of pages of regulations implementing the Act prior to their publication in the New Jersey Register. Once published in the Register, interested parties have 30 or 60 days to review the proposal and formulate meaningful comments. The Department then takes the comments into the "back room" and prepares its response. Final regulations are then published in the Register. During the time the Department is reviewing the comments, the advisory committee is again kept in the "dark" and is not made part of the process. The results thus far in case of the FWPA have been typical. Of the many organizations that took a leadership role in the legislative debate, no less than four major players contested in the Courts elements of the rules enacted by the Department. NAIOP was one of the organizations that brought suit in the Appellate Division of the Superior Court. The Court upheld our points, for the most part, in a unanimous decision and the Supreme Court refused to hear DEP's appeal.

I contrast this process to that which the Department of Transportation is employing in adopting the highway access code pursuant to the State Highway Access Management Act. In that case, the Department has worked with its advisory group and has even created additional external groups to obtain more feedback in the creation of the regulation. All of the groups that participated in the process have been provided with the Department's current proposed language in advance of the forthcoming publication of the regulation in the Register. It just makes sense to get as much input as possible in order to circumvent avoidable disputes. I ask the members of this Committee to think how many times you have questioned whether the Department was following legislative intent in the Department's regulations implementing your efforts.

The Department's permitting process has long operated under a process I have been given to call "policy du jour". Policies that are not contained within the regulations are used in determining if applications are complete, if more information is to be required, in extracting concessions from an applicant and in delaying applications. These policies are often the product of middle or low-level management of the Department. In some cases, these policies eventually find their way into regulation. In these cases, implementation of the policy may seek to actually gain acceptance of the provision in order to justify a subsequent regulatory proposal. In virtually all cases, the policies tend to expand the authority or requirements of the Department

in ways which the regulated community can only determine long after entering the permitting process, when, in fact, it may be too late for change without extensive additional costs and time delays. These hidden policies are part of every Departmental regulatory program that the development community endures. They are a significant source of our frustration with the Department.

There is no efficient and effective method to contest the Department's arbitrary actions in this regard, short of taking the Department to Court. When faced with the choices of delaying a multi-million dollar project (which will be heavily financed) to wait for a legal challenge to be heard and decided, or submit to the Department's probable illegal requirements, the applicant has little choice in reality. This consistent abuse of power by the Department has created an unhealthy estrangement between the Department and the regulated communities.

In a related vein, the attitude of the personnel in the permitting portions of the agency feeds this problem. Several years ago, the Cabinet and Citizens Committees on Permit Coordination sought to deal with a problem involving several DEP permitting programs. We wanted to utilize a methodology we employed in assisting another State agency resolve a problem with its permitting program. The DEP representative to the cabinet committee stated in response, "You have to understand, personnel in the Department of Transportation and the Department of Community Affairs see their mission in the approval process as processing permits. That is not the case with the Department of Environmental Protection. Many of our people in the permitting programs see their role as antagonistic to development. Your efforts to resolve the permitting problem through traditional methods will not work."

Thus spoke a representative of the Commissioner of the Department. I'm told Commissioner Weiner's immediate predecessor attempted to directly confront the attitude problem. I believe we know who won that confrontation.

Timeliness

The Legislature, in creating the 90-day law, sought to provide a system that would produce permit decisions in a reasonable amount of time and provide a mechanism for funding the review process. In essence, the regulated community agreed to pay for the decision mechanism in return for reasonable turnaround in decision-making. The process is a good idea that has not worked. Permit fees continue to rise and permit decisions continue to take longer and longer. The Department has maintained that the automatic approval provision of the 90 day law has never taken

effect. There is little wonder that this is the case when I am consistently told that applicants will get calls within the last days of review asking them to request a thirty day extension from the Department. To do otherwise would result in a permit denial. I am aware of other cases where the Department, after 120 days could still not render a decision, where the applicant is told the permit will be denied without prejudice, resubmit and we will render the decision within the next 90 days!

The Department has developed significant expertise in circumventing the intent of the 90 day law. The agencies will employ strategies to delay applications in "completeness checks" and in tolling the decision time frame through requests for additional information. These requests are often for information that is costly to produce and provides little, if any meaningful information. Again, there is little, if any, recourse to the applicant but to comply. The Department is not held accountable for the time, the costs or the delay's ultimate impact on the project in question.

Each element of the Department looks at a permit application from their own particular perspective. The Division of Water Resources will review from their point of view while the Division of Coastal Resources reviews from another. It is unfortunate, but there are times when respective policies of the agencies within the Department are in conflict. The applicant suffers. There are times when the policies of the agencies will conflict with the permit requirements of other state, regional or local permitting agencies. The applicant suffers. There is no effective mechanism to resolve disputes with the applicant, let alone other permitting authorities. The lack of a comprehensive approach breeds these potential conflicts.

Conclusion

We again thank the Speaker for offering a meaningful legislative package that seeks to address many of the problems we described before you today. New Jersey's commercial real estate industry is suffering as a result of a major economic slump. Our problems in New Jersey are compounded to a significant extent by our environmental permitting process. The small developer no longer has the means to survive this process, which leads to larger projects by larger developers because only they can achieve the economies of scale necessary to "wait out" and even confront the development permitting process. We are sure this was not the Legislature's original intent. However, this is today's reality. Well meaning, temporary solutions are not enough. Long-term structural solutions such as those contained within Speaker Doria's package are an important beginning.

TESTIMONY

TO

THE ASSEMBLY ENERGY AND ENVIRONMENT COMMITTEE

ON

THE ENVIRONMENTAL MANAGEMENT ACCOUNTABILITY PLAN

BY

THE NEW JERSEY SOCIETY OF PROFESSIONAL ENGINEERS

THURSDAY, MAY 2, 1991

I am a representative of the "Regulated Community." I am speaking on behalf of the New Jersey Society of Professional Engineers. The purpose of my presentation is to objectively discuss problems encountered in applying for and obtaining permits from the New Jersey Department of Environmental Protection (NJDEP). The focus of my testimony relates to issues -- not people -- and it is hoped that participants in this hearing will be able to suggest how solutions to these problems can be formulated.

I feel there are problems which cut across all divisions at NJDEP and merit discussion.

First and foremost, NJDEP often does not view a project as a whole, but rather, each division (and occasionally a bureau within a division) will concern itself with only one aspect of a project and issue a strict condition or denial without regard to how another division or bureau may view the project or whether or not environmental trade-offs are in order.

Thus, a project can have overall merit, but be held up indefinitely due to conflicting concerns. For example, a treatment plant which is in need of upgrading and expansion may not move forward because it will encroach upon wetlands. Some sort of functional organization has to exist within state government which will monitor the permit status of a given project and assume responsibility for coordinating policy. I am not suggesting an advocate for the project, but rather someone who will see that the project receives a fair and timely review and will resolve jurisdictional conflicts.

Second, NJDEP requires better appeal mechanisms. While there are procedures for full scale hearings and administrative appeals it has been my experience that applicants are sometimes subjected to impractical requirements from an overzealous reviewer -- requirements which are not found in the regulations but simply represent an individual's opinion, for example, the scope of an archaeological survey or the limits of a wetlands boundary. There simply is no quick and efficient means for getting these decisions reviewed in a timely and cost-effective manner.

Third, the regulations are simply becoming too voluminous, overlapping and complicated for most people to deal with, particularly the "little guy" who, for example, wishes to build a deck in his back yard, but has not budgeted for a professional engineer, environmentalist and attorney to obtain a letter of interpretation and stream encroachment permit on his behalf. One example of overlapping requirements which caused considerable confusion several years ago involved septic approvals. NJDEP claimed authority under both the Realty Improvement Sewerage and Facilities Act and the Water Pollution Control Act. The regulations under neither law clearly define the circumstances under which NJDEP had jurisdiction as opposed to the local health inspector. As a result, developers and local health inspectors were thoroughly confused and many projects

were adversely impacted. New rules under N.J.A.C. 7:9A which took effect on January 1, 1990, resolved the confusion, but this confusion should not have been allowed to occur in the first place. Internal policies and guidelines which are not available to the general public further add to the confusion.

Fourth, in my opinion NJDEP needs to maintain an ongoing dialogue with all concerned interests including representatives of the engineering, development, industrial, and environmental communities. A conscious effort on the part of NJDEP to routinely work with ad hoc committees in the development of new regulations would prove beneficial to the environment and the regulated community.

Fifth, NJDEP must recognize that time is money. Permit delays can greatly add to the cost of a project -- a cost that is passed on to not only the developer, but to the consumer and tax payer as well. This "time-money" relationship is very real but often gets lost in the application and review process. Various steps that could be taken to expedite the permitting process without adversely impacting the environment include upgrading preapplication procedures, increased emphasis upon concurrent as opposed to sequential reviews and improved coordination among NJDEP's various divisions and bureaus.



NEW JERSEY BUSINESS & INDUSTRY ASSOCIATION

Testimony

of

Jim Sinclair P. E.

First Vice President

New Jersey Business & Industry Association

on

Environmental Management and Accountability Plan

Assembly Bills 4511 to 4523

before the

Assembly Environment and Energy Committee

May 2, 1991

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Good morning, I am Jim Sinclair, First Vice President of the New Jersey Business and Industry Association. NJBIA represents over 13,600 commercial and industrial concerns operating within the State of New Jersey. Our members employ over 1,000,000 workers in New Jersey.

I appreciate the opportunity to express the support of our member companies for Speaker Doria's bipartisan efforts to start the process of reform of the regulatory system. These measures, intended to enhance efficiency and accountability in the permit and regulatory review process, are of major importance to New Jersey's economy, as well as its environment.

At the end of last year, NJBIA completed a survey of our membership, and the results indicated a weakening economy for the State. Perhaps the most ominous fact that surfaced in the analysis of that survey was that firms that planned to expand would do it in another state by over a two to one ratio (28.1 to 11.8). This, and the loss of 100,000 manufacturing jobs in the last two years, is definitive proof that New Jersey is viewed as a place where manufacturing is unwelcome. Most people who have to deal with the regulatory process can confirm the validity of this statement.

The shape of the State's economy is molded by the actions of individuals and corporations who choose to locate, expand or shut down business ventures based on a variety of factors. The predictability and underlying logic of a state's regulatory process is an important issue for decision-makers. For New Jersey business to be competitive in the 21st century will require a balanced State economy filled with dynamic

general principle, the degree of regulation and the severity of penalties should reflect the potential for environmental harm or benefit.

It is clear that our regulatory system has to be restructured. We need to redesign the administrative systems so that people can understand the rules and can receive answers to questions in a reasonable time frame. Application review and permit approvals must be accomplished in time frames comparable to other states.

Our regulatory programs and standards should be in sync with national standards. There should be compelling environmental, safety or economic reasons for the Legislature or the Department adopting standards different from those adopted at the federal level.

Despite the good faith efforts of senior managers at DEP, the organization has become overly bureaucratic. Thus, it is unable to be responsive to the legitimate needs of the regulated community and unwilling to discharge its policy and statutory objectives in an even-handed, competent or timely manner.

Permit Application Process

We support A-4518 (Cimino/ Collins) which would require DEP to develop for each permit type at least three categories of permit applications based upon, among other things, the severity of the likely impact upon the environmental medium (air, water, land), the relative complexity of the information that must be reviewed, and the overall status of the project to which the permit is associated.

In addition, DEP would have to establish a permit application review policy to correspond with each level of review identified by the Department.

Timely Processing of Permit Applications

Most businesses are willing to comply with reasonable permitting rules.

However, if we use NJPDES as an example when wastewater treatment plant applications are not acted upon in a timely manner, industry is left in a state of limbo with respect to requests for changes to their treatment plants. In many cases the delayed changes are for improvements to the plants which would reduce the potential for environmental impact.

Unfilled staff vacancies and a high level of staff turnover has hindered the resolution of contested NJPDES permit issues and the response to and/or approval of actions required of a permittee pursuant to a NJPDES permit. Issues that should only take weeks or months to resolve can often take several years. With regard to management, industrial dischargers currently face long delays in renewing, amending, or obtaining new NJPDES permits. Failure to meet the minimum permit issuing performance standards mandated by the EPA could jeopardize the Department's delegated authority for the program.

We support A-4511 (Doria/ Franks), which creates an organizational structure equivalent to a "Permit Management Staff" within the Office of

the Commissioner that would be responsible for maintaining a complete and accurate record of permit activities, and would provide department-wide coordination of permit decisions including the coordination of multiple-media permit applications.

The Increased Use of Third Party Certification

The increased use of certified third party professionals is a promising concept to aid in management and logistics problems. For example, in the case of the air program, the DEP would set performance standards through the administrative procedure process and accept applications designed to show compliance with these standards. Typical of this approach would be the establishment and acceptance of standard testing and modeling protocols which would not require extensive and time-consuming reviews. If the application was signed and sealed by a professional engineer, the Department review would go no further. The case would be transferred to an implementation division, stack tests would be conducted, and the enforcement process would ensue if the stack tests failed. This process would cut out a significant amount of permit review time, while still maintaining the actual performance levels required by the Division of Environmental Quality.

We support A-4519 (Cohen/ Shinn) which would require, DEP in conjunction with the Attorney General, to establish within 90 days a conflict of interest policy governing the conduct of outside consultants employed by DEP. The DEP would to be authorized to use outside consultants to conduct basic reviews of permit applications at any time. The bill would require

that when the overall backlog of permit applications in a particular program becomes "extreme," the Department would be required to use outside contractors. When the backlog of permits reaches 150% or more DEP would refer permit applications to qualified outside contractors for review.

We like the idea that DEP will have to maintain and make available certain information--"box scores"--for permit applications submitted by Professional Engineers and other professionals who are licensed by the State under existing law. **A-4513 (Salmon/ Mecca)** would require DEP to maintain a record of all permit applications received, including the number of applications received by each professional, to record whether the application contains appropriate and sufficient information to be deemed "complete."

The appropriate professional licensing board or boards will be authorized to review the information received from DEP and to take appropriate disciplinary action against the members of the profession.

A-4514 (Impreveduto/ Villapiano) would authorize the appropriate licensing boards to establish performance standards based at least in part upon the box scores provided by DEP. The bill would authorize the boards to impose sanctions as they deem appropriate for chronic failures to meet performance standards. The bill would establish a range of possible sanctions and provide broad authority to the boards to act in their discretion.

Inflexible Enforcement

The Department has adopted a "penalty matrix" enforcement strategy which effectively insulates itself from site-specific mitigating factors in the enforcement process. We believe that at most, the penalty matrix should be used as a guideline which forms the basis for meaningful negotiations. In practice, the penalty matrix is used as a shield to prevent mitigating circumstances from coming into a calculation of a final enforcement number. As to the penalties themselves, there is a general feeling in the regulated community that the Department is using unreasonably high fines as a revenue raising device, if not for the Department specifically, for State Government generally. This is an abhorrent policy from both an enforcement and public policy standpoint. These high levels of fines, coupled with an unbelievably inflexible enforcement process, is one of the main arguments used by those who consider New Jersey a bad place for business. The Legislature must find a way to make the penalty matrix process more flexible, and must find ways to implement innovative enforcement solutions on a case-by-case basis.

We support the establishment of a special unit which would be established within the Office of Administrative Law. The special unit would be dedicated solely to the adjudication of environmental matters. A-4521 (R. Smith/ Haytaian) would require that all environmental matters referred to the OAL be referred to the special unit. The unit would be comprised of a specified number of Administrative Law Judges. This will help with the growing of case backlogs.

I might point out that last year, when Commissioner Yaskin testified in support of the Clean Water Enforcement Act, she stated that the Administration would eliminate the existing backlog by July 1, 1991. I believe that it now stands at 150% of last year's figure.

Fee-Based Programs

NJPDES fees have grown exponentially without the opportunity for meaningful independent audits of the program organization, staffing or fees.

We are extremely concerned about the trend towards fee-based programs in the Department of Environmental Protection. These fee-based programs operate without meaningful outside audits of their activities and without independent assessments of their staffing requirements. As a result, fee-based programs tend to expand during boom times, but do not contract during times of recession. The result is program staff which is seeking things to do which, in itself, translates directly into unnecessarily long permit processing times. We strongly recommend independent management and financial audits of all fee-based programs on an annual basis. We support the following bills which will start to place management controls on the fee based programs:

A-4522 (Ford/ Frelinghuysen) requires that the Treasurer must include all anticipated fee revenue "above the line" in the budget document.

A-4523 (Doria/ Martin) would require the DEP to annually submit to the appropriate legislative committees in each House (Environment and

Appropriations), performance data for fee supported programs similar to the performance data currently provided for General Fund appropriations.

Attitude and Accountability

We believe there must be a fundamental change in attitude not only in the Department of Environmental Protection, but in the State as a whole. The "us versus them" philosophy which appears endemic in State government, manifests itself in many negative ways, both in the permit process and the enforcement process. State employees should consider State service as a "service," as well as a "regulating" occupation. We understand and endorse the concept of strong State regulation in the environmental area. However, we also endorse the concept that the regulated community is entitled to competent and timely treatment of its permit applications, so long as those applications are within the requirements of the appropriate statutes and regulations.

Because organizational culture is a top-down process, there needs to be a high level of managerial flexibility and accountability to the chief elected official. If we are going to hold the Governor accountable for the effective management of this agency, then we should make sure that he has the flexibility in hiring and firing the people who must run the department. We believe that all positions in DEP from the Deputy or Assistant Director level up to the Commissioner should be unclassified appointments. We believe that this will increase accountability and productivity. A-4512 (Bryant/ Franks) also requires the Department of Personnel to allow some key professional staff to be hired without regard to a "list" as would otherwise be required by the Department of Personnel.

Unwritten Policies

It is difficult for the regulated community to comply with governmental directives that are based on unwritten, constantly changing policies which are based on subjective statutory terms such as "state of the art," "best available control technology," and "maximum achievable emission rate." These are all open to reasonable differing interpretations. We believe the current law clearly states that written or unwritten policies of general application must go through the administrative procedure process. Where internal policies do not rise to that level, they should nonetheless be written and made available to the public.

Many departments of State Government operate on a system of unwritten policies which are not generally known to the regulated community and are not open to public scrutiny and discussion. Such a process violates New Jersey case law and the Administrative Procedures Act. We support a series of bills in the package that open up the information flow:

DEP should be required to periodically conduct seminars for professionals who prepare permit applications. We support A-4514 (Kronick/ Albohn) which would authorize DEP to conduct these seminars in conjunction with trade associations such as the Society of Professional Engineers. DEP would be required to develop the content of the seminars in conjunction with appropriate trade associations including the Society of Professional Engineers.

We support the idea that DEP should be required to develop and make available to the public, upon request, an exclusive and exhaustive "check list" of information necessary for a permit application to be deemed "complete" for purposes of the "90-day" provision in the Administrative Procedures Act. A permit application submitted to DEP containing all of the information identified in the "checklist" would be deemed complete for purposes of the "90-day" rule.

A-4516 (Doyle/ Felice) would provide that a permit applicant is guaranteed a pre-application conference upon request. The bill would require DEP to, within 30 days of receipt of the permit application, notify an applicant as to whether a permit application is "complete" for purposes of the "90-day" rule, or as to any particular deficiencies in the application for completeness purposes. The bill would also require DEP to identify all DEP personnel who will be involved in the review of the permit application. Any permit applicant not notified within 30 days after submission of an application would be deemed complete for purposes of the "90-day" rule.

Under **A-4517 (Duch/Albohn)** DEP will have to develop, for each permit type, a technical manual. The bill would require the manual to provide a detailed summary of all policy considerations, not otherwise identified by statute or rule, that bears upon on the review and consideration of a permit application.

In addition, **A-4517 (Duch/Albohn)** would require these manuals to include definitions for standards currently not having a fixed meaning like "state-of-the-art" technology for emission control devices. The bill would authorize DEP to update these definitions, which modification would be

identified in a supplement to the manual, no more frequently than every six months. For purposes of compliance with the statutory standard of "state-of-the-art," the definition contained in the manual would be binding upon a permit applicant (and permit reviewer) once the application has been submitted to DEP.

In other words, if on March 1, 1991, DEP defines "state-of-the-art" as requiring the employment of a particular type of emission control technology, DEP may modify the definition in July 1991, but an application submitted in June 1991, presumably in reliance on the March definition of the standard, would be reviewed based upon the March definition of the standard.

Role of the Legislature

We support A-4520 (McEnroe/ Scerni) which would require that DEP must submit all new rule proposals directly by letter to appropriate legislative committee chairpersons.

We also support Speaker Doria's decision to have the Assembly schedule a number of legislative oversight hearings each year to assess program performance and regulatory problems.

We support the Speaker's goal of having each new bill that contains authorization for the promulgation of departmental regulations contain legislative guidance to assist the department in shaping the regulations.

We also support A-4511 (Doria/ Franks) which would require DEP to provide semi-annual reports to the appropriate legislative committees in each House (i.e., Energy and Environment) summarizing the performance of each permit program. This summary would include for each permit type, among other things, the number of permits received in the preceding reporting period (the preceding year for the first reporting period), the number of permits approved, disapproved and modified, the total number of permits pending, and the number of staff persons assigned to review permits in each program.

There is clearly a need for greater legislative oversight of program performance, baseline information and most importantly, program implementation plans developed by the Administration prior to the passage of major bills. There should be realistic legislative expectations of program performance, cost and impact, which are publicly agreed to, prior to the Governor signing a major piece of environmental legislation.

We are looking for leadership on major legislative reforms of environmental policy failures. Good environmental policy has to work. If its not working, then it should be fixed. Programs which are generally considered as failures, the A-901 process, ECRA and the universal labeling requirement have been off limits for meaningful discussion. The development of environmental "sacred cows" in the legislative and regulatory area will do nothing but add to the problems of the State, while failing to address the problems that these "sacred cows" were originally designed to solve.

The Clean Water Enforcement act is probably the best example of this disturbing development. While the program is recognized to be potentially disastrous to many areas of the economy, its impact on improving the environment was known to be negligible by virtually all professionals who reviewed the bill. Despite overwhelming data in opposition to the legislation, substantive comments were ignored by the Administration, and the bill was passed purely for political reasons. This was a special piece of law designed for the political benefit of one group at the expense of most of the taxpayers.

Last, but not least, when you list all of the issues with the potential to determine New Jersey's economic future, the Environmental Cleanup Responsibility Act (ECRA) casts the longest and most ominous shadow.

New Jersey's ECRA program is stifling industrial reuse of manufacturing facilities in older urban centers, compounding the lack of development and high unemployment in the state's inner cities.

The State must develop a policy that will save manufacturing jobs by reusing industrial land while, at the same time, protecting our environment. The two goals are not mutually exclusive.

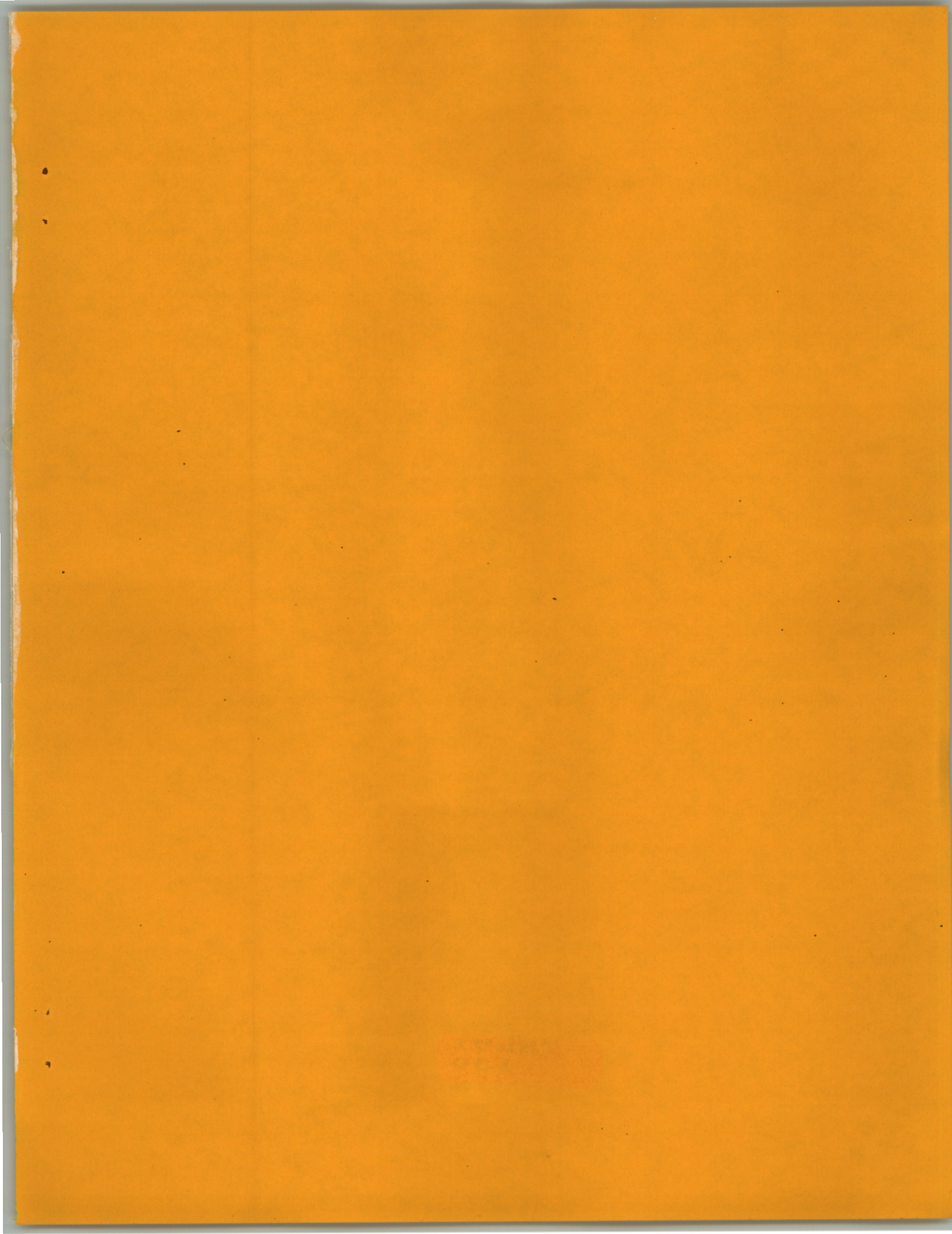
A variety of sound recommendations for ECRA reform have been offered that should be adopted by the Florio Administration. Perhaps the most important suggestion is the development of a regulatory system that relies more heavily upon private party site evaluation, cleanups, and certifications. This system would utilize the "due diligence" legal principles that have been developed over recent years. This revised system would

eliminate the current involvement by the New Jersey Department of Environmental Protection in every step of the environmental audit, especially in routine cases of low or medium environmental concern. This would allow the DEP to be available for timely guidance and assistance on the more crucial and complex situations.

The State should take the necessary steps to privatize the process to the maximum extent possible. This action would eliminate unnecessary delays and paperwork and excessive fees for most properties while reserving the DEP's limited resources for areas where they are truly needed. In privatized cases, environmental audits and cleanups would be conducted following established professional standards and practices. The property owner, operator or an independent environmental professional would be required to certify that the appropriate procedures have been implemented as part of a Negative Declaration or Cleanup Plan to be filed with the DEP and the purchaser. This concept reflects more efficient ECRA-type programs in other states, such as Connecticut and Illinois, which have studied and improved upon New Jersey's ECRA initiative.

Additional proposals by business for modifying the program are being reviewed by the Administration. Reform of ECRA is the more important to the business community than any other program. In the long run, New Jersey's economic health and growth potential may depend on it.

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