

STATE OF NEW JERSEY  
ASSEMBLY ENVIRONMENT AND  
SOLID WASTE COMMITTEE

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RE: PUBLIC HEARING

) October 18,  
2006

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) 10:30 a.m.

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Delsea Regional High School  
242 Fries Mill Road  
Franklinville, New Jersey 08322

Kim A. Johnson,  
Professional Shorthand Reporter

COMMITTEE MEMBERS PRESENT:

JOHN F. McKEON, Assemblyman, Chair

FRED H. MADDEN JR., Senator

LINDA R. GREENSTEIN, Assemblywoman

DAVID R. MAYER, Assemblyman

PAUL D. MORIARTY, Assemblyman

ALSO PRESENT:

CARRIE ANNE CALVO-HAHN, Office of Legislative  
Services, Committee Aide

KELLI B. KELTY, Office of Legislative Services,  
Committee Aide

KATE MCDONNELL, Assembly Majority Committee Aide

THEA M. SHERIDAN, Assembly Republican Committee Aide

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**ASSEMBLYMAN JOHN F. McKEON (Chair):** Good morning, ladies and gentlemen. My name is John McKeon. I am the Chair of the Assembly Environment and Solid Waste Committee. It is our privilege to travel here today to Franklin Township to hold public hearings as it relates to a prospective legislation that will be discussed. As we would ordinarily discuss legislation on the agenda, it usually begins in Trenton.

Just a couple of general comments. First and foremost, many thanks to the police from Franklin Township. It was a pleasure to come in today, not as much as an Assembly person, but as a dad of a high school student. So I am particularly impressed with the Delsea High School, particularly the ROTC and all of the Student Government. Thank you to the students and the administrators, and a compliment to the mayor for allowing us here and having a such a wonderful place. Thank you.

Before I give very brief comments, in general, about today's focus, I want to lay out the ground rules of handling today's procedure. We will have a number of witnesses, starting with Lisa Jackson, the Commissioner of the Department of Environmental Protection. And after remarks from the panel, I'll allow my colleagues to ask questions of those individuals.

After, we will get to the mayor and give him that same courtesy, and allow us to interface. From that point forward, we will invite all of the rest of the individuals who signed up to testify to speak for a period of five minutes. I am not going to be that strict about that. Please, everyone needs the courtesy of having been heard. Keep your remarks to five minutes. After that we will give

you a wave, and that will mean it is time to try to wrap it up.

With that, before I give each of my colleagues just a moment to introduce themselves, I want to just generally tell you what my policy is today. The Board knows what occurred at Kiddie Kollege. It is a tragedy. It is something that should never happen again. The Lord knows there's plenty of blame to go around as far as how that could ever have been allowed to occur.

In part, today, we are going to gather facts to determine as best we can, and continue to flush out, why it happened, so that legislation that has been put forward by some of my colleagues can be bettered to the extent that it never happens again. That is the overall goal with today's hearing.

With no further ado, I am going to start with someone we have invited to sit with us as a Committee member today, as extraordinary as that is. Certainly, the Assembly and Senate work closely together, and need to work together with the Governor's Office to be sure of a legislative road map to correct this problem in the future. We ask Senator Madden to please sit as a Committee member today. Senator Madden, welcome to you. If you would like to make some remarks, please do so.

SENATOR MADDEN: Thank you, Chairman McKeon.

Simply put, I will tell you that it is a special honor to sit with you today. I know what it takes to allow a Senator to share a table with the Assembly in a public hearing. I will also say that on bills and legislation we have written together, it is clearly your leadership as an Assemblyman in this Committee that allows this to take place. It is your vision, your openness, and your willingness to

travel from northern New Jersey two-and-a-half-plus hours that gives southern New Jersey the access to be heard on this bill. I greatly appreciate it. Thank you for those efforts.

Ladies and gentlemen, thank you for taking the time to come out. Simply, do a number of different things. Watch how the legislative process works. The Committee which sits before you would either sit in the State House or at some other venue. Back in July, there was a hearing at Rowan University on substandard housing and the Home Warranties Act. At 4:00 today, the Taxation Reform Committee will sit in the Gloucester County College in a public forum.

This is basically your shot to talk directly to the legislators. There are many people sitting in the audience today who would not have the ability to travel to Trenton. This is a serious issue that broke loose in Franklin Township and the Gloucester County area. I assure you that there have been a number of other sites throughout New Jersey where this is also taking place.

In response to a number of the measures that were put before us starting back in August, my partners of the Assembly, Paul Moriarty and David Mayer, have drafted legislation and introduced that. It will be introduced tomorrow in the Assembly. It was introduced in the Senate just a few days ago.

This same panel that is here and the bills that we are testifying to today -- there will be a hearing, publicly, also. It will be in the State House on this coming Monday in the State Environmental Committee. If you have the opportunity to make that trip to Trenton and you wish to participate in that session, please let me know. I'll afford you -- to make sure you are afforded the opportunity to testify at that hearing, also.

With that all being said, simply put, we really believe that there were, to say it no other way, holes in the existing laws that permitted the dilemma to take place in Franklin Township, and that is taking place at other sites throughout the state. We have worked diligently to try and plug those holes in the existing laws and put some more responsibilities on our State departments in terms of oversight; and setting new standards in terms of testing, and processes, and levels, and things of that nature which you will hear later about, as the testimony goes along today.

The focus today will be to simply take our legislation and do what we do in Trenton: hear from the people, hear from the players that are affected by it, and make amendments where we need to along the process. Ultimately, the end goal is having a product that will simply never allow a child's day care center, residence, or education center to be put on a contaminated site again.

Thank you, again. Chairman, thank you for the ability to make comment.

ASSEMBLYMAN McKEON: Thank you, Senator. From the inception of this unfortunate event, the Assembly team from the 4th District and beyond, the interface of the Governor's office, and the Commission of the Department of Health, certainly it has been a challenge. As the Chair in this Committee, I, too, would like to compliment them on their vigilance in this district on this state-wide issue.

I ask, as a district member of that team, Assemblyman Mayer to make some remarks, if you would, please.

ASSEMBLYMAN MAYER: Thank you very much, Mr. Chairman. Good morning, ladies and gentlemen.

Let me begin by saying thank you to Chairman McKeon for allowing us to have this hearing down here in

Franklin Township. Chairman, I want to thank you for not only driving for two-and-a-half hours, but more importantly I want to thank you for the concern that you have shown for this issue.

In July of this past year, our community was rocked by the news that a day care center was built inside an old mercury thermometer plant. It is my judgment that it appears to be a catastrophic failure of checks and balances at all levels of government, coupled with an irresponsible corporation that has totally ignored the current requirement of cleanup laws.

Unfortunately, we cannot change the past. What we can do is change the future. We can change the future by ascertaining what the facts are as it relates to this matter and passing legislation that will prevent this from ever occurring again. Today marks a beginning of that process. It is not the end of this process, but a beginning of this process.

Again, I thank you, ladies and gentlemen, and Mr. Chairman, for allowing us to have the opportunity to be heard.

ASSEMBLYMAN McKEON: Thank you, Assemblyman Mayer.

Assemblyman Moriarty?

ASSEMBLYMAN MORIARTY: Mr. Chairman, I want to echo the thanks of my colleagues here for bringing your Committee here, at request, to Franklin Township. I am sure appreciative and look forward to testifying.

I would like to say at the outset that this is a hearing not really to affix blame. We are not here to, at the end of the day, decide who did what and what went wrong. There are other people -- there is a criminal investigation.

It is, however, a hearing to gather testimony, and to put people's testimony on the record to create a public record and hopefully discover how we, as legislators, can keep this from ever happening again.

To that end, today we will also be discussing legislation that could be landmark legislation for the State and for the first time set indoor air quality standards for day care centers and schools and also create better checks and balances that will prevent industrial sites from ever becoming schools, day care centers, or residential properties unless they were to go through some serious roadblocks that would require strict environmental remediation. Our job is to make sure this never happens again.

Mr. Chairman, again, I thank you for bringing this important Committee to Franklin Township today.

Thank you.

ASSEMBLYMAN MCKEON: Thank you.

Assemblywoman Linda Greenstein is here -- not from this district, but from the district in and around Trenton. She has developed a particular expertise overall in this area, by her vigilance in similar types of issues -- not exactly the same, but related to notification and making changes for the future. If you would, Assemblywoman Greenstein?

ASSEMBLYWOMAN GREENSTEIN: Thank you. Here and now I want to thank Chairman McKeon. First of all, he is truly a generous Committee Chair. That is important in a Committee like this. What he does is, he let's each of us focus on our particular areas of interests, as well as our districts, in terms of trying to make changes.

I want to say, in terms of this hearing, that he has done jointly with me as Chair of the Assembly Judiciary

Committee, I really appreciate the opportunity to expose some of the things that went on in Hamilton Township, Mercer County. We have had three or four major environmental issues up there.

I also want to thank my colleagues from the 4th District for allowing me to be part of this bill, because there are many similarities. Without going into a lot of detail, in Hamilton we had a situation called WR Grace. It was a plant that closed down. Asbestos contamination and many issues were involved there. We also have a situation called Mercer Rubber, another situation where they found pollution when they were looking to see if there was any on this site. We have had a PCB situation up there from a Ford plant in Edison, New Jersey. Some of you may have read about these in the statewide papers.

I really have become interested in the issue of site standards and DEP procedure. I know we have excellent people at DEP who want to make changes. Maybe we will hear about some of them today. I want to echo my colleagues here with the goals, and to look to the future and see what we can do.

I think the legislation you will hear about today is an excellent start. It is an extremely important piece of legislation that really will move us in the right direction. I look forward to better years ahead. Thank you.

ASSEMBLYMAN McKEON: Thank you, Assemblywoman.

Now, one piece of housekeeping; and that is, as accurate of a record as we can get today will be kept by the certified shorthand reporter to my right. On occasion she may need a break. We will try not to disrupt the proceedings; but if human needs may require the slowing down of it a little bit, you will let us know.

The first person will be the Commissioner of Environmental Protection. There is a lot of blame to go around. On the other side of this, it was individuals with much vigilance under your guidance as Commissioner that led to the discovering of this problem, significant problem, back in July. For that, we in New Jersey, all of the people, thank you for that. Let's make it better. Thank you.

**COMMISSIONER LISA F. JACKSON:** Good morning, Mr. Chairman and members of the Committee. I do want to introduce myself -- less to you, but more for the members of the audience. I am Lisa Jackson. I am the Commissioner of the New Jersey Department of Environmental Protection. I am a chemical engineer by training. I have worked on site cleanup and hazardous site issues for most of my 20-or-so-year career in the environmental field. To my right is Assistant Commissioner Irene Kropp. I introduce her in case you need her expertise and knowledge with issues associated with the Kiddie Kollege site, as well as to answer any questions you may have.

I want to thank the Committee for the opportunity to come before you and before this community to discuss my views regarding the need for strong cooperative systems to protect children in child care centers from potential exposure to mercury or other environmental contaminations.

As you have all said in your introductory remarks, although we cannot reverse the tragedy and unfortunate sequence of events that happened here at Kiddie Kollege, I welcome the opportunity to discuss steps being taken to correct this situation and the safeguards being created by this legislation, moving forward, to keep something like this from happening again.

A great deal of finger-pointing has taken place since this first came to light this past July, when we contacted the day care center and recommended that they should immediately shut the facility because of the presence of elevated mercury inside the building. I do not want to use this opportunity to continue to finger point.

Quite simply, many parties bear responsibility here: Accutherm Company; Jim Sullivan, the current building owner; and all levels of government. To Franklin Township and its people, I do want to say that I'm very sorry that it happened here. I am very sorry it happened anywhere, but I'm sorry that this is something that your township and community has had to deal with.

When Accutherm ceased operations in 1994, because the Industrial Site Recovery Act with ISRA required them to file with the DEP and submit a cleanup plan for any contamination that was on-site, Accutherm failed to comply with those requirements. In May of 1994, Navillus Group applied for a tax-sale certificate for this site.

In September of 1994, the mortgage holder initiated an environmental investigation on the property and identified mercury vapor concentrations three times the OSHA and DEP standards. In April of 1995, the Department of Environmental Protection issued a directive to Accutherm, which required a remediation of all discharges on the site. Accutherm did not comply with the conditions of the directive, but instead notified DEP that they had filed for Chapter 11 bankruptcy protection in March of 1994.

In the summer of 1995, DEP personnel conducted an inspection of the exterior of the property to determine whether the site was secure from unauthorized access. While access to the site proper was unrestricted, the building was

locked. Therefore, the DEP determined the building to be secured.

In August of 1995, the Gloucester County Health Department advised the owners of the indoor mercury vapor problems and strongly urged them to post the area. No one was in the building at that time. Around the same time, the DEP requested the EPA in New York City, Region 2, to perform an assessment of the property. This was done by DEP in order to determine whether any Federal funds could be used for cleanup or remediation of the site.

The EPA complied with our request, and subsequently concluded that even though several small droplets of mercury were located on the floor inside the building, the site did not present an immediate threat to human health or the environment. Therefore, it was not eligible for Federal funding under the Removal Act.

There was some misunderstanding of the EPA's state of findings. At no time did EPA ever say there was no contamination at the site. Rather EPA said there was not sufficient contamination and did not (indiscernible) the building for an immediate Emergency Removal Act. The building was still unoccupied at this point.

At that point -- and we were back in 1995 or so -- the EPA considered this to be an abandoned, secure industrial site. In hindsight and in consideration of the fact that there was elementary mercury at the site, DEP could have made the determination then to secure the building, using public money. I believe that would have been a better choice than leaving it unsecured. Within the coming years, the property was purchased through a tax sale, renovated, and a certificate of occupancy was issued for a day care center to

operate on the site in February of 2004. That's the first use of the site occupancy over there.

This points out a basic problem in communication between all the involved parties and, more importantly, highlights the fact that even as we speak today there is no requirement for a change-of-use for an industrial site to be brought to the attention of either the DEP, the Department of Health and Senior Services, the Department of Community Affairs, or the local health departments. If there were appropriate bells and whistles indicating that there was a problem, and if that would have happened, we would have caught this conversion of use before children were allowed in the building and exposed to contamination.

Governor John Corzine recognized that these safeguards were not in place, and that the State agencies charged with the protection of children, human, health, and the environment were not communicated as needed. The Governor called together all the agencies represented here today and ordered them to develop immediate steps that should be taken in regards to protecting this and day care centers.

Our first step was to insure that new facilities were not sited in areas or buildings that could pose risk to children. As an interim measure, an interim emergency rule was developed by the Department of Children and Families, DEP, using its GIS technology, and has evaluated whether all pending applications for facilities for day care centers that were located in or next to a site that could result in environmental exposures. If we have found that a facility was on or in close proximity to a gas station or a dry cleaner, or a known contaminated site, we contacted the applicants of those day care centers and worked closely with them to resolve those issues. To date there are only a

handful of facilities that are not permitted to open. Those are facilities that have tried to open, and which are not permitted to open today because of the lessons we have learned here.

These facilities are now required to perform testing at their sites to conform and determine that the facility is free of environmental contamination before DCF will issue them a license to operate.

Next, with regard to the 4,300 existing child care facilities, DEP performed the same identification using our GIS system in calculations to identify facilities that would require field inspection. Since September 18, using new inspection protocol, we have a survey and have been inspecting these child care facilities. When necessary we have and continue to sample indoor air, exposed soil outside, and drinking water at those child care centers whenever we suspect there might be a health concern. We are also working very closely with the Department of Health and Senior Services to identify if the interior environment is safe for occupancy by children and workers.

Also, in order to insure future applicants do not locate child care centers in facilities or on properties that may present risks to children, new and relicensed facilities will be subject to new rules developed by the Department of Children and Families, Department of Health and Senior Services, Department of Community Affairs, and the DEP. These emergency rules were filed with the Office of Administrative Law yesterday.

On other matters that are not directly related to Kiddie Kollege, we know we have other issues to address. The DEP is taking steps internally to prevent residents of the state from being exposed to contamination from regulated

sites, even those that do not go into bankruptcy. The most important thing we are doing is developing a new ranking system to prioritize sites so that we focus our resources on the worst cases, those that present the greatest risk to public health and the environment.

We are also expanding the use of our case tracking system to better track our sites. The State has in excess of 16,000 obtained sites. It is crucial that we be able to track the progress of cleanup efforts at these sites. It is deeply crucial that the general public are partners in local government, and the development community and lending institutions have real-time access to this information that we have, not simply a list that is published every few years. That is why we are expanding access to all of our site cleanup data over the Internet.

We are also (indiscernible) our business processes to insure that our resources are used effectively. We anticipate that our evaluations will reveal the need for legislative and regulatory changes. We look forward to working with the State Legislative and all stakeholders to that end.

Senator Madden, State Assemblymen Mayer and Moriarty, I would like to commend you for your proposed legislation that will require documentation that a site was clean prior to receiving local building permit approval. This will help greatly, and we urge this Committee to act on this bill at your next meeting. We especially appreciate that the legislation builds on an existing process at the local level, rather than creating a whole new bureaucratic system procedure. We thank you for working on the bill with DEP and the other agencies prior to today.

To protect the citizens of New Jersey going forward, we need stronger partnerships for families and municipalities. Protecting the environment of New Jersey is a responsibility that goes beyond the DEP to all levels of government. To that end, we look forward to implementing the changes to our programs, and we appreciate your assistance and support on this new legislation. Thank you.

ASSEMBLYMAN McKEON: Commissioner, thank you. I am going to go in the same order that I just introduced the panel. Any questions for the Commissioner, Senator Madden?

SENATOR MADDEN: Thank you, Chairman.

Good morning, Commissioner.

When you were testifying, you had mentioned that the 4,300 existing day care centers -- DEP will do air quality testing if it suspects there is an issue. Could you explain to the Committee how DEP determines that there could be a suspicion of an air quality issue or concern? I hear you have, in Trenton, 4,300 sites. Now, what makes you go to one day care center without going to another, or what triggers that in your office?

COMMISSIONER JACKSON: We have several tools to help us. We are being investigators to some degree. We can't know everything about a site. Our resources are not unlimited. We use the information that we have to try to make some guesses about where we suspect there might be problems. We look for sites that might be located closest to known contaminated sites.

The Department maintains a list of the contaminated sites. We have a plotted GIS, that is a Geographic Information System. We have cross-checked the list of 4,300 facilities with those known contaminated sites looking for, first and foremost, sites that may actually be in

the same place as a known contaminated site -- which is what happened here, unfortunately -- then looking for those that might be close enough, say groundwater, where contamination might be causing a vapor problem inside the building.

Also, because we are learning as we go, as well, we are looking for facilities that might be located close to uses that might have a tendency to have a high vapor concentration, something like a dry cleaner or a nail salon.

SENATOR MADDEN: I assume the list you are referencing with the day care centers is cross-referenced with the list of 16,000 contaminated sites?

COMMISSIONER JACKSON: Correct.

SENATOR MADDEN: Is that the same list that Accutherm was on the list, and then wound up off of the list? Is that the same list that you are referring to?

COMMISSIONER JACKSON: It is indeed, Senator.

I want to say something about those lists. This will give me the opportunity to do so. The Known Contaminated Sites list is unlike many things in government. It is what it sounds like. These sites are known to the Department. They are known to the State. They are contaminated. They are presumed to be contaminated, so that is exactly the purpose of that list.

Accutherm was on the Known Contaminated Sites list. That Known Contaminated Sites list was on the Web at the time when Navillus acquired the tax sales certificate. That site was on the Known Contaminated Sites list. When Sullivan Properties acquired the site, that site was on the Known Contaminated Sites list. When the town issued a Certificate of Occupancy and when Kiddie Kollege opened its doors, that site was on the Known Contaminated Sites list. It had not been taken off. In fact, there was a small set of

sites that had not seen action. Those were placed on the watch list and eventually were moved from the Known Contaminated Sites list. I have since ordered that they be restored.

I wanted to clear up one misconception. In 2004 when, unfortunately, Kiddie Kollege opened its doors, had anybody looked on the Internet -- this was in 2004 -- they would have seen a known contaminated site called Accutherm located at 1600 Delsea Drive.

SENATOR MADDEN: It was my understanding that Accutherm was removed from the list at one point. If that's true, can you tell me when that was?

COMMISSIONER JACKSON: Yes, that happened in November of 2005.

SENATOR MADDEN: November of 2005. They are back on the list now?

COMMISSIONER JACKSON: Yes, sir. I ordered that all sites be put back on the Known Contaminated Sites list until we have proof that they should come off and be moved to an uncontaminated sites list.

SENATOR MADDEN: Commissioner, if I could ask you to focus on the language in the existing bill. Does the language in the bill guarantee that if you are on the Contaminated Sites list, you will not be removed unless there is a declaration, if you will, or some indication or declaration to DEP that says that the site has been inspected and it's clean, and now it is capable of being removed?

The understanding is, as simply put, is that we have this list. It has Accutherm on it in 2005. For whatever reason -- if you know, we are more than welcome to hear, which we will -- it is removed from the list and then it ends up back on the list.

COMMISSIONER JACKSON: Yes. Can I interrupt?

SENATOR MADDEN: Something wasn't right. If you could comment on how that could have happened? How it left and got back on and was returned? Then at the same time, can I hear a comment from yourself and your office on the bill, and the way the bill is crafted to prevent that from ever happening again?

COMMISSIONER JACKSON: Thank you, Senator. Let me start with the bill. I think the bill does exactly what you are referring to, which is to insure that sites that are on the Known Contaminated Sites list cannot be converted to day care centers. It actually goes further. I think it is wise to say residential properties or others, without a finding of No-Further Action -- that the Department has looked at it and determined that there is no other cleanup action necessary. That is indeed its intention. I think it does that admirably.

On the larger issue, the list in 2005, a decision was made to cull out sites that had not seen any action for a long time, essentially. I think there were about 1,800 sites that had been on this Known Contaminated Sites list for some period of time, and a decision was made that we needed to reevaluate. The decision was made that while they were being reevaluated, they would be moved off this Known Contaminated Sites list on to this, sort of, holding watch list. At that point they were moved.

Now, I want to be clear. The watch list was a very active list in our Department. In fact, although this will not make it any better for people affected in this tragedy, had those sites not been moved and segregated, or had somebody not decided to take another look, we might still have a day care center open in that building. That movement off

the list was probably something that in hindsight we should not have done; but, in fact, it was that watch list and reevaluation that caused a member of the DEP staff to take a second look and to eventually (indiscernible).

SENATOR MADDEN: If I hear you correctly then, it is your belief, I guess, that since the day care center was issued while the Accutherm was on the watch list-- Which is really what the hearing is about, about the holes in the existing law. We are looking to plug that. We really have two things which we are speaking about. We have the approval process and the permit process, which -- whether or not the permit should have been issued.

I mean, in hindsight, everybody would say no. The reality of it is that there were no real governmental or legislative controls over the issuance of the permit. If we were to turn the clock back to 2004 when the day care center opened, referring to the language of this bill, if this bill was in law then, would this bill have prevented the day care center from getting approval?

COMMISSIONER JACKSON: Yes, Senator. The answer is that I believe it would.

SENATOR MADDEN: Okay. That's important. We have a guarantee that the lists will stay in existence. We would have now the guarantee from your position that the coverage is there in terms of the permit process, because DEP will be required to have a sign-off, as will the Department of Health.

COMMISSIONER JACKSON: That's right, as will the local officials here, in order to open now.

SENATOR MADDEN: That will be in the loop on all phases of the permit process, as well?

COMMISSIONER JACKSON: Assuming there was a day care, they won't be able to get a license.

SENATOR MADDEN: Yes.

COMMISSIONER JACKSON: As well, we have some checks and balances.

SENATOR MADDEN: Okay. Just one final question, Chairman, if I may? Commissioner, is there anything in the bill, that you would like to put before the Committee, that you think needs to be addressed, in terms of an amendment or an adjustment?

COMMISSIONER JACKSON: I must admit I would like an opportunity to read the bill one more time. I think the intention is that we are 100 percent behind the bill. There are many pieces of law wording, which are important. I would appreciate the opportunity, if you would, Mr. Chairman, to get back to you with some thoughts on that.

SENATOR MADDEN: Thank you, Commissioner. I appreciate your time.

Thank you, Mr. Chairman.

ASSEMBLYMAN McKEON: Thank you for that, Senator.

Before I call on Assemblyman Mayer, there is one other thing I want everyone to understand. The bill that you will hear about in a little while will be listed for voting on the 23rd of October, at our regular meeting. What will happen between now and then is that we will take everybody's input and sift through all of that, with all of the professionals to the right and left of me, and we will get to the point where we will make a law that we are comfortable with and that deals with the problems. We will vote on the 23rd.

Assemblyman?

ASSEMBLYMAN MAYER: Thank you very much, Chairman.

Commissioner, thank you for your testimony this morning. I also want to thank you for the Department's help in drafting this legislation, and accessibility in regards to that matter.

I want to talk with you. You ran through a series of time frames. I understand, as I think I said in my opening remarks, we have to find out what the facts are so we can effectively draft legislation. I want to walk through the timeline with you, and ask you some questions, clearly, about the functioning of your Department and any legislative remedies that might need to be in place beyond the legislation that we are talking about this morning.

We all know that on January 1 of 1994, Accutherm closed its doors. We all know that it failed to comply with ISRA requirements. What I can see from the timetable that your Department has provided us, the first action that your Department filed was April the 7th of 1995. It was through your directive of responsible party's site remediation. You issued a directive to Accutherm that they had to comply with ISRA.

My question to you is, that's a year and a half after Accutherm closed its doors. Why did it take a year and a half for the Department to issue a letter against Accutherm, and are there any legislative remedies that we need to look at to further endorse that?

COMMISSIONER JACKSON: Thank you, Assemblyman. I am going to try to surmise, because obviously I was not there. I would have to believe that we are talking about a resource issue at that point.

Again, when you have 16,000 sites on the list, somebody notifies you that they did a routine closure. Under ISRA there is some period of time for the Department to be able to start to focus on that site. I would assume that basically it took some period of time for the Department to turn around and issue a directive.

What I don't think we have any record of at this point is whether there was any communication in the interim with Accutherm.

ASSEMBLYMAN MAYER: I do recognize that you were not the Commissioner at that time. You are saying that due to the lack of resources at that time available to DEP, lack of staff, etc., that it would delay the issuance process.

Did Accutherm notify you that they were closing down?

COMMISSIONER JACKSON: Yes, they did. They gave us that notice, I think, back in 1994. I don't know the exact date, but they did meet the notice requirements of ISRA. That's probably about the only requirement of ISRA they did meet.

ASSEMBLYMAN MAYER: Let me talk to you about another time frame. From what I can see, the last proactive function by the New Jersey Department of Environmental Protection was on August the 16th of 1995. They conducted an inspection of the exterior of the property. Then recently, this past April, April 11, you conducted a site reconnaissance, if you will, on the property and determined that there was a day care center existing there. So that's 11 years.

My question is, that's certainly a long time for a site just to sit there with no one really doing much about it. Where was the enforcement of ISRA, and why didn't

the Department enforce? My understanding is that under that law, the Department can put fines and liens against the property. Was anything instituted against the company during that 11-and-a-half-year period?

COMMISSIONER JACKSON: In terms of what was done, immediately upon ordering, through a directive, that Accutherm comply with ISRA, they very quickly thereafter declared bankruptcy, basically saying that "We can't afford to do anything to meet our ISRA obligations at that site."

Well, because they were in bankruptcy, really the Department and the State are left with just a few options. We can spend public money to step in and do the work, and later on enforce and get our money back -- part of it -- against the bankruptcy; or we can move on to other priorities. That's where prioritization becomes an issue.

I want to make a point about that, as well. This site was, as you mentioned, an exterior review of the site; that was part of a remedial priority scoring of the site. One of our professionals actually went on the field and scored the site numerically on a score of 1 to a 1,000. This site scored in the 400 range. At this point in time, I was told that sites above 700 would have been considered high priority, with the limited State dollars to be spent on the high priority sites.

Now, that is why I emphasized in my opening remarks that I would imagine for a parent, for someone who has just been through what these parents have been through, it is hard to hear me say it is not a high priority site. However, prioritization depended upon a couple of things: what the contamination is and who could be exposed to it. Because there was no one in that building -- the DEP had no evidence

of contamination leaving the building -- it didn't score particularly high.

The Department was concerned enough that it appeared, and we know we have evidence that we referred it over to the Federal EPA, and said, "Listen, take a look and see if you believe this warrants any urgency look right now." They did look, and it is documented that they said, "No, it doesn't." It was ranked on a prioritization. It was below a level that even then it had been. And I've said a couple of times, the thing that took this from average level, below the radar screen, to a tragic emergency was the day that someone walked into that building. Your bill will take care of that. That can't happen again.

ASSEMBLYMAN MAYER: I was wondering if there were any internal changes, though, as the result of this timeline and, maybe, a lack of response? Any legislation recommendations that we might need to pursue that would say basically, "Look, if you have a company and you don't clean up by a certain time, and you don't respond, you have X amount of days to do this; and then this happens and this happens and this happens, and the fines and levies and tax liens will automatically start the process." I'm wondering if that's what we need.

I understand there are a lack of resources within the Department. Maybe there needs to be a change in the process here, a change in exactly how this is handled, and a timetable that says this will occur on such and such a date if you don't comply with what is directed by the DEP.

COMMISSIONER JACKSON: Thank you. Those are good suggestions. I absolutely do think additional legislative and other regulatory changes, and even process

changes that I control, we can make quite quickly, and have already started to make.

You mentioned penalties in your bill. It actually raises mention to those penalties. That's a good thing. It always comes down to enforcement. Although, in this particular case, Accutherm declared bankruptcy and the penalties are still an enforceable tool.

On top of that, I think we need to give thought to the liens that could be placed on a piece of property. Traditionally, we place a lien on a property after we have spent money. Since the State has spent, in the general scheme of things, not that much money on the clean up, up until 1999 -- no one ever decided to file a lien -- we are not out that much money. I think just having that on the property is probably very important. That is the one asset that every company has. In this state, property is very valuable. I think that there is something there we need to consider.

As I mentioned, prioritization is definitely on my own radar screen. We have to prioritize sites. That doesn't mean in this case. I can't mislead people that we would have caught it, because, again, it wasn't an issue that it hadn't been assessed; it was that the use changed. And that's where we're going.

ASSEMBLYMAN MAYER: Mr. Chairman, that leads to my one final question.

Commissioner, from April 11, of 2006, when you did the site visit and you found there was a day care center, to July 28, when it was closed -- that was three months. Why did it take three months to close this facility, when on April 11 you conducted this visit there and you found there was a day care center in there -- and yet it took three months to notify everybody and get that business out? Have you adopted

any changes within your protocols to expedite that in the future?

COMMISSIONER JACKSON: Yes, thank you. I will answer the question, but I do want to state one thing. Within 30 minutes of getting the sample results that said that the air quality in that building was above OSHA levels, we placed a call to the operator of the day care center telling her that the site was not a place fit for workers, or children for that matter. Thirty minutes.

Unfortunately, as we are learning even now, as we go out and look at day cares across the state, these are businesses, these are people from whom you take samples. One thing that has changed is that we are communicating directly with the operator of the center, even at the time we take the sample. The operator knows, "Listen, we can't tell you that there is a problem. We just want to be sure there is not a problem." That wasn't done here, so that has changed.

On top of that, our first contact, even after the site visit, was with the property owner, not the operator of the day care center. It was with the owner. That person was contacted, and it was said, "Hey, this site was being used as a day care center. Where is the documentation that it has been cleaned up?"

That is when we were presented with this EPA letter, which doesn't say it was cleaned up. It just says it was not an emergency situation. There was a full search done. We asked the owner to take samples. Those samples were taken. Those results came back in July.

In hindsight, there was a couple of things we could have done at the minimum, but we are doing this now. We have talked to the operator of the day care center, so that

person knows, right then and there, why we are doing that. We don't know the answers until the results come back.

ASSEMBLYMAN McKEON: Assemblyman Moriarty?

ASSEMBLYMAN MORIARTY: Thank you, Mr. Chairman. Commissioner, thank you for appearing here today.

I would like to go back to your own timeline, and direct you to two dates and two specific documents.

Two dates that are just a few months before the former Accutherm site reopened as a day care center. The first one being September 23, 2003. On that date, can you tell us what your timeline tells us about a phone call that you received from the Township zoning officer?

COMMISSIONER JACKSON: Just a second. I'm reading from the timeline. "September 23, 2003: Franklin Township Construction Official contacted New Jersey DEP stating that owner was looking to convert the site to a day care center. NJ DEP advised the construction official that a No-Further Action Approval had not been issued by the NJ DEP. NJ DEP informed the construction official that it was not recommended to convert the site at that time."

ASSEMBLYMAN MORIARTY: That was September 23, 2003. The employee that made that notation, which there is a copy here that was made on an interoffice Microsoft file, I believe -- does that employee still work for the DEP?

COMMISSIONER JACKSON: That employee is (indiscernible).

ASSEMBLYMAN MORIARTY: And he has been questioned about this phone call?

COMMISSIONER JACKSON: Yes, he has.

ASSEMBLYMAN MORIARTY: And verified that phone call took place?

COMMISSIONER JACKSON: Yes, he has.

ASSEMBLYMAN MORIARTY: According to the timeline provided by the township, there was a thorough investigation. The zoning officer, Mr. Errera -- not Bob Ezzera, as it says in this document -- but Mr. Errera said he did not remember that phone call. Subsequently, Chief DiGiorgio obtained phone records from the Township which disclosed that a telephone call was made from a Franklin Township municipal phone on September 22, 2003, to the New Jersey DEP. So even though Mr. Errera may not be able to recall that phone message, we do have this document from the DEP files and we do have some phone records from the Township itself that do indicate that it probably did take place or may have taken place.

My question to you: Having your employee tell the zoning officer what he told him, if this is in fact what he told him, is that a clear indication not to do anything? Should anything have happened beyond that?

COMMISSIONER JACKSON: His direction and documentation was quite clear. The Department of Environmental Protection's way of saying "all clear" is to give you a No-Further Action letter. That is exactly what it says, no further action is required, all clear. Everyone who works in real estate understands that you need a No-Further Action letter to clear a property. He specifically said there is a No-Further Action letter, and he specifically said it was not appropriate to convert this site.

ASSEMBLYMAN MORIARTY: In fact, in this document, the word *not* is in all capital letters, "NOT recommend this site be converted at this time." That was, to your knowledge, a pretty clear indication to the local zoning

official that this should not be converted to a day care center; correct?

COMMISSIONER JACKSON: Yes.

ASSEMBLYMAN MORIARTY: You mention the acronym NFA, which stands for No-Further Action. According to the investigation by the Township, the zoning official has indicated that he was not aware of the meaning of the acronym NFA, nor the requirement that an NFA, No-Further Action letter, is what was needed to be issued before going forward.

Do you find that odd that a local construction official would not know what NFA stands for?

COMMISSIONER JACKSON: I think any official, as I said, who deals in real estate -- as I would assume construction officials would do -- would understand that. I think that his note here indicates that he went further. He didn't stick to the bureaucratic NFA. He said, "It was not recommended to convert." Even if by some chance he would not, I think he went even further, given the appropriateness of the conversation.

ASSEMBLYMAN MORIARTY: The trouble to me is that the local zoning official says that he had no recollection of this telephone call. But in his defense, when you are telling someone, "No, you should not do this and it should not be transferred," do you think that it would be wise for the DEP to send a letter memorializing this phone conversation to the official? Maybe saying, "Hey, you know, as I told you on the phone, please do not move forward with this Kiddie Kollege or any kind of day care center." Would that have been a prudent thing to do in retrospect?

COMMISSIONER JACKSON: Well, in retrospect, I would like to speculate that anything that would have stopped this from happening would be prudent.

I think when we deal especially with officials, not just citizens, we expect them to have a higher level of understanding. Also, we are dealing with one official to the other. I can only assume, from knowing (indiscernible), that he thought, in talking to the construction officials saying don't do it, if he needs me, he will call -- or if she needs me, she will call. On top of that, I think, the way we would say that would be with the No-Further Action letter. Lastly, it can't happen now with the bill that is being proposed.

ASSEMBLYMAN MORIARTY: Would it be, going forward, a good idea that from now on, if someone calls you about something like this, to memorialize it and also send them a copy so that there could be no misunderstanding or misrecollection?

COMMISSIONER JACKSON: At their request, I would be happy to do that if they wanted something in writing. That piece of paper that you have is actually from our publicly available database. We would offer to put all that information online, as well. Mr. Farrell (phonetic spelling) took a phone call and took the time to put a memo in the file, in the database, which states that he would cite records.

ASSEMBLYMAN MORIARTY: Thank you. The second document and timeline I would like to refer to would be October 1, of 2003. Shortly after the phone call, the New Jersey DEP received an OPRA Request. Could you tell me about that?

COMMISSIONER JACKSON: Yes, sir.

ASSEMBLYMAN MORIARTY: For those of you that don't know, that is an *Open Public Records Act* request.

COMMISSIONER JACKSON: It says the New Jersey DEP received an Open Public Records Act request from Target Environmental Company, Inc., on behalf of an unnamed realtor,

to reveal information on Accutherm, Inc., 1600 South Delsea Drive, Franklin Township, Gloucester County.

The Open Public Record Act request, as you well know, by law requires us to turn around in short order and give, in response, those records requested. In that case, they asked for an opportunity to review the file associated with the Accutherm known contaminated site.

ASSEMBLYMAN MORIARTY: This is a copy of the OPRA request that was provided by your Department. If I may read it? It asks for, under "The Record Request Information", it says, "Real estate agent hired our firm to find out status of property so they could move forward with possible sale of the property."

They were requesting information on this property. Do you know what you provided them or would have provided them?

COMMISSIONER JACKSON: We would have provided them the site file -- essentially, all the information that the Department had in the file associated with that known contaminated site. Remember, at that moment it is on the Known Contaminated Sites list. They were asking for information regarding a known contaminated site.

ASSEMBLYMAN MORIARTY: If you refer to your timeline, would that have included the June 10, 1996 memorandum to file, stating that the EPA determined that the site was not eligible for a removal action, however, due to documentation of contamination present, the site required further investigation and remediation?

COMMISSIONER JACKSON: Yes, I believe it would, sir.

ASSEMBLYMAN MORIARTY: Okay. Would it be odd to you that the person that received that information from the

OPRA request turned up at the zoning office and gave the zoning officer just one document -- this document from the EPA, which concluded that -- based on air monitoring, soil sample analysis, swipe sample analysis, conditions securing the building and surrounding properties -- this site does not present an immediate threat to human health or the environment?

If that was the only thing that they turned in to the zoning officer, and said, "Here, that is why we are good to go," would that have been selective use of those documents, do you think?

COMMISSIONER JACKSON: Yes, sir. There are two things odd about that. Sir, if that was the only document that was given, that seems to have left out a lot of other documents that would also have been in the site file, that would have been even in stronger terms of concern. That would have left out the fact that the site was on the Known Contaminated Sites list. That would have been important information to point out.

Lastly, and most importantly, anyone who works in the environmental field, such as Target Environmental Company -- and I don't know them -- they know that that EPA document does not mean that there is not a human health risk. They know that it says exactly what you just read, which is that it was not an immediate threat, but to do further investigation.

ASSEMBLYMAN MORIARTY: Just for the record, the memorandum to file, stating that further investigation or remediation was needed -- that came after this document in the timeline in your file, because this was from January 16, 1996. The memorandum to file that said that further investigation and remediation were needed was June 10, 1996, six months

later. So if an OPRA request came in for all the documents, the last document from any official agency would have been from the New Jersey DEP stating that more investigation of remediation were necessary?

COMMISSIONER JACKSON: Yes.

ASSEMBLYMAN MORIARTY: Thank you very much.

Last question. Can you tell us, based on your internal investigation, whether around that same time there was a request, as in the OPRA requests, from this company, Target Environmental Company, from an employee named Linda Crane, who apparently is no longer employed by Target -- where she apparently worked as a receptionist? Did also a representative from a company representing Jim Sullivan, Inc., actually come to the DEP offices to look at the file, as well? Either Target or someone representing the owner?

COMMISSIONER JACKSON: I'm looking. Is it on the timeline?

ASSEMBLYMAN MORIARTY: I believe that Dan Ryan (phonetic spelling) had mentioned that; that was part of the investigation. I don't see it on the timeline.

COMMISSIONER JACKSON: Dan Ryan works on my staff. I would believe it, but I can't verify it here. I would have to look into that.

ASSEMBLYMAN MORIARTY: Will you look into that to see if someone actually came to physically look at the file in Trenton? Would that be something that would trigger a sign-in or some kind of a request that had to be filled out?

COMMISSIONER JACKSON: Yes, Assemblyman. I'll double-check the OPRA database. If this information was even recovered, then absolutely someone came in to look at the file. But I don't have the particulars at this time.

ASSEMBLYMAN MORIARTY: You will get me that information, if someone showed up, and whether they represented a real estate company and were looking at the file? That would be the second attempt to look at the entire file, including, at that point, the most recent memorandum to file, which was in June of 1996, stating that still more investigation and remediation were needed?

COMMISSIONER JACKSON: Yes, sir. I will check, Assemblyman, and get back to you on that.

ASSEMBLYMAN MORIARTY: Thank you very much.

Lastly, I want to thank you and your staff for helping us draft this legislation. I think it is going to be landmark legislation. I appreciate all of your help.

COMMISSIONER JACKSON: Thank you.

ASSEMBLYMAN McKEON: Thank you for your help and preparation.

Assemblywoman?

ASSEMBLYWOMAN GREENSTEIN: A couple of specific questions, Commissioner, on the situation. First of all, did you say that right now, as the result of this Kiddie Kollege tragedy, that you are indeed checking all of the school sites and day care sites out there on some kind of an organized basis? That check is taking place?

COMMISSIONER JACKSON: Yes, Assemblywoman. Since there are 4,000 or plus of them, we are prioritizing them based on the data as to what site is most likely contaminated.

ASSEMBLYWOMAN GREENSTEIN: There are 4,000 such sites you are saying?

COMMISSIONER JACKSON: Over 4,000.

ASSEMBLYWOMAN GREENSTEIN: What would be your estimate of a time frame for checking all these sites?

COMMISSIONER JACKSON: I think realistically, we will probably not have to visit all 4,000 sites. There will be many remaining that we don't have any reason to be concerned about. For at least the next several months, we will continue to focus our resources and redirect our resources to get this done.

ASSEMBLYWOMAN GREENSTEIN: How will this new legislation effect all of these 4,000 sites? In other words, how will this procedure in this legislation affect what you do now with those sites?

COMMISSIONER JACKSON: Thank you, Assemblywoman.

I think the legislation is looking forward. When someone comes in and tries to convert a building in the future, they will meet a pretty significant roadblock and will not be allowed to do that.

ASSEMBLYWOMAN GREENSTEIN: That will be either new construction or rehabilitation?

COMMISSIONER JACKSON: It is actually based on the former use. So if there were many buildings there before, the regulations introduced yesterday take into account the fact that if someone is on the Known Contaminated Sites list, they will not be able to get a license or a certificate. So both of those together.

ASSEMBLYWOMAN GREENSTEIN: You mentioned an interest in prioritization of sites. To what extent has that been done? What is your idea on what to do with that? Would it only be the sites that involve children, or would you do it with all sorts of sites?

COMMISSIONER JACKSON: Thank you. We have to address all of those 16,000 sites. We have a special emphasis right now on day cares, because of the situation in

particular, but we can't leave out the other 16,000 sites that we are responsible for.

ASSEMBLYWOMAN GREENSTEIN: The 16,000, doesn't that also include a lot of individual homes that have oil tanks and that sort of thing?

COMMISSIONER JACKSON: Yes, it does.

ASSEMBLYWOMAN GREENSTEIN: If you took those out, how many sites would you be talking about?

COMMISSIONER JACKSON: About 12,000 sites.

ASSEMBLYWOMAN GREENSTEIN: About 12,000. Do you feel that one of the problems that exists right now in the DEP is understaffing? Throughout the articles that have been written within the last few months, there has been various mention about that. I know it is always a problem of balancing resources in the State, but I wondered to what extent you think that is an issue, or to what extent you think there is a need for a change of process?

COMMISSIONER JACKSON: Thank you.

I think that resource balancing is a challenge and the hallmark of any manager. A good manager understands that resources need to go where the problems are. There are no ends to issues. We have two problems that, I think, we need to deal with at the DEP. We will need legislative and regulatory assistance.

One is that our world is awfully big. As you heard, there are about 4,000 homeowner sites -- homeowners who might be trying to sell their house and now are in a beaurocratic approval process in order to check on their underground storage tank. Unfortunately, at a time they least want to deal with it, they find out they have a leaking underground storage tank outside their home.

The Department tries to be responsive in that manner, but if you say it is to be a prioritization from a health prospective, you find out it is not going to be. It is a very limited area; it is a very limited problem. So we have to balance our resources to make sure that we are dealing with the worst sites first, but we cannot neglect our responsibility to serve these transactions, to get it out of the way so that people can get on with their lives and move forward.

I am very interested, over the next several months, in putting together packets of ideas. Some of them will need legislative assistance to get us focusing our resources and our qualified articles on the bill.

ASSEMBLYWOMAN GREENSTEIN: In reading some of the articles about the Kiddie Kollege situation, I saw one, that I think was in the *Star-Ledger*, that talked about the fact that many on that large list that we were talking about -- where some of the names were taken off and later put back on; that many of these, because of the lack of staffing and other issues, had not been assigned a case manager.

I guess what I'm trying to understand is that, even prior to the new legislation, even if these had been on the list, but had not been assigned a case manager, it doesn't seem like anything would have happened. I mean, they would have served the notice requirement, but there wouldn't have been a cleanup of any sort, at least prior to legislation; is that right?

COMMISSIONER JACKSON: That's correct, Assemblywoman. Two points that I would like to make in that response. First is that we are helped by the fact that this site was ranked. But it did not rank particularly high, so it was put into a place where it did not rise to the level of

attention where it would get State funding or State resources assigned to it. That ranking had stopped for a while. That Department was in the process of revitalizing it.

We are using all the tools we have. One of them being the GIS system, which I think helps us to determine based on where a site is located and how close it is to surface water and how close it is to homeowners, whether or not there is any potential environmental or human health issue.

ASSEMBLYWOMAN GREENSTEIN: Do you feel, as a result of changes in the law in the 1990s, which seemed to limit DEP's ability to order certain kinds of cleanups, the whole idea of voluntarily cleanups has been a deterrent? Do you think we need to move the clock back a little bit to the way it was prior to that legislation in 1990, which I think was about the brownfields cleanup?

COMMISSIONER JACKSON: Thank you. I think that there is a role in the State for voluntary cleanups. I think that not all cleanups should be voluntary. I am a former head of an enforcement program. I believe that there is a need for strong enforcement when you are talking about responsible parties. But we don't want to have a program that doesn't allow people -- who have nothing to do with contamination -- to continue to come in and try to convert a site to a good, and productive, and, hopefully, economic growth.

So for those reasons, I think we have to find a way to make sure that those sites, where there is the greatest possibility for a problem if something goes wrong -- that the State maintains and possibly gets back some of it.

ASSEMBLYWOMAN GREENSTEIN: It definitely sounds like prioritization is key here, in getting that type of a list that would move us in the right direction.

Thank you very much, Commissioner.

COMMISSIONER JACKSON: Thank you.

ASSEMBLYMAN McKEON: Thank you, Commissioner.

Seeing no follow-up questions from the panel, we will, again, thank you. We will look very much forward to interfacing with the professionals in your office if we find legislation to be presented. We'll be looking forward to seeing you again on Monday.

COMMISSIONER JACKSON: Thank you.

ASSEMBLYMAN McKEON: Thank you, again, Commissioner.

COMMISSIONER JACKSON: Thank you. (Applause.)

ASSEMBLYMAN McKEON: Dr. Bresnitz is the Deputy Commissioner for the Department of Health and Senior Services. Both sides of the audience, again, I would expect that as things get started, Dr. Bresnitz will be able to add even more. I appreciate that the Commissioner had a lot to say and the Committee members asked a lot of detailed questions, so we will continue to move along.

Welcome, Doctor.

**E D D Y B R E S N I T Z, M.D.:** Thank you, Mr. Chairman, Committee members, and Senator.

ASSEMBLYMAN McKEON: If you could, introduce your colleague?

DR. BRESNITZ: Sure, I'll do that. I'll introduce myself first. My name is Dr. Bresnitz. I am the Deputy Commissioner of Health and Senior Services. My practice is in the State government. To my right is Mr. Jim Brownlee. He is the Director of our Consumer and Environmental Health Services. He oversees certain programs that do evaluations on hazardous waste sites.

On behalf of the Commissioner, I am pleased to be here to review the Department of Health and Senior Services involvement in this unfortunate incident. I have provided you, and you should have it in front of you, a timeline of our involvement. I am not going to go through that in great detail. I do want to highlight some of the activities that we have done in the last few months.

We were first notified by DEP of increased indoor air and surface sample tests for mercury back on July 28. Immediately, together with DEP, we recommended, as Commissioner Jackson said, to close the facility. That, I have to emphasize, was the single most important action taken to reduce the impact and exposure that occurred over the previous two years at that facility that had been occupied.

We subsequently took several additional public health actions. Let me just go through them very quickly. We established, with our Federal partner, the Agency for Toxic Substances and Disease Registry -- which is an agency in the CDC -- as well as the National Center for Environmental Health -- which is also a CDC agency -- a coordinated health response team. We also brought in clinical academic partners from Mt. Sinai, Pediatric Environmental Health Specialty Unit. Both the Federal agency and Mt. Sinai specialty -- they have an expertise in environmental exposure in this mercury issue.

We had multiple conference calls right from the beginning to develop the most appropriate science-based plan of action. I was personally involved with most of those conference calls and informed the Commissioner throughout all of our recommendations. In fact, the Commissioner was involved on one of those conference calls.

The health response team made a number of recommendations. First and foremost, they recommended

additional environmental testing at Kiddie Kollege to confirm the initial results of significantly elevated levels of mercury. We also recommended and implemented screening of attendees, both the children there as well as the adults that worked there. We recommended urinary mercury tests, because that was the most specific tests for elemental mercury, which is a form of mercury that was contaminated in that environment.

Ultimately, about a third of the individuals who were tested initially showed an elevated level above some agreed upon threshold, agreed upon by the health team. That threshold is based on the reviews of scientific literature and experience of the team. No one who had an elevated level had a level in their urine at the time of the testing that was associated with the symptoms or signs of mercury poisoning, based on previous experience. A second round of tests of those who had the elevated mercury on the first tests revealed that a third of those now still had an elevated level. The results of the third round of testing are pending.

The Department of Health and Senior Services, in conjunction with the CDC and the National Center for Environmental Health Lab, has also agreed to offer another round of testing for all those whose initial tests were of lower background or what we consider in the normal range. This is not for any medical indication, but really to address the concerns of the parents and the workers in the facility.

One of the concerns, I guess, has been that perhaps that the initial test wasn't accurate. We have no reason to believe or to suspect that those who had initial normal tests are actually going to have a second test which would indicate that the value has gone up.

First and foremost, the children and adults were removed from the facility on July 28. Secondly, as you probably know, the EPA has done a round of testing in the homes where people have agreed to have that testing. Essentially, except for one home where there was a contaminated blanket brought in from Kiddie Kollege, there was no evidence of mercury in the homes. There is no reason to suspect that there is an additional mercury exposure beyond July 28.

The health team also developed a medical record review plan, where we invited people to give us permission to review the medical records of their children involved in this case, and also the adult records. To date, we have 14 individuals from all the people involved that have agreed to do that. We have preliminarily screened about eight of them, and to date there are no indications of clinical conditions suggestive of proximity. Although, we do continue to review. We do continue to encourage all the attendees at Kiddie Kollege to give us permission to look at those records, whether they are children, or adults that worked there.

In addition to what we have just described, we have fact sheets on mercury; periodic updates both by letter -- through the mail and in person. We have created a Web site. It is in your timeline on the last page. The Department of Health and Senior Services Web site has resources available to people who are interested. We have had a third update that was sent out to parents and workers at the facility. We sent that out about two weeks ago.

We met with concerned parents and employees to discuss the health effects of the mercury and addressed their concerns. We have another meeting scheduled for November 10. We have also worked closely with the DEP, and the Department

of Children and Families, and the AG's Office on developing emergency rulings, which were introduced yesterday, for the environmental assessment of the licensed child care centers in the state.

I should add, in case people around aren't aware, this emergency ruling only applies to licensed day care centers. There are day care centers, I think it is five or less children, that have no licenses. In many cases, we may not be aware of where they are. We have also worked with the EPA to send letters to Kiddie Kollege offering the home testing that I just mentioned.

Finally, both Mt. Sinai's Pediatric Environmental Health Specialty Unit and the UMDNJ Environmental and Occupational Health Clinical Center have been available to address the questions not only from parents and adults that may be calling, but also for the practioners that may be caring for these individuals.

The Department of Health and Senior Services, and both the Federal and clinical academic partners, developed and implemented a health investigation plan that detailed and detected, initially, elevated mercury levels in about a third of the Kiddie Kollege attendees who were tested. Subsequent testing showed decreasing levels in those with elevated levels from those initial tests. Initial medical chart review of a limited number of individuals does not suggest medical effects, and given the initial testing levels, we do not suspect any long-term effects of Kiddie Kollege attendees.

Thank you, very much. I would be happy to take any questions.

ASSEMBLYMAN McKEON: Senator Madden?

SENATOR MADDEN: Does the Department of Health have standards set now for air quality regarding mercury

testing? Does the Department of Health have its own standards?

DR. BRESNITZ: You are talking about environmental testing?

SENATOR MADDEN: Yes.

DR. BRESNITZ: We have certain standards that are available from the standards that are at the Federal level. We don't necessarily set standards ourselves in the Department of Health and Senior Services. There are many, many environmental standards, both air samples and collected samples standards. Of course, not every single potential contaminant of a facility necessarily has a standard set.

SENATOR MADDEN: Do you have a standard regarding contamination for an adult with mercury, a certain level?

DR. BRESNITZ: There are--

SENATOR MADDEN: You started to testify--

DR. BRESNITZ: Yes.

SENATOR MADDEN: You testified, and you talked about the threshold.

DR. BRESNITZ: Yes, there are studies. A limited number of studies that have looked at where one might have health effects from the various levels of mercury. The level that was chosen, based on data that was studied, that was 5 micrograms per gram of creatinine. That was the way of standardizing kidney functions. We are talking about urinary testing now, for elemental mercury.

SENATOR MADDEN: I guess, from a commonsense point-of-view, having raised children and having grandchildren and whatnot, we all take our judgments from our experiences and relations. A lot of my background is from police work.

I would venture to say that if I had a drunk driver with a .10 in terms of a blood alcohol reading, and then I had to compare a 5-year-old that had a .10 in a blood alcohol reading, I would expect there to be significant differences in the way the alcohol had affected those individuals, by the sure fact of their body composition and weight. Is that reasonable, the way I am thinking?

DR. BRESNITZ: Sure.

SENATOR MADDEN: Using that same analogy now, towards mercury levels, if I have an adult who is, as you said, 5 micrograms per 1 gram of creatinine, and if I have a contamination of an adult through a study, and that's the standard by which we are using to measure the contamination rate on 2-, 3-, 4-, and 5-year-old children, does that seem like it's reasonably a good health policy in trying to determine? applause.)

ASSEMBLYMAN McKEON: I am just going to ask this. As a parent, I can appreciate the feeling of the people here. I am very impressed that you were so polite to Commissioner Jackson when she left. As far as the applause, I think if you can keep that kind of a thing to a minimum, and I do appreciate it, but it will be best if you can contain it in order to be productive.

DR. BRESNITZ: I think that's a great question. Those of us in the environmental health field, we try to base all of our recommendations and plans of actions, when we have these kinds of situations, on data available to us. It is true that there is not much really available in the pediatric literature, but there are some tests that have been looked at on levels of children who have had dental fillings, because dental fillings are made of mercury.

In saying that a cutoff applies, actually there was some suggestion that we use 10, because data showed that 10 was a reasonable value. We felt that by being conservative, we would go down to 5 as being the cutoff level. That was trying to account for the fact that children might be more sensitive.

There is not necessarily a magic number. It is basically an evaluation of the best available science by people who have experience in this field. That's how we make those. It is not black and white. Based on that evaluation and data that existed from the Agency for Toxic Substances and Disease Registry, which is a premier agency in the country -- really in the world -- on setting and doing these kinds of assessments on health relating to biological testing, and with our expertise from the folks at Mt. Sinai, this is what we basically came up with.

The data shows that, in fact -- and again based on what's been reported that individuals who have urinary mercury tests -- and again we are talking about elemental mercury-- Less than 20 micrograms of creatinine, which is quite significantly higher than the 5 cut off, didn't have any health effects at that time. That's the best we have, and that's basically what we proposed.

SENATOR MADDEN: The bill itself is going to require the Department of Health to set its own standards, something that the Department does not have now. It will be the legislative intent, I can assure you, of all the bills it sponsors, to have a breakdown between a mercury level for children versus a mercury level for adults.

I would also venture to say that when we have references to studies, as you commented, though they are not exact and it is the best that we have, it just doesn't cut it

in terms of what we have in front of us. If we have tests and research that is out there and it is focusing on adults, what we need to do is look harder to find research that focuses on very small children.

DR. BRESNITZ: We looked very hard. Unfortunately, it is just not there. We had some experience. I was not in the Department at the time, but Jim Brownlee was there. There was a building in Hoboken that was contaminated with mercury. A child had a very high level, and it was much higher than anyone had in Kiddie Kollege. There were no long-term effects in that individual. You know, we are often faced with uncertainty in this field.

SENATOR MADDEN: Okay. Thank you, Doctor.

Thank you, Chairman.

ASSEMBLYMAN McKEON: Thank you, Senator Madden.  
Assemblyman Mayer?

ASSEMBLYMAN MAYER: Thank you, Chairman.

Doctor, you mentioned that you are faced with an uncertainty. I respect that. I also respect that many of the parents concerned are faced with an uncertainty now.

Now, I think, through your testimony today you are basically saying that there was a lot of information out there about adults, perhaps, exposed to mercury, but very little regarding the effects on the children.

You and I have had conversations, and we talked about a couple of things. One was another round of testing for the students and for the children.

DR. BRESNITZ: Actually, it was for adults or anyone. It wasn't just children.

ASSEMBLYMAN MAYER: The adults, and staff members, and children. I appreciate that.

I am very concerned that it is not until December. I know I had the conversation with the Commissioner, I think it was last week, concerning that. To me as a parent, I would want to know that the mercury levels are coming down and what have you. I would want an immediate response taken. Can you explain to me why we are waiting until December to do that next round?

DR. BRESNITZ: Sure. Let me comment on the comment you made on the mercury levels coming down. I want to deemphasize that mercury levels certainly are coming down. On those who had levels over 5, a third were initially elevated in testing. A third of those that were elevated, if you look at the curve, you can see they are coming down below that 5 micrograms cut off. There are individuals that had less than 5.

There is a basic background on the level of mercury that all of us have, whether we were exposed in the settings of Kiddie Kollege or not. There is environmental exposures to natural exposures that occur, and there are exposures through eating certain foods. So people will have a certain background level of mercury in their urine. That's what we compare this kind of testing to.

People below the level of 5, I mean, they can't get -- none of them are going to be zero on testing. No one is going to be. If I tested everyone of you here, you wouldn't be in the zero level. Most of you, if not all of you, would be somewhere in that range. That would be true for children.

If you are in the level of a 4 or 3, and you get retested -- and you are not having any further exposure, which I emphasized before, either at Kiddie Kollege or in the home, because there is no indication the home has been

contaminated -- that repeat test is not likely to be significantly different from the original test. Just by random variation, it might be a little higher or a little lower.

The reason we chose early December is that the half-life for mercury excreting from the body is about 60 days. So every 60 days you excrete about half of what you have been exposed to. Early December is two-and-a-half months. We felt that we will give a sufficient amount of time. Even if all of those individuals would have what we consider a normal value, we will give them two-and-a-half months and retest them at that point.

ASSEMBLYMAN MAYER: Doctor, I had mentioned the uncertainty that the parents have indicated. Quite frankly, there is a lack of trust from any government entity right now.

DR. BRESNITZ: I appreciate that.

ASSEMBLYMAN MAYER: Quite frankly, from the government, too, as well as from the parents of the children in this case, in my opinion.

One of my concerns is the lack of communication with the parents. I know you handed out a timetable, and that you had two meetings so far, August the 9th and August the 15th. You are having another one on November the 10th.

I met with parents on Sunday. There are a lot of questions that they have, too numerous for this hearing. What I would ask your department to do is to commit to periodically communicate with the parents, and, quite frankly, if it is appropriate, with legislators and other officials, to talk about those concerns and some of the ambiguities that you hear that are out there, and what the results are telling us.

There is a tremendous amount of lack of communication. I would ask you to tell me what your

Department is doing to communicate with the parents at this time.

DR. BRESNITZ: If I could respectfully beg to differ a little bit, in that I think there is a perception here. We have, as I have indicated on my note of July 28, which is a Friday afternoon -- that by Monday we were in the community.

We have come out here several times, obviously, to collect the samples. We have been to two public meetings. We have taken numerable phone calls. We have sent letters to the families with the updates I just mentioned. We have a third update that we just sent out. We have communicated privately with the families providing results of the tests. We have done that. We have sent them the results of the tests in writing, as well.

We did commit to coming to the community. The last time we were here, I think, it was in September after the first round of testing. We said that we would be back when we had some additional information. Plus, we have developed a Web site, that we mentioned, for the families that asked us for information and resources. We put references on there, as well as other information.

You can never communicate enough. I would agree with that. The more the better. We are planning to come back in early November. We will go over everything that has been done since the last time we were there, including the material sent to them, and answer any additional questions they might have. We will come with our Federal partners at that time. We will come with the folks from Mt. Sinai, who are the true experts in mercury toxicity, and who are not government officials and who are not necessarily distrusted.

Those are people we rely on to give us the advise that we need to move forward.

ASSEMBLYMAN MAYER: So Mt. Sinai are attending the meeting?

DR. BRESNITZ: Yes.

ASSEMBLYMAN MAYER: We have a lot of questions, and I apologize. One last question. The long-term study that you and I spoke about--

DR. BRESNITZ: Yes.

ASSEMBLYMAN MAYER: I have to tell you that I really believe that there has to be a long-term study done with these children. I believe, like you said, that there is not really a lot of information out there as it relates to children and the exposure. We have to do all we can to study them and track these children. I would ask your Department to advocate and be a part of that study with the Center for Disease Control?

DR. BRESNITZ: Well, I believe that question was put to the Center for Disease Control and Prevention. It was responded to in the sense that they felt the current approach that was being taken was the best approach under the circumstances.

ASSEMBLYMAN MAYER: Okay.

DR. BRESNITZ: So we have put that question to the Federal government, and we are pursuing that response.

ASSEMBLYMAN MAYER: Well, I would ask you to ask again, because we are going to ask again. I think that is an appropriate response to that situation, and continue to advocate for a long-term study.

Thank you.

ASSEMBLYMAN McKEON: Just one second, if you would, Deputy Commissioner. I understand Commissioner Jackson

had to absent herself along with 15 members of her staff. I do understand; however, I would ask that at least someone representing the Department is here that could report to us directly. I would like it to be clear for the people what the Department has to say beyond what the reporter has in the transcript.

DR. BRESNITZ: That was our plan, yes.

ASSEMBLYMAN McKEON: Thank you very much.

ASSEMBLYMAN MORIARTY: Deputy Commissioner, I believe we spoke a few weeks ago, as well. Again, I want to echo what Assemblyman Mayer said: We will continue to advocate for a long-term study. I know the answer is not positive at this point, but then again, the last time I talked to you we weren't doing a third round of testing and now we are. So never say never.

I would like to move to a discussion of our bill for a second. In this bill, your Department would have nine months to adopt indoor air quality standards. Can you do it?

DR. BRESNITZ: We have not reviewed the entire bill in detail yet. I would prefer, if you will, to provide our comments on the bill through the Commissioner. We are planning to do that this week to the Chair. In a short time-- I don't think that there is any regulation in the State, basically, in the normal process, that can be done in nine months, in terms of developing it, proposing it, public comment period, all the prudent levels that it has to go through, and then coming back for a final adoption; particularly in the area of standards being set. I think it would be a challenge, let's just put it that way. That's true for any bill.

ASSEMBLYMAN MORIARTY: What would be part of this indoor air standards? Are there any indoor air standards at the Federal level that you can use as a guideline?

DR. BRESNITZ: Yes.

ASSEMBLYMAN MORIARTY: What types of contaminants does that look for? We are not just talking about mercury, apparently.

DR. BRESNITZ: What are our standards for organic solvents or for other heavy metals? There are thousands and thousands of potential contaminants, depending on where a site may have been constructed or placed, specifically if it is in a private industry. There are indoor standards for a number of different chemicals and heavy metals. I can provide a list to the Chair of what they are that currently exist.

ASSEMBLYMAN MORIARTY: Once again, these standards would have been set for adult males?

DR. BRESNITZ: There are -- I don't know the answer to that. They try to account-- It depends on when those standards were last set. They try to account for sensitive populations. The sensitive populations would include a pediatric population. It might include other individuals that have other immune illnesses, depending on what the contaminant was. It is not necessarily the case that all contaminants have a level that accounts for a pediatric population.

ASSEMBLYMAN MORIARTY: Well, I would urge that as you go forward -- to echo the sentiments of the Senator, and that is to keep in mind the pediatric population, as well as those who have compromised immune systems. Whether there needs to be a range of safety or whether there needs to be two different guidelines for different populations, I don't know.

I'm sure it is going to be a daunting task. I think the task is worth taking, because this would be a landmark in our state to provide a benchmark for indoor air quality.

Thank you.

ASSEMBLYWOMAN GREENSTEIN: Good afternoon, I think. Is it that time yet?

DR. BRESNITZ: Yes.

ASSEMBLYWOMAN GREENSTEIN: Just really one question. In terms of the legislation, has the State Department of Health, or any other health department for that matter, up to this time established any indoor air quality for any type of facilities, or is that usually a Federal OSHA sort of thing? Have we done that on the State level before?

DR. BRESNITZ: Not that I'm aware of, only for lead and asbestos.

ASSEMBLYWOMAN GREENSTEIN: I'm sorry?

DR. BRESNITZ: Lead and asbestos.

ASSEMBLYWOMAN GREENSTEIN: Oh, lead and asbestos. We have State standards for that?

DR. BRESNITZ: Yes.

ASSEMBLYWOMAN GREENSTEIN: Is that done through the health department, as well? Has that been done in several health departments?

DR. BRESNITZ: Just two out of thousands. It is a daunting task, Ms. Assemblywoman.

ASSEMBLYWOMAN GREENSTEIN: Of course, I'm sure. I'm sure. I was just interested in the precedent for this. Good luck with the endeavor.

ASSEMBLYMAN McKEON: Again, thank you Deputy Commissioner for being here. We will continue to have you monitor the proceedings of the day, and will certainly work

with you closely between now and the 23rd when we vote on the bill.

DR. BRESNITZ: Thank you very much.

ASSEMBLYMAN McKEON: What I would like to do now is call up Mayor Ferrucci. He has with him the Chief of Police, Mike DiGiorgio. I would also like to call up two other members of the Franklin Township governing board that are here, Councilman Kenneth Gallagher and Councilman Frank Scavelli.

**M A Y O R   D A V I D   F E R R U C C I:** Mr. Chairman, if I may request our Solicitor William Ziegler to join us, as well?

ASSEMBLYMAN McKEON: You certainly may. I will see if we can get another chair for you. Mayor, first of all and once again, I reiterate thank you for your hospitality. The facilities speak highly of the quality of your community, as do the finest of Franklin Township.

Thank you.

MAYOR FERRUCCI: Thank you. Thank you for coming today. Well, first off, let me start by saying: When we were first informed of the situation, we were alarmed and appalled at what had happened -- clearly a lot of inappropriate actions, as to safeguards that we had hoped were in place at the higher levels of government.

I ordered an investigation to begin immediately, and directed our Solicitor, Mr. Ziegler; and Acting Administrator and Chief of Police, Mr. DiGiorgio, to move forward as quickly as possible to develop whatever information they could from the written records, and any testimony they could gather, and report back to the Township Committee as quickly as possible.

ASSEMBLYMAN McKEON: I am sorry to interrupt you. For the record, could you please introduce the people at the table? You can start on your right, if you would.

MAYOR FERRUCCI: Oh, sure.

K E N N E T H G A L L A G H E R J R.: Mr. Gallagher, Township Committee Member.

ASSEMBLYMAN McKEON: Welcome.

F R A N K B. S C A V E L L I: Mr. Scavelli, Township Committee Member.

W I L L I A M Z I E G L E R, E S Q.: Mr. Ziegler, Solicitor.

MAYOR FERRUCCI: Also, Chief Michael DiGiorgio is behind me.

ASSEMBLYMAN McKEON: Thank you very much.

MAYOR FERRUCCI: They reported back to us within, I guess, about two weeks -- pretty quickly -- with a very comprehensive report reviewing what had happened, and put together a tremendous amount of information. We made that report available for the legislative team in the 4th District.

I trust you gentlemen had a chance to take a look at it. I would be happy to answer any questions on it. I am not going to go through it. It is a 3-hour endeavor. We have done that, however, at a public meeting previously for the residents of our community and for the parents.

The other thing that came of that effort was to put together a list of recommendations for us, internally, on things that we felt would be better to be changed on the State level, at DEP and elsewhere, to hopefully prevent this from ever happening again. I have a copy of that. I don't think it has been distributed.

ASSEMBLYMAN McKEON: Do you have that with you?

MAYOR FERRUCCI: Yes.

Could you pass that out to the panel, please?

ASSEMBLYMAN McKEON: Thank you.

MAYOR FERRUCCI: I would just like to run through that very quickly, as the Commissioner did, and let you know some of the things that we've changed and things that we think ought to have been changed in the process. Some of those are significant, and others are relatively minor. In any case, we think they are all important.

Item 1 is to strengthen Franklin Township's environmental requirements in the realm of zoning and planning, with respect to site plan and subdivision applications. Unfortunately, this particular site was not subject to a site plan review. We will address that later. Those that will be done in the future, now have a heavier set of environmental standards to meet under the amendments to the major local ordinances.

Item 2 is the DEP list of Known Contaminated Sites within Franklin Township, which would be added to the property record card within the Franklin Township Tax Office. That has already been accomplished. One of the reasons for that is that we want to make sure that if a property is sold at tax sale, like I just said was (indiscernible) for Sullivan, a purchase tax sale certificate, it will be readily evident that it is a Known Contaminated Site. Upon research, we realized our advertisement for those tax sale certificates did, in fact, comply with the requirements of the law, in that a general disclosure was made. There was a due diligence requirement afforded by the buyer.

We are going to move forward unilaterally in the future to specifically reference what properties are on that list. We would recommend that the Legislature entertain some legislation that would require that. We think it is

appropriate. We will take that extra step and do it anyway. It is probably a good idea to require that each individual property that is on that list be so referenced in the tax sale certificate.

Item 3 is that we would like the New Jersey DEP to let us know what properties in Franklin Township are subject to the provisions of ISRA and on which, if any sites, action has been taken. That is not information that is routinely shared with municipalities. We think that would be helpful.

Also, we mentioned, in 3-B, about the DEP providing copies of all documents respecting Franklin Township properties. It can be provided to the Franklin Township clerk, and the clerk can provide it to the Committee with any information. One of the things we uncovered in the investigation of this matter is that we were left without knowledge of a lot of DEP actions over the years. We found this out through our investigations this past August.

Item 4, during the course of the investigation, Chief DiGiorgio has uncovered that Accutherm conducted business surreptitiously out of two other properties in Franklin Township. The DEP has been informed of that. I believe there has been a review and tests. I believe the results have been no problem in either of those sites.

Let's see, what's next. Item 5, we are recommending that even when making a change of an existing building, if we convert to a new use that provides for the care, or housing, and maintenance of persons under the age of 18 -- there be a requirement for a site plan. Also, there be a site plan study done on any facility that is going to be used for the population of under-18. We are also asking that those applicants appear before the Township Environmental

Commission for review and comment as part of the site plan process.

Item 6 is on an item that had already been changed in 2005. The Office of Emergency Management was found to contain many documents of environmental nature, one of which involved Kiddie Kollege. Those documents have now been transferred to the Office of Community Development. Those are readily available to those officials prior to the making of any decisions.

Item 7 is just a (indiscernible) that we reached out to the Governor to ask for a meeting and have some further discussions. We certainly thank the Chairman and this panel for being here today to accomplish the same.

Item 8, again, it is an internal matter. There is some software that we had asked for and now have purchased to help monitor these conditions. We also would like to see the GIS information system updated with the DEP's Known Contaminated Sites list. Commissioner Jackson also mentions the GIS. We think the county department might be able to do that, and play an important role and do that countywide as a cooperative venture.

Item 9 is basically asking for what you have here today -- legislation that has been presented. I won't speak for my Co-Committee members, but I trust to a degree that they certainly are willing to support it, and I ask them to join me in a resolution at our next meeting supporting your legislation.

Item 10 is more of an informational matter: The County Health Department also receiving information, and not copying Franklin Township's. We think that will not take place in the future.

Item 11. Just a comment: Earlier, that I believe someone may have brought up, before, about evacuating the building immediately, as opposed to waiting. We think that is very important. We realize there is testing being done. Once everyone recognized that the remediation had not taken place, which is clearly something a Franklin Township Officer thought had happened, I believe it would have been prudent, of course, to evacuate the building immediately, and then do the testing. The analogy that the Chief gave was that if this was a bomb scare, we would empty the building and then go look for the bomb, not the other way around. I think that's important and the way it should be.

Item 12 is an effort to keep the Township from furthering the loophole, by receiving copies of all documents from the DEP and County Department of Health, to use them as a resource to help prevent situations like this from occurring in the future.

That's what we have done. We've done what we have recommended. You have a copy of our investigation. There were a few comments earlier relating to some of the actions on the Township level. I would be happy to address those. Perhaps it would be best to ask me some questions at this time.

ASSEMBLYMAN McKEON: I appreciate that.

Councilmen Gallagher and Scavelli, if you have anything to say, I would be happy to hear it before we open it up to questions.

MR. SCAVELLI: Thank you for coming out, and we would like to thank our Senator, and Township residents, for working on this legislation.

ASSEMBLYMAN McKEON: Thank you both for being so gracious; and the same comments to you, being: this is a great reflection on our government.

Same thing, Chief or Solicitor, anything that you want to affirmatively state?

Okay then, I am going to open it for questions.

My one thought is that a lot of this has been vented in both public meetings--

MAYOR FERRUCCI: Yes.

ASSEMBLYMAN McKEON: --with people that are residents of the community. Secondly, there was one issue incorrectly brought up before the Commissioner, regarding an interpretation regarding the acronym NFA, and the letter. I would appreciate it if we do our best to stay away from that, per se. That's a personnel matter. There is an individual involved there, and I don't know if that is at all productive. It is what it is. It was stated by the Commissioner with that caveat.

Perhaps we can open it up now. Senator?

SENATOR MADDEN: Thank you, Chairman.

Good morning.

MAYOR FERRUCCI: Good morning.

SENATOR MADDEN: Mayor, the focus of the bill is really to try to plug holes in the system at all levels of government -- where, quite frankly, one could claim that the ball might have been dropped -- without making any accusations. Now, just as a preamble, I wanted to get that on the record.

Could you tell me the purpose of the Environmental Commission within Franklin Township? What is its mission, and why does Franklin Township have such a mission?

MAYOR FERRUCCI: Well, Franklin Township's, like any municipality, is to advise and counsel the governing body on all environmental matters within the town. They are certainly not an investigative body or authority, but at the same time they can provide a very significant resource and represent a significant knowledge base.

SENATOR MADDEN: Okay. It is my understanding that the Environmental Commission had a list, much like I questioned Commissioner Jackson about, the State list that existed with known or potentially known hazardous sites. Did Franklin Township possess such a list in the early part of the year, say between 2000 and 2005?

MAYOR FERRUCCI: Let me give you the background on that. I can't tell you the exact year -- it was somewhere between 2000 and 2002. I went to the Environmental Commission chair and asked that the Commission attempt to harvest what I refer to as some of the institutional knowledge of the Commission and the residents of the community.

We had at least one long-time member that I think moved away and another former chair of ill health. I wanted to make sure that any knowledge they may have had about suspected contaminated sites be recorded for future use. The Known Contaminated Sites already existed, because that was on the DEP Web site, which is where Kiddie Kollege was.

Kiddie Kollege was not something that was the result of the Environmental Commission work on what was suspected. It was on the notice. But they were requested to do that work for the Township, yes.

SENATOR MADDEN: The purpose of compiling a list was, as you say, for future use. Can you describe what future use it could have been used for?

MAYOR FERRUCCI: When the Environmental Commission gets notice for applications that are to come before the Planning Board or the Zoning Board, and if one of the properties was on one of those lists for application and it showed up on their internal suspected contaminants list, they could then inform the Planning Board and the Zoning Board of that.

Again, this is something where they were going to harvest this knowledge. Someone once said, "Oh, back in the '40s someone used to dump on such and such a site." That is the kind of thing the Planning Board and Zoning Board need to know. Even though that particular site might not be on the Known Contaminated list, that's what the Environmental Commission needs.

SENATOR MADDEN: In and around the year 2002, there was a list compiled of suspected contaminated sites by the Environmental Commission--

MAYOR FERRUCCI: Correct.

SENATOR MADDEN: -- using some of what I will call institutional knowledge, generally, with all of Franklin Township?

MAYOR FERRUCCI: That's it.

SENATOR MADDEN: When that list was compiled, you also had the DEP list that you had referred to. Somehow you would have had a list or a large list, and you had the Commission. It is your belief that the purpose of that report is so that the Environmental Commission could advise or bring to knowledge, to either the Planning Board or the Zoning Board--

MAYOR FERRUCCI: Correct.

SENATOR MADDEN: --either known or suspected contaminated sites?

MAYOR FERRUCCI: Right.

SENATOR MADDEN: In the year 2004 when the Kiddie Kollege opened, is it your belief that the Zoning Board or Planning Board would have been aware of the potential, either known or suspected, contaminated site?

We heard Commission Jackson testify that the Known Contaminated Sites list contained Accutherm in 2004 -- on DEP. For sure it would have also contained it on the Franklin Township either suspected or known list?

MAYOR FERRUCCI: Right.

SENATOR MADDEN: The question the Committee would really like to know is, just what happened? Did the Zoning Board not get the information? Did they just not refer to it?

MAYOR FERRUCCI: I think the key point the members here today need to know is that the Kiddie Kollege application did not have to go to the Zoning/Planning Board. There was no requirement for that.

SENATOR MADDEN: Where would that go, sir?

MAYOR FERRUCCI: Directly to the zoning officer for a zoning permit, because it is a permitted use of the zone, as it is in all nonresidential zones in New Jersey.

SENATOR MADDEN: So are we talking about something very technical here in the approval process?

MAYOR FERRUCCI: No.

SENATOR MADDEN: It is not very technical?

MAYOR FERRUCCI: No, that application would not have been referred to the Zoning Board. It didn't need to.

SENATOR MADDEN: So the Environmental Commission, as you see it then, its responsibility was to advise the Zoning Board, but not the zoning officer?

MAYOR FERRUCCI: There you go, exactly. There's a gap in the system there. It would have made sense for the zoning officer to have that list. Although, that list was suspected sites. The DEP already had Kiddie Kollege on the Known Sites. So the list is really, regarding Kiddie Kollege, irrelevant, because that contained properties that were in addition to those on the DEP list, which is where Kiddie Kollege was. The suspected sites list is irrelevant to this discussion.

SENATOR MADDEN: I understand. At least I understand the logic behind having an Environmental Commission. It is going a long way-- I would surmise that it is not a local governing authority. We have state environmental commissions, and I know their purpose. The Environmental Commission, though, still has the responsibility to advise the Zoning Board of the Known Contaminated Sites list. Let's stay with that. However, it does not have a responsibility, locally, to advise the zoning Officer of the Known Contaminated Sites list. That's what I'm hearing you say.

MAYOR FERRUCCI: It should have. Well, the Known list, the zoning officer had access to.

SENATOR MADDEN: Okay.

MAYOR FERRUCCI: The Known Contaminated Sites list he had access to. It is on the DEP Web site.

SENATOR MADDEN: If they have access to it, why would they not check that before they issue the Certificate of Occupancy?

MAYOR FERRUCCI: I don't recall. Michael, what was the zoning officer's testimony? Did he say he checked it or not?

**C H I E F   M I C H A E L   D i G I O R G I O:** No, he did not check it. There was no requirement to check it.

SENATOR MADDEN: My final question, Chairman.

Thank you for your patience. Mayor, Council members, attorney, Chief, the bill which we have before you, does the language in that bill prevent this from happening again at the municipal level, to the best of your knowledge? I just don't mean on isolating Franklin Township. I am talking about all 567 municipalities.

MAYOR FERRUCCI: Having read it through just once, and, of course, it is lengthy and very technical, I believe that it will. I would certainly support it. I believe it will do that. I would like the opportunity again, as the Commission said, to read it over again and digest it.

SENATOR MADDEN: At 10:00 a.m. on the 23rd it goes before the Senate and Environmental Committee. I ask you please, if you could, to go through it diligently two or three more times and reach out to us if you have any suggestions. Thank you, Chairman.

MAYOR FERRUCCI: Yes, it seems to be intense.

ASSEMBLYMAN MAYER: Thank you and good afternoon gentlemen. First, I want to begin by thanking you for the important work the Chief and Mr. Ziegler did. It is a very comprehensive and thorough report that is dated August 16, 2006. We did receive that last Friday, and did have somewhat of an opportunity to try and make our way through it. It is a lengthy document.

As I mentioned to the Commissioner of the DEP, we need to know the facts. We need to know the facts to draft legislation to fill the voids. I think that we can get to the facts by looking at a series of timelines. I want to walk you through a couple of those. It appears to me that the first

official notification the Township received regarding the mercury problem at this site -- this is a letter that's dated April 24, of 1990. That was sent to Mayor Mastro at that time; and sent to the attention of Theodore Miller, who was and still is the Building Inspector.

I am just going to read excerpts from that letter. "The President of the company, Mr. Giuliano, has told Ocean lawyers that he intends to sell the building and possibly move out of state." It goes on to further state, "Mr. Jenkins, from my staff, spoke to Mr. Miller and advised him of the situation. It seems the possibility exists of an unsuspecting buyer from Franklin Township may be converting this contaminated building, while the apparent owner escapes cleanup of a problem he created."

Then I jump to July of 2001, and I know it is an 11-year period. Then Mr. Miller, who was the Building Inspector, issued a Stop Construction Order to the Navillus Group because they did not have the proper documents, according to your documentation. Also during that time period, they were actually issued building permits for plumbing, electrical, and siding.

My question is this: I know 11 years is certainly a long time, once you received this letter, but what procedures did the Township have in place to track this letter, this correspondence, and to issue permits? Is there any correlation between the two, or have you taken steps since then to provide that type of statement?

MAYOR FERRUCCI: Assemblyman, let me answer that this way. Much like it worked in the legislature in 1994, when ISRA was not enforced, none of us were there in 1984 when that letter went to Mayor Mastro. We uncovered the fact that that letter was in our Emergency Management Office

files. It was not in the Community Development, which runs the Planning and Zoning Department files.

CHIEF DiGIORGIO: Prior to any of this even happening, the fact is that the department realized that was not a good place for that to be, and all those files were moved into the Community Development Office. If that were to happen again and that's where the document ended up, it would now be in the Planning Office, and we would catch it. So that's what we have done. What happened to it back in '84? Your guess is as good as mine.

ASSEMBLYMAN MAYER: To go along with Senator Madden's point regarding the Environmental Health Commission, in your steps that you are taking to address the situation, No. 2 says that you are providing and documenting the property record cards with the tax office's Known Contaminated Sites. Are you also including the sites that are on the Environmental Commission list, which they have produced?

MAYOR FERRUCCI: Those sites have not been investigated. We don't have the ability to investigate those. Those are just institutional knowledge. I am going to defer to the Solicitor as to whether or not we can do that. I certainly do not have a problem doing that, but we would require legal counsel before moving forward with something that hasn't been verified by an agency charged with the authority to do that.

MR. ZIEGLER: If I may Assemblyman, my position on that would probably be, if asked, that without some State legislative authority, it would be inappropriate to slander a piece of property or a title to that piece of property based on no scientific or actual tangible evidence, based upon the memory of one or more members of the Environmental Commission

that remembers that, back in the '40s, he remembers his uncle Joe telling him that somebody was dumping trash.

The idea that the Township has to take it unilaterally to the local level is to go further than what ISRA requires. Instead of simply providing a disclaimer, placed on all tax sale certificate purchases, on notice, if one were to actually cross-reference the Known Contaminated Sites list with the tax sale lists and put an asterisk next to it -- which goes beyond what ISRA requires -- at least it is based upon the State agency, DEP, having made that determination, and not based upon what one or more members of the Environmental Commission remembers.

ASSEMBLYMAN MAYER: I thank you for that, Mr. Ziegler. I wondered if you have reevaluated the role of the Environmental Commission in the town, as in giving it more ability to investigate some of these properties and come up with a better list, perhaps, locally?

MAYOR FERRUCCI: I think if you read through this list of recommendations, that comes through loud and clear, yes.

ASSEMBLYMAN MAYER: I just want to follow up, Mr. Ziegler, as to what you were saying regarding the tax certificates. When I look through the information that you provided, there was a June 13, 1997, tax certificate that the Navillus Group acquired. The DEP timeline also lists a May 18 tax certificate. Do you have any record of that? Did that happen, as well?

MR. ZIEGLER: Assemblyman, let me preface my comments. That's why Franklin Township was recently sued, as was the DEP, by the Sullivan Group -- the exact Plaintiff, I don't know -- in an attempt to obtain rescission of the tax sale certificate. That is a matter of active litigation.

Although Franklin Township hasn't been served with any complaint, it was in the newspaper. I saw a copy that was sent to me that said, "I have obtained the tax sales certificate information from the tax office." I was currently in the process of going through that when that suit began. I found out about it late last week.

It appears that that sales certificate was issued prior to the one that was sold to Navillus. It appears that several were sold to a bank or banking consortium. It has an acronym, and I don't know what it stands for. FUNB?

MAYOR FERRUCCI: First Union National Bank.

MR. ZIEGLER: I'm still trying to go through it, but it does appear the prior tax sale certificates were issued.

ASSEMBLYMAN MAYER: You are still looking through that, okay. My point really, about tax certificates, is that I was wondering if you need legislation that it would be a requirement. I looked at your attachment that you had with your report regarding the June 13 tax certificate. Although -- I think I have the right page, I can see the property on here -- you do have a disclaimer, it is a generic disclaimer on the property back then, that some of these properties contained environmental hazards.

I think that, perhaps, we should require that, on tax certificates, that asterisks be placed specific to that particular property. So if there is any confusion, that will waive the generic disclaimer.

MR. ZIEGLER: This is the way I understand this, and I am not an environmental expert. The way I understand it is that the disclaimer would only apply to properties that were taxed as industrial properties. It would

not necessarily have anything to do with any property that was used as an industrial property in the '50s, or '60s, or the '70s, but was never taxed as an industrial classification code.

Legislation that would require the tax office to cross-check this on a statewide basis on properties that were contaminated, properties on the list -- it would go a long way towards protecting unwary purchasers of tax sale certificates.

Also, the person obtaining the tax sale certificate has to do his own investigation. I would like to further point out, and it might need further clarification, when the local finance board interpreted ISRA, the generic disclaimer is exactly what they directed the tax collectors to do. That was in specific legislative records. That was January 5, 1996, Local Finance Notice to tax collectors.

ASSEMBLYMAN MAYER: Thank you very much.

ASSEMBLYMAN McKEON: Assemblyman Moriarty, please.

ASSEMBLYMAN MORIARTY: Thank you very much.

I also want to thank you for your thorough report. Although getting it on a Friday before the hearing, it is very difficult to get through. I would have liked to have received it earlier. It is very thorough, and I thank you for that. Hopefully, I'll get through the bulk of it.

I did want to ask you a couple of questions. In your investigation and in the Chief's investigation, can you tell us who you interviewed?

MAYOR FERRUCCI: Mike, can you answer that?

ASSEMBLYMAN MORIARTY: For instance, did anyone interview, out of curiosity, the former mayor, Mayor Mastro, regarding this letter?

CHIEF DIGIORGIO: No, I did not.

MR. ZIEGLER: Nor did I.

ASSEMBLYMAN MORIARTY: He is still alive and living in town?

MAYOR FERRUCCI: Yes.

ASSEMBLYMAN MORIARTY: Is the zoning officer here today regarding any of this?

MAYOR FERRUCCI: He is in Trenton testifying.

ASSEMBLYMAN MORIARTY: Okay. Thank you.

I want to ask you a couple of questions about your current zoning and planning. Let me get this straight. If someone comes to you and they have a property that is a dry cleaner and they want to turn it into a restaurant, and it is in the proper zone, that is administrative as opposed to going before a board, currently? Would that be correct?

MR. ZIEGLER: Well, yes.

MAYOR FERRUCCI: Yes.

ASSEMBLYMAN MORIARTY: That is one of your objectives -- is to change that; is that correct?

MAYOR FERRUCCI: On properties that will be utilized for children.

ASSEMBLYMAN MORIARTY: Okay. I mean, there are many municipalities that have a change of use. Anything that's a change of use, that goes from a dry cleaner or a funeral parlor, or even from a magazine shop to a restaurant, it has to go before a Board. Are you aware of that?

MAYOR FERRUCCI: Our new development director, Ms. Knobloch, is here. Could we bring her forward?

ASSEMBLYMAN MORIARTY: Sure.

MAYOR FERRUCCI: She would be really better to answer that question. That's day-to-day administrative stuff that I'm not sure of the answer. Patty, if you could?

ASSEMBLYMAN McKEON: I just want it, Assemblyman, relative to the bill and information. I appreciate this.

ASSEMBLYMAN MORIARTY: I am wondering if there were different changes of use laws around the state. And I also wonder whether this is an area that we need to look at to help us out in Sullivan's--

ASSEMBLYMAN McKEON: I appreciate your thoroughness on this, but I am concerned about the people waiting to be heard, so I'm going to--

ASSEMBLYMAN MORIARTY: Is that correct, that if you currently have a dry cleaner that uses lots of chemicals in a commercial retail strip, and they leave and a restaurant comes forward and wants to occupy that space, they can do that administratively by going to the zoning officer and not actually going to a board?

**P A T R I C I A K N O B L O C H:** Right. Well, it depends on the actual piece of property itself, and how the property has been developed and if it has been developed for certain use, for parking, and all that.

ASSEMBLYMAN MORIARTY: Yes, all that other stuff.

MS. KNOBLOCH: It is already complete. You don't have to go back and forth for that site plan. It is literally dictated by the property, and each property dictates what happens.

ASSEMBLYMAN MORIARTY: There are some municipalities, and correct me if I'm wrong, that do have ordinances that when you have a change of use, it has to go before a board. Is that correct, Mr. Ziegler?

MR. ZIEGLER: True. There are many municipalities where, for example, if a shop moves out and you

have a vacant store in the strip mall, when the new tenant moves in and that tenant is a permitted use in that zone, that permit requires nothing.

I think what your question is getting at is that there's a legislative determination as to how many approvals of land use practice that a person should have to go through to operate a permitted use in the appropriate zone, in an existing structure that requires no exterior renovation and no additional parking.

ASSEMBLYMAN MORIARTY: Okay. Thank you.  
That's all.

ASSEMBLYMAN McKEON: Assemblywoman?

ASSEMBLYWOMAN GREENSTEIN: No questions.

ASSEMBLYMAN McKEON: Okay. Thank you all for your testimony, and I wish you the best working through this. We'll try to do our part, not only for this town, but for the state.

MR. ZIEGLER: Mr. Chairman, I happen to have 300 resolutions to support this legislation. Would you like me to give that to you?

ASSEMBLYMAN McKEON: Certainly.

MR. ZIEGLER: I'll prepare it this afternoon.

ASSEMBLYMAN McKEON: Thank you. I appreciate it.

John Ducoff, Acting Chief Information Officer,  
Department of Children and Families. John?

We will take a short break after this.

**J O H N A. D U C O F F, ESQ.:** Thank you, Mr. Chairman.

I'll give you my title that is relative to this matter. I am also the Director for the Office of Legal and Regulatory Oversight. In that capacity, I oversee the

licensure of our child care centers. The Department also licenses foster families to these residential facilities.

I want to thank you on behalf of the Commissioner for the opportunity to speak to you today. I would like to take a few minutes to provide, if I could, a general overview of our licensure process and describe the changes that we have made since the Kiddie Kollege tragedy came to life.

At the outset, I would also like you to know that this was not solely a Department of Children and Families process. This was very much a collaborative process. All the State agencies came to the table with their varying expertise to help us draft the rules that make sense.

Generally, in order to obtain a license to operate a child care center, the applicant would have to submit a completed application to the DCF office. That application will provide a significant amount of information about the center, and staff, their credentials, and a number of other issues. The application will also include supporting documentation from other environmental agencies, such as construction, fire, and other health issues.

The office of licensing staff will visit the center to inspect the center and review, among other things, the training and qualifications of each staff member; criminal history and child abuse registry information on each staff member; the center's policy of reporting allegations of child abuse and neglect, and other offenses; the center's ratio of staff to children; and the center's programmatic activities, to make sure the center has appropriate activities for children.

If the results are found to be acceptable, they will issue a license valid for three years. At the end of

three years, they go through the process again. In the interim, there are periodic on-site inspections. Those inspections cover the center's staffing ratio, discipline, fire safety, and things like that. As has been mentioned today, we have been working with other departments to craft the regulation, because we have the regulatory power of overseeing child care centers to attempt to insure that something like this doesn't happen again.

Let's take another minute or two to briefly describe what that regulation does. The regulation was filed with Administrative Law. It was filed with a managing regulation. It will be effective immediately. Under the regulation, each child care center has to certify in writing whether the building or the center is located in one that previously housed one of four provided Uniform Construction Codes. Those uses are Group F for factory/industrial, Group H for high hazard, Group S for storage, and Group B for dry cleaners and nail salons.

If the building did house one of those uses, the child care center would have to certify in writing that the center has contacted the DEP and the Department of Health, and has complied with all the instructions that those departments have given them, and made the recommendations to insure that this facility is safe.

There are three other requirements, as well. Every center will have to provide certification that they have provided safe drinking water. Effective January 1, of 2007, the Office of Licensing will no longer issue licenses to centers that are co-located with a dry cleaner or salon in the same building, unless the applicant can demonstrate through indoor air sampling that there is no health risk to children. Effective July 1, 2007, every center will have to provide to

the Office of Licensing a No Further Action Letter issued by the DEP.

As I said at the onset, all of these are DCF regulations that are part of the effectiveness of the regulatory side of State government. This is one of the ways we are in partnership, in collaboration, with all these agencies that have been represented here today. The Commissioner and I feel confident that it will bring us a part of the way to an attempt to insure that this situation doesn't occur.

Although, the Commissioner and I both believe in the legislation that is proposed. I want to thank you for your leadership on that. It is an absolutely necessary first step to plug the holes and to fill the gaps that allowed this situation to happen.

I thank you for that, and I'll be happy to take any questions.

ASSEMBLYMAN McKEON: Senator?

SENATOR MADDEN: No questions.

ASSEMBLYMAN McKEON: Assemblyman?

ASSEMBLYMAN MAYER: Thank you, Chairman.

I thank you for your help within the past several months to grant this legislation.

MR. DUCOFF: Thank you. I'll be happy to help.

ASSEMBLYMAN McKEON: Assemblywoman Greenstein does have some questions.

ASSEMBLYWOMAN GREENSTEIN: I have just one question. This legislation -- would that only apply to licensed child care centers?

MR. DUCOFF: The regulation I described?

ASSEMBLYWOMAN GREENSTEIN: Yes.

MR. DUCOFF: The regulation, yes, it would apply to a licensed child care center. There are about 4,300 statewide.

ASSEMBLYWOMAN GREENSTEIN: Okay. Do you have any sense at all of how many are unlicensed child care centers around our state?

MR. DUCOFF: There may be some numbers that may be operating. I don't have a sense of the numbers for the centers that may be operating inappropriately, in violation.

ASSEMBLYWOMAN GREENSTEIN: There are none that should be operating without a license; is that right? Anyone who is doing it is --

MR. DUCOFF: Well, there are a couple of different categories. There are people who provide child care services in their home to a small number of children. So for those situations, I think, if you compare them to the situations of Kiddie Kollege, are less implicated here because they are residential uses. They are not former industrial plants.

ASSEMBLYWOMAN GREENSTEIN: Right.

MR. DUCOFF: There is a number. We register, through intermediate areas, these unknown numbers of certain private facilities. Somebody who, "My sister is going to watch" -- for instance -- "my kids during the day." That person (indiscernible) to get registered, and so forth.

ASSEMBLYWOMAN GREENSTEIN: There is another question I want to ask. The legislation that you are referring to, does that track this legislation?

MR. DUCOFF: No. I think this legislation is very different. This legislation is comprehensive. This legislation really looks at it from a broader prospective.

ASSEMBLYWOMAN GREENSTEIN: This is much more comprehensive?

MR. DUCOFF: I think the legislation is comprehensive. It think they are complimentary.

ASSEMBLYWOMAN GREENSTEIN: Thank you very much.

ASSEMBLYMAN McKEON: Thank you, Assemblywoman.

John, thank you very much for your testimony.

MR. DUCOFF: Right.

ASSEMBLYMAN McKEON: I know you will do your best to get the information on the testimony today, and use that to further your evaluation in your process.

I did say we are going to take a break. However, Jen Sneed from Senator Frank Lautenberg's office is here with a two-paragraph letter to enter into the record. I would like to give her a chance to do that.

I will take 10 seconds to talk housekeeping and then take a break.

Jen?

**J E N N I F E R S N E E D:** Thank you. To restate, my name is Jennifer Sneed. I am here representing United States Senator Frank Lautenberg today. I have a letter here to read to you on his behalf.

"Dear Assemblyman McKeon: I would like to thank you and the Assembly Environment and Solid Waste Committee for holding a hearing on the mercury contamination situation at the Kiddie Kollege day care center in Franklinville, NJ, at the request of area residents and legislators.

"As you will undoubtedly hear during the course of this hearing, this is a situation in which government on many levels has failed its citizens. The New Jersey Attorney General's Office investigation of this matter is still

underway, and we expect the results of that investigation to shed more light on what exactly went wrong and where the responsibility lies. I want to do whatever I can to continue to assist the families whose children attended Kiddie Kollege and the staff who worked there. At the request of some parents, I called on both the United States Environmental Protection Agency (EPA) and the Centers for Disease Control (CDC) for immediate assistance. As you may know, the EPA did agree to test homes for mercury contamination, and in fact discovered mercury on a child's blanket. Recently, the CDC agreed to provide necessary support to the State for additional testing that will now take place. On the State level, I understand that Senator Madden, and Assemblymen Mayer and Moriarty are working to determine how this site became a day care center in the first place, while also exploring solutions for the future.

"I will continue to follow this issue closely, and investigate what action might be needed at the Federal level to make certain that what happened at Kiddie Kollege can never be repeated.

"I thank you for your time and for allowing me to address you this morning. Please do not hesitate to contact my office if I can be of any additional assistance.

"Sincerely, United States Senator, Frank R. Lautenberg."

Thank you.

ASSEMBLYMAN McKEON: Thank you, Ms. Sneed. Please express our thanks not only to you personally, and to your office staff, but to the Senator, on behalf of all the Committee members. I know that you have been proactively involved with our partners in the Federal government to be sure this doesn't happen again in the future.

MS. SNEED: Absolutely. Thank you.

ASSEMBLYMAN McKEON: I don't know if anyone, other than the members of our staff, need to get access to your cars, but in about 20 minutes from now, until about 2:20, you need to move because the buses start to stack up.

When we reconvene, it will be with Bill Connolly, Department of Community Affairs. He will officially read into the record the legislation being proposed by the Committee, and then we will be taking public testimony of five minutes each. We will be self-limited, and it will be very unlikely there will be any questions. Members rather will listen, and then everybody will reserve their comments to the very end for final conclusion.

It is 12:51 p.m., and at 1:00 p.m. sharp we'll start under the gavel. Thank you.

**(RECESS)**

**AFTER RECESS:**

ASSEMBLYMAN McKEON: We are going to read a statement into the record to make sure the public understands this is a legal requirement. It will be very brief, and then we will call upon Mr. Connolly.

MS. CALVO-HAHN (Committee Aide): The first proposed legislation to the Department of Health and Senior Services developed standards for safe building interiors for buildings that are being used for child care centers, or residential or educational purposes. That bill would require the Department of Health and Senior Services to issue a certification that a building interior is safe for use as a child care center, or for residential or educational purposes.

This certificate would then be required as an issuance of a construction permit for any structure that was previously used for industrial, storage, or high hazards purposes, or that is located on a contaminated site, when used for a child care center, or for residential or educational purposes.

The proposed legislation would not only increase the penalty provisions for the Industrial Site Recovery Act, it would require owners or operators of an industrial establishment to submit certain information to that municipality in which the establishment is located.

ASSEMBLYMAN McKEON: Thank you.

Mr. Connolly?

**W I L L I A M   M .   C O N N O L L Y:** Thank you, sir. I am Bill Connolly. I am the Director of the Department of Community Affairs, Division of Codes and Standards. We are also accountable for the performance of all local construction code officials and inspectors.

The local construction code officials can and should be the first and the last line of defense for a community when it comes to safety in buildings. We are all familiar with the permits of issuance and the certificates that are required whenever any kind of construction work is undertaken for any kind of use of a building that is obtained.

There is one other important responsibility that is relevant to your hearings today. That is that they are the final gatekeeper. In addition to making sure the final requirements of the construction code are met, one of their responsibilities is to insure that any other approvals, from any other agency or level of government required in connection with that construction project, have been met

before a construction permit has been issued or before a Certificate of Occupancy is issued.

The problem highlighted here is that for this kind of a problem there were no requirements. The Industrial Site Recovery Act that is instituted concerns real estate transactions. For construction activities, the Industrial Site Recovery Act concerns the site and not the inside of the building.

This legislation-- As was indicated by Senator Madden at the very outset, there's a very significant gap in our laws in this state. This legislation closes that gap and makes construction officials responsible to be sure that -- whether it is the construction of a building or the change of the use of an existing building -- that whenever a change occurs on a site or in a building -- whether it is industrial, storage, high hazard, a dry cleaner, or a nail salon -- and that change is made into a day care center, educational or residential use, that all the appropriate environmental investigations have been undertaken and problems are identified, even if they weren't suspected before the permit was applied for. Finally, that the appropriate remediation has taken place during the course of the construction.

I think this an approach that is very workable for the people in the state. I think our construction code officials are entirely capable of carrying it out. They already do it for other kinds of laws that are far less important, such as erosion control and things like that. That's it, unless there are questions.

ASSEMBLYMAN McKEON: I will see if any of the panelists have any other questions or comments.

SENATOR MADDEN: No questions.

ASSEMBLYMAN MAYER: I have just one comment to make. I want to thank you very much for your help in drafting this legislation and for the direction of your team. You have provided a lot of guidance to us.

In your professional judgment, do you feel this legislation, to the best of your authority, will benefit and help this type of situation in the future?

MR. CONNOLLY: Yes.

ASSEMBLYMAN McKEON: Thank you very much, sir. We look forward to working with you as we go through the legislative process.

Jeff Tittel from the Sierra Club? I'm calling Jeff, because he has another matter that he has to get back on. There are a number of environmental groups represented here. We will hear from all of them. We appreciate hearing from them. We are going to call parents and other groups after Jeff, first, because the environmental groups have the benefit of meeting with us often, all the time in Trenton. We will hear from them on Monday, I'm sure.

**J E F F   T I T T E L:** Thank you, Mr. Chairman. I just want to start out and talk a little bit about history, because the old saying that I learned a long time ago is that if you don't learn from the mistakes in the past, you are condemned to make them in the future.

I think that what we see here happening is that Kiddie Kollege is a symbol of a system that is broken. It is to me, sort of, I guess, everything Katrina was to show how FEMA was broken. Kiddie Kollege is sort of a continuation of a learning of that, because government failed at all different levels. Laws that were in place were ignored. Programs that were in place were not being used properly. So many places and things, I think, fell down. It really showed how this was

such a horrendous situation. My God, did you ever think about anything more horrendous than a day care center having mercury in it?

When you think about the problems in the state -- and for me, this is not my first hearing this year. I'm sure Assemblywoman Greenstein and Assemblyman Mayer are sick of seeing me. This is about the fifth or sixth one.

We have had similar problems in Edison, and in Hamilton, and Jersey City. We have had plenty of them. Greenwood, in the City of Trenton, where you had to take down a school because it was built on top of a contaminated fill. That is \$14 million. Better to take it down than have children go to school on a contaminated site.

These are the consequences of government failure. We are here to support the legislation, because we believe that there needs to be more accountability of checks and balances. That is one of the things that is missing.

Some of the things that I would like to address more specifically, still in connection with Kiddie Kollege-- The system is broken. The more ways you can have checks and balances on it, the better. We have been trying to get that out of the Health Department for 10 years, to get better standards. I'm glad this legislation is now forcing them to do it.

We have been saying for a long time that you should not be able to get a building permit or any kind of a permit before there is a NFA on the site. Not just here, but there are literally thousands of condominiums along the waterfront. We are looking at a chromium site that doesn't have a NFA. We are concerned about the fact that people have let so many things slip through the cracks.

Going back in history a little bit, when we changed the law from ECRA to ISRA, many people felt that ECRA was slowing down and falling on the ground, and that we needed to make certain changes to speed things up. At the same time we did that, we cut the budget by 20 percent. We cut the staff hours by 16 percent. People that worked 40 hours a week work 36 hours. Back in the mid-'90s there were 720 people in the site remediation program. We are down to 520. We have a hiring freeze in place. As more people retire, that will matter.

It is part resources, but it is also leadership. It is also prioritization. We have allowed, because of this rush towards development -- it became a voluntary cleanup program, not mandatory cleanup program. Even though we have the tools to go after them preliminarily, to make them clean up the site and actually charge them for damages, this is something we never, ever do.

We also have failed especially with Accutherm, because they have gone out of business. It is tough to fine someone. What we have done is not used the law in front of us. We need to fix that, as well.

Your law is a good step in the right direction: getting the Health Department in there, making sure you have to have NFA before you can build and get a building permit, and making sure the Health Department inspects the site to make sure it's safe.

We also need to fix the DEP law. We need to make sure of it. One of the reasons that cleanups take so long and people get frustrated is the Department and the permits. The more you are at it and the more you push, eventually you will get your permit.

The problem with the program is that it is voluntary. If you don't want to come in, you don't have to. You get to choose your own cleanup, which is one of the cheapest cleanups possible. What ends up happening with a site is not cleaning a site. You end up, you know, trying to make it -- it is really more about the responsible party and the polluter than it is about cleaning up the site. It has become more about the developer than the public health.

That's some of the other areas that you need to look at before you go forward.

Just a couple points on Kiddie Kollege itself. Back in the mid-'90s -- or the late '90s, there were staff people in DEP who did look at the site. They saw mercury on the floor. In 1999 and 1998 there were rankings in the priority system where they said, "There is mercury on the floor, the site needs to be secured." What the Commissioner said is, "Well, it didn't rank as high as some other sites." Those are sites where there is occupation and people there. It is an emergency, and you need to rush in.

This site was shown to be contaminated. It was shown that there was mercury on the ground, yet we didn't do anything to secure the site. We did nothing as far as handing it over to a case manager. That is one of the reasons it slipped through the cracks, because there was no one responsible within DEP for this site. One of the things we need to look at is that every site has to be assigned a case manager. There has to be accountability. They talk about bringing back the priority system. The law requires it. It is nothing new.

In fact, unfortunately with the previous Commissioner, at the same time he eliminated 1,800 sites on the Contaminated Sites list, as well as this one, he also

allowed the priority system itself to lapse. We need to make sure there is accountability within the agency.

Also, that the staff there is also given the tools to do their job. When a site is going to get (indiscernible), other than industrial, under ISRA you only have to clean up from an industrial standard, not a standard for children or housing. You have to make sure there is a permanent record for whatever the site is going to have, in the DEP, for any use other than industrial.

You need to bring back total participation. Right now when you have to do a cleanup, the public doesn't have to be involved. They don't even have to be noticed. Again, people will come forward and will be able to influence the DEP on appropriate cleanup plans. Not just having a meeting and telling them we are going to clean up the site or we are going to give the responsible party whatever they want, but a real one where the public has a real voice on the table of what we want to happen here.

ASSEMBLYMAN McKEON: I am going to ask you to wrap it up.

MR. TITTEL: Okay. Real quick. One of the other things to be concerned with the (indiscernible), that would not have been provided for by the board, are that the consultants who do site remediation (indiscernable) work for the guilty parties, but they end up working for the State. They set up an escrow account so that they end up getting paid by the responsible parties. It is a State oversight, just like we need to have insurance or bonding to make sure we don't just walk away from the sites. So that if something happens later, we can go back and properly monitor property sites.

I want to end with this: that for too long we stuck our head in the sand about these contaminated sites, just like an ostrich. There are contaminated vapors there, I understand, and toxic waste. We need to pull up our head, and open our eyes, and start fixing the problems. This legislation is an appropriate important step in this direction, but we have a long way to go.

ASSEMBLYMAN McKEON: Jeff, thank you very much. We are going to defer on any questions on your testimony at this point.

The first two parents that I would like to call up are Tina Toy and Julia Hoolahan. If you could both get up and identify yourselves. I know how patient you both have been, but try to limit yourselves to five minutes because there are many other parents that want to speak, as well as staff members from Kiddie Kollege, as well. I am going to mispronounce your name, but George and Rosemarie Smierciak, I think, are going to be next to come up.

**J U L I A   H O O L A H A N:** Julia Hoolahan. Tina can go first.

ASSEMBLYMAN McKEON: Ms. Hoolahan, Ms. Toy will be going first? Is that okay with you, Ms. Toy?

**T I N A   M.   T O Y:** Yes, sure.

Tina Toy.

First, I would like to thank everybody for being here. It means a lot to me, and I'm sure it means a lot to everybody else. I would like to first address all the agencies that are involved, not just the environmental ones, but especially with our children's health. Safety and security must be proven and not declared.

It scares me, especially today when I'm listening to everybody from different agencies speaking about

this, and I am listening and the word "tragedy" is repeated over and over and over again. Yet, when we are speaking to these agencies one on one, they are not listening to us. We are calling upon them and we are asking them for help. We are calling and not getting calls back. We are putting out correspondences; we are not getting anything back. We are being treated like we are overacting and there's nothing wrong.

It wasn't until today that we finally got to hear the truth and what the numbers really were. They were not being honest with that, and that's basically what we got out of this today. I had a feeling that we weren't just going to walk in a here and get to hear something that was going to change New Jersey. It was going to give us a little bit more of a base of how we felt. We knew we were just being heard. It meant a lot to us in a way. I also -- here are my notes. Oh, I'm done. That's it. Sorry.

ASSEMBLYMAN McKEON: Thank you, Ms. Toy, very much. I'm sure it is not easy to be up here.

MS. TOY: No.

ASSEMBLYMAN McKEON: I am sorry for what you went through. We will try to make it better.

Ms. Hoolahan?

MS. HOOLAHAN: I thank you for coming today. I do not have a child at Kiddie Kollege. Back in the early '90s, I had three children at the Bankbridge School. At the time, our children and our teachers were getting sick, very sick. The school board was hemming and hawing with us, gave us nothing up front. They did nothing to help us. They would not share any information. So we went, like these parents did, to our local leaders, John Matheussen, John Geist, and Assemblywoman Jenny Webber. We found out what was causing the

problem at the school. The school board stepped up and took care of the problem.

Once again we are faced with this measuring what is harmful and what is not. That is why I am speaking today. Back then, they started the process. Where is it at? Apparently, it didn't get completed because Tina's child is an example of what's happened. We were told back in the '90s. So many people ran to our help. I mean, even Mayor Ferrucci and his whole council. Everyone was there to help us.

It was frightening when your kids are getting sick, and the teachers. They are good people. They promised that they would continue on with this. When they went to pursue this further, they got the good old political block. They didn't want to hear that we need to set standards for schools with kids.

They keep talking about that 5 milligrams. I know all about that 5. I know all about it. Don't tell me that 5 is okay when my son is only 35 pounds and his teacher is 150, and he is getting sick and so is she.

I had prepared questions. The reason I know some of these things was because I fought for the Marriot Senior School and for the teachers.

Lisa Jackson from the DEP, she left. When I went out into the hallway to speak to her, her associate stepped in between us and politely handed me a card and said, "Call us." For the record, I would like to ask my questions, if that's okay?

ASSEMBLYMAN McKEON: Sure.

MS. HOOLAHAN: The first thing I wanted to ask her was, how much experience the person had who was doing the testing on the site. Did they test inside and outside? Was the building occupied or unoccupied? In 1995, I did find out

that they only tested the exterior of Kiddie Kollege. They never even went inside and touched the floor boards.

Federal funds, that keeps coming up. The Federal funds are not there. We have to find them. These are our children. They are all we have. We have to fight for them; we are their voice.

Now, I have other questions. I'm getting emotional. I wanted to ask about what this (indiscernible) testing is. The terminology is being used. I wanted some answers. But like I said, I did not get them. How does it work? I didn't get the answer to that either. Were any of the buildings surrounding Kiddie Kollege -- were they tested? Have we extended our arms to the neighbors of the people that live around there?

The thing that really bothers me is that any building that houses a child, any building -- a church, a school, Kiddie Kollege -- it should fall under Federal guidelines. If you want me to be the first one to sign a petition, I'm here. We have to protect them.

Now, the other thing that bothers me is, in 1994 Accutherm closed their doors. It took a year and a half to be cited. We have to do something about that. We can't let that kind of time go by. We have to be on top of this. This bill that you are doing, given what I went through in school and the things I learned -- I went to Delsea here, and got a B in Chemistry. I am not, you know, a professional at this. One thing I see missing in this first line is that you have air, water, and soil. I personally would like to see the bill for testing, too.

There is a woman who worked with us when our children and teachers were sick. Her name is Wendy Hunter-Carey (phonetic spelling). She works for the Gloucester

County Board of Health. She would be of such help to you. She went through this with us every step. She knows every step of it. She would be just a font of information for all of you.

The last thing I want to say is, whatever we have to do as a member of this community, we will go the extent or whatever. We have to accommodate these parents, the kids, or the teachers that work there. I don't think there is one organization in this community who would fight you on making sure that happens -- on everything they need to make it better, to make their lives whole again.

Whatever you need, if you need the support of the organizations in the community, you let me know. I'll start the march. Again, I ask you, please, call the Gloucester County Board of Health. Talk to Wendy Hunter-Carey. She has so much to offer all of you. Hopefully she is still working there. Thank you for your time.

ASSEMBLYMAN McKEON: Thank you very much.

(Indiscernible), as a liaison, was working with the Commissioner. He is here. I suggest you that might submit your questions to him. I can attest to the fact that the Commissioner -- other than the questions about Federal funding of sources and things, she can't directly answer. That is out of our control. We will get you, in a short amount of time, answers to your questions.

MS. HOOLAHAN: Thank you. I appreciate it.

ASSEMBLYMAN McKEON: The pleasure is ours. We put you ahead of every elected official in chemistry.  
(laughter)

MS. HOOLAHAN: Anything I can do to help.

ASSEMBLYMAN McKEON: George and Rosemarie Smierciak? Carolyn Tanguay and Carol Lynn Calabro will be next.

**G E O R G E S M I E R C I A K:** Good afternoon. I am George Smierciak. I'll try not to be emotional. It will be very hard. The two ladies up here were quite eloquent to me.

Let me just say one thing, "No other action." That's what my child was told. No further action, because she is under 5. Tell your child that.

You don't even know if they are going to be sick or not. Everything we are told, we are assured everything is fine. No further action. I love those words, *no further action*. Give it to a site, so there is no further action. Give it to my child, so there is no further action.

Mercury is a poison -- it is an elemental poison. We, as adults, can handle it better than a child. But you put the same standards on the children that you would on adults. My daughter was in there for two years and two months. How long do you have to be in there and exposed to mercury before it becomes a problem? The people say there is no problem. From April 11, of this past year, to July 28 -- we take that long to close a school.

You say "We are concerned about the children." If you were so concerned about the children, why didn't you come there on Monday and take a blood test and tell me how much mercury was in her blood. Why did you wait until Friday to tell us, "We are going to do a urine test on Monday?" Why do you tell us that this person can expel mercury out of their system faster than this one, but we are going to hold them all to the same standard? You don't know what mercury does long-term, because there has never been instances like this. As you say, "instances."

Tragedy. This is a catastrophe; it is a national disgrace. Not just a state, but a national. We, as the State of New Jersey, are recognized across the nation as number one in toxic sites. We have the highest property tax. I mean, what are we paying all this money for? We talk about resources. We don't have the resources. Where is all the money going then?

I don't want to be here all emotional. I don't want to cry, or carry on, or waste time going over the same thing again and again. If it was about the children, why are we here? If it is about the children, you should be monitoring from day one. You should be saying, "Hey, we are going to do it every day, every week, every month. We are going to do it every year for five years."

It is still about permits, and taking your time, and using good science. Good science. Good science put us in this position. Good science.

I'll let my wife say something.

**R O S E M A R I E   S M I E R C I A K:** Hi. My name is Rose. My daughter actually carried home a mercury bead. Fortunately, I was able to catch it. I saw it on her black bag. If it hadn't been a black bag, I would not have seen it. When I saw it, I had no idea where it came from. I didn't even know what it was. I had to ask him. When I asked him, he said, "That's mercury. That's impossible."

**MR. SMIERCIAK:** I'm an idiot, because I didn't step up to the plate and say, "Hey, where did this come from?" We had no idea about what was in the building.

**MS. SMIERCIAK:** Anyway, I was able to dispose of it. Good news is, our house is clean. This I am glad of, and it was a relief.

One of the things I am still concerned about, as a mother, is my daughter's health and my daughter's future. Will I be able to get medical coverage for her? Will somehow, because she's been exposed to mercury for two years, will then she have good premiums or will we be charged higher premiums in order for her to have medical insurance? How about life insurance? Is she going to have trouble when she is older obtaining life insurance, because maybe insurance companies might not want to carry someone who has some type of exposure?

Now, maybe I'm going to the extreme, and maybe I'm not. These are concerns that we do have for our child. How is it going to affect her when she is older? We just don't know. Thank you.

MR. SMIERCIAK: I challenge you. It is the people that help run the State. Make sure it never happens in our state -- never happens again.

ASSEMBLYMAN McKEON: I am going to violate my own rule of asking questions. Can I ask her a question? You believe beads of mercury were on her bag?

MR. SMIERCIAK: Yes.

MS. SMIERCIAK: She had it on her bag. She had a small bead down on the side of her black bag. As I was emptying it that night -- we had been all over the place. That is why we didn't associate it to the school. As I was emptying it at nighttime and I took her stuff out, I saw it on the side. I touched it. When I touched it, it was like liquidly but not. I was like, "What is this stuff?" You know, then we thought maybe somebody had broken a thermometer in the shopping cart.

MR. SMIERCIAK: That's what I thought. That's where I thought it came from.

MS. SMIERCIAK: Yes. As soon as he told me what it was, I ran to the kitchen and grabbed a napkin, and scrubbed it off and threw it out. You know, because I don't want this near us.

ASSEMBLYMAN McKEON: One more question. Did any of the other parents at Kiddie Kollege, that have spoken to each other, say that they literally saw beads of mercury on their children?

MR. SMIERCIAK: That's why we wanted to make sure that people knew about it. We didn't want somebody falling on a spot where you had some kind of a contamination where the children had fallen.

Mercury is bad. There's no two ways about it. They talk about phenyl mercury, and elemental mercury, or inorganic mercury. A poison is a poison. If you take enough of any poison, you are going to die. If you take enough of a poison, it will hurt your body.

ASSEMBLYMAN McKEON: Thank you both. I know it is not easy to be here. Like any concerned parent, I think your testimony today is meaningful to all of us.

MR. SMIERCIAK: Just one more thing. I was one of the fortunate parents whose numbers were lower. What about the people that were higher? If we use the good science that was told to us, and the 60-day life and all, then why can't we double our number from the time they took it? Let us go back 60 days. We know that it was worse in that building. They cannot tell us how bad it was.

I know that my daughter had peeling feet. I noticed that for a fact. I know she had headaches. We are going to be told, "There is no proof of anything. It is a coincidence. It just happened like that." What about the

babies that crawled on the floor? The little toddlers that were down there?

I understand the time. We will let somebody else go.

ASSEMBLYMAN McKEON: Thank you both, again.

Carolyn Tanguay and Carol Lynn Calabro? Please spell your names. I'm sorry. I should be reminding you of that. Sabrina Schopp, along with Sandy Keen, K-E-E-N, will be next.

**C A R O L Y N T A N G U A Y:** My name is Carolyn Tanguay, T-A-N-G-U-A-Y. I would like to thank you for the opportunity to speak this afternoon. Since July 28, 2006, our lives have been turned upside down. There have been lots of questions and very few answers. My daughter attended Kiddie Kollege since November of 2004. She was 2 when she began there. She would come home complaining her "brain was broken." She developed rashes and GI upset. My daughter slept on the floor of Kiddie Kollege for over two years, breathing in that poison. Because I am a nurse, I did not rush my daughter to the doctor with every complaint. I attributed these symptoms to childhood ailments.

Looking back, I am horrified to think of the danger my daughter was placed in. I travel thousands of miles, halfway around the world, to bring my daughter from China to put her into a safe and healthy environment, so I thought. How wrong I was. My daughter now displays delayed development in speech. She has mood swings. What will the future hold for my daughter? No one seems to be able to answer.

We were told if levels were below a certain amount, no further testing was warranted. Yet in the next breath, they don't know much about mercury poisoning. If

that's the case, why is it so difficult to make the decision to allow additional and long-term testing for our children? Why not use these children as a case study? God forbid something like this happens again.

All parents deserve answers, and we don't have many. How something like this happened in the first place is a disgrace. It never should have happened. My hope for this meeting is for all to understand what we parents are going through. It is an uncertain future for our children.

Provide long-term testing for our children. I would like to be able to look my daughter in the eyes and tell her everything will be okay, but I can't do that. As a mother, that's unbearable. I implore this Committee to push for long-term testing and treatment. Thank you.

ASSEMBLYMAN McKEON: Thank you very much.

Ms. Calabro?

**C A R O L L Y N N C A L A B R O:** Yes. Hi, my name is Carol Calabro. I want to thank everybody once again for taking the time to come down here and allowing us to speak a few words. A lot of my questions were answered in this session today.

I did just want to reiterate some concerns that the parents still do have. We find it unfathomable that no one -- or I should say, the CDC does not want to continue this long-term study on our children. To me, that would be the first thing that needs to be done.

I understand that laws have to be passed for the future. But our children continuously get pushed aside. They will forever have issues even though the Department of Health says there will be no long-term effects if none of the children have shown any symptoms. What we have said, over and over again, is the symptoms that our children have, they are

significant. They may not be to the extreme as what they have noted on a lot of the Web sites and information.

I can say that the majority -- but not too many parents are here, they have left -- that they all have some sort of symptoms. They need to be tracked. I think we are just tired of getting pushed aside as parents. That's first and foremost. I really would like to say, the 4th District has been wonderful in pursuing this for us, and we thank you.

The next thing I want to say, in terms of legislation, is how can we basically eliminate monopolizing in a small community? I know that is probably virtually impossible, but you have these laws. You have these zoning permits. You have all this. We have seen, firsthand, in Franklin Township a real estate agent who basically runs this town. It is not the Mayor. It is not the Committeemen.

There's a monopoly here, and basic laws were overlooked. Underhandedly, people forgetting they made phone calls, or whatever the case may be. I don't know how we can eliminate that. I don't know how we can have someone else oversee basic procedures. That's a big problem. I think that goes for a lot of communities.

Also, why are we still allowing an owner of a property to be able to clean up a contaminated site on their own? That should not happen. Once again, after all is said and done, Jim Sullivan was still offered the chance to clean up this site. That offer should never have been there. The site should have been cleaned up. End of story. It is still sitting there.

Another issue. Our children were tested at the end of July. As everyone knows, heat makes mercury rise. Correct? Well, this building is sitting there empty. No one has ever simulated the fact that -- if they had gone in and

cranked up the heat, as the children were subjected to in the wintertime, and gone in and tested for mercury levels at that time--

They were testing when the air-conditioning was cranked up. Those levels could have been certainly lower. I would like, and I don't know who we could address that to -- someone needs to simulate that and get a true numbers that these kids were exposed to. I know for a fact that the heating element was broken at one point and that heat was cranking, so the mercury levels do go up.

ASSEMBLYMAN McKEON: I don't know about the science on that, but that's a good point. The DEP is here, and I'm sure you can talk to each other on this.

MS. TANGUAY: Okay.

ASSEMBLYMAN McKEON: Logically, it does sound right.

MS. TANGUAY: I think that is one of the major concerns for the parents. They're basing their levels at the end of July. My son may have been in the 7.58. Well, guess what? In the winter months, that could have been quadrupled. Every child had symptoms at that time. The teachers had continuous bronchial pneumonia. In the winter months, that's what needs to be done. If that could be done, we would really like to see it while that building is still standing.

ASSEMBLYMAN McKEON: Thank you.

MS. TANGUAY: Thank you for your time.

ASSEMBLYMAN McKEON: Thank you very much, both of you, for your time and comments. Ms. Keen and Ms. Schopp?

John Lilley and Sue Foster will be next.

**S A N D Y K E E N:** Is it okay to speak?

ASSEMBLYMAN McKEON: Yes.

MS. KEEN: Good afternoon. Thank you. I want to thank the panel for doing this, and also the DEP Director. I came into the mercury issue back in the late '90s, when my house was contaminated. Not my house, but my water supply was contaminated. There is the Spill Fund and Point-of-Entry Treatment System that I have had many, many horrible stories with.

I also gave my blood, because I had a benign tumor back in '97. Finally, by 2000, I went to Fox Chase and said I wanted them to do environmental studies on me. My levels were at 7. Once again, I had a benign tumor after I moved into the home. I then went and was assured by the DEP.

I don't blame the DEP, because the EPA kind of wrote us off awhile ago on those spill funds and turned it over to the DEP. The DEP has been very diligent in their practices of following up. This has to do with home (indiscernible) also in the Township, that, you know, once again -- let me get back to Fox Chase.

After, I started drinking my remediated water, because I was assured that everything was okay. At that time it affected my business, because I also had a beauty parlor in my home. When I realized I had problems because of contamination and chemicals that I used, I kind of questioned a lot of things. So I kind of backed down from my beauty business and went into the environmental field to do studies.

And where are we going with all this?

I went to Fox Chase because now, after six months of drinking the remediated water, the benign tumor became cancerous. There is a lot of thought there. Back in our Township, in Monroe Township, the CDC came in and did a study in '97. It was inconclusive then that contaminants were causing the problems.

Now we know these contaminants were causing these very severe problems. The common denominator here is the contaminants in the water. We really need to readdress it. I thank you for the legislation, because pieces of the legislation were brought out before by Senator Matheussen and Assemblyman Geist tried something. Then everything got swept under the rug.

We have a lot of issues in all of New Jersey. We need to really deal with the whole remediation process, and where are we going as far as the testing. My son was affected two years in a row, severely with problems. He was 14 at that time, and both times -- in two years, separate times -- he went into the Hospitality Creek, which was contaminated. At that time, we didn't know it. But two years in a row we dealt with severe problems, with him in the hospital for a week at a time.

I do agree that once you take yourself away from the contaminated issues, your body does clean out. Once again, as I said, I am a paramedical esthetician and I deal with endocrinology. You need to really address further testing for our children and what the standards are and aren't.

My blood levels, not urine levels, were at 7. I dealt with those problems. The cancer that I have is a genetic cancer, and I don't have the genetic gene.

Once again, the common denominator here is either your water or your air. Water and air -- as you all have water up there-- I am afraid to, you know, drink my water or even rinse my vegetables and everything else. Then I also deal with -- outside, my property has actually been on the geological survey because of different things that I have dealt with. My property outside -- because of the remediated

water, there were some issues. It gave me mercury with my draw water outside, so my draw water levels outside were 24. I still deal with that every day, especially in the summer. I have swimming pools and that. You know, there is a whole issue. Once again, my whole property and myself are a science project in itself.

We need to take this further and go further and address the serious situation that is in all of New Jersey, as you know. I haven't had time to read your legislation. I would like to read it through. I'm sure you have covered quite a lot of areas. Make sure we really look at this on a level of not just children, but grown children and adults. It is all a serious issue from children to adults.

My children are now going to have children. They are in their late 20's and early 30's. You don't know how the human body has been so affected by all of this. They just found two polar bears with mercury. Look how heavy polar bears are. Once again, we have a whole issue that clearly needs to be addressed.

ASSEMBLYMAN McKEON: Thank you for your comments. I'm sorry, I didn't mean for anyone not to be heard. I had to step out for a moment. It may be because I'm butchering her name. I called for Carol Schopp, S-C-H-O-P-P. She didn't step up. Perhaps she had something else to do. I will ask John Lilley and Sue Foster to come. The Gallenthin family will be next.

Sue, you are a member of the staff at Kiddie Kollege?

**SUE FOSTER:** Actually, I am a parent of a member of the staff. She doesn't like to talk, but she has a lot of questions and a lot of issues.

ASSEMBLYMAN McKEON: Well, please go ahead.

MS. FOSTER: I would like to read what I wrote, because I forget things when I get here.

Today I am compelled to speak on behalf of the children and their adult caregivers of Kiddie Kollege. These people all need necessary and thorough care, testing, and follow-up care. They need it now. As far as I am concerned, the blame game and finger-pointing can be worked out by the proper channels at a later date.

The facts are that these children and adults alike were being steadily poisoned. Day by day, week by week; and for some, year by year. The place they worked at, the place they played at, suddenly shut down. For what? For mercury? How could this ever happen? If this sounds like a nightmare to you, I can tell you it is.

The CDC tested the levels of mercury in a select group of individuals who were present in the building 60 days prior to the closing. The findings were not that horrible, according to the Health Department, yet devastating to the family members of the children and staff of Kiddie Kollege.

As a parent, and certainly not an expert on the matter, I am wondering if their levels are higher than what experts deem "the acceptable amount" two weeks after being removed from that building. What were their levels in the middle of winter with the heat blowing into that nearly windowless building? These children and adults alike were breathing in this poison. It was a breeding ground for it.

I am here to ask for help. All the adults and children who attended Kiddie Kollege need testing and care immediately. They need to have their bones, kidneys, and livers tested. What we all know about mercury is that it stores itself in these particular areas. These adults and

children alike need both resources and testing. As you can just imagine, this testing is very specialized and expensive. Who is going to pay for it?

The employees of Kiddie Kollege lost their jobs quite suddenly and without warning, so they do not have health insurance. Many health insurance companies are going to turn the children away, as this is very expensive and specialized testing. Who is looking out for these people already going through a living nightmare?

I hear that there are funds for environmental disasters. If this doesn't qualify for that, then please tell me what does? How about a Spill Fund?

These people deserve answers to these questions now. Thank you.

ASSEMBLYMAN McKEON: Thank you very, very much. I know that was difficult for you.

Mr. Lilley?

**J O H N L I L L E Y:** We do want to thank you for coming down. We do have just a few short questions. I have lived next door for approximately 30 years. I am 37 now. I am hearing of everybody else being tested, from the media. When will they be doing testing for people around there? Will they be doing that testing?

We've seen everything that went on in that place for over 20, 30 years. Now we are all worried about it. Everything that runs off of that property runs into our property and our well.

ASSEMBLYMAN McKEON: Could I ask you a question? Mr. Lilley, do you have children?

MR. LILLEY: Yes, I do, and they are young. They are 12 and 16. They have a lot of issues.

ASSEMBLYMAN McKEON: Do they?

MR. LILLEY: They have been in and out of hospitals for many years for a lot of different things, and they never came up with a straight answer for anything, including for myself. As I understand it, and I am not a scientist to that extent-- But why the DEP or Department of Health would not test and take the property owners right next door -- to look at the exposure to the property owners that are right next door?

ASSEMBLYMAN McKEON: To that extent, we can personally request the Governor to move in that direction. I would imagine that the representatives here of those departments, themselves, would move in that direction.

MR. LILLEY: They have been out and not done anything. They talk about it, but have not done anything.

ASSEMBLYMAN McKEON: I know that Assemblywoman Greenstein and the entire delegation here from the 4th District will. Rest assured that Senator Madden will be on the phone calling the Governor prior to Monday.

ASSEMBLYMAN MAYER: Chairman, we have actually gone out and seen the property, and several of the staff contacted the DEP. I know they were here and talked to the Commissioner about that. I believe you were tested once, and now you will be tested again.

MR. LILLEY: They took it out, but they never went right into the property.

ASSEMBLYMAN MAYER: Right, they took it out of the facets from the sides of the homes. We will see that the DEP retest in the home for you. We have asked the DEP to do that again. However, I don't agree with some of the other properties that are around.

MR. LILLEY: I don't either. Exactly.

ASSEMBLYMAN McKEON: I know, with your diligence, you won't let it drop. Thank you for bringing that to our attention. It is another very sad part of all this.

The Gallenthins, G-A-L-L-E-N-T-H-I-N, Cynthia and George?

One thing, just before you both testify: is the last individual, Kevin Kelton -- are you here?

**K E V I N K E L T O N:** Yes.

ASSEMBLYMAN McKEON: Are you a parent?

MR. KELTON: No, a resident.

ASSEMBLYMAN McKEON: I'm sorry?

MR. KELTON: A resident.

ASSEMBLYMAN McKEON: I am going to call you next. The remainder of the individuals that have signed up as witnesses are either with advocacy groups or -- one of them signed up as a local reporter, and others are with various environmental testing groups.

Are there any parents, for whatever reason, that didn't sign up, that want to testify? Okay. I would appreciate that.

Then, Mr. Kelton, you'll be next.

Before you begin, let me apologize. I have an obligation back in my home district at 5:00 this evening. With the distance, after all the parents have finished, I am going to exempt myself and leave the Chairpersonship to Assemblyman Mayer, who will conduct the rest of the hearing from that point forward.

**C Y N T H I A L. G A L L E N T H I N:** Good afternoon. I don't want to mislead you. I am not a parent of a Franklin Township child. We are parents of children in Gloucester County.

ASSEMBLYMAN McKEON: We will be happy to hear from you.

MS. GALLENTHIN: One thing that I did notice, as related to the bill: the child care center is located on a contaminated site. With the brownfields economic developmental projects going on all across New Jersey located on contaminated sites, I believe they do stretch (indiscernible); and maybe to have some parameters.

In fact, I have a suggestion. Any contaminated site -- as the woman, one of the mothers just said recently, a few parents ahead of me -- where there will be children, it would not be a bad idea. Being a parent, it is one of those things you must look out for. You must know what they are exposed to. What are they exposed to?

The State of New Jersey, and specifically the town, know these contaminated sites, and not just from the DEP. I did an OPRA request as it related to brownfields that we have property next to in Paulsboro. In fact, closely situated to the property in Paulsboro is a child care facility. They are expecting to take 190 acres, because it is contaminated. They expect to economically develop it. So any impact on that 190-acre brownfield will affect, obviously, this child care facility next to it. That is my concern -- not only located on, but located near.

The OPRA request that I did showed, and I believe this is important, the proposal for brownfield studies was done by PMK Group. This study was submitted (indiscernible) back in 2000. Apparently, when DCA had their Smart road map, it targeted these brownfield areas for development. So you had this company, PMK Group, do a study of all the brownfields throughout the state.

I was able to just obtain the Gloucester County copy. I paid \$30. This study is on GIS, and it was released in the year 2000. It cost the taxpayers \$52,000. Earlier you had mentioned, perhaps, we will have a study. It appears that the studies are there. The data might have to be updated, but the studies have been completed and are available on GIS.

My other question is, if this information is available, who benefited from the information if the individuals that live in these towns -- live on or near, or have children exposed to these contaminated sites -- the data was not made available to them?

Again, if it is on GIS, should it not have been disseminated? Should the information not have been released to the taxpayers? Why would someone have to do an OPRA request to obtain the data? Whether or not it is on the DEP Web site, I believe, the data is on the county records, not just NJ DEP Web site. We actually have a two-tier system there, where the data is contained. That really addresses why it happens.

You have got the information. Perhaps if the improvement authorities, and the Gloucester County Improvement Authority weren't so bent on economic development of these brownfield sites-- Maybe cleanup should be the first and foremost effort by these improvement authorities, and then economic development may follow. I know that GCIA's brownfield development team is Maley and Pennington. I believe the liaison was Mr. Sweeney. I know that at least that group knows of contaminated sites in Gloucester County. I am saying that the benefit should have been and still needs to be citizens of the county. You may speak.

**G E O R G E   A .   G A L L E N T H I N :** Hi, my name is George Gallenthin. I used to work for Roscoe P. Kandle. He was,

previously, the health commissioner of the State of New Jersey. He taught me something when I worked in the Gloucester County Health Department. It is called stewardship. Everybody is a public servant when it comes to the environment.

When I see that Franklin Township had identified Accutherm in the year 2001, and yet somebody gets an occupancy certificate in 2004, I know from working in the health department that you have to go through Environmental Health in order to get the water tested for your occupancy. It lists Accutherm as having no water.

What I'm seeing is a lack of stewardship. I am sure everyone present has stewardship, especially Senator Madden. It inspires. What about the standard of a child as opposed to an adult male? We need to have a sense of stewardship across the state, in the Legislature and across the state. I'm sure that everyone present is aware that we serve the public. I am getting ready to (indiscernible) on Saturday, and I don't expect to have pollution coming over on my property in Paulsboro or to those children in that day care center.

In closing, when they built the Riverwinds, they did it without an EIS. The person that picked up the phone and called NJ DEP, and provided an Environmental Impact Statement; and then got Gerald White, the Administrator from West Deptford, all over them -- it was me. I can honestly say that.

I know you are an Assemblyman, sir. I know you get pretty good reactions from the Commissioner, but I have run into-- I am an attorney in Pennsylvania and Kentucky. I am a field-grade officer in the Army. I have seven years

experience in Gloucester County in government. I have worked for regional--

There is total insensitivity in NJ DEP -- not with the new Commissioner, not with the Governor Corzine -- but with the rank and file. You get insensitivity.

And I sympathize completely with these parents. I thank you very much for letting me speak.

ASSEMBLYMAN McKEON: Thank you. You said you are going to serve as part of our active military?

MR. GALLENTHIN: Yes, for six months.

ASSEMBLYMAN McKEON: All of us respect you, and thank you for that. We hope you come back safe.

MR. GALLENTHIN: Thank you.

ASSEMBLYMAN McKEON: There were certainly issues with DEP over the period of time. I would like to mention the fact that the Commissioners once said it was vigilance that brought that into fruition, and that there are some good people that do care and try to do the best for citizens.

MR. GALLENTHIN: I know. I'm not giving you the broad brush, but I know it is. I can write you a letter and give you the names.

ASSEMBLYMAN McKEON: I appreciate that. Thank you both for being here. Mr. Kelton?

MR. KELTON: Good evening, ladies and gentlemen. My name is Kevin Kelton. I am a resident, and also a member of our Township Environmental Commission.

Just to rehash on testimony just previously given to me, to this committee, about the so-called rush to brownfield development that the State seems to be embracing. At this time, I think it is setting some dangerous precedents for redevelopment. I know recreation complexes within the

state can also qualify for redevelopment under the brownfield laws.

I know, locally, we have a situation like that in which one of the wells tested for high levels of methane gas. I don't understand how the Department of Environmental Protection can be approving situations like this, where children play on old landfills or old factories that had hazardous waste. It doesn't make any sense to me. I do not think that we should be headed in that direction as a state. I think we need to back away from that.

In earlier questioning, Assemblywoman Greenstein brought up a point of mandated or forced cleanup and enforcement, versus voluntary. We see that voluntary is not working. In my opinion, in New Jersey I would like to see us go back to pre-1990 levels of government enforcement and then mandate the cleanups. I would be happy, I'm sure along with many other groups in New Jersey, to support bills. To that effect, Assemblywoman Greenstein, we need to go back in that direction to protect our population.

Home rule was also brought up. Home rule, I believe, is important because local residents know their backyards better than State agencies. In some cases, such as DEP, we have situations in New Jersey where a local governing body will attempt to remediate a situation or cause action on contaminated sites, such as-- Examples would be hazardous waste facilities, Class B recycling facilities. They are told by a department, such as the Department of Environmental Protection in this state, that they do not have any authority to force action orders or closures if it is determined that these sites are causing any environmental or health damage in their own municipalities. Well, we need to review, as well, as far as our home rule -- as to why our municipalities have

been uncertain in their authority to protect their residents from damages that are being caused by some of these industries in their own local town. They know best.

Perhaps some of our Class B recycling facilities need to be reclassified as hazardous waste facilities, as they were previously before the 1990s. That is dangerous also because when one thinks of recycling, one thinks of the typical glass and paper recycling. But no, hazardous wastes, oils, and asbestos can also be reclassified as recycling. Therefore, it has less stringent oversight than would be given to it.

For those four points, I wanted to make. I think they are important. They effect not only us here on the local level in Franklin Township, but I think they have state implications, as well.

ASSEMBLYMAN McKEON: Thank you, Mr. Kelton. Thank you for services as a volunteer of the Environmental Commissions.

As I said, I am going to exempt myself at this point. I have a few very brief general comments. One is that we have held this Committee in other parts of the state involved in the Highland Preservation Act up in the northern, western part of the state. We had this Committee in Ocean and Monmouth County relative to Oyster Creek.

Quite frankly, as emotional as those issues are to me, none would be as emotional as this, involving the health of yourselves and our most precious asset, our children. I can't compliment you all enough in the professional dignified way in which this was handled. Understanding, that it is voluntary of all of the professionals that are here.

With that having been said, I think you can see with the vigilance of my colleagues, there is a lot of work going on understanding and pursuing every way within our elected powers to make certain we advocate for you to get things done for you from a testing prospective in the future and to make sure this doesn't happen again.

Thank you for making me feel welcome. Mr. Chairman, I'll leave it in your capable hands to press forward. Thank you very much.

ASSEMBLYMAN McKeon: Thank you very much for

**(RECESS)**

**AFTER RECESS:**

ASSEMBLYMAN MAYER: Ed Knorr will be next on the list.

**E D K N O R R:** Ed Knorr, K-N-O-R-R. I would like to thank you for the opportunity to testify today. I am Chairman of Green Action Alliance; and also, as a profession, I am an investigator with my own company.

The terms that I have here today -- and I just want to reiterate something that Senator Madden said, and he may have made a point and he may not have, about environmental commissions. I had a flashback of about eight years ago when he was saying about having the power to understand or do a little bit more.

You guys were not around when I was on the Environmental Commission. I don't know how much you retained about Monroe Township. It was a volatile situation with the Environmental Commission trying to do what's right. Officials sometimes, I think, don't want to have officials on the board that know what they are doing. I found that out firsthand.

Unfortunately, I was one that tried to do the right thing and got removed from the Commission.

Fortunately, during that time we were able to lobby to have testing in the water in Monroe Township. We were able to get that issue pushed to get the Private Well Testing Act in New Jersey passed. The Governor came to our Township, two years after I was removed from the Commission after pursuing that bill, and signed it into law.

Today, we were involved with this issue almost from the start. We tried to help in some respects and not step on anybody's toes, especially the parents. It is a very volatile issue. Mercury contamination is probably one of the more serious contamination issues known to man. Mercury is the most known toxic radioactive substance. It is a persistent toxic substance.

There are very serious concerns about what happened at Kiddie Kollege. I think part of a legislation, by the way, will support that. The concerns are that these children were not looked at as children. They were looked at as objects. The fact that this woman was exposed and this one was not.

I guess, let me first start with my conclusion and then I'll go back. We believe that the State of New Jersey allowed the children to be exposed to high levels of mercury resulting in their young growing years -- at a point that these children were poisoned. Now the concern is: What happens? The fact is that the CDC has said that they don't warrant this as a special case history. I think now that New Jersey should. The State Department of Health should take this on as a case history.

(Indiscernible) that it is very simple, the fact that this was a unique situation. The pictures here --

and the concern for Kiddie Kollege -- if you look at this building, this was an aquarium that these children were put into. It was a stone building, very little ventilation. Yet, for two years, sometimes two and a half years, these children were exposed to very toxic levels of mercury, the most dangerous types of mercury for these children.

We had talked about, and I heard that discussed before, about children. I have been, for 10 years, doing studies on children in the environment. I worked with Congressman Rob Andrews on a couple of bills that we now have before us in Congress. I would also like this panel to take a look at the bills that we presented to Senator Madden, and Assemblymen Mayer and Moriarty regarding the Mercury Reduction "Elimination" Act of 2006.

That's my name for it. It was given because back in January of this past year, based on several instances happening in schools in 2004 and 2005, we had asked them to take a look at reducing, to the point of eliminating, mercury products in the schools and day care centers in the State of New Jersey. It is very important.

One thermometer is a concern. People used to think it was a joke, I remember. Senator Madden may remember, in the physics lab in Gloucester County, where a thermometer would break and we used to play soccer with it.

Today we know the concerns and the issues. One thermometer broken can contaminant a 10-acre lake. One thermometer broken can contaminate the interior of a building. That's how volatile this is. What can we do? DEP, I think, has dropped the ball on a number of occasions.

Now, I'm not saying that everybody from DEP is libel today. The agency, as Jeff Tittel referred to, is broken. It needs to be repaired in a very reasonable yet

quick fashion. The concerning thing is that when the first meeting came for the parents -- and I called it a lock-out meeting -- it was before all the information was distributed to all of the parents. It was more or less a pressure-relief-valve meeting, where there was some venting and then we would go into the next meeting. Information should have been in hand for parents at that point.

Why, in April, when DEP suggested that this site could possibly be contaminated -- why would you not, at that time, pull the children out, test them, and have the results back in a reasonable fashion, so by the end of April you knew, in fact, whether or not the building was or was not contaminated; and if so, lock it up?

Sometimes it is the question of whether the government really wants to listen to the professionals and people that know what they are doing, or they just want to follow their own route and end up with hearings like this.

We had, on a number of occasions, questioned why this building was allowed to again be reoccupied. Again, it is a situation that starts way back in 1987 with blood levels. When they were high, that indicated that there was something going on in that building. The building closed down. The interesting fact is, look how high these levels are still; 13 years later how high these levels still are in that building and how long these children have been exposed.

Let's talk about the exposure real quick, so I don't eat up the time for anybody else. Testing the classroom: Question No. 1, 12 micrograms per cubic liter? Question No. 2, 13 micrograms per cubic liter? Question No. 3, is the region setting these standards? The reason I'm saying this is because these are high. These were for children. I know a parent made mention about a high point and

a low point of mercury. The concern is when they are enclosed in this building.

The National Institute of Occupational Safety and Health indicates that a level of 10 is immediately dangerous to life and health. Level 10. These children have been exposed for a long time. When I spoke with a lot of parents, their symptoms completely focused on mercury poisoning. My concern is the Health Department sits here and says, "Well, we will do urine tests."

We don't think the urine tests -- the urine tests tell you what's coming out of your body. It may come out this week and have zero next week. You don't know if you will have some the following week. I don't rely on urine testing. It's no more than a passive test to try and water down the issue that's here.

The concern is, how much has been stored in the organ or stored in the brain? Over the course of time, mercury vapors directly draw into the lung. What kind of lung damage in five or six years? This is why I asked the New Jersey's State Department of Health to do their own long-term study until at least these children are 21 years old. The reason being is that this is a good case study. If the CDC wants to get New Jersey's information, I would say sell it to them.

ASSEMBLYMAN MAYER: We asked that, too, of the Health Department -- to keep on working on that. I want to thank you for your testimony. I want to thank you for your guidance last year with the legislation that Senator Madden and I were prime sponsors of, that actually was signed into law, that does away with mercury thermometers in New Jersey. I thank you for your information.

MR. KNORR: No problem. Thank you.

ASSEMBLYMAN MAYER: Cindy Merckx?

**C I N D Y   M E R C K X:** My last name is spelled M-E-R-C-K-X. I want to thank you for coming here. It was very nice. I thank you all for the legislation. I think it is wonderful.

I do have concerns, because as a reporter in this Township, I had heard that there were other sites available -- 132 is the exact number. I do have concerns with those sites. I did provide Senator Madden with the list. I appreciate you drafting and directing those questions to the Mayor this morning.

My concern is, we have children on a ballfield, playing on these sites. Even though they are being tested, and I'm very glad they are, there is methane gas. We also have another area that was just north of the Kiddie Kollege where there were children in a day care center; and granted they are not there right now. It was only a stones throw up and down Delsea Drive, where there are old gas stations; like many places at the shore, there were underground tanks. We had other things, like mostly everywhere in the state, and we rely on well water. Also with the soils, because everything is being dug up and taken care of.

I have a concern in this community because my community relies on me to report the facts and the truth. When I go to the local offices to get the truth, one thing is to take out an OPRA request, as all reporters do.

We should be allowed to get that information. But when I am given the 132 list, I was given it by an attorney here who warns me, "You shouldn't print it, because when you do print it, there is going to be repercussions." In other words, there might be someone who is buying this land and finds this information on that list.

My (indiscernible) concern is maybe that's what is going on in the DEP. They have to be 100 percent accurate. Now, we have the local people sitting here on these boards. They are trying diligently to find out: Where was this gas station? Where were all these contaminated sites?

There are a lot of questions, and I know we don't have all the answers; but I do have concerns. Should we put warnings on these buildings? We have it on a pack of cigarettes as a requirement. If we do this, are we going to have problems later on? Well, should there be a warning on a ballfield that says, "This, at one time, was a landfill and may contain methane gas"? Do we do that so that we have this warning?

Not every parent can go into a building and read the sign and see that it is a remediated site, or whatever. There is no warning there. If you don't have a computer and you are not sure or real savvy at going to a particular area, you may not find that.

I just want to put that out there, so that hopefully in the future we will be able to come up with some more solutions to this problem. You have done a wonderful job with the solutions that we have. I appreciate it.

ASSEMBLYMAN MAYER: Thank you. Assemblywoman Greenstein?

ASSEMBLYWOMAN GREENSTEIN: It was your suggestion -- I was just trying to catch your last suggestion.

MS. MERCKX: I was trying to put everything in order.

ASSEMBLYWOMAN GREENSTEIN: Was that the idea of having some sort of notice to the public on sites that were remediated?

MS. MERCKX: Yes, well, I think that would be-- If you have a site that is being remediated by the DEP, that you have a warning.

ASSEMBLYWOMAN GREENSTEIN: We actually have legislation that was just signed into law, and DEP is working on a new rule right now, that has to do with public notice. It doesn't get into something like Jeff Tittel and others mentioned, which is the idea of a real public participation process. We are not there yet, but this does certainly improve public notice about these cleanup sites. That is already law, and they are working on rules right now.

MS. MERCKX: That's as best (indiscernible), and I think that is great.

ASSEMBLYWOMAN GREENSTEIN: It is brand new.

MS. MERCKX: That is great, and we welcome hearing that. Thank you Assemblywoman.

ASSEMBLYWOMAN GREENSTEIN: Thank you, Cindy.

ASSEMBLYMAN MAYER: We have four more individuals to testify.

SENATOR MADDEN: If we can--

ASSEMBLYMAN MAYER: At this time, I would like to bring up Sabrina Reilly-Pisciotta.

Oh, I'm sorry, Senator Madden. Go ahead.

SENATOR MADDEN: If we can, get a copy of the bill for her.

ASSEMBLYWOMAN GREENSTEIN: Okay.

SENATOR MADDEN: We will get you a copy of that. That will be without an OPRA request. (Laughter.)

ASSEMBLYMAN MAYER: Sabrina Reilly-Pisciotta?

**S A B R I N A R E I L L Y - P I S C I O T T A:** It is Pisciotta (indicating pronunciation). Everybody says it wrong. That's okay.

ASSEMBLYMAN MAYER: I'm sorry.

MS. REILLY-PISCIOTTA: That's okay. Do you want me to spell it?

ASSEMBLYMAN MAYER: Please.

MS. REILLY-PISCIOTTA: P-I-S-C-I-O-T-T-A. I am actually not from Franklinville. I am from Bergen County.

ASSEMBLYMAN MAYER: Move closer to the mike, please.

MS. REILLY-PISCIOTTA: Oh, I'm sorry. I am not from down here, but I can only imagine what it would be like to be from here. I hear their emotion. Right now I was listening to it as fact.

As I was listening today, I had some questions for her -- Commissioner Jackson. She did leave. I am going to kind of ignore them, since no one can answer them. I was reading through, while I was listening, the new legislation. Does it apply just for places on industrial sites? I wasn't sure, because the way the rule is now, you only have to do a 400-foot radial search. Now, is that in conjunction with this new legislation? It doesn't mention it. I was not sure.

I was trying to open my own child care center, and I was stuck in the new regulation change. I am still not open. It's been two months. I come from the other side of the fence, as opposed to everyone else here.

ASSEMBLYMAN MAYER: Basically, it would apply to areas that were under four different classifications. They are F, S, H, and B. That means industrial, storage, high hazard purpose, dry cleaner and nail salons.

MS. REILLY-PISCIOTTA: Right, but right now, currently, you have to do a 400-foot radial search. Do you still have to do that when this new legislation comes up?

ASSEMBLYMAN MAYER: This new legislation, as I understand it, doesn't deactivate anything that is already out there. It adds to the body of laws.

MS. REILLY-PISCIOтта: Well, before they did that, there was a new thing. They were changing it from 200 to 300, to 400 feet. Some people are going to get hit. Some people get requirements and some people don't know what to do. There is no protocol yet. That's why I am stuck, also. I hope this new legislation will set new standards for anyone that wants to open a child care center knows exactly what rules to follow. Is it done mostly on those four areas?

ASSEMBLYMAN MAYER: This isn't just about child care, day care centers.

MS. REILLY-PISCIOтта: Oh, I know.

ASSEMBLYMAN MAYER: The legislation, what it would do is set standards that don't exist for indoor air quality for day care centers and schools, such as this, and any residential areas. For instance, if there was a building that someone wanted to turn into loft living apartments, it would come into effect for those residential areas.

MS. REILLY-PISCIOтта: Right.

ASSEMBLYMAN MAYER: But notification of building or of a change-of-use, that's not in this.

MS. REILLY-PISCIOтта: Right.

ASSEMBLYMAN MAYER: For anything like that, that's not in this.

MS. REILLY-PISCIOтта: Right. It does go and talk about the contaminated sites. Now, in any one of those categories that want to open a new building -- a child center, I focus on a child care center. That's my area.

ASSEMBLYMAN MAYER: If you were switching from any of those four lettered categories, that I mentioned, to

any other category, it would trigger this -- where you would have to get a No Further Action. They would look at this site and see if they needed to do remediation work. If they did, you would need a No Further Action letter from the DEP.

MS. REILLY-PISCIOTTA: Now, what happens when you do your first search of 400 feet, and there is another site within your 400-foot radius that is not remediated radius? Who is responsible for testing for that?

That is what is happening to me right now. That's happening to me. There is a site that is not remediated. They are not telling me who is responsible. That's where I am stuck. Some people are telling me I'm cleared of it, and some people are telling me I'm not. Now, I'm stuck. That's why my question was for the Commissioner.

ASSEMBLYMAN MAYER: The Commissioner's representative is right here and can talk to you afterwards. I'm sure he would be happy to.

MS. REILLY-PISCIOTTA: Oh, there is another thing.

ASSEMBLYMAN MAYER: The Commissioner may have gone on to her many other appearances of the day, but she left behind very capable people that are willing to answer any questions from anybody.

MS. REILLY-PISCIOTTA: There was another gentleman talking about the DCF. I just wanted to clear something up. Because I think -- he didn't misguide anybody, but I'm not sure if he is up-to-date with the new rules. He spoke about how you have to have certain requirements fulfilled.

Now, I was not sure if he was talking about current, or as of January of '07, because some of them did not apply. I want to make you aware that something from DCF is

not congruent to licensing at DEP, such as radon testing, lead testing, and asbestos testing. I have all of those records.

I believe he left.

ASSEMBLYMAN MAYER: Yes, I believe he left, but the Division of Children and Family Services has suggestions, as of yesterday, on the emergency regulations. I think he was referring to some of those parameters that you were referring to. I think we can try to get you a copy of that.

UNIDENTIFIED PERSON FROM AUDIENCE: I represent the Department of Children and Family Services. I will get a copy.

MS. REILLY-PISCIOтта: Oh, great. I'll get your name.

One more quick little issue.

ASSEMBLYMAN MAYER: Sure.

MS. REILLY-PISCIOтта: It kind of goes to the issue, in part, of DCF and DEP. There are a lot of child care centers that are not licensed. I know of several. Who is responsible for those? They can have mercury problems. They can be on contaminated sites. The rule in the legislative book is you don't need a license if you have five children or less. There are dozens of people that are doing that in industrial sites in office buildings.

Is there any action that can be done to protect those children, because they can be in warehouses that can be converted? Who is going to change the legislation for that, to take care of those children? If you don't need a license, then you don't have to go through DCF, or go through any agency, or have the regulations.

ASSEMBLYMAN MAYER: The Division of Children and Family Services would have authority over that, but it would be a legislative issue again. It would have to take a

look at exactly how those day cares are being operated and what legislation is necessary to start a licensed facility, on whether they are registered or not.

MS. REILLY-PISCIOтта: It is basically voluntarily if you want to let anybody know you have a childcare center in your home or a building, or your business, for five children or less. I know. I had a neighbor, and he had a business. It was on a contaminated site. He had his kids there and all the other workers' children there. He was fine, because he had five or less. That's a concern to me.

ASSEMBLYMAN MAYER: Sure.

MS. REILLY-PISCIOтта: But I'm not sure whose concern it would be, because he's on a contaminated site. If anybody from DCF goes in there, they would see those children. He doesn't have a license. He would have an obligation to say, "Yes, I'm caring for them."

ASSEMBLYMAN MAYER: Part of it is, the process is starting right here of looking at what happened in Franklin Township and stopping that from happening again. Next time we will look at: How do we list day care centers in New Jersey? Also, asking for a protective order in which he was asking his department to better streamline that process and figure out what the regulations are. If we have the new regulations, and we will get you a copy of it.

MS. REILLY-PISCIOтта: Oh, I have the regulations. They change it every week. That is part of the problem. They keep changing it. I have been doing this every week. I try, but the regulations change. I am still not open, two months later, and I have spent over a million dollars on my building. That's part of the problem I have with the Commissioner. There is no end to the scrutiny.

Granted, now the legislation calls for a No Further Action letter; but prior to today, in this new legislation, there was none. If you dig long enough in New Jersey, you are going to hit contamination. It is a fact. I have lived here all my life. I just want to know where it stops. I have a good piece of property. My site is clean.

ASSEMBLYMAN MAYER: Now, I am not familiar with the specifics of your property in Bergen County. In all honesty, the bottom line is, we protect the children.

MS. REILLY-PISCIOTTA: I understand, but what is enough? Maybe that is probably a question for the Commissioner. How many tests will be enough? How many letters of applicability are enough? How many No Further Action papers are enough?

ASSEMBLYMAN MAYER: I think you should check with John in the DEP in reference to that, and follow up with the Commissioner specific to your situation in Bergen County.

Thank you.

MS. REILLY-PISCIOTTA: Thank you very much for your time.

ASSEMBLYMAN MAYER: Mark Riether, from South Jersey Water Test, LLC? I hope I got that right.

**M A R K R I E T H E R:** Pretty close. Last name Riether (indicating pronunciation), R-I-E-T-H-E-R; and Mark, M-A-R-K.

I am the owner of South Jersey Water Test. I am in the environmental (indiscernible) business for 18 years this month. I have felt obligated to stay around, mostly because of the bill that is, kind of, before us and ultimately may become enacted, adopted, and whatever.

I'm going to probably say a few things that may step on a few toes, and it is not meant to be that way. So please try to read between the lines if I don't say it

correctly. I am going to start with a statement, which is meant to grab your attention: I think this is a bad bill.

This is what I mean by that. It is not a bad bill because of the intent. I read the summary of the bill. I don't really think I have to get too specific, but it is talking about where the DEP will test the air, and the water, and the soil of the space in a building in which a child-care center is located.

In summary, the DEP is going to be responsible for this testing. So here's why I consider this to be a bad bill. My thoughts are a little bit all over the place. Again, please bear with me. I want to say this. I think in this country, the United States, that New Jersey has some of the best environmental professionals that the country has to offer, both working independently as consultants and also within the DEP. I really want to caution us to proceed in a direction that puts the DEP in control of this oversight and the actual physical testing that's involved.

We heard earlier that there were problems with staffing and budgets. So here we are going to put to the task 4,000-plus day care centers, to the DEP, to provide this air, water, and soil testing -- when they are talking about budget problems and staffing issues; when, in fact, we have hundreds, if not thousands, of qualified environmental professionals out there serving in an independent fashion.

These companies in most, if not all, cases maintain professional liability insurance. So if there are problems, you can access that insurance. There is what is known as a Star list. Anyone that is familiar with the current -- a Star list is a program that the DEP put together to allow licensed environmental professionals to proceed without direct oversight to clean up sites in New Jersey, and

ultimately to get No Further Action letters with the proper DEP oversight.

We have a number of environmental professionals that obtained that credential. It is my opinion that that is the type of thing that should be happening here, where you utilize that Star list to perform the due diligence that's necessary.

One of the things I also want to point out is that the area of air quality is a very specialized area. When the Commissioner of the DEP, Lisa Jackson, sits up here, I would be willing to bet that she feels very comfortable talking about water and soil related to environmental contamination. However, I do believe you would find her a little less likely to speak confidently and professionally about indoor air quality issues.

We are talking about something that is very unique within the environmental field. You really have to make sure it is even-- A proposal that I would have is that you possibly -- within the Star Program, this cleanup program -- you differentiate professionals that have different areas of expertise, and ultimately develop a subgroup that handles indoor area quality issues.

One of the things I want to point out, too, is that the Kiddie Kollege is an example of a place that obviously had mercury. It is very known. Let me just use a brand-new building as an example. You build a brand-new building. In that brand-new building-- I am going to give you two quick examples.

ASSEMBLYMAN MAYER: Excuse me. Mr. Riether, I apologize. The bill that you are referring to is the second bill that we will be introducing. We do recognize that there has to be a lot of work regarding that.

MR. RIETHER: Okay.

ASSEMBLYMAN MAYER: Certainly we would be happy to take more of your comments in the future. That would probably not move on Monday when the Environmental Committee meets. We will probably hold that bill to figure out some of the issues that you are talking about.

MR. RIETHER: Right.

ASSEMBLYMAN MAYER: The other bill that was mentioned earlier was the legislation that will move forward on Monday. Do you have any comments that you would like to add on that piece of legislation?

MR. RIETHER: No, I don't. I support that bill.

Let me just say two quick things related to the indoor air quality matter. It is related to the new buildings, with their own set of new, modern (indiscernible) indoor air quality problems. In addition to that, the whole topic of mold. A number of day care centers that are currently operating throughout the state -- mold and other indoor air qualities. I think it is important that the department is taking a look at these 4,000-plus day care centers. At a minimum-- What I heard today is they are not going to make personal visits to many of these sites. At a minimum, they need to be doing some high quality, preliminary reviewing with the owners of these places, and utilizing a series of questions to decide whether they should make a personal visit.

I don't think that the proximity to a Known Contaminated Site or GIS is going to catch the two, five, or 10 sites out there that might exist where there might actually be a problem for the kids.

ASSEMBLYMAN MAYER: Thank you very much.

MR. RIETHER: Yes. I'm sorry I misunderstood that bill.

ASSEMBLYMAN MAYER: Actually, it is good to get your testimony on that, as well. That is something we are looking into further review. We will review that on Monday.

MR. RIETHER: I support that. I just read it for the first time. I am familiar with EKRA and ISRA, and I support the legislation.

ASSEMBLYMAN MAYER: Thank you very much for your testimony. Arnold Wendroff, from Mercury Poisoning Project?

**A R N O L D P. W E N D R O F F:** Hi. My name is Dr. Arnold Wendroff. I am from Brooklyn, New York. So obviously, I don't have any kids in the Kiddie Kollege. However, I have been barking up your collective and New Jersey tree for mercury contaminated homes for over a dozen years.

In 1999, I testified before the New Jersey Mercury Task Force at the DEP. Actually, in February of 2001 I was at the closed-door Congressional hearing in Brooklyn with Congresswoman Nydia Velazquez; together with Lisa Jackson and three of her colleagues, then at EPA Region 2.

It was an outgrowth of my testimony before the NJ DEP-- They conducted an investigation of indoor air mercury vapor levels in Latino housing in New York City and West New York, as the result of my observations -- they were published initially in the *Journal of Nature* in 1999 -- that in these communities around the country there was widespread use for this, believe it or not. For the people sitting behind me, and possibly the people in front of me, I have notified all of the members of the Environmental Committee by phone and e-mail for the last couple of weeks on this issue.

There was a widespread (indiscernible) on the use of elemental mercury in these heavily urban Latino communities. They stated that the belief arose -- and it possibly (indiscernible), I leave it to you to conclude -- that sprinkling mercury around on the floors of your homes wards off evil and attracts good. There is documentation from the DEP that I have here in front of me, in both of the documents, that a lot of people are sprinkling a lot of mercury around on the floors of their homes. The DEP measured mercury vapor levels in Union City and West New York, using a Luminex mercury vapor analyzer, and found all those vestibules to be markedly elevated. I have a report here, online, of 2002 December; a research summary in May 2003; two articles in the *Journal of Health*.

ASSEMBLYMAN MAYER: Do you have a comment on the bill, though?

MR. WENDROFF: Yes, it is overlooking the fact that there are a lot of, as our predecessors mentioned, unlicensed day care centers, day care centers with small numbers of kids, day care centers in the homes. Many of these day care centers are likely to be contaminated. As an aside, the major function of everyone here -- we are not concerned with day care centers per se. We are concerned with the kids getting mercury in them.

And someone -- what could be worse than a day care center contaminated with mercury? What I am suggesting is that it's a lot -- many thousands of homes that are contaminated with weights of about 10 grams. That's about 15 chemical thermometers of mercury. And here the DEP, right in front of me, has documented this to some extent and didn't follow up.

I have two letters here -- dated January 18, 1991 and August 27, 1991 -- from your colleague Bill Bradley, congratulating me on working on this. And it's a letter to him, cc'd to me, from the U.S. Consumer Products Safety Commission, in essence agreeing that this is a problem, that the mercury is (indiscernible), that the DEP knew about it, and knows about it.

I spoke with Lisa Jackson earlier. Earlier when she was leaving, she said she disagrees with me. She is not going to deal with me. She disagrees with this issue. If you are really concerned, instead of just showing off and pretending to follow this. This isn't a politically correct issue. Let's do something about it, or in 10 years --

ASSEMBLYMAN MAYER: I am here to focus on this situation and how to stop this from ever happening again.

MR. WENDROFF: To stop it, that's--

ASSEMBLYMAN MAYER: I appreciate your testimony.

MR. WENDROFF: It has been put to you and others and your colleagues here, but I have had no response.

ASSEMBLYMAN MAYER: Thank you for your comments.

MR. WENDROFF: Talk is cheap.

ASSEMBLYMAN MAYER: Thank you for your comments.

MR. WENDROFF: You are welcome.

ASSEMBLYMAN MAYER: Mr. Gene Elwell is next.

**G E N E E L W E L L:** Good afternoon, ladies and gentlemen. My name is Gene Elwell. I am the President of the American Medical Saliva Testing, AMSTI. I want to thank you for giving me the opportunity to address this panel concerning the matter

of contamination to children, staff, and neighbors living around the day care center property.

My company was involved in the testing, heavy metal blood testing, for the rescue workers at Ground Zero. We donated emergency medical equipment, and supplies, and personal equipment to the Red Cross for those workers. We were also hired to test the Anthrax cleanups in the New Jersey and Washington, D.C., post offices.

My partners and I started AMSTI to bring our tests and technology for heavy metals, drug abuse, and steroids use to corporations, schools, and major league sports. Last year at this time, we discovered the need to test children for lead poisoning. We call it Testing for Dignity. We at AMSTI and Hyphenated Solutions, our partner's laboratory, wanted to verify any of the testing methods' initial results, to determine how high it was for the children and staff who have been affected by the mercury poisoning. We are testing the ultrafiltrate of blood plasma. We can detect the amount of lead in the bones, the kidneys, the liver, and the fat cells of the body. This technology will reduce evasive and painful testing.

AMSTI and our partner, Hyphenated Solutions Laboratory Corp., are forming a task force of parents, doctors, scientists, toxicologists, epidemiologists, and other professionals from the medical community. We are asking local hospitals, and the EPA, and the Department of Health to join us to find the truth of the extent of damage that these children may have sustained from the day care, and the care they will need to maintain a healthy life.

This task force will also address the needs of the staff, parents, and the neighbors of this day care center. Hyphenated Solutions, our partner, and AMSTI will both have

laboratories in New Jersey. We are in the process of doing that right now. To better serve these children and families, we will require funding from many sources. We hope to acquire grants from government programs, and more importantly, corporate and private foundations of the American public, including parents and grandparents from around the country.

I have asked the parents affected to establish a children's fund for donations to help in this endeavor. AMSTI will donate 10 percent of all online sales of our kit to this fund. There was a government study estimating that 14 percent or higher of all day care centers in this county are contaminated with lead poisoning and other heavy metals.

There was a bill in the Senate, by Senators Obama and Clinton, to test all centers within the next five years. You, as the parents, can have your children tested now to find out if they are at risk. If any children show any elevated heavy metal levels, they should contact the State EPA, Department of Health Office, or our office at AMSTI.

The Agency for Toxic Substances and Disease Registry, or AMSDR, a division of CDC, requests that more studies be done to determine what damage is done to adults and children in low level, long-term mercury vapor exposure. That's what we have with the children here. They admit they don't know enough. Whenever a famous hospital turns parents away because they don't know what to do, we need to find answers now.

I quote one of our Founding Fathers, "The care of human life and happiness, and not their destruction, is the first and only object of good government," by Thomas Jefferson. This panel has demonstrated good government, but more needs to be done. Please join our task force to help protect and ensure children's health and future.

Thank you.

ASSEMBLYMAN MAYER: Thank you for your testimony.

We are going to call the three final people to come forward and address the panel.

Jane Nogaki? Roy Jones? Bill Wolfe? Ladies first.

**J A N E N O G A K I:** Thank you.

ASSEMBLYMAN MAYER: Could you spell that last name?

MS. NOGAKI: My name is Jane N-O-G-A-K-I, and I represent the New Jersey Environmental Federation.

Chairman Mayer, Assemblyman Madden, and Assemblyman Moriarty, thank you for having this hearing today, and particularly for coming to the community that has been affected. Today I am representing the New Jersey Environmental Federation, which is the largest New Jersey Environmental Group. I am representing David Pringle, who couldn't be here today. I am in his place. He will be here on Monday.

Special standards need to be legislated for cleanup of sites of where day care centers, schools, and residences are built. Currently there are no special standards for these settings to differentiate where vulnerable populations, namely children, spend most of their time in there.

Children are more vulnerable, and more exposed to and sensitive to toxins than adults because of their size, their immature immune systems, their developing brains, and mouthing behavior. They require different standards for protection, more protection than adults. It is the point that Senator Madden and Assemblyman Moriarty made before: children

are not just little adults. You can't give just, like, half the dose or one-tenth of the dose, and expect that it is going to be protection.

What we found in certain kinds of chemicals like lead and mercury -- that children actually concentrate these toxins in their body. They can have from two to 10 times higher levels of mercury in their blood, in their systems, than adults living in the same environment. I think that has actually been borne out by the testing done at Kiddie Kollege.

The children had higher levels of exposure than adults in the same setting, because they are more vulnerable, and more exposed, and can accumulate it faster than adults. Also, because their bodies are still developing, the impacts can be lifelong. The impacts of mercury and lead can have lifelong effects. It affects learning abilities.

So we appreciate that today is a first step. The legislation has much promise. We agree that this kind of accident that happened at Kiddie Kollege could have been prevented. Legislation needs to fill the gap to make sure that it doesn't happen again. We recognize this is just the tip of the iceberg. It is happening in other places. New Jersey DEP has identified 700 day care centers that are within 400 feet of contaminated sites.

Many of these day care centers are in urban areas, with the industrial legacy of contamination that poisons young children and permanently damages their ability to learn. This environmental injustice must be corrected. Site remediation legislation, ISRA, that was enacted in 1997, significantly undermined the DEP's ability to require health based cleanups at contaminated sites in New Jersey, and denied

public input that would have flagged egregious situations like that at Kiddie Kollege.

While we appreciate the efforts that are started today, we call on the legislators to restore to DEP the power that it used to have to make polluters clean up sites and to do it right. Additional areas of legislation to prevent indoor air pollution from toxic pesticides and harsh cleaning chemicals, or construction chemicals, or paints and solvents should be considered, as well.

DEP needs the authority to mandate the cleanup of sites for schools, day care centers, and residential housing, and to make sure those sites are cleaned up for unrestricted use. That means the highest health-based standards, not using engineering controls, not using caps, not paving over contaminated areas, not consolidating contaminated soils under a berm. Those are unacceptable remedies for residences, for day care centers, and schools.

It is too often happening at school sites. They are just putting that contamination under the parking lot or putting it under the foundation of the building. As we all know, the parking lot of today could be the playground of tomorrow or the swimming pool. It could be the garden in somebody's home. Those kinds of things left in place, contaminants, would not be accepted as a remedy in a clean up.

ASSEMBLYMAN MAYER: I appreciate that.

MS. NOGAKI: Finally, the indoor air quality issue is very huge -- accumulative risk of multiple chemicals. That's going to be a heavy burden within the Health Department to come up with your standards, not to say it shouldn't be done or there shouldn't be some measure to guide them in doing so. Again, these levels have to be addressed at the children's exposure level rather than adults.

Thank you very much.

ASSEMBLYMAN MAYER: Thank you, Jane. Mr. Jones?

**R O Y J O N E S:** Good afternoon. My name is Roy Jones. I am the Co-chair of the South Jersey Environmental Justice Alliance. We are based in Camden, New Jersey. Part of what I want to do is come and support the parents here in Franklinville, and also open the discussion up a little broader about what could be happening in other places outside of Franklinville.

The first thing I want to talk about is, I think you asked the question this morning: Can this happen again? I think it is quite possible it could happen again. This goes to the issue of, kind of, addressing the legislation in a different way. One of things that the legislation says is that "the owner shall request a testing from the DEP."

I think, from a semantic standpoint, some people would use the word "shall." I would say, "must request a test from the DEP."

ASSEMBLYMAN MAYER: I think you are referring to the second piece of the legislation of the act.

MR. JONES: Yes. This is a question. A lot of day care centers would not open because of this issue of this -- contamination issue. They see themselves as losing money, or the privileges that they have to have the day care center. That's my point.

The other thing is, some type of notice to every single day care center in the State of New Jersey, every single school in the State of New Jersey -- every single educational facility that houses children should be notified. We want you to go on record as a State body notifying these people about this bill, because a lot of people are not going

to be aware of this bill. They are going to go on as usual, and at the end of the day you'll have another Franklinville. I just wanted to put that on the table.

The other thing, just broadening this discussion a little bit more, and that is the Commissioner was with us three weeks ago. There was a national toxic environmentalist who came to Camden, New Jersey. The Commissioner, I understand, was on tour with us along with other officials. She was actually shocked to find out and to see firsthand for herself what exists in the City of Camden.

I am bringing this up for this reason. Yes, it is a difficult situation here in Franklinville, and we sympathize. It is horrible. But I can tell you, if I describe the environmental degradation that children face in Camden, 20,000 children face every day, you would be completely amazed and astonished that DEP exists.

In Camden there are five schools now that sit on contaminated sites. I'll get this information back to you. I'll name the schools, and I am going to ask for an investigation of this. There are five schools which house about, at least, 3,000 to 3,500 kids. These schools are now sitting on contaminated sites. How do we address that? Be honest.

ASSEMBLYMAN MAYER: Thank you. I know that the Assemblywoman was talking to me about issues that you have raised. She might even have a paper of legislation drafted that looks at the standards of those schools and which schools are being built. There is discussion on the way that she is expressing interest in that. I appreciate your testimony.

MR. JONES: My point about this is, that in Camden, unlike a lot of areas, Camden the city is a completely inundated with environmental facilities that pollute, that

contaminate the air and the water and the soil. How do we address these issues for kids in the schools? There are 20,000 kids in the schools and about another 20,000 kids in the day care-centers, in the city alone. This is just one city.

Although this is an outrageous example of one city in New Jersey, there are other cities in the state just like Camden and just like Franklinville. I am asking this body to start addressing this issue, because at the end of the day these children are suffering. They will never, never, ever, ever meet their educational potential unless we address the issues from an environmental adjusters standpoint.

I won't list all of the contaminated facilities, I'll just give you a few. Then I'll close out. There are 114 Brownfield sites in the City of Camden. Three Superfund sites, a sewage treatment plant, all kinds of junkyards, all kinds of scrap metal facilities, all within the City of Camden. These children walk past junkyards and scrap metal facilities every day. They are breathing in toxic air.

Of course, my group exposed lead poisoning in the water that was coming into the school systems in Camden. So the issues are incredible in the city. I want to bring that to your attention, not taking away from anything happening here. But incredible stuff is going on. We are trying to and need the attention of the State to address these issues.

ASSEMBLYMAN MAYER: Thank you. Mr. Wolfe?

Please pass the mike.

**B I L L   W O L F E:** My name is Bill Wolfe, W-O-L-F-E. I am with the NJ PEER, Public Employees for Environmental Responsibility, the National Alliance of Federal and State

professionals who worked in the resource agencies, and state and Federal EPA, and EPE, and Fish and Wildlife.

First of all, I would like to thank the legislators from the 4th District on their work on this issue. It is obvious you put a lot of time and energy into that. I appreciate that.

Second, I would agree with my fellow panelists -- everything they said. Being the last up, I am not going to summarize. I am going to bring it back to where the oversight question began. This morning there were some laser beam questions. To follow up, it was incomplete information provided -- some of it was misleading factually and some of it was not provided at all.

I would like to speak to several of those laser beam issues. Just to comment on (indiscernible), I spent 13, 14 years at DEP, most recently as an advisor to the Commissioner. I have been in the agency and worked in several governors' offices, going back to the Senator and the Task Force Office. I have legislative experience, as well.

I am here as an information resource, but I particularly want to focus today on some of the Q and A that came from the Senator and yourself, with respect to the DEP regulatory oversight. I will also suggest a legislative remedy for each area, that is broken down. I'll go through that quickly.

The children's health issue, before I get to those children's health, if you are looking for legislative amendments to grant exactly how that method would be, then Senator Menendez has introduced a bill looking at that.

In terms of the questions about whether or not there were indoor air risks based on child health test standards, there are the DEP vapor guidance documents that

have indoor air screening criteria that were developed. Some of those do protect children's health, so the nine-month timetable and its feasibility of going forward with rule-making is reasonable for a first cut. Those standards are not perfect. They are neurological. They are health-based and reflect children's health and deal with indoor air exposures. It is in a document. I'll give you written testimony on Monday.

With respect to enforcement, there was a very misleading perception with the Committee. I completely agree with your recommendation that there should be milestones and timetables, and sanctions for them to meet those timetables. That's the old school mold. They used to be called stipulated penalties. There would be an enforceable, administrative consent order entered into between the DEP and the responsible party. That was a contractual agreement. If it had a timetable, then failure to meet the timetable would result in a stipulated penalty -- automatic, nondiscretionary, nonsequential, nonlegal defenses backing it up. A great incentive to get it done, a strengthening force.

I have to just agree, last, that DEP adopt rules establishing grace periods for the second remediation program. In that program, they stipulated penalties from the administrative consent order and agreement. Oversight of contaminated sites happens through two documents, either of a memorandum agreement, which is a volunteer document, or a plenary document to an administrative consent order.

Again, (indiscernible) was stipulated by DEP. Okay? So they are not tightening up their enforcement practices, they are weakening their practices. They are doing the opposite of the impression they left you with. That's unacceptable. We can have an idea where it is the largest

interest; or where there is lesser places than schools, residences, or day care centers. That is a good debate, but we have a (indiscernible). We are weakening an enforcement before we can have that debate.

Last point on it is with respect to OPRA. I opened the file and I spent a lot of time with the file. There is a document here I was allowed to get under OPRA, and I will submit this in writing. It is a bill in the OPRA privilege lot. It will come out with subpoenas. This will come out in discovery and litigation. They have not disclosed a number of very sensitive documents, some of which are criminal enforcement referrals going back to July of '01. There is a whole bunch of information, that I don't have before me, that I was able to discover in the file review that is germane.

Some of the memoranda are clearly from staff, raising major issues of concern that are in the public interest. And I can't get this, for confidentiality. I would ask you, as a matter of legislative courtesy, to do that. I (indiscernible) think the DEP will comply if the Governor is true to his commitment. Put all the cards on the table.

ASSEMBLYMAN MAYER: As you know, there is a separate investigation, ongoing, by the Attorney General's office.

MR. WOLFE: The problem with the criminal investigation, as you well know, is that we will not see the fruit of the investigation. Therefore, there will not be a legislative record to establish legislation in all the areas that need reform. It is just like the bargain with Mr. Lynch. All the dirt hasn't come out and--

ASSEMBLYMAN MAYER: I would like the investigation to go fully.

MR. WOLFE: We called on the Governor, and the Governor has denied the request. We called on the Governor to do the same thing that Governor Codey did with the school reformation -- to do an investigation of the investigation, and let the staff talk to me on a regular basis. I am privy to have this information out of the scope of OPRA and from staff outside the business. I won't put that on the record right now, to protect the source, but there is a lot of information that needs to come out in order for a reform to occur.

The only point in the OPRA thing, there are documents that DEP purged from that file that they did not provide under the privileged lot -- that they are obligated to do under OPRA -- that I have as a matter of illegal leaks. What I am saying is, it is purged and it is bad faith.

No. 1, one of them talks about an advisory from DEP for them to wear respirators before they enter a contaminated site. When will they follow through with it? They were asking (indiscernible) to make them aware of it, and not advising communities that live nearby, where children played in the area. Ultimately, the owner and operator of a day care facility has a major issue. DEP is not willing to disclose that information.

ASSEMBLYMAN MAYER: Mr. Wolfe, if you have material that is of sensitive nature, you should send that to the Attorney General's Office.

MR. WOLFE: It has been out. I published it on the Web site. That does relate to the Attorney General's investigation. I have called and published individually damaging articles of information on the Web and in the *Philadelphia Inquirer* and in the *New York Times*. I have shared that with journalists and community members. I have

gotten not one phone call from anyone in the Attorney General's Office.

ASSEMBLYMAN MORIARTY: Did you call the Attorney General's Office?

MR. WOLFE: I don't like to get involved in a criminal investigation.

ASSEMBLYMAN MORIARTY: But you have an obligation if you have information that you think is germane to a criminal investigation. I think you have an obligation not to show up here and lecture, but to bring it to the Attorney General's Office. I ask you that you do so. If you can call the *New York Times* and the *Philadelphia Inquirer*, and everyone else, you can place a call to the Attorney General's Office if you are genuine in seeking this.

MR. WOLFE: That was the reason I raised this information. The question was with that subcommittee that secured it through an OPRA request, through a file (indiscernible). I did it all of the time. You have to sign in the book. You have to sign in on the 6th floor to get the records. Before you get a piece of paper, they charge you 75 cents a copy. That's a paper trial.

If that paper trial existed, it would be in the file. I didn't see it in the file. I doubt whether it exists. You presume that EPA letter came through an OPRA file. I say your presumption was flawed; I don't know on what. I think Dan spoke to you. I mentioned that to Dan in the men's room. DEP is not going to be giving you the straight poop on this.

ASSEMBLYMAN MAYER: Is there anything on the bill that you would like to comment on?

MR. WOLFE: Yes, with respect to the breakdowns that occurred, and where they can be legislated, and the remedy.

Initially, one was '94 and one was '95. There needs to be some mandatory requirement. They have used their discretion. There needs to be a mandatory requirement that there is a lien filed on the property. Why wait until a transaction goes down, and development plans are developed, and you are issuing a construction permit before you are dealing with remediation? Don't wait until late in the game. They have a way to recover money spent. We didn't be spend any money. We didn't file a lien. The lien could have presented a transaction from--

ASSEMBLYMAN MAYER: There's not any question--

MR. WOLFE: Legislation may have been a way to mandate, in case of a bankruptcy filing or within a 60-day period. It might make sense to mandate that a lien be filed or performed. The second largest breakdown occurred with respect to the properties.

I want to read to you the findings in the property screening that was done of the Accutherm site, that was purged from the DEP file. This is from a remedial scoring (indiscernible) evaluation of the Accutherm site conducted in 1999. "In 1994 and 1995, field inspectors found free mercury on the floors in an abandoned building. Mercury concentrations were elevated to 7, and suspected to be in the vent systems. Residential homes are within 50 feet of the site. The site is not secured, no vents or signs, and windows of the building were broken."

That's the kind of information that is generated in the DEP property screening process. That information is generated within DEP showing a significant risk

to the neighbors, if not kids who ultimately occupy the site. Yet, no action was taken on that. That's a serious, serious defect within the DEP.

Further, the DEP, instead of affixing remedial screening regulations, recently allowed those regulations mandated by the studies -- it mandates that the DEP has a remedial system set of regulations. Those regulations were allowed to lapse. They are not in effect anymore.

Furthermore, the DEP hasn't applied the remedial property screening criteria. That just (indiscernible) to 6,000 sites, and they have refused -- I'll give you this in writing -- they have refused to divulge the list of 6,000 sites. It is a public document. They have dreamed up a bogus rational, calling it enforcement sensitive, and reduced the dollars to release that list of 6,000 sites.

When I sit here and see officials talking about good faith efforts of DEP, prior to, they are not giving you the factual records. I suspect Senator McKeon is saying that we are here to establish a legislative record and a transcript. You are not being given the facts, the regulatory reality upon which to base reasonable conclusions.

ASSEMBLYMAN MAYER: As I said, this is just the beginning.

MR. WOLFE: Right.

ASSEMBLYMAN MAYER: We are just starting that process.

MR. WOLFE: The last point I'll make is, the other breakdown occurred -- it was a dual breakdown on August 2. Two things occurred on August 2 that I find highly curious and irregular. I'll refer both to the Attorney General's Office.

On August 2, a Volunteer Memorandum agreement was executed between DEP and Mr. Sullivan. That volunteer role was subsequently withdrawn. On August 2, another event occurred whereby a-- The claim for loss of operating revenue at the Kiddie Kollege site was approved by the DEP in less than 24 hours. That was faxed to them without any staff review, or attorney conclusions, or legal reviews.

Ask the Commissioner about approving the Spill Act. Hundreds of municipalities file hundreds of filings for damages under the release of toxic substances. It takes months, if not years. The operator of the facility got DEP approval in less than 24 hours, on August 2. At that same time, the DEP entered into a voluntary agreement, a sweetheart deal with Mr. Sullivan. I find that highly irregular.

On August 3, they issued a joint press release with the former Attorney General and the DEP Commission that was deeply misleading, that failed to disclose the levels at the site, and created an appearance, which we heard repeated today, that there was an immediate response by State government with respect to the government -- an advisory, and evacuation, and the closing of the facility.

As somebody raised a point today, the known discovery goes back to prior to 1994. There was a 1998 direction to cease charging to their mercury acceptance system. It was in that time -- I think it was April 11, '06 -- that's when they discovered the building was occupied. That's the Duty to Warn, and the State did not warn.

I have released it for you guys. Go read the file. Read the case managers reaction upon discovery of that -- what his first inclination was. Was it based on children's health?

I am a parent. I have two kids. I thought there was a problem before, but if my kids went through what the children down here have gone through, it would--

ASSEMBLYMAN MAYER: I, too, have concerns regarding that time period.

MR. WOLFE: It is very unique.

ASSEMBLYMAN MAYER: I have asked the Commissioner to look at that. How are they, the DEP, reacting to situations like that?

MR. WOLFE: If institutional changes are going to occur, like a 12-step program, you have to acknowledge the problem and accept responsibility. I did not hear responsibility of a problem. I heard them share blame. That is not responsibility. I did not hear a report from DEP. Given these, see how -- as a culture and an agency -- how a professional was impeded from picking up a phone and calling someone and saying, "Your child may be at risk." You should tell the parents.

How can an adult exercise that level of judgment? If an adult exercised that level of judgment, that person should not be on the panel. It is as simple as that, or put them in another area where they are not given that responsibility.

ASSEMBLYMAN MAYER: The hour is late and getting later. We have been here for a long time. There are many, many more questions to be asked, I agree. On that, I ask that you submit anything else you have in writing to the Committee and then, of course, disclose everything to the Attorney General's Office.

MR. WOLFE: Just so you know, I submitted written testimony to the Joint Judiciary, and Assembly Environment and Solid Waste Committee. On June 1, I submitted

10 pages of written testimony at that hearing. I reiterated those submissions on the second hearing on June 15.

I have been in constant communication with Assemblywoman Greenstein. I have done more than a level of effort to put facts on the record in good faith, based on DEP documents. I will follow up with the Attorney General's Office, as well.

ASSEMBLYMAN MAYER: Thank you very much. I appreciate that.

That concludes the testimony this afternoon. I want to thank the Franklin Superintendent of Delsea Regional High School, and Delsea Township, also, for hosting this hearing today. Thank you, Police Chief DiGiorgio, for your efforts; and the State Police Sergeant for your efforts. Thank you very much.

(The hearing was concluded at 4:00 p.m.)