P U B L I C H E A R I N G

before

ASSEMBLY REGULATORY EFFICIENCY AND OVERSIGHT COMMITTEE

on

"Problems Encountered in Interpreting and Complying with ECRA Regulations"

October 27, 1986
Room 11
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:
Assemblyman Arthur R. Albohn, Chairman
Assemblyman Kathleen A. Donovan, Vice Chairman
Assemblyman Robert E. Littell
Assemblyman John S. Watson
Assemblyman Jimmy Zangari

ALSO PRESENT:

Darby Cannon, III
Aide, Assembly Regulatory Efficiency & Oversight Committee

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

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ARTHUR R. ALBOHN
Chairperson
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New Jersey State Legislature
ASSEMBLY REGULATORY EFFICIENCY
AND OVERSIGHT COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 292-9106

October 14, 1986

NOTICE OF A PUBLIC HEARING

"Problems Encountered in Interpreting and Complying with ECRA Regulations"

The Assembly Regulatory Efficiency and Oversight Committee will hold a public hearing on the problems encountered in interpreting and complying with regulations governing implementation of the Environmental Cleanup Responsibility Act (ECRA) on Monday, October 27, 1986, from 10:00 A.M. to 12 Noon in Room 11 of the State House Annex, Trenton, N.J. This will be the first of several hearings conducted by the committee, as directed by Assembly Resolution No. 110, on the services performed by the Department of Environmental Protection.

Anyone wishing to testify should contact Darby Cannon, III, Aide to the Committee, at 609-292-9106, and should submit copies of the testimony, including specific recommendations, to the committee on or before the day of the hearing.

TABLE OF CONTENTS

APPENDIX

sk: 1-31
di: 32-47
ig: 48-68

ASSEMBLYMAN ARTHUR R. ALBOHN (Chairman): Okay, if you'll make yourselves comfortable, I just have a couple of opening remarks I think I'd like to make with regard to format, procedure, and so on.

As you all know, I am sure, we are holding these meetings at the request of the Assembly, which passed a resolution, AR-110. Not that we had been ignoring DEP, but it's just that we hadn't quite gotten around to them, with a lot of other things to do.

While the task that's been set before us is to investigate all of DEP's activities, that's a little bit like carving away at the Rocky Mountains with a teaspoon. So, I think what we'll do is break it down and take one subject at a time, and the first one that we've chosen, of course -- as you all know, I believe -- is ECRA, which is the newest, perhaps the most confusing, and the one of greatest concern to people.

We've requested input from everyone who wanted to make it, and quite a few have signed up already for today's meeting. We will hold the hearing in sequence, according to the sign-up time. At this moment we have nine people, I believe, plus Senator Lesniak, and plus DEP.

Senator Lesniak, who is the original sponsor of the bill, has been invited as a guest, more or less, to say a few words about what his objectives were in introducing the legislation and maybe what his reaction to it is, as it has gone into effect.

The second speaker will then be Mr. John Trela of DEP. And, following that, we will have the rest of the speakers in sequence.

We're asking everyone to submit written testimony and make their oral testimony sort of a summary of what they expect to submit in writing so that we can have an accurate record without having anyone speak for half an hour and use up everyone else's time.

As I said, we have until 12:00, which gives us about ten minutes per speaker. So, I would ask you to try to adhere to that kind of a schedule. And as far as your written testimony is concerned, it can be essentially unlimited as far as we're concerned, and we'll try to make it all a part of the record.

If anyone does not have written testimony today or wishes to submit it later on in the week, we will accept written testimony up until Friday of this week and we will ask our reporting staff to include all such testimony -- whether you have spoken here today or not -- in the record of the meeting.

We will hold another meeting on November 17, in the same place, at 10:30 in the morning out of deference to Mr. Littell who has a long way to come. And we will conclude that meeting at 1:00. I'm not sure yet what the format will be for that meeting. That will depend a lot on what happens here today, and what we decide to do based on our digestion of what kind of testimony is presented here today.

There are any number of people who would like to quiz DEP at length and there may be some opportunity for that, but not this morning, I don't believe.

I'll ask John Trela to perhaps say a few words as to how DEP would like to respond to some of the questions that will probably be raised this morning.

So, with that, I think I'd like to first introduce Senator Raymond Lesniak, who is the sponsor of the ECRA legislation. And there should be no assassination attempt here this morning, but I think that Ray has some of his own concerns about the things that have been produced.

S E N A T O R R A Y M O N D L E S N I A K: Thank you, Mr. Chairman. As a matter of fact, on the contrary, rather than assassination attempts, I would think that it would more likely be coronation attempts.

ASSEMBLYMAN ALBOHN: Oh, coronation. Okay.

SENATOR LESNIAK: As a matter of fact, just recently Jim Morford, the Chairman of the State Chamber of Commerce, has called -- we will say publicly has stated that ECRA is pro-business in the terms of the State of New Jersey.

I want to thank you for the opportunity to open up these hearings because it's an incredibly important subject and an incredibly important matter for the Legislature to have oversight on what is the ECRA program.

I'm going to be very brief. I have my own committee that I must chair this morning, and I would just like to give you some general outline of the way I feel, the background of the program, the way I believe it's been implemented, and I would expect that some of the details will be able to be filled in.

I had the good fortune to sponsor ECRA in the Assembly, and then moving it -- when I was in the Senate -- on the floor of the Senate. That was over three years ago -- four years ago -- and I stated on the floor of the Senate when I moved the Environmental Cleanup Responsibility Act that ECRA would be the most important hazardous waste cleanup program that this State has, that it will be responsible for more hazardous waste cleanup than the Spill Fund, which I sponsored, the $100 million bond issue, which I sponsored, and the Superfund, which I did not sponsor. But all three of those programs combined--

We read in the paper about Superfund and what a great thing it is for the Congress to reauthorize Superfund -- and it certainly was for the State of New Jersey -- and, of course, what a great thing John Bennett, Dan Dalton, the Senate, and the Assembly did with this hazardous waste cleanup package. All those programs combined will not have the impact that ECRA has on making our State a clean State and giving it a healthy environment for economic development.

During the three years that ECRA has been in place, we have seen the economy boom in the State of New Jersey. Economic development cannot take place in an environment where buyers are afraid, and investors are fearful, and people coming into the State are concerned about toxic waste, and hazardous waste, and the condition of the property that they purchase.

I'd just like to give two examples: One, of course, if the famous Ventron case, where property changed hands over, and over, and over. And each time there was a more significant environmental problem regarding hazardous waste. Finally, the last person in the chain ultimately, unless he was able to collect from the previous granters, is stuck with a multi-multi-million dollar cleanup bill, not to say anything about the tremendous impact, and degradation, and health threat to the environment of allowing that hazardous waste problem to continue.

With an ECRA program in place, that wouldn't have occurred. That would have been stopped in the first instance. That buyer would have known that he was buying a clean property, and the environment wouldn't have been unalterably -- and in many case irreparably -- damaged.

I liken it to strip mining in the Midwest. If you've gone through parts of Pennsylvania, you know the ravages of strip mining. That's the same thing that can happen in this State if we didn't have an ECRA program. Companies would be able to just walk away from sites.

I'll give you an example of the City of Elizabeth's Singer site. Singer easily could have -- I'm not saying they would have. A company like Singer probably wouldn't have-- But, Diamond Shamrock may have-- But Singer could have. It just walked away from that site in Elizabeth. With ECRA they couldn't just walk away from it. They had to clean it up, and now there's industrial development on it, and there are jobs. Without ECRA, there very well could have been neither.

That's the good part. Now, I'm the first one to recognize that there are serious problems with ECRA that have to be remedied. There's a three-pronged approach now in process that I would want, and expect this Committee to help us with, along with the Department, to solve these problems. They are administrative problems; they are regulatory problems; and they are legislative problems. Those are the areas that I would expect the DEP to fill you in on the details, but it's a process that it's currently undertaking. I don't believe that the Department has spent as much -- has concentrated as much effort in the ECRA program as they should have. I believe they recognize that, and that's going to turn around. There must be more certainty in the ECRA transactions; administratively, there has to be a procedure in place where if you have a diminimous (sic) situation, a non-applicability situation, a negative cleanup situation -- a simple cleanup situation, that administratively, can be handled on the fast track, so that there aren't any undue delays.

Many of the delays, by the way, are the fault of the sellers themselves; the fault of the seller's attorneys, and the engineers who oftentimes do not provide the necessary information required by DEP. Some of it's DEP's fault in terms of not having a-- And much of it's DEP's fault, not having the staff available, not having the procedure in place where they can have a checkoff to insure that the application is complete, rather than waiting "x" amount of days -- 30 or 60 days -- to see that the application is complete; that it's not complete before sending it back. Those are the administrative things that must be remedied by DEP if this program is to continue to succeed.

Regulatory: I think there must be more specificity. There are just too many inquiries out there made by the bar, made by engineers, made by developers for ECRA opinions that aren't necessary. Residential properties -- they're being deluged with requests for ECRA clearances on residential

properties. It doesn't apply. It's not necessary. By regulations specifying exactly where the applicability is, we can avoid that problem.

Legislatively, there are some problems. Most significant, I believe, is the subdivision problem. That is, you have a portion of a property being used for hazardous materials and industrial manufacturing processes, and a greater portion of it that is not involved in that at all. People would want us just to look at that portion that's being subdivided, and have an ECRA determination on that process. But that would allow that manufacturer to subdivide the entire parcel, leave the hazardous waste site -- the manufacturing site -- that may be causing the problem, and walk. We can't allow that to happen, but that's not to say we can continue the current situation. There is a process that, I believe, we can work with to allow reasonable development of other portions of the property, and also avoid the danger of having all the good stuff -- it's called adverse selection, if you will -- all the good properties parceled out and leaving behind a hazard for the taxpayers of the State of New Jersey to clean up.

I believe that you will see all of these things, all of these issues -- the administrative problems, the regulatory problems, and the legislative problems -- approached in the upcoming months. I'm committed to working with DEP, working with this Committee, working with Senator Dalton's Committee, Assemblyman Bennett's Committee, to refining the program, making it more efficient, because it is one of the most effective programs for economic development that this State has ever seen.

ASSEMBLYMAN ALBOHN: Thank you very much, Ray. That all sounds very encouraging, and I didn't really mean that -- in my opening remarks, that you were such an enemy of everyone, but because I think even ECRA has its strong proponents as well as its opponents. And it depends on which side of the fence you are.

SENATOR LESNIAK: I don't really know that anyone would disagree with the concept, because anybody that disagrees with the concept really has their head in the sand and is not -- does not have the future of the public interest at heart, as we do.

ASSEMBLYMAN ALBOHN: I agree. I think it's a question of the way it's handled more than its objectives.

Are there any questions from the Committee of Mr. Lesniak?

ASSEMBLYMAN LITTELL: Yes. Mr. Chairman, I'd like to ask Mr. Lesniak-- You're quoted in the Sunday Trenton Times -- and I'll read it to you: "In response to concerns raised by the banking and real estate community, however, Senator Raymond Lesniak, Democrat-Elizabeth, the original sponsor of the cleanup act, is considering proposing an amendment to the law that would restrict DEP's right to void a sale after it has gone through if the seller has violated any of its provisions. Bankers and title insurance companies contend that clause creates uncertainty in a sale, adding risk to their investments." Where do you stand on that issue?

SENATOR LESNIAK: I stand as quoted on that issue. I think we can clarify that. I don't know that DEP needs that hammer anymore, and I think that it may be an unnecessary provision; and that will be addressed in part of the legislative action that will be necessary.

ASSEMBLYMAN ALBOHN: Thank you.

SENATOR LESNIAK: I must add, however, that the banking community and the title companies never ever raised a peep about ECRA when it was going through. But then again, they never raised a peep about Superfund -- my "Superlien" either, until after the fact. But that doesn't matter. We'll still work it out to help solve that problem. Absolutely.

ASSEMBLYMAN ALBOHN: Thank you a lot, Ray. Anything further from the Committee? (negative response) Thank you, Ray.

SENATOR LESNIAK: Thank you.

ASSEMBLYMAN ALBOHN: I appreciate your being here this morning.

The next speaker, to give DEP's side of the story, perhaps, is Mr. John Trela. Oh, Mr. Dewling is with him, too. I'm delighted to see you here, Dick.

C O M M I S S I O N E R R I C H A R D T. D E W L I N G: Good morning.

ASSEMBLYMAN ALBOHN: Commissioner Dewling and Mr. Trela -- I'm not sure of your function in the organization. Maybe you can tell us a little bit about that.

J O H N J. T R E L A: Yes, sir. I am the Director of the Division of Hazardous Waste, and ECRA is one of the programs in that division.

COMMISSIONER DEWLING: Let me just say at the outset, I welcome the opportunity to sit down with you. You obviously don't rate with the room this big here -- I've been in a hearing so small, the togetherness-- I hope it doesn't reflect on the magnitude of the issue at hand.

Obviously, I welcome any type of constructive review of the program. I think we all have to recognize that the ECRA program has had some growing pains. But I think we've tried to address some of these issues by-- Earlier this year, I asked for an OMB and outside review panel to come in to review the processing time -- any in-house efficiencies that we could undertake, and very honestly, what could be done to speed up some of the processes without giving up some of the major environmental benefits that we are getting from the ECRA program.

Part of that review process, which included an outside consultant coming to come up with a workload model of how much

time it actually takes to review these activities -- whether the projections for, need for, increasing fees if required; and whether the staff -- how the breakout or workload actually takes place. And I think we'll be prepared to turn this report over to you in the next week or so, which details that. I've got a draft copy of that report.

But they also went out and spoke to the New Jersey Bankers Association and New Jersey Bar Association, New Jersey Business and Industry Group, the Environmental Lobby, and the Realtors Association. And you can basically break this down into about -- 70% of the cases fall into one category, 30% fall into this longer-term issue where you have some severe environmental problems. But I think some of the most dramatic input that comes out of this is, the DEP staff have done a superior job in controlling the amount of workload that's come in, in recognizing this time of the year, when you get the crunch. There is a need for the non-declaration of applicability, which we didn't anticipate earlier, where everyone wants to make sure they're not applicable under ECRA. So, we're trying to speed up this process of those issues that are not significant, where we can relieve this type of pressure, and focus more attention on those ones that need that environmental cleanup.

Earlier this year, we also de-listed several types of SIC categories that we felt would not be appropriate under ECRA, because environmentally, we felt there would not be environmental problems.

I will never deny that under the haste of moving with Superfund last year, which I think had to be our priority, that ECRA sort of became the stepchild of some of the programs we had within the Department. We were focusing on the hazardous waste issue, and ECRA was going along at its steady state. I think now, since January, we've tried to re-focus the organization to look at some of the problems in ECRA, as well

as deal with some of the problems in hazardous waste as a holistic issue, because very honestly, ECRA has involved, or will probably involve, a greater potential for cleanup than possibly Superfund, in a more reasonable time frame. In the past six months, we've had significant contributions for assurance of the cleanup of some of these sites, which potentially could have wound up on the Superfund list.

So, there are pluses and minuses on every type of program, and I think we're trying to address the minuses in this case, which is the processing time. I think the pluses are, from the environmental standpoint, in the public perception I think obviously, they're there. But some of the issues that we have to deal with, I think, are focused in this report, which I think will assist you in coming to a workable understanding of what the program is. Let me ask John Trela, who is -- who just came over to the program six months ago, and has done a Herculean job with some of our other staff, in terms of Lance Miller and Frank Coolick, in refocusing what I call some of the issues that we have to deal with in ECRA. So, John?

ASSEMBLYMAN ALBOHN: Thanks very much, Dick. John?

MR. TRELA: Thank you, Mr. Chairman. I'd like to build a little bit upon what the Commissioner said by focusing, basically, on two areas and generally following the outline that Senator Lesniak used in terms of identifying some of the successes that ECRA has had, and also identifying some of the problems. In addition to just identifying problems, I also want to explain to you what our plans are to deal with those problems, and I think that pretty much summarizes my presentation this morning.

As you know, ECRA is probably one of the most innovative environmental statutes in the United States. I was just at a meeting the other day in New York City, and one of the people there informed me of something that was quite surprising that I wasn't aware of, that there are currently 22

other states in the United States that either have ECRA laws or have an ECRA law pending in their own state legislatures. So, it's spreading widely across the country, and the merits are widely recognized of the program.

In the historical sense-- To give you some statistics, in the first six months of the program -- between January and June of 1984 -- we received 164 cases. In the first six months of this year, 1986, we received 484 cases, and we anticipate a similar number, maybe as high as 550, to cover the last six months of the year. So essentially, the caseload between the first year and the third year has gone up very substantially, and as you all know, when you have work coming in, that presents a lot of problems.

Now, to focus in on what we've been able to accomplish in terms of achievements, or the major successes of the program. At this point in time, we have 311 approved cleanup plans. The cleanup plan is that portion, or the document that sets forth how an industrial establishment is to be cleaned up. We have also issued 743 negative declarations. Those are certifications from DEP that the sites are clean, most of these being given to the smaller sites that Commissioner Dewling referred to that are able to be cleaned up quite easily.

We have issued 220 administrative consent orders, and as of today, there has been expended $25 million for cleanup in New Jersey, at the 311 sites. In addition to those 311 sites that have the cleanup plans approved, we have financial assurances under administrative consent orders for future cleanups, totally $175 million. In the last six months alone, we have signed 61 administrative consent orders totaling a dollar value of $124 million. And, some of the major sites that you may be familiar with, in addition to the Singer cleanup in Elizabeth that Senator Lesniak referred to, would be the Ford plant in Mahwah and the Texaco Eagle Point refinery in South Jersey.

Another point that Senator Lesniak mentioned was what's referred to as a letter of non-applicability. Many lending institutions right now are requiring people applying for mortgages, whether they be individuals-- As indicated earlier, even homeowners -- they have to get a letter from DEP saying that ECRA is non-applicable for their transaction to proceed. Currently, we are receiving these requests at the rate of 5000 a year, although clearly, most of these are not covered under the intent of the statute or the regulation.

Moving on to the next section, problems and what steps we have taken to address those problems: As the Commissioner indicated, we have recently reorganized to focus more of our energy on the privately funded cleanup area. Secondly, the Commissioner has asked for the OMB report, and the purpose there is twofold: one, to look at the current processes that we use to move the paper through the administrative system and look for efficiencies there, and then to evaluate, in that context, the need for additional staff or modifications to the program as would be required to effectuate the turnaround times necessary.

We have already, as a result of that -- and a third point -- streamlined the initial notice review process. Instead of -- as we had done in the past, historically, two or three years ago, we got into situations where someone would get into a situation, we'd write them a letter of deficiency, they would attempt to fill out -- correct the deficiencies, then submit it again, then we'd write another letter -- back and forth, and this would go on into a protracted cycle, resulting in a lot of delays. So, what we're doing now is encouraging -- once the initial notice is followed, if there's any problem, encouraging a face-to-face meeting, sitting down with the people, going over every item in a checklist format and correcting those deficiencies so there's less of this letter writing going back and forth, which results in very unacceptable delays.

COMMISSIONER DEWLING: Let me just mention to you, in the OMB evaluation, what they found was that 95% of the ECRA applications were incomplete. And, the other conclusion that they reached was that it takes ECRA three times longer to obtain a complete application than it does to process the application.

So, there's a communication problem that we are having with the outside world relative to getting this message out on how to do all these types of things. One of the things that obviously was an impact, was defining how you declare whether an area is clean or not clean in a sampling plan. During this past six month period, we had gotten out a document that says, this is what you have to do in a sampling plan; where before, someone might have said, "Well, you need two samples," someone else says, "You need 42," and there's a difference of opinion. Now, it's down in concrete, what you require as a minimum.

So, some of those management issues, I think, have to be reflected on the growing pains of this program, where we've tried to address these things from a management approach of focusing the reorganization, focusing OMB to look at how best to go from step 1 to step 2, and where we can have internal efficiencies.

Also, earlier this year, I gave authority to hire another 10 positions, which actually has to come out of somebody else's hide, to focus -- to try to expedite some of the issues over in ECRA. Because as soon as we get somebody trained -- I'll be honest with you -- now they're a premium dollar on the outside, so we lose them. So, we go through a program of, we're probably the best training ground for the real estate and banking community than anybody else, where they come in, they get a couple of years training, and then your performers go on the outside to make some big bucks.

ASSEMBLYMAN ALBOHN: When someone calls and asks for the ECRA packet, is the sampling plan included in that?

COMMISSIONER DEWLING: The guidelines-- Seventy-one percent of the cases don't require sampling. I mean, that's the type of thing that we--

ASSEMBLYMAN ALBOHN: But of course, that isn't what the application states. The ECRA forms simply ask you, what kind of a sampling plan are you going to provide? And of course-- I don't know. I suppose, if someone says no, we don't need a sampling plan, obviously, you don't take that at face value. You'd have to decide whether or not they do need it, and isn't that where part of the delay is like to occur?

MR. TRELA: Well, in most of those cases, we do go out and actually inspect the facility, so that in a lot of cases, it's very obvious. You know, you go into an office building or something like this -- they obviously don't have drums there, they're not processing chemical products or handling chemical products in any way. Those things are fairly straightforward. Even though they might have been listed under an SIC code that would seem to make them applicable, a simple site inspection would clarify that, and that usually takes half a day, or something like that.

ASSEMBLYMAN ALBOHN: But how long does it take you to get to that half a day?

MR. TRELA: Why, I think right now, I think it would be less than straightforward if I was to say that there's a lot of delays in terms of processing or scheduling those inspections because of the large number of cases that we're dealing with right now, relative to the staff that we have.

COMMISSIONER DEWLING: That's one of the reasons we put another 10 people over there, to try to handle that backlog. But the other thing we're finding out is that about 75% of the caseload is coming from northern New Jersey, so, you know, rather than losing half a day's traveling time, what we're looking at now is organizationally, maybe we should put some of our people up in our field office up there to take care of

those activities, to service the clientele better in that particular area.

ASSEMBLYMAN ALBOHN: With regard to residential property, I suppose if it's John Q. Public who owns a house and -- I guess the bank asks him for a declaration of non-applicability?

MR. TRELA: That's correct.

COMMISSIONER DEWLING: That's right.

ASSEMBLYMAN ALBOHN: Then he has to fill out the forms, I presume, and send in the $100 fee, and wait some 15, 16 weeks -- is that the time schedule now -- before he gets the non-applicability back, or approved?

MR. TRELA: Well, on the letters of non-applicability, the time used to be that long, but we've accelerated that by instituting a computer processing system. We've instituted a system that separates the cases into the various classes that the Commissioner referred to earlier, of low environmental concern and high environmental concern. And not only have we instituted that computerized reponse system for letters of non-applicability, but we've also separated the case managers who handle the cases that don't get letters of non-applicability into two groups, the group that deals with the 70% that are minor problem or no problems, and the group that deals with the 25% that are major problems.

So, the simple case that can be processed quickly is handled by a different group, and there's a division of labor. You don't get the small industrial facility mixed in with the large oil refinery, and there's -- and we found that to be helpful, in decreasing processing time.

ASSEMBLYMAN ALBOHN: But any of these determinations depend on a site visit by one of your people?

MR. TRELA: Yes.

ASSEMBLYMAN ALBOHN: Have you thought of any possible way of eliminating visiting hundreds of homes to see if they're--

MR. TRELA: Yes, we're looking at some of those issues right now regarding certifications or affidavits, or things of that nature. There are certain procedures that we're evaluating right now, in the context of the regulatory review that we're conducting -- and in order to increase the efficiency of the staff that we have now.

ASSEMBLYMAN ALBOHN: In many cases, industrial corporations own residential property also. Just incidentally -- for investment or other purposes -- are they treated any differently than if John Q. Public owns the property? They're isolated lots now. Suppose you want a block of houses, or something.

MR. TRELA: Well, it would depend, principally, on what SIC code that facility is listed under. For example, we could take a chemical company that might own tract housing or a subdivision or something of that nature, for that particular piece of property, as an individual industrial establishment. And it shouldn't have an SIC code listed for chemical industry when it's in fact residential housing. So, that should be a fairly straightforward circumstance.

And, we're looking at all -- a variety of similar problems in our review of the rules, trying to identify very specifically in clear, regulatory language, which facilities would be covered and which ones wouldn't be covered. This is one of the things on our agenda in the next six months.

ASSEMBLYMAN ALBOHN: Any members of the Committee have any questions of the Commissioner or Mr. Trela?

ASSEMBLYMAN LITTELL: I have one, Commissioner. I had two; you answered the one about the non-applicability. Commissioner and Mr. Trela, how will you process the applications you now have before the end of the year so that the applicants can take advantage of the recent tax breaks on capital gains, which is the reason many of them decided to sell their business this year?

MR. TRELA: Well, the first thing that we're doing is, we're making much greater use of the administrative consent order than we had in the past. This allows the transaction to proceed, and the seller or the buyer -- or both, or whatever -- could sign an agreement with us to do the evaluation and the necessary environmental cleanup actions after the transaction has taken place. So, we're offering that, and many people are taking us up on that. We've gotten general feedback that is a very, very helpful offering. We've expanded our offering of that relief to a much greater degree than we have in the past, as I indicated to you regarding the statistics I gave you earlier. We've done a lot more in the last six months than we had in the previous two years, and we've gotten a favorable response.

COMMISSIONER DEWLING: I mean, obviously ECRA is not the only problem. Two years ago, when the interest rates were 18% we didn't have the same pressures on some of the issues that we have to deal with in the Department. I mean, we had bans on sewage treatment plants, and there was no building, and no one really pressured the Department. Now, we've got bans on sewage treatment plants that have been there for two years, and now they want relief from some of the sewer extension permits, some of the stream encroachment issues, the ECRA program, and obviously, we're not in the business to put people out of the business, but we are in the business of environmental protection. And our critical concern here is that we're not about to waiver our responsibility on permits, or on certain types of cleanups, at the expense of speeding up something when we could be in deeper trouble later on.

I think we have tried, with the staff that we have, to accommodate those business needs and requirements as best we can. And, to correct some of those problems at ECRA is going to require some changes internally as well as externally. And I think there's got to be-- When we went in there, what we

were looking at -- how much time we were spending on certain activities. I mean, from our own standpoint, I can understand the frustration on the outside. We had two telephone lines, and they were always busy. So, we put another four lines in, to allow the calls to come in. I mean, it was totally frustrating, I'm sure, to the outside community. You couldn't get into us. And it was those little simple things we were able to correct very early on to recognize what those problems were.

This OMB study basically reflects on what the problems are, how to correct them -- assuming certain deficiencies within the Department -- and you can break the caseload within a category of a ranking from, say, zero to four, where four must have the high attention span. But 70% of the cases are low attention span cases, meaning minimum environmental impact. Our goal is to process those within a reasonable period of time. We're talking about several months, all right? Now, I say several months because of the physical time it takes to get a completed application in, get all the information in. If some sort of person has to go out to a site, you must go out there. And, years ago, when NJPDES permits were issued-- A sewage treatment plant is a sewage treatment plant. When you're issuing RCRA permits, you must go out to every RCRA site to determine what's there -- they're all unique. Someone must go out to these facilities to make sure -- unless we come up with some sort of affidavit requirement, or get some other outside folks to certify SPEs to do this type of thing.

But we have just looked at trying to have sewage authorities -- delegate the authority to them to approve sewer extension permits. They have not chosen to do that. I mean, we're trying to look for ways to do that outreach type of program, to give somebody else the authority. I don't see any willing host out there to accept that burden of responsibility.

ASSEMBLYMAN LITTELL: Just a comment. Commissioner, the reason we're here today is because Speaker Hardwick introduced this resolution because he found, as he traveled around the State, that people were confronting him with the fact that they were totally frustrated in their efforts to get things moving in the Department, and to get their permits processed--

COMMISSIONER DEWLING: I don't disagree.

ASSEMBLYMAN LITTELL: The Governor has had those kinds of questions asked of him on "Ask the Governor" program -- I've heard him confronted with that. The Legislature-- The Assembly, at least, voted 72-1, so it's not a partisan thing or an appointed thing. There's a lot of frustration in the public regarding the efforts being put forth to resolve the problem; and we don't have any doubt in your sincerity in wanting to resolve it, but we want to be able to resolve it.

COMMISSIONER DEWLING: And I appreciate that. As I say, (inaudible) working dialogue, I'm trying to resolve this. I think it would be very meaningful. We recognized the problem before it became-- I'm saying, internally we recognized what the problem is. The other issues that I think you'll be focusing on will not only be just the ECRA issue, but the backlog that we have on the air permits will be the problem that we have with the sewer extension permits, and the stream encroachment. It's all part of the total process, and I think there's an interconnection between all of these, where we have to recognize that whenever you have DEP or any environmental agency -- reaction agencies as opposed to action agencies -- if there's a new pollutant of the month, then we charge off in that direction. That's our job; that's our responsibility. And this particular program here is an excellent program; and it has some growing pains. And I think your constructive criticism of this is welcome; and I think-- Please recognize that we have taken the initiative earlier, because we recognize

internally, that we do have this problem and we want to correct it.

ASSEMBLYMAN ALBOHN: Thank you very much.

I think we'd better move on to some of our other speakers, and I certainly appreciate the Commissioner and Mr. Trela being here.

ASSEMBLYMAN LITTELL: Can I ask him to respond to those questions?

ASSEMBLYMAN ALBOHN: Oh, excuse me. If-- Do you have another copy of that, or do I have the only one? Oh, here it is.

Maybe we can ask you to respond to this at your convenience.

MR. TRELA: We would be happy to do that.

COMMISSIONER DEWLING: No problem.

ASSEMBLYMAN ALBOHN: I haven't read them; I really don't know what the full concept is, but if you had some thoughts, that would be great. I hope you may be able to stay part of the time and hear some of the firsthand complaints that we expect to receive from a lot of people.

COMMISSIONER DEWLING: Would you like, at any future time, to sit down and discuss some of these issues? I'd be more than happy to do that.

ASSEMBLYMAN ALBOHN: This particular session has been provided mainly as a public input. Your statements and the Senator's statements, as being introductory -- public input. Our next session on the 17th -- I believe it is -- of October (sic)-- We're not quite sure what the format will be; a lot will be determined on what we hear today. So, we may be asking you back again at that time if we think that would be appropriate.

COMMISSIONER DEWLING: Fine.

ASSEMBLYMAN ALBOHN: Okay? Thanks very much.

COMMISSIONER DEWLING: We look forward to working with you on it.

ASSEMBLYMAN ALBOHN: Good. Thanks a lot.

COMMISSIONER DEWLING: Right.

MR. TRELA: Thank you.

ASSEMBLYMAN ALBOHN: I have just had it reported to me that those in the back cannot hear too well. We don't have a public address system here today, I don't believe; so we'll ask both the members of the Committee and the speakers to perhaps speak up a little bit more and try to exercise some public speaking for the rest of the crowd.

The first speaker on the witness list is Mr. David Houston of the New Jersey Society of Industrial Realtors, and he was the very first to request to speak so he's the very first of our officials. If you want to make a slight turn too, that's fine.

D A V I D H O U S T O N: I think, having sat in the back, it would be helpful if maybe this lady and I switched places and then everybody would hear.

ASSEMBLYMAN ALBOHN: All right, that's fine.

MR. HOUSTON: If you're speaking forward, it's going to be difficult. I apologize for stealing my chair.

ASSEMBLYMAN LITTELL: Swing your microphone over there or the recorder won't get you.

MR. HOUSTON: I want to thank you for the opportunity, Mr. Chairman, to speak before you.

I'm an industrial and commercial real estate broker who's involved in this program on a daily, if not hourly, basis. I don't think there's any question that the premise that "If you did it, you should clean it up," is one that industry accepts and is a valid premise on which to base a fair program. I think, however, there are some questions about ECRA that -- and I think there are some practical solutions. First of all, the major problems -- it's simply encompassed, I think,

a much broader scope than the Legislature really envisioned when they passed the law. If you read the plain language description of the bill, it says this is a bill to regulate the manufacturing transportation warehousing of toxic substances. I don't think anybody understood at that time the auxiliary definition that said a warehouse, a research facility, and an office building has the same SIC code as the manufacturing arm that it serves. And I don't think people understood the comprehensive list of substances that was part of the dual test.

This is sort of like the IRS auditing everybody's tax return. I question whether or not the program as it is devised today is an intelligent use of both financial and the available human resources in a very serious era -- area. If, in fact, 71% of the application do not involve sampling, why are they in the program, and why are we spending time on these issues?

Now, there are a couple of solutions. I've written to Senator Lesniak suggesting to him -- I've not gotten a response from him, but let me make them here, because just to come down and complain-- The current time, if you have a case that is not one of low environmental priority, it will take 18 weeks for a caseworker to be assigned to you after you complete form 2. There are two forms in ECRA, form 1 and form 2.

The number of cases coming into the Department, at least based on the information given me, has exceeded the cases going out of the Department, for every month, I think, except one, which gives you a frightening idea of where we are headed. It is almost impossible to induce a manufacturer to come into this State to buy an existing facility if you can't tell him when that facility is going to be available. And, if there is a cleanup involved, there is no way to do that; and I don't know that the consent order is the answer because nobody will move into the building when the cleanup has not been determined. The consent order and a bond are in place, but if in fact the DEP -- there has not been an agreement as to the

cleanup plan, then would you move in and put equipment in place, only to find out it might have to be removed?

There's also an issue of fairness. It should be understood that this program does not say, "If you did it, clean it up." It says, "If you own it, clean it up." And I don't know what we say to people, who might be a 70 year-old man who 10 years ago, bought a new plant and rather than go out to a nice suburban industrial park - he'd run a business all his life -- he buys a 50 year-old plant in an urban area of New Jersey. Now he's ready to retire and sell his company. He's subject to ECRA. He does an analysis, and the site is determined to be a problem. But he didn't do it. Under this law, he must clean it up, even if it bankrupts him.

Now, I question the fairness of that particular doctrine. Why should that individual, just because he owns the building at this time, and because he didn't have the hindsight 10 or 20 years ago -- why should he be subject to this?

And secondly, what does it say about the redevelopment of our urban cities? I sit on the Governor's Advisory Commission having to do with industrial development of the Port Authority, and they recently came to us and presented a park that they wanted to develop in the City of Newark, New Jersey. And I asked them if they would test this site first to make certain it was clean. And they said no, they couldn't afford to. They couldn't comply with ECRA. They didn't want to. I said, "You mean we're going to bring in industries here, in a public -- we're going to invest public funds" -- and it was $5 million of the interstate -- in the bank from the intrastate, I guess it is, fund of the Port Authority-- And they said that every time that they test something, it costs them millions of dollars. So they were just going to develop this park, have people move in, and when those people leave, of course, they'd have to test, and if it was contaminated, they'd have to clean it up. Now, this is just plain not fairness.

Timeliness is an issue, as I said. It's easier today to induce a company to go to a nice suburban site that's never been used, perhaps it has been a farm, and put up a plant rather than deal with the issue of cleanup. Because what you should understand is that letters of non-applicability and cleanup plans are not estoppels. They aren't buyer protection plans; it does not prohibit the DEP from coming back at a later date and saying, "The cleanup isn't good enough under today's standards; you have to clean it up to a higher standard." Why shouldn't the buyer get to rely on that?

Now, a couple of ways we can improve this program dramatically: One is, it took about two years to get that list published; two-and-a-half years which eliminated some 75% of the industries that were originally covered by ECRA. I can't understand how it takes two and a half years to exempt travel agencies, newspaper, piano tuning and organ repair. I mean, I think it -- why it couldn't have taken a grand total of 30 days for somebody to recognize that travel agencies -- I'm not certain about newspapers, frankly -- but at least organ repair and piano tuning aren't major sources of pollution. And I can't understand radio and TV stations either, but they were part of the original bill. I think you can look at a program that 70% don't even require sampling as a program that is being spread -- is spreading the financial and human resources too far.

Number two, the auxiliary building definition. We're not covering just manufacturing plants; we're covering warehouses. A warehouse full of women's lingerie, if it has a fuel oil tank, is covered by this bill. Now, I'm not aware that anybody has yet been seriously harmed by these substances. The issue -- well, suppose the fuel oil tank leaks. Why can't minor cleanups, such as fuel oil leaks and other rather non-life threatening situations be done by the owner of the property under the supervision of a licensed

engineer, with that cleanup plan and an appropriate form sent to Trenton? Why does it require a caseworker to come out? We had a machine shop in Belleville that was 3,000 square feet. There was a fuel oil tank that was leaking. The application was complete in October of 1985. It took until March of 1986 for a caseworker to come out and look at this problem. The entire money tried up in the transaction, I believe, was less than $100,000. It doesn't make sense. It would have been better for the environment for that cleanup to have occurred at that time, rather than wait five months for it to be cleaned up, until a caseworker can be assigned.

There are people today -- industries today -- that tell me, when I say, "Well, why don't you go ahead and do it?" -- they say, "No, no. If we do it and we clean it up, we're better waiting until we sell the property, because if we clean it up now, the DEP may not like what we're doing and we may have to do it again."

So, if you eliminated the auxiliary definition, which is to say that warehouses, research facilities, and office buildings would not be subject to the law unless their principal purpose was storage or dealing with one of the substances on the list-- In other words, if they were storing as a principal purpose, toxic chemicals or materials that were hazardous, that's a different issue. But if they're storing women's underwear, computers, television sets, I don't understand why, even though agreeably, those things today get handled by the Department very, very quickly, why take up the time that should be spent on the more serious issues?

Finally, because I know I've run over my time, I agree that rules for partial sales need to be taken care of. And there's a simple solution to that. If you sell a piece of property, put up a letter of credit equal to the sale price until the cleanup plan done under the ACO is completed. After all, the reason that Senator Lesniak didn't want you to sell

the clean land is because you'll -- the DEP will no longer have that as security. Well, if they put up a letter of credit or a bond equal to the amount of the purchase price, they've in fact got better security. And I've been suggesting that for a year, and I don't know why-- I think there are simple, not complicated changes that could be made in this law that would not rape the environment, that would not hurt buyers.

Now, one last thing. The word "tenant" is not -- is nowhere appearing in these regs, in the law. Right now, if a tenant did it and the tenant leaves town, the landlord is held responsible. But there is no power the landlord is given to insure the tenant complies with ECRA when he closes down that establishment. In other words, a lease expires as of a date. What does a landlord do if the tenant hasn't complied with ECRA as of that date? The tenant is the operator. It gives the landlord no power. The landlord now has a tenant who hasn't complied with ECRA, a building he can't rent, and he hasn't done anything. He's done nothing, except that the DEP, as a matter of policy, will go after the landlord to clean it up. And that has happened, where tenants have disappeared and the landlord has been held responsible. And yet the landlord has nothing-- The law says that a tenant or an operator must comply with ECRA within so many days of closing -- announcement of the closing of the facility. Suppose he doesn't make the announcement until 30 days prior to the lease being terminated? What does the landlord do? What does he do? He's stuck. He's stuck.

Two last points. Any conveyances covered by the law -- that includes things like condemnation-- If, for example, the city -- a city condemns one foot of your property, and you were an industrial establishment subject to ECRA, you must take the entire property -- your plants and all your land -- through this program, and you didn't sell the property. I mean, it was an involuntary transfer. Is that fair? And is it practical?

It also applies to foreclosures. In other words, if there is a foreclosure and a transfer of title under the mortgage, the seller or the debtor is responsible for complying with ECRA the way it is written. Now, if he couldn't pay the mortgage, it's highly unlikely he's got the funds to clean it up. This, however, puts the lender in the curious position of having the State be able to void title at any time in the future. And this whole issue of voiding title is, I guess, the one thing that makes little or no sense.

In other words, if a buyer comes in and the seller fails to clean up under an ACO, and defaults; and the bond isn't sufficient, the Department's stated remedy is, well, we'll void the title, take the building and sell the building, and use the proceeds to finish the cleanup. Now, if there was anything that would shoot the buyer in the foot worse, I don't know what. A man has bought a building, and now you're going to take the building away. The seller has disappeared with the proceeds, and he not only can't clean it up, he doesn't have a place to conduct his business. And there is no time limit on this voiding. Either buyers or the State have the ability in perpetuity to void title for violations of this law. And if you want to know why 5000 people a year want letters of non-applicability, you can understand that having this cloud on-- You know, suppose a buyer just doesn't like the building two years later. There's nothing to prevent him from claiming or filing a lawsuit or claiming a violation of this law and, "I want my money back." It is not an appropriate remedy. There are $25,000 a day fines that-- Surely if somebody is willing to risk a $25,000 a day fine personally, I don't think voiding title is going to be something that they're going to have to worry about much further.

But you have to understand that we have a law against robbing banks. I don't rob banks, and I don't suspect any of the rest of you do, either. A law-- You know, we shouldn't

shoot honest people in the foot while we are protecting ourselves against bank robbers. I think most of the industries in New Jersey will do their part, but it's very difficult to do your part when you're trying to sell a facility and there is a cleanup, and it takes 18 weeks for a caseworker to get out there because they have to go and look at 3,000-foot machine shops in Belleville, New Jersey, where there's been a fuel oil leak that clearly could have been cleaned up by any competent licensed professional engineer, and logs filed with the Department based on some standard policy.

I apologize for taking up too much of your time, but this is a subject somewhat near and dear to my heart, as I guess you can gather.

ASSEMBLYMAN ALBOHN: Thank you very much, Mr. Houston. Really, you went four minutes over, but I think you were well worth listening to. Mr. Littell?

ASSEMBLYMAN LITTELL: You asked that everybody who speaks give us their comments in writing--

MR. HOUSTON: I will give you rather extensive comments in writing by the end of the week. I had hoped to have it today, but certain events occurring in the evening over the last week have made it difficult for me to get around to writing some of the things that I've-- (laughter) And it won't get done tonight, either.

ASSEMBLYMAN ALBOHN: You just haven't got your priorities in order, that's all. (laughter)

ASSEMBLYMAN LITTELL: We know what's near and dear to your heart now.

MR. HOUSTON: I'd be happy to answer any questions if anybody had them.

ASSEMBLYMAN ALBOHN: Well, I think we'll have to hold them until another day. I really want to give as many people here who want to speak an opportunity. We are going to have to quit at 12; the Assembly session starts at 12. So, thanks very

much and we'll look forward to receiving your testimony in written form.

MR. HOUSTON: Thank you.

ASSEMBLYMAN ALBOHN: Our next speaker is Mr. Rocco Guerrieri, from the Office of Business Advocacy of the Department of Commerce and Economic Development. Dr. Rocco Guerrieri, I beg your pardon.

D R. R O C C O G U E R R I E R I: Thank you, Mr. Chairman. I have copies of our statement.

I'm really speaking in terms of my role as Chief of the Office of Business Advocacy within the Department of Commerce and Economic Development, and also as the Executive Director of the Cabinet Committee on Permit Coordination, and Citizen Committee on Permit Coordination, which were established by executive order of the Governor.

In both of these roles, our office has been inundated with requests for education on what ECRA is, when ECRA applies -- just what is ECRA? -- and also, with request for assistance on how to get projects through the ECRA process. So, it's sort of an embarrassing role to be in, in that in most cases, we could help people quite a bit more than we've been able to do recently, and -- not only recently, since ECRA started -- in assisting and guiding people through the process. We're looking for things to hold out to people, too, to be helpful in our role in the Department of Commerce.

I think I want to emphasize two things at the outset: One is that ECRA is an effective law in achieving the basic intent of the Legislature. Sites with dangerous environmental conditions are being cleaned up, which is excellent. And second, we believe that the Department of Environmental Protection is absolutely trying to interpret it as being their mandate, given the manpower that they have available.

But the cause for great concern is the statistics on how long it takes to process things. I would have liked to

have heard these directly from DEP. I'm certain that you will, in whatever they submit for the writing, but within our Cabinet Committee Task Force meetings that we have, the kind of feedback that we've gotten is that it's 12-15 weeks wait for assignment to a case manager, up to a month for a scheduling of the case by the case manager of a site visit, 4-6 weeks to obtain letters of non-applicability; and up to a half-year for processing sites with minor problems, and much longer for sites with major problems. And these are averages; obviously, some people get things through quicker, but a lot don't meet these time frames.

As long as this occurs, we're faced with this situation which we've got to do something about. And the whole thing really boils down to the fact that it's complex environmental problems that the Legislature and the Environmental Protection Department are dealing with. The solutions aren't easy. We're an innovator in New Jersey in dealing with a lot of these problems.

So, one of the things that I believe is necessary are more focused standards by the Legislature in dealing with complex problems to the extent that they can. I know this is one of the goals of this Committee, to provide more focus where it's possible, to the regulators on any legislation. I think that kind of focus might be very necessary here. What standards should DEP be shooting to?

The Environmental Protection Department, because of the fact that the law went into effect I think about 45 days after it passed the Legislature December 31st three years ago, had to adopt emergency regulations which they're still operating under, with refinements. I think that whole set of regulations has to be substantially re-looked at in light of the fact that delays are occurring and perhaps -- definitely people are unnecessarily applying for ECRA clearances and non-applicabilities when they don't have to.

So whether that's something that the Legislature might change by modifying the law, or that Environmental Protection might change by modifying the regulations -- I don't care.

And of course, staffing needs, right from the start, put the program behind the eight ball. They've never had the amount of people that they should have had to handle the magnitude of this program, and we've heard Commissioner Dewling express his comments on that issue.

It was already pointed out the relatively minor changes in the SIC codes that have occurred, and that's about all that we've seen in two-and-a-half to three years under ECRA. It's time for a lot more changes.

I think the way to do it is, there's an ECRA Industrial Advisory Task Force that's in existence now, that some people in this room are on. This task force, however, really reports to Environmental Protection and advises them on what changes could and should be made in ECRA. It may be time to have a task force that reports to a legislative committee or a legislative body and takes it up a big step, because I really have the strong sense that the kind of input that's being received, and the kind of input that's being listened to, or the direction that's being applied, is to work within the legislative framework and tell us, DEP, how better to improve our process. I believe we have to go a giant step beyond that, and look at what changes also need to be in the legislative -- what legislative changes need to be taken. So, a committee similar to the ECRA Industrial Task Force, consisting of practicing professionals, business persons, environmental scientists, and government officials, to provide input to legislative amendments which would reaffirm the goals of ECRA while at the same time recognizing economic needs and practical limitations, I believe might be in order. And we in Commerce Department are ready to be part of such an effort, and otherwise help in any way that we can in the process.

Thank you.

ASSEMBLYMAN ALBOHN: Thank you very much. Do you have any questions, members of the Committee?

ASSEMBLYMAN LITTELL: Yes, I'd like to ask Dr. Guerrieri, do you know of any businesses that did not come to New Jersey because of ECRA delays?

DR. GUERRIERI: Without-- I don't-- That's difficult, because we all feel that there are. And, I certainly do, also feel that people early on in the process find out that the seller might not be able to pass clear title. So, I-- Definitely yes, but it's difficult to quantify, since they're not here by the nature of what you said, people who have not come to New Jersey because of environmental problems.

ASSEMBLYMAN LITTELL: But, you work with companies that want to come to New Jersey all the time. Have any of them actually said to you, "We're not going to come here because it's going to hold us up"? Aren't they glad to be coming to a State where they can ensure their employees that they are going to live in a cleaner environment, and have a better place to work because the environment of the place that they'll be working in is cleaner?

DR. GUERRIERI: I definitely -- you know, I hope I made clear in my remarks -- believe in ECRA, and believe in environmental protection, and am all for the intent of the legislation. I also strongly feel that in a lot of respects that if the seller can't pass clear title to a project, that there have been people who have been turned away, and, maybe for good reasons, or have not come to New Jersey because of that. But, you know, there are other sites that they could be steered to also.

So, it's not a problem that could (sic) be overcome. I wouldn't make that big of it myself personally.

ASSEMBLYMAN LITTELL: Somebody mentioned to me Toshiba. Was Toshiba a company that didn't come to New Jersey, or did come to New Jersey and had a problem with ECRA?

DR. GUERRIERI: They're here. They have come. I don't know that specific company whether or not they were worked through by administrative consent order; DEP could probably answer that better. But, the recent mechanism has been that an administrative consent order, which to some degree is working well, although it sort of does put a gun to the party's head, so it's not the ideal solution. But, to be honest, whether or not Toshiba initially was impacted by ECRA or not, I don't know.

ASSEMBLYMAN LITTELL: Well, maybe you could get us some answers for our next hearing.

DR. GUERRIERI: I will.

ASSEMBLYMAN ALBOHN: Thanks very much, Dr. Guerrieri. We're right on the button with you, it's ten minutes and no seconds. So, we'll move on to the next speaker. The next speaker will be Mr. James Morford, Vice President of the New Jersey State Chamber of Commerce.

J A M E S C. M O R F O R D: We hould lose weight if we're going to sit in these narrow confines. Good morning Mr. Chairman, and thank you very much for permitting me to address this panel on this important issue. I'm Jim Morford, Vice President of the State Chamber of Commerce. I'm also Executive Director of New Jersey Society for Environmental Economic Development -- New Jersey SEED -- which, as you know Mr. Chairman and members of the Committee, is a business/labor coalition dedicated to balanced economic growth in New Jersey.

For some time now, New Jersey SEED has had an ECRA task force, which has been looking into the problems of ECRA since its inception, and has developed a 13 point program for reform within the ECRA law, which I would like to highlight with you, at least this morning.

I do want to comment a little bit on Senator Lesniak's characterizations of the State Chamber's support before it gets reported in the papers, because I have said and will continue

to say that the State Chamber of Commerce applauds the concept and the purpose of ECRA. A business locating in New Jersey should be comforted to know that the site in which they're locating is in fact an environmentally clean or sound site. But, an overly long and tedious process, such as we've been witnessing under ECRA, may in fact cause some potential New Jersey employers to look to other states where their laws are more welcoming and can be expedited. The process is, unfortunately, too long under New Jersey's ECRA law.

So, while it is good in concept, it does have problems. And, we commend Senator Lesniak, not only for his sponsorship, but his continuing interest in this legislation. We have met with the Senator -- our task force has met with the Senator -- and we also facilitated and took part in a meeting between the Senator and Commissioner Dewling and his staff recently. And so, we are hopeful that with Commissioner Dewling's renewed attention, or his commitment to ECRA, that we are going to see some improvements come about in this program in the near future.

We are disappointed. And I think that ECRA probably is a very good example of one of the problems that we face in New Jersey with our Department of Environmental Protection. Because, when this law was being considered by the Legislature, the DEP, as it does with virtually every environmental proposal, opened its arms widely and embraced the legislation; endorsed it with great enthusiasm; did not, we suggest, adequately bring to the attention of the Legislature, the problems that it had to envision that it would have in implementing and managing a statute.

I suggest if the DEP had done that, and if the DEP could be urged to do so with future environmental proposals, that we would not face the kinds of management fiascos that I think we have seen under ECRA. Had the DEP not been successful in the Legislature, perhaps the DEP could have used its

considerable influence within the Governor's office to have an ECRA law conditionally vetoed -- or statute conditionally vetoed -- so that its implementation could have been phased in, or its scope could have been somewhat narrowed or limited so that implementation could have taken place in an effective way, and once established, then perhaps expanded to other areas. The attempt at embracing the world got the DEP in trouble on this issue, and I think it continues to flounder in some of that trouble today.

I do want to commend Commissioner Dewling, however, because since his assumption of the responsibility of Commissioner of DEP, I think he has worked very very hard to bring a concerted effort -- concerted attention -- to the ECRA problem, recognizing with over 300 cases not even assigned a caseworker that this was a truly unacceptable condition for a department of State government to find itself in. And he has given a great deal of effort and a great deal of time to addressing some of these problems.

And yet, we hear that one of the great problems is incomplete applications. That this is a -- I'm sorry, that applications -- yes, incomplete applications. At least one attorney has told me that he can document at least one case where this incomplete application problem has merely been a mechanism on the part of DEP staff to continue the process and to buy time and to delay making a decision. He's been able to point out in three communications where the area cited is specifically accurately completed, only to get it bounce back. One could call it bureaucratic ineptitude, another could say perhaps it is a deliberate attempt to avoid making a decision or moving a process if there is some question on that part.

I know that time is limited this morning, and I know that you have other speakers, and instead of highlighting each of the 13 points that we are concerned about, let me at least suggest them by topic, and submit to you, Mr. Chairman, in writing the--

ASSEMBLYMAN ALBOHN: That would be great.

MR. MORFORD: --somewhat expanded view. Certainly we could assert that on the whole, the statute has been a positive force in New Jersey. However, we recognize that escalating compliant rates, couple with increasing overload of the ECRA staff, particularly in the geo-technical area, are making it difficult, if not impossible, for full, accurate compliance to be achieved within 12 months of submitting a complete initial ECRA notice. A good portion of this time lag is found in the geo-technical review of submittals by the regulated community.

The absence of time deadlines: Specific technical criteria and specific cleanup standards have created a serious time problem within DEP. Although DEP says that this lack of standards gives it the flexibility to deal with specific site situations, it has been the experience of many of the regulated community that the standards are rigid, stringent beyond any other program in the State, and are of questionable technical basis. A major part of any amendment of ECRA -- or review of ECRA -- should require that that situation be rectified.

We are very much concerned that in future considerations of ECRA that we have a very clear definition of those kinds of transactions that are covered by ECRA, particularly the subset -- and the Commissioner addressed that -- selling a portion of a property. Back in January of 1985, SEED submitted a petition for rule making, and we asked for a timely response. That timely answer came from DEP in the form of a denial of our petition late that spring.

We're concerned with the involuntary transfers and stock transfers. And we're concerned, certainly, with the effect of condemnation, which Dave Houston so adequately addressed just a few moments ago.

We think that ECRA should be limited to specific real estate transactions. That the area of mortgage foreclosure should be addressed as questionable in triggering ECRA. We

must address the landlord/tenant issue. Again, Mr. Houston addressed that; I won't go into that in detail. We need to codify the administrative consent orders to at least make it clear in the law that these aren't acceptable mechanisms, because they are not permitted by statute nor in the regulations, and we fear may be subject to some kind of legal challenge.

We are concerned that ECRA recognize its relationship with other laws. If you are doing a site cleanup under another state or Federal statute, that that should be able to satisfy much of the need of ECRA, and not necessarily require a duplication, at least, in certain specific areas. The right to self-insure has been proposed by ECRA and DEP currently, but it's a very cumbersome, very costly mechanism. We think that that could be improved upon, but at least there is movement in that direction.

We are very much concerned with some codification of standards. Not necessarily how clean is clean, but when you have an ECRA standard that requires you to clean up beyond an ambient standard-- If you are in a brackish area of groundwater, and you've got to clean the groundwater to drinking water standards, it is impossible. It can never be done. If that water is by nature of its surrounding area brackish. The same thing needs to be recognized in the use of soil cleanups. There are areas that have been and are going to continue to be industrial sites. Do we need to clean them up to the same standards as you would in other areas that are perhaps residential sites, or something of that nature?

These are, in general Mr. Chairman, and in recognition of the time, some of the kinds of areas that we feel are desperately in need of being addressed. And, we recognize that Senator Lesniak is willing to work with the regulated community on addressing that. We welcome this Committee and we welcome the light that this Committee is focusing on ECRA. Thank you.

ASSEMBLYMAN ALBOHN: Thank you very much, Mr.

Morford. I think rather than allow questions at the moment, we're at 11:15, I'd just assume go on to the next speaker. The next speaker is Mr. David Farer, who identifies himself as an environmental attorney with emphasis on ECRA.

D A V I D B. F A R E R: Good morning, Mr. Chairman, members of the Committee. My name is David Farer. I am an attorney; I'm ECRA Committee Chairman of the New Jersey State Bar Association's Corporate and Business Law section, and I'm author of the book, "Complying With ECRA in Real Estate Sales and Leases" and I've written a number of articles, the most recent of which is in the current "Law Journal." I've lectured for the Institute of Continuing Legal Education, and in that regard I'm preparing a new book on ECRA compliance. And, I've represented a wide variety of clients in a number of ECRA submissions, from oil companies with major cleanup plans to travel agencies which had to go through a full ECRA because of an underground storage tank.

I'm testifying today though, I have to make clear, in my private capacity as an attorney. Given the time constraints, there was not the time available to obtain the necessary approvals from the Board of Trustees of the Bar Association for presenting a Bar Association view. And I know you will be hearing later from another attorney.

The objective, I want to make clear, is to make ECRA work. This is groundbreaking legislation. I'm proud that New Jersey is the first. And, I think what we've got to do is to make the law work. You know, Pennsylvania has a cut and paste version of ECRA, New York has legislation in the works -- when I say a version, I mean before the Legislature; it's not signed yet. New York has a version in the Legislature which specifically states that it owes its genesis to New Jersey ECRA. Other states are monitoring New Jersey. We are in the spotlight, and I think it's our obligation to make this law work well.

The regulations and the administration of ECRA have been much criticized -- I've not been among the least critical -- and the criticism is necessary to achieve the goals of fine-tuning the regulations and improving the efficiency of the administration so that sites are cleaned up in New Jersey.

I'll divide my comments into two sections: just some general comments, and some specifics on the ECRA trigger, which again I will deal with very briefly because of the time constraints today.

First of all, I think one of the most important aspects of ECRA is that it is the first law that attacks business transactions -- that targets business transactions -- as the trigger. But, the program does not have in it the number of people with business expertise, I think necessary to administer the problem correctly. I have a great respect for the environmental expertise of the individuals in the ECRA Bureau, of the DEP attorneys who know their environmental business from top to bottom. But, they don't, I believe, have the necessary business expertise to make these kinds of decisions. For example: Does ECRA apply in this specific transaction?

Now, you may know that some months ago, prior to the current Bureau Chief taking his position -- and that is Lance Miller, who has done a very fine job, as did his predecessor. There was a determination made that a lease of 25 years or more constituted an ECRA triggering event. That is, that that was tantamount to a sale. Well, this clearly goes against the entire history of property law, both in this country and in England, and, I think is the kind of decision that shows a lack of the grasp of the kind of basic real estate law that is involved in interpreting questions with the ECRA trigger.

I think the McGraw/Edison case, which was the case where there was a tender offer, and the Bureau immediately shot out letters saying that completing the tender offer was in

violation of ECRA if the law had not first been complied with, is another example of the failure to grasp the nature of a business transaction, which was a stock purchase. There was no way to stop someone from buying that stock. And the idea, I think, should have been to go to McGraw/Edison and ask McGraw to undertake ECRA compliance, instead of taking an aggressive adversarial approach based on, I believe, a misunderstanding of the basis of the transaction.

I think that if someone were brought into the Bureau, particularly on these non-applicability determinations, who have the kind of business expertise to make quick decisions, not only would it help the Bureau, but it would help the public in getting quick answers to the questions that are being raised.

The ECRA delays are legend; they've been dealt with today. It's very difficult to tell a client that they've got to languish with an 18 to 20 week delay for a site inspector to come out to a site, because we're dealing with clients who are used to being able to tell us, "You do the work, Farer you get the closing papers set, and we're going to close next week." Now, I have to go back to my client and say, you're not going to close next week, you're not going to close next month, you might not even close this year.

I think those delays will improve by the number of personnel who are going to be brought into the program. I know that Commissioner Dewling and Lance Miller are committed to bringing these individuals in. But, I think efficient use of time is another key tool. One does find applications being rejected on the basis of information not being present when that information is there, in fact. There are delays in sampling plan responses, where the sampling plan is fairly straightforward, and still there's a substantial delay in getting turn around and the review. One has cases where perhaps an inexperienced case manager is sent out to a relatively sophisticated and complex site. So, I think -- I

hope -- the audit will help -- the OMB audit -- will help direct the Bureau to correct the administrative problems within the program, but I don't think it's necessarily manpower alone.

The ECRA forms, I think, need to be redone in a way that will make them clearer. One sends in, for example, a map, and unless one has done quite a number of ECRA submissions, one doesn't know that the map is going to be returned with a note that says you haven't showed us where the paved and unpaved areas are. Why? There's nothing in the ECRA form itself that says, show us paved or unpaved areas, and this can be the basis for the Bureau kicking back and ECRA submission. This is just one example of the kind of delays that one can get involved with, which I believe can be improved.

Absence of precedence: You know, the Bureau is receiving this incredible backlog, or it has this incredible backlog because of the immense number of non-applicability submissions. One of the problems that I as an attorney have is how can I issue an opinion, or how can I assure my client that a particular transaction does not come under ECRA? There's nothing to rely upon. There's no precedent because the Bureau has not been publishing the opinions that they have obtained already. This, I believe, is going to change. Both Commissioner Dewling and Lance Miller have agreed that the important non-applicability determination should be made available. I, as ECRA Committee Chairman, have accepted the responsibility working with them to get those published in the "Law Journal" much in the way of an Internal Revenue opinion. So that attorneys can rely on the precedential value of an important non-applicability determination.

There are inequities that have been discussed in the application of the law. Problems between landlord and tenant are widespread. One quick scenario: Let's say a tenant leaves a property, thus triggering ECRA, then the landlord decides to sell the property. A very standard procedure, since when you

have a lot of the older leases the rent isn't particular good for the landlord, and therefore the return to an investor whose landlord want to sell to won't be particularly good. As soon as the tenant is ready to leave, the landlord wants to sell. Well, if the tenant's been operating for 20 years, the tenant knows all the information; the landlord is in a double bind in a couple of ways. First off all, if he wants to sell the property, he can't just piggy-back on the tenant, and if an ACO, for instance, is assigned, the Bureau will require just as much of a bond, or a splitting of the bond between the landlord and the tenant. Furthermore the tenant is in control of all the information available, really, as to the nature of the operation, and a landlord's hands are tied, as to what information can be made available. This has to be cleared up.

The minimum standards: The Bureau has, in the past, decided that minimal amounts of oil on-site are of a sufficiently small nature that they'll grant the non-applicability letter, for say 25 gallons use or less a year. They won't apply that same standard, or have not yet, applied that standard to something like one gallon of cleaning fluid. So, one could have one applicant getting a non-applicability determination on 25 gallons of oil, and another applicant being rejected on the basis of one gallon of cleaning fluid.

One also has some problems in inconsistency in Bureau decisions. Again, I think this is the result of the overburdened state of the Bureau and the failure to have these precedents set to date.

As to administrative consent orders, there are no substantive negotiations right now. And again, as has been mentioned, there really is not an administrative consent order requirement in the law. This, I hope, will be addressed by the Bureau.

The Bureau has yet to defer ECRA cleanups, or cleanup plans, which they are permitted to do when the use is going to be the same. I think this could help in reducing the backlog.

There are no cleanup standards yet, which is very important, because it means the Bureau can go on a case by case basis in determining what is clean. And one kicker provision in the law, which says that the Bureau has the right to make last-minute requests before granting approvals to negative declarations, which gives the Bureau the right at the last minute to ask for additional information, which they have used on a number of occasions.

Let me turn quickly to the trigger problems. It has already been mentioned, the auxiliary facility problem, where a company which has a warehouse, perhaps with furniture in it, if that furniture is being stored for use in a chemical manufacturing plant, the warehouse automatically comes under ECRA. So, if I represent the client who owns the property where the warehouse is located, and the warehouse is to be sold, we have to go through a full ECRA submission, just because that furniture warehouse is connected in a very tenuous fashion to a manufacturing plant elsewhere.

Another aspect of the law that must be worked on is the definition of what is closing, terminating, or transferring operations under ECRA. The largest of the triggers is the change in ownership, but another one is cessation of operations. And I've heard the Bureau try to argue that, for instance, where a manufacturing operation closed down, let's say 10 years ago, nothing's happened since, and therefore, technically the matter shouldn't come within ECRA, if the company simply starts knocking down the buildings at the premises, this constitutes a new cessation of operations, such as to bring that business under ECRA.

I think this is the kind of decision that should be clarified so that the Bureau starts to take only those cases which it can really deal with -- only the number of cases which it can effectively deal with.

Sale of a controlling share of assets: The statute says, and the regulations say, that sale of a controlling share of assets triggers ECRA. What's a controlling share of assets, and where? For instance, if I-- Let's use a major oil company -- has one particular storage facility, are we talking about the assets of that facility? And then, are we talking about the real property, or are we talking about personal property? Are we talking about inventory, or are we talking about machinery and equipment? This is a problem that comes up again and again. And the difficulty is it's tough to plan transactions when you're not sure what's going to come out of the Bureau in the way of a determination. Plus, you're dealing with a four to six week backlog in obtaining letters of non-applicability. And, as the members of the Committee have already brought up, we are facing a tremendous backlog within the business and legal community in closing out your transactions before the end of the year for tax reasons.

Inter-family transfers, and a number of other items have to be clarified by the Bureau. I believe these matters can be properly and will be properly addressed in the regulation redraft.

Ultimately, the problem is, as I've said, in planning transactions, and I hope that the Bureau will follow through as they have agreed to, and work with the legal and business community in redrafting the regulations, and in making this law work for all of us.

ASSEMBLYMAN ALBOHN: Thank you very very much. I think we're going to have to forgo questions again, with you. It's 11:27, but we may be back to you for more information if we may. I hope you'll be submitting your text of some sort.

MR. FARER: I will, indeed, submit my test with some elaboration.

ASSEMBLYMAN ALBOHN: Great. Thank you very much. I'm sorry to have to rush things along like this but I didn't

expect quite this much interest. I knew there'd be a lot, but not a roomful like this.

Mr. Robert Geiger, Manager of Environmental Affairs of Public Service, Electric & Gas?

R O B E R T A. G E I G E R: I'm sorry I don't have enough copies for everyone. (indicating written statement) The Xerox machine was a little tired on a Friday afternoon.

ASSEMBLYMAN ALBOHN: That's all right. As long as we have one here, why that's the main thing.

MR. GEIGER: Basically, as you said, I am Robert Geiger, Manager of Environmental Affairs, Public Service, Electric & Gas Company, and we appreciate the opportunity to be able to review with you some of the problems. I'll take probably five minutes to give you some examples of some problems we've had.

Let me stress, we endorse the objectives of ECRA, but as, with everyone else, I think, we've heard today, feel that changes are necessary in order to assure a more efficient and effective implementation of the program, and a need for flexibility. My remarks and examples will focus on the need for the Department to prioritize cases, and to provide for greater flexibility.

A first example typifies a number of cases which our company has submitted, which have little environmental impact, but have experienced protracted delays. For example, we are currently selling a four acre section of excess property off of a right-of-way. That piece of property has never been used for operations, where the remaining property would continue to be used in the same fashion as previously by our company. That is, as an electric right-of-way, with an electric substation on it, with its electrical switching equipment and its step-up and step-down transformers which contain mineral oil. Those equipments would remain in operation, as they have. The kind of equipment on the property has a very low probability of

failure, and when it does, it gets immediate attention. In such an ECRA case, where it's clear that the potential for environmental impact is low, and when the history of the operations of the site is known, one would expect a fast and efficient approval. Instead, in this case, an application was submitted on August 19th of this year, found to be complete, and to date has not yet been assigned a case manager. This transaction has already been delayed two months by this process.

In many other similar cases we've averaged a six to nine month delay in process leading to ECRA approval. It's recommended that a priority system in assigning sites previously established by the BISE be streamlined to allow those transactions with little environmental impact to be processed in an expeditious manner.

A second case illustrates the need for more flexibility in the regulations. Particularly where the handling of hazardous waste has never been involved. In this case, we were leasing a property for approximately 30 years, which was across the street from one of our Electric T&D Division Headquarters. The property was owned by a neighboring pharmaceutical company. The property that we leased was used exclusively to park company and employee vehicles. In order to insure the continued availability of that parcel as a parking lot, the company -- our company -- entered into negotiations for its purchase. First it was suggested there would be a need for an ECRA review of the selling pharmaceutical corporation's property. That, of course, was not received favorably by them. Then it was thought, perhaps, an ECRA review of our T&D Headquarters would be sufficient. Recognizing that both the existing operations would continue unchanged, including the parking of vehicles, and that the buyer -- our company -- was willing to accept responsibility for the environmental conditions of the property, a status of non-applicability of simplified ECRA review should have been sufficient one would

have thought to satisfy the the Bureau. However, to date, the Bureau has disallowed the subdivision and the opportunity to purchase the property was withdrawn by the seller. This seems to be an inappropriate waste of the Department's resources, and an inappropriate interpretation of the intent of the Act.

Another example focuses on the need for clarification of the word owner/operator as to who's responsible in the landlord/tenant situation. But, here we're coming at it from the other end. A specific case involved PS and large air conditioning equipment manufacturing company that owned a 125 acre site which had its manufacturing facility on the site. We were the tenant. We leased a small area approximately .4 of an acre for our electrical transformer and switching equipment to service the manufacturer. The property was sold by the manufacturer after a negative declaration was granted. However, a request by the DEP for refiling was made after it was discovered that PSE&G was a tenant on the property and operated a small substation there. After a one year review and delay, an ECRA clearance was given the second time. All of this was for a case where there was no real environmental problem, nor was there any change in our company's equipment or method of operation.

Finally, as a suggestion, we feel there is a need to include in the regulation procedure for the withdrawing of an ECRA application. This item has been overlooked and omitted by the authors of the regulation.

In summary, our company supports the basic objectives of ECRA, along with, I'm sure, many other if not all other industrial firms in the State. However, there is a critical need to revise the regulations to provide more flexibility in their interpretation and to efficiently and effectively administer the program. Thank you

ASSEMBLYMAN ALBOHN: Thank you very much, Mr. Geiger. I appreciate also your written testimony which we will include

in the file on the case. And everyone, it seems to me, poses some interesting new questions. And, I think we're going to have as long a list of questions as there are remarks. But, undoubtedly we'll be back with DEP. I don't know, I think I saw Commissioner Dewling slip away. I don't know if John Trela is here or not. But, in any event, we'll go on then, and thank you very much. Mr. Edward Hogan?

E D W A R D H O G A N: Thank you Mr. Chairman. I appreciate the opportunity to be able to address your Committee today. I'm an associate of the law firm of Lowenstein, Sandler, Brochin, Kohl and Fisher, in Roseland, New Jersey. I've handled about 100 ECRA-regulated transactions over the past three years. I'm also Chairman of the Environmental Law Section of the New Jersey State Bar Association. Today, however, I testify solely on my own behalf, not on behalf of my firm, the Bar Association, or any of my clients.

I will address my comments today to the two broad issues that you have identified as part of the topic -- applicability and procedures. We've heard a good deal today about non-applicability letters, and the difficulty that they had posed for the department. It's been cited that there are some 5000 non-applicability letters requested a year.

I would suggest that those non-applicability letters are not the problem, but the manifestation of the problem. The problem is that the ECRA statute is deceptively simple. Many of the problems that had revolved around the ECRA issue have resulted from the fact that no one can read the statute and know clearly whether a situation is covered by the statute or not.

This is not a new problem. I raised these issues when I testified at the original enactment of the ECRA regulations in February of 1984, when I testified before the Assembly Oversight Committee in October of 1984, and had articles in the "New Jersey Law Journal" in 1984 -- in February and November

The problem then and the problem now is that the ECRA statute requires hundreds of policy decisions as to what is an industrial establishment, and more importantly what is a transaction.

The Department has made those decisions on a case-by-case basis. To the Department's credit, it has dealt with an extremely complex area -- defining what kinds of facilities are subject to the statute, how to deal with central administrative offices -- a position which has wavered from time to time in subsequent policy announcements of positions taken by the Department. It has had to deal with many, many different kinds of transactions -- stock transactions, foreclosures, subdivisions, and all those various kinds of business and real estate events. It has tried to define when the statute should be applicable or not.

Unfortunately, the Department steadfastly and repeatedly refused to promulgate regulations. The Department has been overwhelmed with the caseload, but has not received a committment or the support to move forward and be able to promulgate regulations on a regular basis, when different policy positions are taken.

At one time, for instance, the Department had taken the position that long-term leases were not subject to the statute. It subsequently issued a policy position not published -- an internal document that was available if you requested it, but now widely distribured -- which had changed that position. It subsequently, I understand, withdrew that position.

Without complying with the Administrative Position Act, there's no opportunity for public comment -- to be able to have some imput into the Department's position. But more importantly, there's no opportunity for public notice, nor any ability to rely on regulations. In many, many transactions there are complex issues that arise. In fact, any major

transaction has an opinion of counsel. The problem with opinions of counsel is the counsel has to be able to look at some statutes, regulations, or case law and be able to define whether a statute applies or not.

In this kind of a situation, where the Department of Environmental Protection does not follow procedure, it can change a policy position either at a published policy statement -- of which it has had a dozen or so -- or in hundreds of non-applicablity letters where it's taking different positions.

There's no way to be able to accurately gauge whether the Department has changed its position or not. That's why the Legislature enacted an Administrative Procedure Act. But the Department, because it has had a change in flexible program, has made these positions and there's no ability to be able to point to some particular position and so, in fact, that is the position now. If the Adminstrative Procedure Act were followed, there would be notice beforehand in the "New Jersey Register"; one would know there was a proposal pending; one would have hearings, have public input, and know if the transaction were covered or not.

As a result, the banks and the legal community has not been able to apply our transactions, and hence, ask the Department for these no-action letters, the so-called letters of non-applicability. Whether in fact, they have a legal basis is rather fascinating. One that the community is not really interested in asking. In fact, I understand that only the Attorney General can bind the State. Everyone wants to rely on these applicability letters, and I really question whether they have much authority, in fact, to stop the Department in the future.

But in any event, it's the best thing anyone has. The problem is whether they're published in the "New Jersey Register," whether they're made publicly available, it's still not going to solve the problem. The basic problem is that for

three years we have not had regulations, and the Department has had an evolving process. With all due respect to the Department, the Department has been working for the last six months on promulgating regulations.

Despite my frustration for having suggested this for two-and-a-half years, that the Department promulgate regulations, I'm hesitant to suggest that the Legislature should intervene in that process. I think the process should go forward. I think, however, the Department should have the full commitment of resources, not to be distracted on its day-to-day caseload, which is tremendous, and in which there is a tremendous backlog.

But rather, I think, there should be an increased commitment from different levels in the Department, not simply on the Bureau, not simply in the Division of Waste Management, but from the Commissioner's office, and the Office of Regulatory Services, to provide the support needed to intergrate those hundreds of decisions into a fully comprehensive regulatory program.

That can't be done with just a few staff people, but it's going to require legal input. It's going to require a massive regulatory undertaking. But until those regulations are in place, the uncertainty is going to continue to exist.

I don't suggest that those letters of non-applicability are the problem. It is, in fact-- There is a failure to have had measurable standards by which one can measure where the statute stands and where it goes. A more subtle problem, even from the fairness problem, resulted from this failure to promulgate regulations. It's the fact that there's probably massive non-compliance with the statute. Seventy to eighty percent of the transactions, I understand, are sales or transfers.

In those types of situations, I understand, there is an institutional mechanism to force compliance. Transfer title

companies do not want to insure title attorneys. They have to request letters-- They have to issue opinion letters that have ECRA exceptions. The transaction is highlighted for the Department. Someone has to go forward. There are pressures to move forward and to comply with the statute.

In closures and cessations of operations, however, there-- I've run into a number of situations where they're subsequently selling the property and subsequently closing the property, and there had been a earlier closure of operations covered by the statute, for which there was no compliance.

I suggest the reason there has not been compliance at that time is that the institutional mechanisms weren't there. That is not, however, to distract the fact that the institutional mechanisms should drive the compliance with the statute. Rather, the statute should be clear, and should be fairly and completely enforced. It's unfair to the companies that do comply to have companies that don't comply, and to have the Department not follow them through.

Part of the fact that the reasons that there has been the institutional pressure, this interregnum effect, has been from the voiding -- a situation which Senator Lesniak indicated does not make a great deal of sense. Again, it's been pointed out by a number of the other speakers today that it's perhaps not a very valid remedy that would be used regularly. In any event, it's not the way a compliance process should be drawn. A compliance process should be fairly and equitably done, and enforced with clear standards.

As to other issues that have been addressed, clearly the definitions need to be clarified. Procedural issues need to be addressed as well. I think the most important procedural issues outside the applicability area are in addition to the voiding, the partial conveyance problem -- that is a large industrial tract which wants to sell off a clean portion. I would suggest that the motivation in many, many of those

situations is not to avoid the statute, but it's in fact to allow that portion to be revitalized -- to be sold.

But it's not in the economic benefit of a large company to force itself through the large ECRA compliance effort, really to sell off a small parcel. In fact, that small parcel is usually more to the benefit to the purchaser than it is to the seller, who is going to bring in some new life into an otherwise unused corner of the facility. I suggest that something has to be done, in that the seed for submitting a proposal two years ago, which the Department has not acted on-- That should be addressed.

Finally, the landlord tenant issue is one which will not be addressed in the regulations according to representatives of the Department. Everyone is focused on the poor landlord, but when a tenant closes it goes both ways. The statute is triggered even when the landlord sells fee title to the leased parcel, and the tenant continues in operations.

Without some allocation as to both the obligations of the landlords and tenants to comply with the statute's paperwork provisions, no less the substantive provisions of allocating substantive responsibility-- Those issues need to be addressed, and I think the Legislature has to address the intergration of those concerns with the ECRA statute. They are very difficult issues, but issues that need to be addressed in one form or other. Because the statute can be triggered by the landlord or tenant, and the substantive problems can be created by either the landlord and tenant. But compliance is not possible unless both the landlord and the tenant cooperate to insure that the compliance of the statute moves forward.

I will not address in any great detail the issues addressed by previous speakers as to the procedural issues and backlogs, except to say all of these problems are not due to the staff. The staff has worked very hard. The present staff

and the prior staff that are building the ECRA Bureau have done a tremendous job, put a tremendous amount in, have worked to assist industry. However, they are consistently understaffed, have not had the other support that is necessary, and have tried to deal with the day-to-day crises that they often face without looking at the larger issue, which would really help solve their problems -- the substantive regulations that would really set forth the standards of the program. Thank you very much.

ASSEMBLYMAN ALBOHN: Thank you very much. Moving right along-- Mr. Harry Moscatello, of the Accutech Environmental Service -- the president of Accutech.

H A R R Y M O S C A T E L L O: I note that you have 15 minutes remaining, if you're going to stay on your schedule.

ASSEMBLYMAN ALBOHN: I'm going to try.

MR. MOSCATELLO: In heed to Speaker Hardwick's call to join upstairs-- So, the three speakers remaining-- I'll try to limit myself to five minutes. Many of the points that have been made deserve emphasis and repetition. But I'm not going to try and redo everything that has been done here.

First of all, my firm specializes in helping people get through the ECRA process. I've represented approximately 100 clients in their efforts to gain negative declarations with ECRA. Most of my clients are of the small business type, and they're clients that are completely overwhelmed by what appears to them to be an extremely difficult process. But with the right help and the right kind of situation, that is a reasonably clean site with low environmental concern, I have found that a properly presented application can move through the process in as quick as two months. That is from a submission -- a general information submission -- a site evaluation submission and a negative declaration. I'd like that point to be emphasized as you review this program. I think what it underscores is the fact that preventive action on

the part of property owners is extremely important. I think it emphasizes that preparing properly to go through the ECRA process is critical.

I also think it emphasizes that the process does work, the staff does perform and does turn around applications when they're properly presented. On the other hand there are cases that due to extensive pollution on the site should require a long time and an extensive review, and they do.

The administrative consent order, I believe, will take care of those situations. There are legal problems associated with it. I'm not qualified to address those. The attorneys that have appeared here have touched on them. It leaves un-dealt with the smaller businessperson who has as an environmental problem -- perhaps a leaking underground storage tank. That person is usually someone who is liquidating an asset -- an manufacturing company in a building that they've worked in most of their life. They find that they can't achieve this easily and they're frightened, they're concerned, and they don't understand why the leaking underground storage tank is such a major problem.

It's those kinds of people who are inappropriate for the administrative consent order. It's too expensive a process for them, and usually their properties are not of the kind of value that supports that approach. I think a mechanism has to be developed that provides some relief for that type of person, so that they can close their transaction, liquidate their asset, and reserve sufficient funds to take care of a leaky, underground storage tank. The amounts often put forth in an administrative consent order for that kind of problem approach $1 million. It's just not appropriate for a person who's liquidating an asset worth a half a million dollars. Usually, leaking underground storage tanks do not require anywhere near that amount of money to remediate the problem. So I think some legislative direction, or perhaps administrative

direction is more appropriate, but some focus should be given to that kind of person.

A couple of people before me mentioned the lack of standards. I think it's a real problem, not only in the ECRA program, but in others. If you saw yesterday's New Jersey section of The New York Times, there was an article dealing with the "How Clean is Clean?" issue. It has to be dealt with. It produces a great deal of uncertainty to business transactions that are going to be subject to ECRA. The uncertainty can be better handled by the business community if they know which standards are going to be applied to their particular piece of property.

I'd like to emphasize that the standards should be developed with as much public participation as possible. I'm not sure that's taking place now, as DEP is reviewing the clean-up standards that they will apply. I think the more public participation we have early on in the game, the more likely it is that a regulated community is going to accept, endorse, and understand the standards sufficiently to apply them to their day to day business transactions.

Since I represented primarily the smaller businessperson, I thought I could bring to you some of their most commonly voiced complaints, which I hear all too frequently. First of all, the standards problem is a real concern on their part. They don't understand why they have to clean their soil to a hundred parts per million of total petroleum hydrocarbon contamination. I am hard-pressed to provide an answer based on the health literature to that concern. So that question comes up frequently.

Many manufacturing concerns feel that they're being treated unfairly, in that they have to undergo what is sometimes a very expensive process for them, because they're in a manufacturing industry and they have an underground tank but they don't use any other hazardous substances to speak of in

their process, while the gas station down the block, or the scrap-yard around the corner that has some gross contamination problems is not handled by this law. I hear frequently from people that it's unfair and they'd like to see that changed.

I mentioned the need for a mechanism other than the ACO for the smaller type of transaction, that would allow it to close and still reserve some funds to clean up what minor problems might exist. I think that's important. Probably most important though--

I'd like to suggest that having heard as many people as I heard emphasize the need for information, I'd like to suggest that the DEP and the Legislature, if appropriate, do something to bring the business community together with the regulators in forums where information is exchanged, so they understand before they have to go through ECRA what they'll be facing. I think it will enhance the goals of the program, and tend to reduce the stress that now embodies the program.

I know when the Federal government instituted some of the new regulations under the Resource Conservation and Recovery Act dealing with hazardous waste at the Federal level, this was done quite frequently. There were some ECRA seminars that were held when the regulations were first adopted, but I don't think there has been a great deal of activity in that arena lately, and I think there should be. The telephone lines are busy. People can't get answers that easily when they try to.

I think more meeting and more exchange would be very helpful. Especially now that the draft sample plan is being distributed to people. I think we need a mechanism to interact with the DEP about that draft sample plan, and produce some dialogue about it.

I think I've gone beyond my five minutes, so--

ASSEMBLYMAN LITTELL: May I just ask him one question?

ASSEMBLYMAN ALBOHN: Sure.

ASSEMBLYMAN LITTELL: You talked about somebody with an oil tank on a property, but nothing else that complies. You mean to tell me they have to go through the whole process just because they have a 550 or a 1000-gallon fuel oil tank in the ground?

MR. MOSCATELLO: They'll have to submit the same applications that a larger facility would to handle it.

ASSEMBLYMAN LITTELL: Even if everything else is exempt?

MR. MOSCATELLO: If the tank failed, they would be--

ASSEMBLYMAN LITTELL: Suppose it didn't fail?

MR. MOSCATELLO: If it didn't fail they would be eligible for exclusion from a sampling plan if they had no other problems, but they would have to prove the integrity of the tank.

ASSEMBLYMAN LITTELL: They have to prove the integrity of the tank?

MR. MOSCATELLO: Yes

ASSEMBLYMAN LITTELL: So you do have to go through the process?

MR. MOSCATELLO: Yes you do.

ASSEMBLYMAN LITTELL: File an application?

MR. MOSCATELLO: Yes you do, and you would have an inspector come out to the site to determine that the application was properly presented.

ASSEMBLYMAN LITTELL: Even though everything else might be exempted automatically under the regulations?

MR. MOSCATELLO: That's right.

ASSEMBLYMAN ALBOHN: It's the old story of oil spill control. You never know until it happens that it's underground. We could get into a lot of discussion here, but I think we'd better go on. We have Mr. Reinauer and Mr. Jim Sinclair. We'll try to get them both in, unless the Speaker comes in and subpoenas us.

B. F. R E I N A U E R, III: I'm going to be brief. We'll give you the first-- I'll send you some remarks by Friday, and we'll go with that. I come to you this morning as the Chairman of the Commerce and Industry Association of New Jersey. We're a general business association with 1400 members, primarily in the northern part of the State.

At the outset, let me just say that our association supports the goal of a clean and healthy environment. We are as concerned with any toxic waste, radon, clean water and air pollution as anyone else. Our concerns are for the problems caused by what appears to be a lack of realism in the administration of ECRA by the Department of Environmental Protection. Without a realistic approach of that which the law purports to achieve, namely a clean and protected environment will not be achieved.

Our State is now and has been for decades, if not centuries, one of the most heavily industrialized states in the nation. Unfortunately, no matter what we do now, the banks of the Passaic, the Raritan and the Delaware will not be as clean as they were when the Lenape Indians pedaled their canoes and roamed the forests looking for game. Gone are the snows of yesteryear.

Where is the solution to the confusion caused by ECRA? We recommend the DEP immediately set attainable standards, taking into account the past, present and future use of the property. The standards for groundwater under Newark should not be the same as the standards for groundwater in Warren County. Regretfully, they are today. And in being so, time and money is being wasted in an attempt to do what in theory may be possible, but what in practice is impossible.

Every political entity in New Jersey has zoning maps. These can be used to determine where standards should be applied. The heavily industrial zones should be require to meet certain standards. The commercial zones should be

required to meet a different standard -- residential standards and so forth. You can see how this would apply across the whole State.

Standards must be attainable, realistic, and procedures for meeting such standards must not be overwhelmingly costly. These standards must be codified. As it is practiced by the DEP, currently policy is changed arbitrarily. You've heard that this morning over and over again. In fact, much of this is a rehash of what has gone on before. We're simply supporting what has already been said. Speak to anyone in the process of gaining an approval, and he will tell you that what the DEP required him to achieve changes periodically, seemingly depending upon the whim of the official being spoken to.

The second recommendation is to reorganize the technical review procedure, so that as to provide for quick response, and a timely decision. Again, we're supporting what has already been said this morning. As it stands today, the response to any question takes between 10 and 12 weeks. Frequently that response is incomplete and provokes another question, beginning the cycle all over again. There have been instances -- and you've heard them this morning-- where it has taken -- I've heard -- 20 weeks. I have 17 down here. I guess it can range from whatever you want to say as far as getting a case manager assigned to the whole thing.

The answer to this problem of timely review is not necessarily to hire more people. We've heard that this morning. The answer can be found in the acceptance by the DEP of the reports of the certified laboratories hired to analyze the soil and water samples, and of the reports of the licensed independent environmental engineers charged with the responsibility of drafting cleanup plans and procedures. As it stands today, both of those professionals' work is questioned by the DEP, and many, if not most of their reports,

calculations, etc., are rewritten, or recalculated, or what have you, by the DEP at additional expense and time delays.

In summary, permit me to repeat that our association supports the efforts of those committed to a clean environment. Further, we believe that that which is clean deserves special protection as a valuable resource for now and the future. Our concern is for the continuing prosperity of our State, which is being threatened by the confusion attending the enforcement of ECRA. You asked before if there is a name that can be given to you of a company that did not come to New Jersey because of ECRA. I will get that name for you. There is one, and I know someone who knows the name.

We believe that much can be done to relieve this confusion immediately by setting attainable standards. Again, you've heard this over and over again. But take into account the past, present and future use of the property. The technical review process had to be reorganized so that it is more timely.

We've heard here today how there have been delays of-- As much as a year was mentioned. I can one that has been over two-and-a-half years. The initial application submitted was complete. What happened is it went down there, and in it's review it was determined not to be complete by the reviewer, who had been on the job for two-and-a-half weeks. It came back, and it was all there. He was looking as far as page 33 and it was on page 43, or whatever it happened to have been.

This is where the problems often delay. You wonder sometimes if the DEP does not want to make the decision. Also, take particular note of this administrative consent order. Because, in fact most businesses cannot raise the $1 million -- that's the average. "The New York Law Review" -- I think it is -- or "Law Journal" had an article about that about three or four weeks ago. It is about $1 million. For the most part, small companies cannot raise $1 million to get on with their

business, sell their property, or transfer ownership. Okay? I'll send you some materials.

ASSEMBLYMAN ALBOHN: Thank you very much. Jim Sinclair?

J I M S I N C L A I R: I realize you have to go upstairs. I'm Jim Sinclair, from the New Jersey Business and Industry Association. I'm Vice President. I realize that you may have to stop this all of a sudden, so I'll just go on and say what I have to say.

I won't tell you about the company that spent $1 million on the process of ECRA. They thought they had a clean site. They sold their site; or they committed to sell their site. They took it to ECRA. They fooled around for a year-and-a-half, went through a lot of sampling plans and a lot of things, paid a penalty of $90,000 a month to the buyer of the property because they couldn't convey it, spent a lot of money on attorneys, sampling, and stuff like that. At the end of a year-and-a-half ECRA told them they had a clean property. It cost them $1 million to play in the game. That was $1 million that didn't do anything that they lost.

I won't tell you about a company that -- a multi-state company on the East coast that was going to be purchased by the employees. The family was going to sell the company. They were all set to go until they discovered that there was this thing in New Jersey called ECRA. The people in ECRA told them that they would have to put in, I think, $3 million -- which was more than the sale of the company -- as a bond. So, that was a sale that didn't go through in New Jersey -- the New Jersey portion of it. That company still is in New Jersey. Whether it is in the rest of the United States the same company, I don't know. But as far as the New Jersey portion, it exists by itself.

I won't tell you about a company that tried to save a floundering company. This is a major New Jersey corporation

It had a floundering company that was nearby, and said, "We need what they're producing. We think we can make this go." They bought the property. It has an ECRA problem. They tried to make a go of it for a year-and-a-half and failed. Now they have the corporation. They're still in the ECRA review process. So they've gone through the whole cycle of purchasing the company, operating it, failing it, and still haven't gotten to the point of determining what the ECRA cleanup is going to be.

The problem is not with the staff of ECRA. You've heard that this morning. These are really good people who are trying to do a good job. They can't be classified as bumbling or inept bureaucrats. They're not. They're really high-powered, as good as State employees that we have and probably better than most.

What you have is the framework. The problems are embedded in the enabling legislation. There isn't anybody in this room that could do a better job of administering the program than the people that are doing it. The problem is in how we set it together, the framework of what we're asking them to do. We're asking them to certify, to say, "This is absolutely clean."

No wonder nobody makes a decision. No wonder the only person that really ultimately makes the decision in the ECRA Bureau is the bureau chief. That's not a bad thing, except that it takes forever, when you have one person making thousands of decisions.

I had people call me up all the time on ECRA. We have 11,000 member companies in the Association, and most of the people that are covered by ECRA eventually get around to calling me up and saying: "What is this? Why are we doing this? Why are you delaying the sale or conveyance of this property?" They say, "I've been trying for three months to talk to the bureau chief, and the same morning I get a call

from people in the neighboring state saying, "Who is this person who is the chief of the bureau that's here testifying on what a wonderful and effective program New Jersey's ECRA law is?"

It's a little disconcerting to wonder about the State employees traveling around the country saying how good our program is when our program isn't good. It has real problems in terms of the implementation.

Now where do those problems come from? They come from what I consider a contract. The Legislature thinks of good ideas. Senator Lesniak has a good idea on how to solve a problem. He thinks it's a good idea. It goes before the Legislature. Everybody says: "Yes, this sounds like a good idea. We want to clean up all this hazardous waste on properties."

What are the ramifications of this? The Department comes in and says: "Yes, this is a good idea. This is another tool. This is another tool that we have to do what we're supposed to do -- protect the environment." Nobody asks what's the implication of using this tool? How much is it going to cost? What's the time frame for implementation? What can we expect? Who is it going to impact on? What are we really going to accomplish? Nobody asks that? You don't ask that, and you should ask that.

You should asking on major legislation for an implementation plan. You should say that the administration-- If the administration supports something, they should be willing to come up to you with the analysis. Or, if it's too complex or too costly, you should be willing, under a separate piece of legislation, say: "Study this. Give us an implementation plan on what are the alternatives. What's going to happen here?"

There are other ways to accomplish what ECRA sets out to do. We're talking about stewardship of industrial land.

We're talking about using industrial land, conserving it, and making it safe. What we have done with ECRA is develop an anti-urban policy. You don't know that, and I don't know that, because we don't have the analysis. That's my gut feeling. My gut feeling is that existing industrial land is being voided for reuse for industrial purposes except in very special cases -- on the Hudson River waterfront, where economic conditions are really driving it.

But that's not what we're concerned about. We're concerned about, you know, XYZ Chemical Company changing to some other chemical company. We want to see those jobs stay there. We want to see the land properly maintained. I think you need that kind of commitment. I think you need a plan on how you're going to implement the program. I think you need to think about what you're going to do, what you're going to accomplish.

This didn't have the public discussion. This ECRA program just sort of wandered through while everyone's attention was on "right to know." And if anything ever deserved the Sunset Law, this program deserved the Sunset Law, so that we could really think about what the policy implications are.

Having this come before your Committee, we're thinking about how we can correct, administratively, what is imbedded in the enabling legislation, or legislatively tinker with a good idea. I think that we really need to rethink what the idea is, what we want to do in terms of stewardship, and start right at the beginning at this process.

We have a lot of people that have investments in it. There are a lot of attorneys, a lot of consultants. A lot of them are here. They're very good. They know how to deal with ECRA. I advise people when they call me up. I advise businesspeople that are involved with ECRA, "Find yourselves somebody that has done this before." That shouldn't be the way

the world works. It should be the way where any citizen can come in, understand what the law is and how to use the system, and understand the forms, and deal with the bureaucracy.

Especially the system that is paid for by the user. If we were going to purchase any other service, we would expect to get an answer within three months to a question on a telephone. We would expect to get good feedback. We'd expect to get a good turnover.

The goal of this program when it's all done -- under the new OMB thing, is to get the time frame down, for the people who aren't affected, to four months. That doesn't seem right to be, that it should take four months for somebody that isn't affected. I'm not talking about the non-applicability. I'm talking about somebody that has a clean site, that hasn't any of the things, that just happens to be in the SIC codes, that has no problems.

We need to think about what we do. We have the DEP coming before the Legislature supporting a lot of good ideas. Wetlands is another example. Wetlands is ECRA in the making. Wetlands has exactly the same problems. Exactly the same problems as ECRA, because of non-applicability. You know, every time you do anything you have to say, "Gee, am I in the wetlands or am I not?"

This is the thing with ECRA. We could have done-- If we would have used the framework of this and said: "Gee, this is a good idea. Let's figure out what the standards are going to be. Let's figure out what the administrative procedures are going to be. Let's phase this in. Let's implement it two years or three years from the date, then we could have worked our way through and had an implementable system when we went on-line." Instead we-- Everybody felt good about: "Gee look what we did. We protected the environment."

Well, what have we done? We have all these ACOs out there -- Administrative Consent Orders -- for millions of

dollars. Then DEP comes in with their telephone book about what they're doing and saying: "Well, forget the Superfund sites, where we are. Look at what we're doing with ECRA. ECRA is a really great tool, because we've got these millions of dollars of administrative consent orders that people have consented to pay to do cleanups." I say, "Well, what is the relationship of those Administrative Consent Orders to cleanups?"

If you wanted to sell your property, and you had a multi-million dollar property, how much would you commit to paying in an Administrative Consent Order to get the project through? You'd say, "You know, whatever it takes here, whatever is going to make sense, count me in. I'll put it on there."

Where is the negotiating process? Where is the thing that makes sense? Where is the cleanup? I don't know. I can speak for a long time on ECRA. I have a stack of telephone messages that I've collected over the last year, of people calling up -- small businesspeople, big businesspeople. There are only two kinds of people that I've discovered in the world. There are people that have absolutely no idea that ECRA exists. And then there are the other people that are somehow involved with the process, and it becomes an all-consuming thing, from the environmental person in the corporation to the chairman of the board. It needs to be dealt with in a much more logical way.

ASSEMBLYMAN ALBOHN: Thanks very much, Jim. I was afraid they were going to be calling for an investigation of the Legislature too. It wouldn't be the worst idea. But in any event, we'll continue this kind of discussion in three weeks, on November 17, at 10:30 a.m. We'll run until about 1 p.m. that day. In the meantime, if you have testimony or comments or statements that you'd like to submit before Friday, they'll be in the record for this meeting. Other than that,

they'll have to be held until the next meeting.

Thank you very, very much for your attention and your attendance.

(HEARING CONCLUDED)

APPENDIX

Sierra Club
NEW JERSEY CHAPTER
360 Nassau Street, Princeton, N.J. 08540
(609) 924-3141

Testimony presented before the Assembly Regulatory Efficiency and Oversight Committee hearing on permit delays in the Environmental Cleanup Responsibility Act (ECRA) program, October 26, 1986.

My name is Ian Walker. I am Chairman, N. J. Chapter, Sierra Club. Thank you for this opportunity to comment on the ECRA Program.

The Sierra Club strongly supports ECRA because:

- It requires significant cleanup of wastes that threaten the environment and public health;
- Those responsible for creating the problem are obligated to clean it up; and,
- ECRA constitutes a major incentive to manage properly hazardous substances and wastes, and thereby avoid future problems.

We are also aware that there are several aspects to the ECRA program which, at least at the outset, tend to guarantee confusion and controversy. Those aspects include:

- The large number of applications which challenge DEP management and staff;
- The risk to applicants of heavy penalties, including fines and potential voiding of transactions; and,
- Cases where significant cleanup is necessary require considerable time and resources of the applicant to affect a solution.

ECRA hearing
October 27, 1986

The Sierra Club urges that relief to the problems occasioned by ECRA be sought through improvements in the efficiency of the program, rather than through any fundamental change in law or regulation. To this end, we understand that the Office of Management and Budget (OMB), Department of the Treasury, has undertaken a study of the ECRA program and in a report to be released soon will make recommendations for improvements. We look forward to the release of the report, and to a prompt response from the Department of Environmental Protection. Also, if the OMB study identifies the need for additional funding for added ECRA program staff, we hope that the Legislature will respond favorably.

The Sierra Club has a continued interest in this program and would like to be kept informed of future legislative activities on this issue.

FARER, SIEGAL & FERSKO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

Assembly Regulatory Efficiency and Oversight Committee

October 27, 1986 Public Hearing on ECRA.

SUMMARY OF TESTIMONY
by
DAVID B. FARER, ESQ.

1. Speaker's Background.

(a) Partner: Westfield law firm: Farer, Siegal & Fersko.

(b) ECRA Committee Chairman of the New Jersey State Bar Association's Corporate and Business Law Section.

(c) Author of treatise: Complying with ECRA in Real Estate Sales and Leases (ICLE 1985).

(d) ECRA lecturer: New Jersey Institute for Continuing Legal Education.

(e) Author of articles on ECRA, including "ECRA Developments" in the current New Jersey Law Journal.

(f) Have represented a multitude of industrial and commercial clients in ECRA matters from straight forward non-applicability submissions to sophisticated sampling and cleanup plans on behalf of major oil companies.

Note:

This testimony was presented in my private capacity as environmental/commercial attorney and not on behalf of the New Jersey State Bar Association.

2. Objective.

The objective of the legal and business communities should be to help DEP to make this law work. ECRA is ground-breaking, innovative legislation, and we should all be proud that New Jersey was the leader, and we should all be aware that other states are monitoring New Jersey's ECRA experience and using ECRA as a model. Pennsylvania's current proposition is a cut and paste version of ECRA. New York's proposed legislation acknowledges New Jersey ECRA as its model.

It is essential that the law and its administration be scrutinized in such a way as to make the law work fairly and efficiently.

3. Criticism.

The ECRA regulations and administration have been much criticized, and I have not been among the least critical of the program's administration. However, our criticism has not been aimed toward overturning the law but rather toward fine tuning the regulations and approving the efficiency of ECRA administration in order that this law be made more fair and workable.

4. Business Expertise.

ECRA is the first environmental law triggered by business transactions. However, there is no one in the program with the necessary business expertise to evaluate the complex business questions aimed in the Bureau's direction or to enter into the business negotiations necessary in order to enter into fair administrative consent orders with the private sector.

I have great respect for the environmental expertise and commitment of DEP administrators and attorneys, but the necessary evaluation of transactions inherent in the ECRA law is simply out of DEP's bailiwick.

A good example of the problems incurred in leaving business related evaluations to an environmental department was the short lived and much maligned ECRA Bureau policy which held that a 25 year lease was tantamount to a sale of property such as to trigger ECRA. The policy ignored the entire history of property law and the well defined differences between owner/landlords and tenants.

Another example of the lack of commercial expertise within the Bureau was the Bureau's handling of the McGraw-Edison tender offer case, where DEP argued that once a majority of McGraw-Edison's stock had been purchased, ECRA had been violated by failure to comply with ECRA's audit requirements prior to consummation of the stock purchase. Such an argument supports the illogical conclusion that every time a new majority interest arises in any stock exchange, the purchase is in violation of ECRA and the stock purchase may be voided. This is simply an untenable conclusion, and the Bureau's adversarial stance led to protracted litigation in the McGraw/Edison matter. Much time, effort and money was spent by both sides before the matter recently settled.

My suggestion is that at least one individual with substantial business experience be added to the ECRA program in order that sophisticated business questions be more appropriately addressed and resolved by the Bureau.

5. **Delays**.

ECRA delays are legend and are the major source of program criticism. The current backlog for assignment of a case manager upon completion of the initial notice is 18 to 20 weeks. In other words, an applicant acting in total good faith and with the utmost urgency can expect to languish five months from completion of the ECRA-1 and ECRA-2 forms until the Bureau finally schedules the required site inspection.

The answer to this problem is not only appointment of additional personnel to the Bureau, but even more importantly a more efficient use of time by the current Bureau employees. Applications are wrongfully rejected because sloppy Bureau reviews have failed to acknowledge receipt of the information. Inexperienced case managers are sent to complex sites, where they do not have the necessary expertise to properly evaluate the situation and recommend proper work and remediation.

The Bureau rejects applications when information is requested which is not even mentioned in the forms themselves.

Letters are processed slowly by the Bureau, while a telephone call could easily resolve minimal questions.

6. **Absence of Precedents/Changes in Policies.**

Hundreds of determinations are issued by the ECRA Bureau as to the applicability or non-applicability of the law to particular transactions and operations. These determinations are filed at the ECRA Bureau by the county of the referenced premises. There is no reporting service nor any method of organization at the Bureau which permits for any reasonable method to distinguish the bases for the various determinations.

One of the chief obstacles to transactional planning by the legal and business community is the difficulty in predicting whether particular transactions and properties are subject to ECRA. The trigger issues have also resulted in the ECRA Bureau being swamped by non-applicability requests.

The problem is compounded by the Bureau's tendency to abruptly change policies without notifications to the public. ECRA Bureau Chief Lance Miller recognizes the need to more clearly define the Bureau's policies as to the trigger, and both he and Commissioner Dewling have indicated interest in working with my ECRA Committee in publishing major applicability and non-applicability decisions. I hope to include such information in future ECRA development articles, such as the ECRA article I have appended to these notes.

7. **Inequities in Application of the Law.**

ECRA is unclear as the relative responsibilities of landlords and tenants. Therefore we constantly find ourselves in scenerios where, for example, a tenant's lease term ends, thus

triggering ECRA. A landlord then decides to sell the property, and the law is triggered for a second time. The Bureau simply requires that both parties be on the hook without regard to the fact that the tenant may have been the sole operator at the premises for the past 25 years and as such the only party responsible for any possible contamination at the site. Or, another common scenerio is to have a landlord selling the building, thus triggering ECRA the tenant, who is in possession of all appropriate information as to the operation, often fail to cooperate, or provides the information on a slow, piecemeal basis, thus further confusing the transaction and the submission to the ECRA Bureau.

Another example of the inequities and application of the law is the current "de minimus" exemption permitted by the Bureau. The Bureau has allowed subject businessess which use only minimal amounts of oils to gain exemptions from the ECRA process, but will not permit such exemptions where, for example, the only hazardous substance whatsoever used by an operator is one gallon per year of cleaning fluid. This also leads to the ECRA Bureau's current overload. The Bureau's philosphy is to embrace as many operators as possible, rather than concentrating on obvious sources of contamination.

8. Administrative Consent Orders.

There is no current statutory or regulatory basis for administrative consent orders, and it is hoped that the regulation redraft will remedy that problem.

Aside from that, the current major problem with administrative consent orders is that the Bureau refuses to engage in any substantive negotiations concerning the terms of ACO's. Nor will the Bureau accept administrative consent order drafts prepared by parties who are applying for those orders.

These stances apparently arise from the Bureau's distrust of the regulated community and its counsel.

9. Refusal to Defer.

Pursuant to both the statute and the regulations (See N.J.A.C. 7:1-3.14), the Bureau has the power to defer implementation of a cleanup if the proposed transaction or transfer will result in the new owner or operator carrying on the same business. The Bureau has flatly refused to use this deferral option, although it has clearly been appropriate in many circumstances.

10. No Cleanup Standards.

Despite the legislators' declaration in the enabling statute (See N.J.S.A. 13:1K-10(a)), the Bureau has to date failed to promulgate minimum cleanup standards, and instead decides what is "clean" on a case by case basis. Cleanup standards tend to change even during the course of an ECRA Submission.

11. Trigger Problems.

The ECRA trigger (see N.J.A.C. 7:1-3.18) contains myriad mysteries, only some of which have been unraveled by the Bureau (and are even then subject to inconsistencies or further policy changes).

Again, it is hoped that the expected cooperation of Lance Miller and Commissioner with my ECRA Committee in publishing some of the major applicability decisions will help in sorting out discrepencies and perplexities.

However, it is clear that the new regulations must more carefully define what constitutes "closing, terminating or transferring" of operations, and what an "industrial establishment" is. In this regard, we hope that the Bureau follows through on its indication that it will work with the legal and business community in preparing the new regulations.

12. Conclusion.

I am greatful for the opportunity to address the Committee in regard to problems in interpreting and complying with ECRA.

I also welcome the opportunity to participate in your Committee's task force on ECRA in line with Assemblywoman Kathleen Donovan's request.

The objective is to get this law to work and to keep New Jersey in the forefront of progressive environmental legislation.

TESTIMONY

OF THE

NEW JERSEY DEPARTMENT

OF

COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF BUSINESS ADVOCACY

PRESENTED BEFORE

THE

ASSEMBLY REGULATORY EFFICIENCY AND OVERSIGHT COMMITTEE

ON

PROBLEMS ENCOUNTERED IN INTERPRETING AND COMPLYING WITH

ECRA REGULATIONS

AT

THE OCTOBER 27, 1987

PUBLIC HEARING, STATE ANNEX

TRENTON

Mr. Chairman, Members of the Committee

My name is Rocco Guerrieri, I am the Chief of the Office of Business Advocacy in the Department of Commerce and Economic Development and also serve as Executive Director of the Cabinet and Citizen's Committees on Permit Coordination. These committees, created by executive order of the Governor, are charged with coordinating and simplifying the permit process as it relates to construction projects.

Since ECRA became effective in January, 1984 much time and energy has been devoted both by my office and the Cabinet Committee in response to pleas from the private sector for information on the relevance of this new program and for assistance in obtaining clearance required to meet real estate settlement dates.

Two facts must be emphasized at the outset of our discussion: First, the Environmental Clean-up Responsibility Act is an effective law in achieving the basic intent of the legislature: sites with dangerous environmental conditions are being cleaned up; and second, the DEP is valiantly trying to cope with what they interpret as being their mandate using the manpower they have available.

The statistics for processing of ECRA permits are cause for great concern. While the estimates vary, no one disputes the fact that it takes:

...12-15 week wait for assignment to a case manager
...3-4 weeks for the scheduling by the case manager of a site visit
...4-6 weeks to obtain letters of non-applicability
...4-6 months processing for sites with minor problems
...1-2 years processing for sites major problems

As long as this occurs we are faced with a situation which cannot be allowed to continue indefinitely.

We are experiencing a rather clear example of the difficulties inherent in coping with complex environmental and social problems. These problems are the result of:

. . . An overly broad and all encompassing law without focused and specific standards which inevitably leads to a regulatory process with built in delays since every application is handled on a case-by-case basis.

. . . A regulatory process saddled from the start by regulations adopted on an emergency basis and which in spite of extensive private sector input are today, almost 3 years after their adoption still the basic governing regulatory provisions.

. . . A failure to foresee staffing needs and provide adequate appropriations for these needs.

Left to their own devices, overburdened by an ever increasing case load and insufficient staffing, the regulators have had their hands full in merely trying to respond to the needs of applicants without being able to address adequately much needed refinements. All we can point to at this time is a relatively minor change in the SIC Code numbers which took 2 1/2 years to implement.

We are now promised substantive regulatory changes by Spring of 1987. How effectively these will address existing needs remains to be seen. In the meantime it behooves the legislature to take another look at this act in terms of almost 3 years of experience.

The need for strong involvement by affected parties in the Legislative and Regulatory processes can never be over emphasized. A committee of practicing professionals, business persons, environmental scientists, and governmental officials could provide input to legislative amendments which would reaffirm the goals of ECRA while at the same time recognizing economic needs and practical limitations.

The Department of Commerce stands ready to participate and provide input to such an effort.

Commerce and Industry Association of New Jersey

Continental Plaza • State Highway #4 & Hackensack Avenue • Hackensack, New Jersey 07601 • (201) 487-4600

Remarks prepared by:

B. Franklin Reinauer III

Chairman, Commerce and Industry
Association of New Jersey

Public Hearing: Problems Encountered
in Interpreting and Complying
with ECRA Regulations

October 27, 1986

Assembly Regulatory Efficiency
and Oversight Committee

Good morning and thank you for the opportunity to come before your committee.

I am Chip Reinauer. I am appearing before you this morning not as the head of a sixty-two year old business entity, but in my capacity as the Chairman of the Commerce and Industry Association of New Jersey. Our general business association is one the the three largest in New Jersey with approximately 1400 corporate members. Our membership includes Volvo of North America, Jaguar, Sony, Federal Electric, Becton Dickinson, Ingersoll Rand, Alexander Summer Company, Coldwell Banker, Price Waterhouse, United Jersey Bank, as well as the butcher, the baker, and the candlestick maker. Our goal is to foster the greater prosperity of our state by providing for the best climate for business and industry.

At the outset permit me to say that our Association supports the goal of a clean and healthy environment. Indeed, such a goal is a noble purpose -- one that every one can support. Our Association is as concerned as any with toxic waste, radon, clean water, air pollution, etc. As most of our members live as well as work in New Jersey, we have a vested interest in our environmental future.

Our concerns are for the problems caused by what appears to be a lack of realism in the administration of ECRA by the Department of Environmental Protection. Without a realistic approach that which the law proposes to achieve -- namely a clean and protected environment -- will not be achieved due to impossible requirements.

Our state is now and has been for many decades, if not centuries,

one of the most heavily industrialized states in the nation. Our glass industry was old before the Revolution; our iron foundries supplied cannon at the battles of Princeton, Trenton, and Monmouth; Alexander Hamilton formed the Society for Estabishing Useful Manufacture in 1793 -- the result being Paterson, which became the silk capital of the world before World War I; after World War I, our state led our country into the aviation age with the construction of the Fokker Aircraft plant in Teterboro. The list goes on of New Jersey's contribution to industry. Unfortunately, no matter what we now do, the banks of the Passaic, the Raritan, and the Delaware will not be as they were when the Lenni Lenape indians paddled their canoes and roamed our forests in search of game before the Dutch and Swedes arrived.

Where is the solution to the confusion caused by ECRA? We recommend that the DEP immediately set obtainable standards taking into account the past, present, and future use of the property. The standards for ground water under Newark should not be the same as the standards for ground water beneath Warren County. Regretfully, they are today -- and in being so time and money is being wasted in an attempt to do what in theory may be possible, but in practice is impossible.

Every political entity in New Jersey has zoning maps. These can be used to determine where standards should be applied. A heavy industrial zone should be required to meet one standard; a commercial zone should be required to meet another standard; a residential zone, still another standard; and so forth. These standards must be obtainable, realistic, and procedures for applying these standards must not be overwhelmingly costly.

And these standards must be codified. As it is practiced by the DEP currently, policy is changed arbitrarily. Speak to anyone who is in the process of gaining an approval from the DEP and he will tell you that that which the DEP requires of him one day may change the next -- "a policy decision" is the usual reason -- seemingly at the whim of the official being spoken to.

The second recommendation is to reorganize the technical review procedure so as to provide for a quick response and a timely decision. As it stands today, a response to any question takes between ten and twelve weeks -- and frequently that response is incomplete and provokes another questio beginning the cycle over again. There have been instances where it has taken up to seventeen weeks simply for the assignment of a case manager so that the approval process might begin. Some applicants have been waiting for decisions almost as long as the law has been in effect -- nearly three years.

The answer to this proble of timely review is not, in our opinion, to hire more people. The answer can be found in the acceptance by the DEP of the reports of the certified laboratories hired to analyze the soil and water samples, and the reports of the licensed independent environmental engineers charged with the responsibility of drafting clean up plans and procedures. As it stands today, both these professionals' work is questioned by the DEP and many (if not all) of their reports, calculation, etc. are rewritten or recalculated or retested or what-have-you by the DEP -- at additional expense and time delays and frustration.

In summary permit me to repeat that our Association supports the

efforts of those committe to a clean environment. Further, we believe that that which is clean deserves special protection as a valuable resource for now and the future. Our concern is for the continuing prosperity of our state which is being threatened by the confusion attending the enforcement of ECRA. We believe that much can be done to relieve this confusion immediately by: 1) Setting obtainable standards taking into account past, present, and future use of the property in question, and codifying such standards; and 2) the technical review procedure must be reorganized so as to provide for a timely response. Both of these recommendations, we believe, can be accomplished quickly and without hiring and training additional personnel. Much of the information necessary to set the obtainable standards and the technical skills to impliment them are at hand -- they must be used.

Our Association stands ready to be of whatever assistance we can in matter of the effective and efficient administration of ECRA.

Thank you.

NEW JERSEY STATE
CHAMBER OF COMMERCE
GOVERNMENTAL RELATIONS OFFICE
315 WEST STATE ST.
TRENTON, N.J. 08618 • (609) 989-7888

October 28, 1986

The Honorable Arthur R. Albohn
Chairman
Assembly Regulatory Efficiency
and Oversight Committee
200 Madison Avenue
Morristown, NJ 07960

Dear Chairman Albohn:

Thank you for giving me the opportunity to be heard at the October 27 hearing and to amplify those comments in writing.

It is true that the State Chamber views the purposes of the Environmental Cleanup Responsibility Act (ECRA) as having real merit. A business moving in to a new location should be comforted to know that the site is environmentally sound. However, an overly long and tedious ECRA process may cause prospective New Jersey employers to look to other states who do not subject them to such burdensome processes.

We are encouraged that DEP Commissioner Dewling and his team are giving much greater department attention to the ECRA program.

DEP must, however, be called to task for its overzealous practice of embracing and enthusiastically endorsing virtually every bill introduced in the Legislature to provide some additional environmental control, even if the department can't responsibly manage such additional programs. The department would better serve New Jersey's citizens if it recommended changes and modifications in legislative proposals that would lead to a greater likelihood that it could manage its programs effectively and efficiently.

Perhaps what is needed is a moratorium on environmental control legislation, absent emergency situations, until DEP can demonstrate that it can properly manage the responsibilities it now has.

Mr. Chairman, at the October 27 meeting I briefly mentioned a number of items from the NJ SEED ECRA Task Force's 13-point program for ECRA reform. Here, in some greater detail, is that program:

1. Transaction Covered. There is virtual unanimous agreement that where a company seeks to sell some percentage of its property which has never been used for industrial purposes, that transfer, in and of itself, should not bring the entire plant under ECRA review. NJ SEED proposed a regulatory change, which would have allowed a 20% transfer of a previously subdivided property to go under ECRA on its own, leaving the remaining 80% out of the ECRA process. The proposal also concluded that if there was contamination of the 20% portion which might reasonably be found on the remaining 80% then, and only then, would ECRA attach to the rest of the plant. This is a reasonable proposal which should be included in an ECRA reform.

2. Involuntary Transfers and Stock Transfers. There are several categories of involuntary transfers, that is, transfers where the transferee receives the property by virtue of some interest or event out of his control, which NJ SEED believes should be exempt. These include transfer by death and trustee to beneficiary.

As to stock transfers, NJ SEED believes there should be a specific definition of when particular financial transactions result in the change of control of a corporation. The Task Force believes DEP lacks the financial training and understanding necessary to make these determinations and recommends that specific guidance be given in the statute along the lines of that contained in various Securities and Exchange Commission and "Blue Sky" statutes found throughout the country.

3. Limit to Real Estate Transactions. A substantial majority of the Task Force believes that ECRA should be limited only to those transactions resulting in an actual change of property ownership under existing New Jersey laws. This would eliminate various merger and acquisition transactions from the ECRA statute when the acquired or merged corporation retains its corporate identity. In that situation, there is no change of owner under existing property statutes and no additional deeds are filed. In those situations, there has been no transfer of real property under existing New Jersey law, and the Task Force believes this lack of transfer should take the transaction out of the statute.

4. Mortgage Foreclosures. The Task Force recommends that a mortgage foreclosure or condemnation should not, in and of itself, trigger the statute and recommends that the statute should attach only when the bank or the condemnor seeks to utilize or dispose of the property. This section would effectively shift the responsibility for ECRA compliance from the person against whom foreclosure or condemnation has been instituted towards the person initiating the transaction.

5. Landlord/Tenant Issues. Almost all questions in this category relate to who bears the responsibility in various landlord/tenant situations. NJ SEED believes that the statute should put the onus for compliance on the landlord, except to the extent that the landlord can show that the tenant caused or is otherwise responsible for contamination conditions on the site. This language would have two practical impacts. First, it would allow the landlord and tenant to address the issue of responsibility for ECRA compliance under the terms of the lease. Second, it would limit the responsibility of any tenant in an ECRA situation only to those areas actually occupied, used, or impacted by the tenant. Under current application of the statute, DEP has held tenants responsible for total cleanup of a property, even where there are other tenants utilizing the property. We believe this system to be manifestly unfair to both tenant and landlord, and strongly urge that the statute address the situation.

6. Mutual Consent. The NJ SEED Task Force recommends that the statute be amended to allow a buyer or seller to agree by contract to take a particular transaction out of the ECRA process by allowing the seller to postpone cleanup, if required, through the posting and maintenance of a cleanup performance bond over the life of his ownership of the property. This provision would only apply where the parties can show that there is no offsite contamination resulting from activities on the property.

This provision would greatly simplify major real estate transactions, without causing any undue threat to the public health and welfare.

7. Time Schedules. The statute, at present, contains only one time deadline to be met by DEP, which is the 45-day standard applicable to negative declaration requests. Under current practice, that standard is honored more in its breach than in its compliance by DEP staff. The delay in reaching final resolution of ECRA applications currently faced by the regulated community is unacceptable. There is a strong feeling in the regulated community that DEP is unwilling to let these cases go once cleanup has been made, due to its inability to "let go" of a project. NJ SEED proposes that specific time constraints be placed on DEP as follows:

DEP would have twenty (20) days after the filing of each submission under the statute to declare that particular submission complete for review. The declaration of incompleteness would have to specify the areas of deficiency. Where the list of areas of deficiencies includes information which has already been submitted to DEP, the latter clause is intended to overcome the problem currently faced by the regulated community under the 90-day Act, where DEP routinely rejects applications as incomplete or requests additional information on the 89th day of review with the threat of rejection if the requests are not complied with. In many cases, the request is merely an attempt to give DEP more time to review the submittals, a practice which manifestly violates the intent and letter of the 90-day Act.

After a declaration of completeness on any particular submittal, DEP would have 90 days to review that submittal, with the submittal being deemed acceptable if a decision is not made within that time. Again, if a decision is made citing a lack of information and that information has already been submitted to DEP, then the application will be deemed approved.

8. Annual Audit. Since ECRA is funded by a significant fee schedule, NJ SEED believes the statute should be amended to require an annual outside audit of program funds according to generally accepted accounting principles, in order to assure timely and accurate review of program practices. This is consistent with practices currently in place in other fee generation statutes, and should be insisted upon as a fair and equitable review method.

9. Statute of Limitations. The Task Force recommends that a statute of limitations, applicable to both DEP's and a buyer's ability to void the sale, be set at some period three to five years after submittal of the initial notice to DEP. The statute of limitations would not apply to instances where DEP can show a deliberate pattern of non-compliance or where there has been non-disclosure of material facts to DEP.

10. Administration Consent Orders. Many transactions are time sensitive and disappear when faced with a year of compliance time with DEP. To address this situation, the DEP staff has adopted an administrative consent order process which allows a deal to close upon the signing of a consent order and compliance schedule with DEP. This process does not appear in the regulations or statute at present and is, thus, open to legal challenge. NJ SEED believes the process should be codified and that a person who can show that a transaction by its terms must be closed before final ECRA compliance can be achieved, and where the failure to close that transaction would re-

sult in a hardship on one or more of the parties, or any other person, that DEP issue an administrative consent order allowing the transaction to close under terms similar to those now used by the department.

11. Relationship With Other Laws. NJ SEED does not believe ECRA should apply where remediation activities are underway under one or more statutes. There is some confusion in the regulated community, and in DEP, as to ECRA's effect on existing remediation programs. The NJ SEED Task Force recommends that DEP elect its remedy in this situation and, where remediation activities are already underway under other environmental statutes, those activities would be deemed to satisfy ECRA requirements in the areas affected. This will eliminate the confusion and needless duplication of effort currently faced by the DEP and the regulated community on this subject.

12. Right to Self-Insure. Under current regulations, companies must post bonds, letters of credit or surety, as a means of guaranteeing the cleanup. Costs of these instruments have increased and the NJ SEED Task Force believes that a self-insurance provision similar to the one found in the Resource Conservation and Recovery Act (RCRA) should be adopted by DEP. Self-insurance terms are such that DEP stands absolutely no risk of having assets unavailable to fund the cleanup. This provision provides substantial relief to the regulated community and no harm to DEP. Such a provision must, however, be one that permits self-insurance not one that makes it virtually impossible.

13. Codified Standards. This item, although last, is, by far, the most important recommendation of the NJ SEED Task Force. Although DEP purports to have a set of generalized cleanup standards, these standards have never been put to a public comment or technical challenge in a public forum. Many in the regulated community believe the standards are without any technical justifications.

The NJ SEED Task Force strongly urges that soil and groundwater cleanup standards be proposed and put to public hearing pursuant to the provisions of the Administrative Procedure Act. This procedure would allow the regulated community an adequate opportunity to comment on the regulations, and it would give DEP an opportunity to justify the standards it currently uses. It would also remove the uncertainty regarding the extent of compliance required by DEP under the statute. The Task Force unanimously recommends two specific review standards for ECRA cleanups:

A. The standards relating to the cleanup of any particular groundwater site be related to the actual or intended use of the system. This tracks the philosophy in use in other statutes and other states and seems to us to be a common sense approach to groundwater decontamination. The regulated community has been faced, in several instances, with the requirement of cleaning up brackish groundwater systems to drinking water standards. The cleanup may be successful for a very limited period of time, but then the groundwater system returns to its brackish state through influences outside the particular site. The Task Force agrees with the concept that groundwater systems which are used or intended to be used as drinking water sources should be cleaned to drinking water standards. However, where there is no such use in effect or intended, such a standard seems unnecessarily harsh.

B. The second standard relates to the establishment of a background condition for soil cleanup. The Task Force recommends that the statutes specifically say that DEP establish a background condition for each site, said background condition to be established for samples taken on the site or within a reasonable distance of the site. This is intended to address those situations common in the Northeast part of our State, where currently unacceptable fill material was used in the historic past. This situation is found, most often, in the cities of Hoboken and Jersey City and in that general metropolitan area, where fly ash, lamp ash and other types of similar material were used to fill in the areas upon which those cities were built. The establishment of these codified standards and general operating goals will greatly simplify compliance and streamline the process for both DEP and the regulated community.

Mr. Chairman, thank you again for the opportunity to address this important issue. We remain hopeful that, through efforts such as yours and sponsor Lesniak's as well as the dedicated efforts of Commissioner Dewling and his staff, a workable and effective ECRA program will evolve.

Sincerely,

James C. Morford
Vice President
Governmental Relations

JCM:bam