

**COMMITTEE MEETING**

of the

**SENATE ENERGY AND ENVIRONMENT COMMITTEE**

on

**SENATE BILL NO. 1120**

(Establishes a \$10 Million Hazardous Discharge Mitigation Fund)

Held:

February 27, 1984

Room 308

State House Annex

Trenton, New Jersey

**MEMBERS OF COMMITTEE PRESENT:**

Senator Daniel J. Dalton, Chairman  
Senator Catherine A. Costa, Vice Chairwoman  
Senator Paul Contillo  
Senator Peter P. Garibaldi  
Senator Lee B. Laskin

**ALSO PRESENT:**

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

**New Jersey State Library**

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**SENATOR DANIEL J. DALTON (Chairman):** Good morning. I would like to read a short statement, and then we will go to the witnesses.

Today the Committee is considering a bill which I introduced late in the last legislative session at the request of the Commissioner of the Department of Environmental Protection, and which, again at the Commissioner's request, I introduced this session.

Senate Bill 1120 appropriates \$10 million from the General Fund for deposit into a Hazardous Discharge Mitigation Fund, to be used by the DEP for the cleanup of hazardous waste sites on the Super Fund Priority List. Although this bill embodies a straightforward and even routine appropriation, the more I thought about the bill, the more questions it raised. These questions go to the heart of the most pressing environmental issue facing New Jersey, the cleanup of hazardous waste sites and, more specifically, the management and financing of that cleanup.

Just a year ago, the DEP announced the inauguration of a four-year plan designed to clean up many of the most serious hazardous waste sites in the State. The funding sources for the cleanup were to come from the New Jersey Spill Fund, the 1981 Hazardous Discharge Bond Fund of \$100 million, and the Federal Super Fund. In theory, each of these funding sources should complement the other, but, in actuality, it seems that a virtual gridlock now immobilizes the interaction of our funding sources and, thus, paralyzes our cleanup program.

The enactment of the Federal Super Fund legislation precipitated a preemption challenge to the validity of the Spill Fund Act. During the pendency of the court case, the Attorney General has advised both the DEP and the Administrator of the Spill Fund not to expand Spill Fund moneys on Super Fund sites, until the legal uncertainty is resolved. This has resulted in the steady accumulation of moneys in the Spill Fund -- \$26 million as of January 1, 1984 -- which, in turn, has impeded the use of the Hazardous Discharge Bond moneys, because moneys in the Bond Fund are to be used only when Spill Fund moneys are insufficient, or are unavailable.

This situation is further aggravated by the prohibition in the Spill Fund against spending more than \$3 million in any year on

hazardous discharges which occurred prior to 1977, a prohibition which applies to most Super Fund sites. Thus, we seem to have arrived at a point where the State has at its disposal \$126 million for hazardous waste cleanup, but cannot use it. We seem to have been at this impasse for more than a year, during which the three departments involved in this logjam -- the Attorney General, the Department of the Treasury, the the DEP -- have been able to do nothing to resolve it. The result is that each month the balance in the Spill Fund grows, the Hazardous Discharge Fund remains unused, and each hazardous waste site gets worse and, ultimately, more expensive to clean up.

I intend, during this Committee Meeting, to try to determine why the State has not been able to spend the Spill Fund and Bond Fund moneys, and then determine what needs to be done to realize the potential of our funding sources for hazardous waste cleanup. With this in mind, I hope that at the end of this meeting we will have answers to these questions:

One, why should the Legislature appropriate \$10 million from the General Fund for hazardous waste cleanup, while there is \$100 million in the Hazardous Discharge Bond Fund, and \$26 million in the Spill Fund?

Two, why didn't the Attorney General modify his advice not to spend Spill Fund money after the Spill Fund Act was upheld in a tax court decision in April, 1982 and, also, in a later appeal?

Three, why, during the last two years as the balance in the Spill Fund increased, didn't the DEP recommend that the language in the Bond Act be changed through a ballot question, to allow bond moneys to be spent without regard to the balance in the Spill Fund?

Four, should the prohibition in the Spill Fund Act against spending more than \$3 million per year on the pre-Act discharges be removed, so that the Spill Fund can be used on Super Fund sites without that financial restriction?

Five, why haven't the three departments involved in the Spill Fund preemption issue -- the Attorney General, the Treasury, the DEP -- tried to find a way to free the Spill Fund?

Six, given the enormous cost of cleaning up the State's hazardous waste sites during the next ten years -- which will range between \$1 billion and \$2 billion -- shouldn't the DEP now make enough claims against the Spill Fund so that an accelerator on the tax on chemicals is triggered, and the Spill Fund tax will yield its maximum amount?

And, lastly, what would be the real harm of spending Spill Fund moneys while the preemption issue is being litigated? The worst that could happen is that the State might be ordered to reimburse either the Spill Fund or the tax fares into the Fund for expenditures made from the Fund which the court found to be unlawful.

I know there are a number of you out there who would like to address these questions, and I hope all of you will address them. However, because of the number of people who have indicated a willingness to testify, I would like you to keep your testimony to around ten minutes.

The first person I would like to call up to the witness stand is Senator Raymond Lesniak. Senator?

**SENATOR RAYMOND LESNIAK:** Thank you, Mr. Chairman and members of the Committee. I will be less than ten minutes. I would just like to address two issues that you raised in your opening statement, Mr. Chairman. I congratulate you, and commend you for raising these very issues which are so important to our cleanup program.

First of all, I will give you just a little background history on the Spill Fund. Currently, it is raising from the chemical contribution to the Fund, approximately \$4.8 million a year. Now, when the bill was originally passed -- which I sponsored -- the chemical industry, through its Chemical Industry Council, agreed to pay \$7 million into the Fund. In fact, they submitted figures to us which Treasury used to estimate the amount of tax which would raise \$7 million. At that time, I questioned whether that tax rate would be sufficient to raise the \$7 million. I was assured by the Chemical Industry Council that, not only was it sufficient, but it would raise an enormous amount more. In fact, they requested, and we agreed



because of that position, that a provision be put in the bill so that Treasury would reimburse them anything in excess of the \$7 million.

SENATOR DALTON: Per year?

SENATOR LESNIAK: Yes, per year. Therefore, what we are seeing now is that we are losing a certain amount of money from what was originally committed. Because of the fact that the accelerator has not been in effect over the last two years -- and the accelerator isn't in effect because the money isn't being committed, and isn't being spent -- we have lost approximately \$10 million from the contributions of the chemical industry to the Spill Fund.

Now, the proposal is to take \$10 million, coincidentally, from general revenues. It is my position that this money should first come from the industry which agreed to pay part of -- and I emphasize part of -- the cleanup program here in New Jersey.

In terms of the preemption issue, you're absolutely right, Mr. Chairman, when you say there can be absolutely no harm done even if we are preempted, because what would happen would be, we would have to reimburse the money, and the money would come from general revenues, where the \$10 million is proposed to come from now. So, there would be absolutely no harm in spending Spill Fund money, because it would only have to be repaid from the same source anyway. We would be taking absolutely no risk if we took this \$10 million from the Spill Fund.

Secondly, that opinion, in terms of preemption, is contrary not only to the tax court's opinion, but to the Appellate Division's opinion. So, the opinion in terms of preemption, the extremely conservative approach taken legally in this matter by the Attorney General's office, runs contrary to the Appellate Divisions' upholding on the preemption issue.

Lastly, even if we were to lose -- and I just want to throw this in as an aside -- the entire preemption issue, I'm sure that this Legislature, recognizing the fact that our petrochemical industry has agreed to contribute to part of the cleanup program, would be willing to pass new legislation levying that tax, and having that tax go right into the general revenues. In that event, we would have to, on a yearly basis, appropriate money for the cleanup program, and we would

avoid any preemption issue at all, because it would go into the general funds, and it would take each separate Legislature, each budget, to appropriate that money.

So, the preemption issue, quite frankly, is a straw man in this whole thing and, because of that, we have lost approximately \$10 million over the last two years in contributions from the chemical industry, which they had agreed to pay in any event, and which now we are asking each and every taxpayer of this State to contribute. I do not think it is fair; I do not think it is right. I would suggest and propose, as we have discussed, Mr. Chairman, that we take the \$10 million that the Administration is willing to pay from general revenues, but hold that in escrow, or in trust if you will, and, at the same time, appropriate \$10 million from the Spill Fund for feasibility studies, and only allow that \$10 million from general revenues to be used if the Spill Fund moneys with the accelerated clause are not sufficient to pay for it or, in fact, if we are preempted. That would say to the taxpayers, the residents of the State of New Jersey, that the petrochemical industry is contributing its share to the cleanup program, and that we intend to ensure that that commitment be fulfilled, because over the last two years, unfortunately, it hasn't been.

SENATOR DALTON: Are there any questions from the members of the Committee?

SENATOR LASKIN: Ray, on the preemption issue, I guess I'll have to talk to someone from the Attorney General's office on this. If we spend "X" million dollars, let's say we use \$10 million, and, for whatever reason, it is ultimately determined that there is, in fact, preemption, does that mean we lose the \$10 million that we would not have had to spend, because it should have come from the Federal government?

SENATOR LESNIAK: I'm not sure if I understand that question.

SENATOR LASKIN: I'm not so sure either.

SENATOR LESNIAK: If we spend the \$10 million--

SENATOR LASKIN: If we spend our \$10 million--

SENATOR LESNIAK: (interrupting) Right, and we're preempted--

SENATOR LASKIN: (continuing) and we're preempted, does that mean that we could have, or would have gotten the \$10 million from a Federal contribution?

SENATOR LESNIAK: No.

SENATOR LASKIN: Are we laying it out from a State contribution?

SENATOR LESNIAK: No. It has nothing to do with the payback from the Federal government. It has to do with whether we would have to pay back the companies which contributed to the Spill Fund.

SENATOR LASKIN: No, I'm going to be more basic than that. Let's say we have a project and it is going to cost \$10 million. And, let's say that the cost of this \$10 million project really should be borne by the Federal government, but, for one reason or another, we decide we will spend the \$10 million. Now, preemption comes in sort of indirectly. The court says, "You shouldn't have spent it, unless you just wanted to spend it, because the law says the Federal government preempts that whole area and, if there was any cost to be borne, it should have been theirs." Does this loosen the fact? Does it make it sloppy? Does it mean we are spending \$10 million which we should have gotten from some other source, and that we're spending our funds instead of somebody else's funds?

SENATOR LESNIAK: We are doing that regardless of whether we are spending it from general revenues or from the Spill Fund.

SENATOR LASKIN: Right.

SENATOR LESNIAK: It doesn't make any difference. If we are reimbursable from the Federal government, we are reimbursable regardless of whether we spend it from the Spill Fund or from general revenues.

SENATOR LASKIN: But, that is where the preemption issue comes in. If it is determined that we are preempted, we are not going to be reimbursed.

SENATOR LESNIAK: That is not correct.

SENATOR LASKIN: That's what I'm asking.

SENATOR LESNIAK: Okay, that is not correct. If we were preempted, if we were to be reimbursed, we would be reimbursed, but

then we would have to give the money to the source of our tax. Preemption has nothing to do with whether we will be, or will not be reimbursed from the Federal government. It has everything to do with what we have to pay back to the companies taxed. It goes to the taxing source--

SENATOR LASKIN: (interrupting) The net result is that we may be losing the \$10 million, whether we have to reimburse it to the oil companies, the chemical companies, the Federal government, or wherever.

SENATOR LESNIAK: That's right, and we would lose it whether it came from general revenues, or whether it came from the Spill Fund.

SENATOR LASKIN: That I understand, and I agree with that. All I am trying to find out is, in the absence of preemption, would we have gotten that \$10 million from the Federal government?

SENATOR LESNIAK: It doesn't matter.

SENATOR LASKIN: It makes no difference?

SENATOR LESNIAK: It makes absolutely no difference.

SENATOR LASKIN: Why aren't we getting it? Do you know?

SENATOR LESNIAK: Well, I don't think I am the proper person to ask. I mean, I could answer that, but I think other people will be more qualified to answer.

SENATOR COSTA: Clarification, please.

SENATOR DALTON: Senator Costa.

SENATOR COSTA: Thank you.

SENATOR LESNIAK: It is a complex issue.

SENATOR COSTA: Yes, it is. Would you please go through it again?

SENATOR LASKIN: She wants to know if you could explain preemption better.

SENATOR COSTA: Not only preemption, but also why it would go back to the chemical companies. Is that the money that would be taken out of the Spill Fund?

SENATOR LESNIAK: Right.

SENATOR COSTA: Because it was put there by the chemical companies?

SENATOR LESNIAK: Right.

SENATOR COSTA: So, then you would have to pay back that Spill Fund?

SENATOR LESNIAK: You would have to pay back the money--

SENATOR COSTA: (interrupting) That is where you lost me.

SENATOR LESNIAK: Yes, we would have to pay the money back to the companies that we taxed. If we ultimately lost--

SENATOR COSTA: (interrupting) If we were supposed to get Super Fund moneys, and then we lost the Super Fund moneys--

SENATOR LESNIAK: No, it has nothing to do with--

SENATOR COSTA: That is where I--

SENATOR DALTON: Ray, may I help you out?

SENATOR LESNIAK: Sure, please.

SENATOR DALTON: If you explain the nature of the preemption challenge, I think that would help the Committee out.

SENATOR LESNIAK: Okay. There is a clause in the Super Fund which basically says in laymen's terms, or indicates that, since the Federal government is raising money from the petrochemical industry, you cannot also raise money from the petrochemical industry to do the same thing. You are "preempted" from doing that. Therefore, if we did raise the money--

SENATOR COSTA: May I stop you right here?

SENATOR LESNIAK: Sure.

SENATOR COSTA: But yet, we are getting money from the chemical companies?

SENATOR LESNIAK: Yes, we are.

SENATOR COSTA: At the same time that the Federal government is getting it -- into our Spill Fund?

SENATOR LESNIAK: That's right, because there has been a legal challenge on the preemption issue, and our Spill Fund-- Basically, the tax court in New Jersey, and the Appellate Division, have said that the intent of Congress was not to preempt New Jersey's Spill Fund to clean up chemical dump sites. Obviously, they really did not intend to do that, because the money in the Super Fund is so much less than what is necessary to clean up the number of sites in any one state, or throughout the United States. But, in any event, the

Appellate Division has said that the intent of Congress was not to preempt our Spill Fund.

Therefore, any money we spend, we are spending legally. We may be doing it against the Attorney General's opinion, but we are doing it in conformance with the Appellate Division's opinion. But, the ultimate question was answered by the Chairman in his opening statement. It doesn't really matter, because if we're saying, "Well, we're afraid to spend from the Spill Fund because we may have to pay it back, so we'll spend it from general revenues," it's the same thing. If we have to pay it back, we have to pay it back from general revenues anyway. So, why not make those industries which, as I've said, have quite frankly been getting a break to the tune of about \$10 million over the last two years from what their original commitment was -- why not make that appropriation from the Spill Fund? It would draw down the Spill Fund. There is now \$24 million in the Spill Fund. I understand \$8 million of that is committed, so it would draw that down to about \$6 million. It would put that in a position where the accelerated clause could easily go into effect and, therefore, bring the chemical companies' contribution to what they had agreed to pay originally and, at the same time, allow us then to sell the bonds. So, this whole "Catch-22" situation we're in would really be alleviated if we took this appropriation, this \$10 million, from the Spill Fund.

I would like to say one thing. What we ought to do, is still take the \$10 million from general revenues -- let's not give that up if it is available -- and put that in reserve.

SENATOR COSTA: Thank you.

SENATOR DALTON: Senator Contillo?

SENATOR CONTILLO: Senator Lesniak, looking at it the other way, if we do what you suggest, and the chemical companies have to then add to the Fund because of what we're doing, will the State have more money to use on cleanup efforts?

SENATOR LESNIAK: Yes, that is correct.

SENATOR CONTILLO: So, by taking no action we are, in effect, possibly losing millions of dollars worth of funds which we could be using for much of the cleanup.



SENATOR LESNIAK: That is an added point. We would be gaining close to \$5 million a year.

SENATOR CONTILLO: So, by not acting, you're saying--

SENATOR LESNIAK: By not acting, we're losing close to \$5 million a year.

SENATOR CONTILLO: Which we may find ultimately that we should have done, in other words.

SENATOR LESNIAK: There is no risk in doing it in any event.

SENATOR CONTILLO: That seems very simple.

SENATOR LESNIAK: It boils down to something very simple.

SENATOR DALTON: I'm sure we will have testimony which will seem to make it a little less simple, Senator, so why don't we move on to that?

SENATOR LESNIAK: Thank you, Mr. Chairman.

SENATOR DALTON: Thank you.

SENATOR LESNIAK: If you have any questions and want to call me back, I will be in the committee room.

SENATOR DALTON: Okay, thank you. The next speaker will be Assistant Commissioner George Tyler from the Department of Environmental Protection. Good morning, George.

**A S S I S T A N T C O M M I S S I O N E R G E O R G E T Y L E R:**  
Good morning, Senator. I might make a suggestion to the Committee to also call Administrator Hunt at this time and, perhaps, we could jointly address some of the questions, since they transcend our respective agencies.

SENATOR DALTON: I have no objection to that. Sir, for the record, will you please give your name?

**R O B E R T H U N T:** My name is Robert Hunt. I am the Administrator of the Spill Fund.

SENATOR DALTON: Thank you.

**ASST. COMMISSIONER TYLER:** As I listened to the opening statements, I tried to decide where to begin with the maze and complexities the Committee is grappling with this morning. I think I should speak to the origin of the \$10 million bill that Senator Dalton introduced.

At the time that bill was drafted, there was a negotiation underway between the State and the Federal government with respect to the Fiscal 1984 Super Fund budget. Originally, the staff at EPA had budgeted a very small amount to New Jersey, when compared with our Management Plan. There was a possibility that our Management Plan would not be accomplished, given the small Federal funds which were originally proposed for New Jersey in the Fiscal 1984 budget process. That was in the summer, or September of 1983.

Fortunately for New Jersey, we were successful in our negotiations and our pressure with Administrator Ruckelshaus and Assistant Administrator Lee Thomas, so our anticipated shortfall did not materialize. The moneys we were seeking were moneys which would have been used to fill the gap, and supplement our otherwise entangled Spill Fund dollars with a source of money that was not covered by the cloud of preemption. That was the original purpose of the bill, so I can say, without agreeing with all of the reasons as to how we got to Senator Lesniak's bottom line, that I certainly agree with the proposal to appropriate \$10 million and keep it in reserve, because it appears at this time that we will meet our Federal budget expectations. We will realize somewhere between \$36 million and \$40 million in Federal Super Fund dollars in New Jersey obligations this Federal fiscal year, and we will not need a source of unpreempted money.

The reason we had to seek moneys outside the cloud of preemption gets us into all the questions about preemption. I understand that the Attorney General will be communicating with the Committee separately, because of the fact that they feel they cannot testify on the issue this morning. The case has been briefed and argued orally before the State Supreme Court, and they are, indeed, awaiting an opinion at this time. The Attorney General has decided it would be inappropriate to comment at this point in what might appear to be an attempt to influence the court's decision. They agreed that they would be sending a letter to the Committee in lieu of that.

But, as far as the Department is concerned, and I may be presumptively speaking for the Spill Fund Administrator, there is a line in the Federal Super Fund law which Senator Lesniak paraphrased

for you, that somehow preempts the spending of money raised from a tax on the same materials that the Federal government taxes. It is unclear to us what that means. We have taken a view of it in New Jersey-- I think that collectively the three agencies -- the Attorney General's office, the State Treasurer, and our Department -- have taken the narrowest possible view of that preemption language, that is, if a dollar is, indeed, expended from the State Spill Fund and is reimbursable and is later, in fact, reimbursed by the Federal government, then it was, in fact, preempted, and we would cure the problem by paying the dollar back. The Attorney General supported us in that position, and the Spill Fund Administrator has, indeed, allowed us to expend moneys on that premise.

At the beginning of this year, it appeared that we would want to draw a substantial amount of money, \$10 million, from the Spill Fund, without a real promise of Federal reimbursement; thus, the preemption cloud raised its ugly head and we had to determine how to spend that money and avoid the preemption, or, obtain the money from, if you want to call it an untainted source, which the General Fund presents. It is not raised by a tax on the substances. That was the origin of the bill.

With respect to the second proposal -- to appropriate money from the Spill Fund in order to somehow put that money in reserve for future expenditures -- I am not sure if that is the right remedy. I think if the issue is raising more money for the Spill Fund, the easier answer might be to just simply raise the tax rate, or avoid the escalator situation, where we have to, again, be in a deficit situation before the escalator goes into effect. So, I offer that for your consideration.

With respect to the question on encumbering the Bond Fund, I can tell you that I personally testified when the bond issue was in the Legislature, before the Assembly Energy and Environment Committee, and sought to have that tie to the Spill Fund left out of that bill. I think it was originally drafted in our Department, or in the then Governor's office, and we sought to have it nonencumbered by a tie into the Spill Fund. I think the wisdom at the time was that it ought to

be. So, we are tied in, and we cannot get into the Bond Fund until the Spill Fund is at zero, or effectively at zero. That is the background of that problem. I would like to now turn it over to Bob, in case he wants to add a few thoughts, and then I would be happy to try to respond to questions.

MR. HUNT: My comments will be rather brief, in that this bill was proposed by the Department of Environmental Protection. I think George has expressed the reasons why the Department of the Treasury is in agreement with it. I'm not sure that the Department of the Treasury -- I can't speak for them -- has a position one way or another with regard to the proposal whereby money would be appropriated and held in abeyance. I think the key question here is being able to spend it so that we are not violating any preemption issues, any issues which may cause a draw on general Treasury funds, which have not been approved in advance by the Legislature. I think if the Legislature took a position in advance that they would be, in effect, a backup if the question of preemption does go against us, Treasury would have no problem with that.

SENATOR DALTON: If I may start the questioning, the concern I have relative to the Department is that you have, in effect, a \$26 million Spill Fund that you were concerned about using -- you, the Attorney General, and I suspect the Department of the Treasury -- because of the preemption issue. Okay?

MR. HUNT: Yes.

SENATOR DALTON: You also had a \$100 million bond issue that could only be used if, in fact, the Spill Fund itself was depleted. Now, given the enormity of our problems here in this State, as far as cleanup is concerned, and given the fact that you had two separate court opinions that said that you could go ahead and utilize Spill Fund moneys for that cleanup, why didn't you do that?

ASST. COMMISSIONER TYLER: An easy answer for me is to say that the Attorney General has not changed his advice to us based on those two prior court decisions and, in part, I believe that is because the last court decision was so rapidly appealed to the State Supreme Court. There is always the concern that if the court is reversed, the moneys will need to be reimbursed.

SENATOR DALTON: But, you have the fund to reimburse it with.

ASST. COMMISSIONER TYLER: Where is that?

SENATOR DALTON: What is the bond money for?

ASST. COMMISSIONER TYLER: The bond money cannot be reached at all, until the Spill Fund is deficient.

SENATOR DALTON: Okay.

SENATOR CONTILLO: How could the Spill Fund ever be deficient, if when it drops down, the tax increases?

MR. CONNELLY: It's claims against the Fund.

ASST. COMMISSIONER TYLER: It is possible it could be deficient if sufficient moneys are expended in a given year when the escalator clause is in effect.

SENATOR LASKIN: The key is commitment, not actual payout.

ASST. COMMISSIONER TYLER: But, I said the short answer would be that. Perhaps a longer answer is that we proposed a need for a major chunk of money -- \$10 million -- in a nonpreemptive form, at a time when it appeared there would be a \$20 million shortfall in what we anticipated getting from EPA. That means we thought for this fiscal year that the Spill Fund would be sufficient for the work we would do on about thirty-five major sites that we have underway, plus the work we are doing on non-Super Fund sites, without--

SENATOR DALTON: (interrupting) Are you talking about feasibility studies?

ASST. COMMISSIONER TYLER: Yes, consistent with the approach we have taken. That is why we asked for the money as a standby at this point in time, because we have work underway in study, design, and in two or three construction projects we will reach at the end of this fiscal year, which draws down the Federal money. So, we are preempted, and we can use the Spill Fund for the 10%. Now, what that also means is, if you take those thirty-five major sites and schedule them out into the next fiscal year, you will see that-- I am going to use approximate numbers, because I was not prepared to go through each project site-by-site this morning. I am perfectly willing to come back and do that with our staff, if the Committee would like me to. But, let's say approximately, twelve feasibility studies that are commencing

in this quarter of the Federal fiscal year and the next quarter of the Federal fiscal year, will produce final recommendations for cleanup in the middle of the first quarter of the next fiscal year. That will precipitate a need for even more dollars to do designs at those sites. Those designs will take approximately six months to a year, again being very approximate, and, at the end of that phase, construction dollars are going to be necessary, which will involve even more money.

I will give you an example. At Price's Pit, there has been approximately \$1 million spent in feasibility studies and conceptual design. The actual design will probably cost in the neighborhood of \$2 million, and then the construction will cost about \$12 million. Again, please do not hold me to these numbers, because I am talking off the top of my head from memory. But, the point is, you are going from 2% or 3% of the total cost into a step that is 5% or 10% of the total cost, into a step that is 90% of the total cost. When you hit that 90% stage, the Spill Fund will be deficient; our fiscal projections showed that. We presented them to the Legislature last year and showed that sometime in Fiscal 1985, we would need to draw down on the bond issue.

SENATOR DALTON: Mr. Tyler, my point is that for two years you have been sitting, waiting around for the courts to determine what to do with the Spill Fund, when all you had to do was come to this Legislature and recommend changing the language of the 1981 bond issue, and you would have had your money.

ASST. COMMISSIONER TYLER: Well, we haven't been sitting around. Our track record, I think, speaks for itself, and I offer to put it on the table and present it. We presented it last year, and at that time I offered to update it. The Commissioner personally came over and presented it, and he will be happy to do that again, if the Committee wants him to. We haven't been sitting around; we have been moving, and have been investing a lot in getting the program going. These major projects are--

SENATOR DALTON: (interrupting) You haven't touched the Spill Fund; you haven't touched the bond issue.

ASST. COMMISSIONER TYLER: Yes, we have. I'm sorry, Senator, but I disagree. We have obligated moneys from the Spill Fund to match



the Federal dollars for these major sites, and we are moving into the construction phase on these sites, in which we will demand the lion's share of the money.

In addition, in response to your other question, our Department recommended in the first instance that the bond issue not be tied to the Spill Fund, and the Legislature decided that it ought to be.

SENATOR DALTON: I have been the Chairman of this Committee for two years, and I have yet to receive that recommendation from the Department.

ASST. COMMISSIONER TYLER: Well, that was my testimony before the Assembly Energy and Environment Committee when it passed the bill. It was then ratified by the full Legislature, which determined that it ought to be contingent on a bankrupt Spill Fund.

SENATOR DALTON: Senator Costa?

SENATOR COSTA: I have a question. You said you have obligated moneys from the Spill Fund?

ASST. COMMISSIONER TYLER: Yes.

SENATOR COSTA: May I ask how much?

ASST. COMMISSIONER TYLER: Bob, do you know?

MR. HUNT: Actually, the \$26 million which is being referred to is closer to a cash balance. The uncommitted balance is \$16 million. Part of that is taken up by administrative costs, and about \$8 million is committed money at the present time.

SENATOR COSTA: Eight million dollars is committed, and how much is in administrative costs?

MR. HUNT: That is close to \$8 million as well.

SENATOR COSTA: That is an awful lot for administrative costs, is it not?

ASST. COMMISSIONER TYLER: I think you have to view that in the context of the total Management Plan, and the Federal funds that we anticipate drawing down. In other words, compared to the Spill Fund, it is a large percentage, but compared to this year, approximately \$40 million in projects that we hope to undertake, or obligate moneys to, it is a lot less of a percentage.

SENATOR COSTA: It would seem to me at this rate and at the rate we're going, that most of the money in the Spill Fund is going to go to administrative costs before we even touch the problem we have throughout the State.

ASST. COMMISSIONER TYLER: Well, if the--

SENATOR COSTA: (continuing) Eight million dollars in administrative costs in two years, is that correct?

MR. HUNT: I'm not sure I understand. Two years?

SENATOR COSTA: Well, I don't know. I thought we were talking in the context of two years. Maybe it is more; I don't know. Please enlighten me.

MR. HUNT: I can give you a breakdown on the drawdown of administrative expenses. I would like to preface that by saying -- or adding to what George said -- that the Spill Fund is being used to put the administrative base in line for the planning on Super Fund sites, and things of that nature. So, it is not totally tied to just Spill Fund expenditures.

SENATOR COSTA: Do you expect that money to be reimbursed?

ASST. COMMISSIONER TYLER: Yes, we do. In fact, we applied on each Super Fund site for reimbursement, which will probably end up coming in the form of credit toward the 10% that the State has to pay on each Super Fund site. So, I anticipate that somehow these moneys will be reimbursed to the State, either as expenditures we do not have to make in the future from the Spill Fund and the Bond Act, or in terms of cash reimbursement to the Fund.

I have to add -- and I guess I should have said this earlier -- it has been our policy to apply for every Federal dollar that is available for the cleanup of hazardous waste. What happened in the middle of this fiscal year was that, in addition to us getting the commitment for \$40 million for the State, the Federal government made an unilateral decision not to require a 10% outlay in advance. So, on the sites we are negotiating at this point in time, we do not have to obligate money out of the Spill Fund. We still have to have that money ready at the point where we hit the construction phase, when they will want 10% of the total job. It is at that point we would get credit for

administrative expenditures. So, we're still in the investment phase on these major projects.

SENATOR COSTA: At this point, whether you look at it as credit, or expenditures from the Spill Fund, the fact is, that is an awful lot of money to be spending on administrative costs. Mr. Chairman, I would like to ask for a breakdown on where that money has been spent. It has been a frustration of mine as long as I have been in government -- and that's a long time -- to see that taxpayers' dollars never get to the heart of the problem, but are always spent on administrative funds. That distresses me terribly.

ASST. COMMISSIONER TYLER: All right. I share your frustration. I think in this instance I have to point to the Federal government. They passed the Super Fund law, and they put a preemption clause in it. Therefore, they subjected us to EPA bureaucracy and, when something is on the Super Fund list, we have to go through the Super Fund process. That means we have to get on line and wait for a guaranteed, or Federal reimbursement, or a denial to use the money.

We have actively supported changing the Federal law and, indeed, have worked with Senator Bradley's office on his version of the Reauthorization of the Super Fund, which he introduced in the United States Senate to remove the preemption language. We are prepared to pursue that issue in any way we can.

SENATOR COSTA: It seems odd to me that the preemption issue has been resolved twice in our courts, and yet our Attorney General will not accept their conclusions.

ASST. COMMISSIONER TYLER: Well, I can't--

MR. HUNT: The matter is still under appeal.

SENATOR COSTA: I know you can't speak for the Attorney General, but--

SENATOR CONTILLO: (interrupting) Did the Attorney General give you a second opinion after this?

MR. HUNT: No.

SENATOR CONTILLO: Did he give you a written opinion in the first place?

MR. HUNT: We promulgated regulations which were the basis for our defense.

SENATOR DALTON: The question was, "Did he give you a written opinion?"

MR. HUNT: No.

ASST. COMMISSIONER TYLER: I seem to remember a memo somewhere.

SENATOR CONTILLO: A what?

ASST. COMMISSIONER TYLER: I seem to remember an informal opinion to the Spill Fund Administrator some years ago, which gave guidance on the regulations.

MR. HUNT: I'm not sure if it was written. I have had many discussions with the Attorney General's office and, basically, the regulations and the interpretation of how we address those regulations, are what we have been guided by. Whether or not it was a written opinion, I don't remember at this point.

SENATOR CONTILLO: But, after the two court cases, he didn't write to you saying, "I still disagree with the court," or anything?

MR. HUNT: No, he did not.

SENATOR CONTILLO: That seems a little thin for the important problem we're facing. I would think that if he gave you a written opinion, you would have some basis to go on.

MR. HUNT: Again, if he gave me a written opinion, it was not a formal opinion. At the end of the last appeal, I think the procedures of the regulations were thrown out by the court. We were told that was based on procedural technicalities only, and did not apply to the base of the regulations. Other than that statement, it was not a written opinion as to how we should change our approach to defending.

SENATOR CONTILLO: Are we going to get a list of the projects that are underway?

ASST. COMMISSIONER TYLER: I will be glad to provide -- either in person or in written form -- a status report of all the projects and what the schedule for them is.

SENATOR CONTILLO: There seems to be a general feeling, for whatever reason it has developed, that we have ground to a halt in a "Catch-22" situation.

ASST. COMMISSIONER TYLER: The point is, and I think our project report will bear me out, we have not ground to a halt. The money has accumulated because we are in a phase where the Federal government is not asking for 10% from us, even though we are engaged in work on projects where they will later ask for 10%, and because we are engaged in major construction type projects, which have low front-end costs and very high construction costs which come later. This is very much equivalent to highway construction, where the original studies that give direction to the design which then guides the actual work, run maybe 5%, or less, of the total cost. The design runs about 10% of the total cost, so after two years on a given site, you have only spent 15% of the total cost. At the time you commit men and bulldozers out there to move dirt, etc., you have to have millions available. We forecast that out, and that is how we get through the Spill Fund and into the Bond Act.

SENATOR DALTON: Senator Garibaldi?

SENATOR GARIBALDI: Yes, Mr. Chairman, I have a couple of questions.

SENATOR DALTON: Sure.

SENATOR GARIBALDI: First, to follow up on Senator Costa's question, the \$8 million -- is that already spent, or is that a projected cost for administration?

MR. HUNT: I believe that is the annual cost, the fiscal year cost.

SENATOR GARIBALDI: In other words, that is committed?

MR. HUNT: It is committed in the sense that it has been approved through the budget process.

SENATOR GARIBALDI: And, will it be spent for that purpose? That is what I am getting at.

MR. HUNT: Yes.

SENATOR GARIBALDI: Okay. I am going to take advantage of this opportunity to be more specific. I happen to be the Mayor of a community that has a dump site which has been under restoration since 1977. We have had leachate flowing down the slopes of that eighty-two acre site. This is in Monroe Township in Middlesex County. There was

a front-page story in the Home News last Sunday which referred to the health hazards from the alleged contamination of our underground aquifers and wells, and people who are suffering from serious diseases as a result of what some experts attribute to the contamination of the underground aquifers and wells within close proximity of that dump site.

We appealed to the State to help us. As a matter of fact, the State refused to close the dump down, even knowing of the circumstances there. We finally had to litigate with the Department of Environmental Protection's Solid Waste Management Agency to intervene on our behalf, because we couldn't just close the dump site down. It wasn't a municipal operation; it was a dump site operated by a prestigious firm within the boundaries of our township.

Here is the problem we have. Now, that firm is suing the township for a vast sum of money, for the cleaning up, or the restoration of that site. We do not have the funds, certainly not within the 5% "cap" we have to live with. This exceeds the overall budget I use to operate my whole community.

Now, what does a town do in this circumstance?

ASST. COMMISSIONER TYLER: Can you tell me what site it is?

SENATOR GARIBALDI: It's the Browning-Ferris Industries operation site. I can refer you to front-page articles in the Home News. Experts from Rutgers University did a great deal of study and research on the problem. They were in the area to survey it back in 1980. I became Mayor in 1976, closed it in 1977, and had to litigate. I had to contact the State, and we were not allowed to do it. However, we did get them to join with us.

ASST. COMMISSIONER TYLER: I can't answer; I am not familiar with the specifics of that case. I can tell you that before 1980, there were no funds available to the State. So, during the 1976 to 1980 time frame, we did not have the moneys that we have available now. I also seem to recall there had been some kind of a cleanup agreed to between BFI and the Federal government in some kind of a court consent order, where they would undertake the cleanup at their expense. But, that is all I know about it off the top of my head. I would be glad to try to resolve your questions.



SENATOR GARIBALDI: I certainly would appreciate it, because we are involved in litigation at this point, and we couldn't even begin to settle. As I say, it is an eighty-two acre site. There had to be a leachate collection system. We project it is going to take at least twenty years before it will be cleaned up, or cleaned up to the satisfaction of everyone concerned. It is an extremely serious situation; the hazards are still there. We have had to construct a treatment facility, in addition to the leachate collection system, and there has been a clay liner installed. But, we didn't spend a couple million dollars in administrative costs to devise the system. We went to court, and the court said, "Browning-Ferris Industries, you come up with an engineering plan that will satisfy." They did, but now they are coming back to the town and saying, "Okay, you are going to pay for it now."

ASST. COMMISSIONER TYLER: Well, all I can say is, whatever they spent for the engineering design and for the studies which preceded that design -- those are the kinds of things I am talking about on these other sites which have to happen before you can invest the millions necessary to do a proper closure. Those are the kinds of things we are investigating on all the other sites in the State -- leachate treatment, leachate collection, capping, cutoff walls, and ground water monitoring.

SENATOR GARIBALDI: What of the annual costs?

ASST. COMMISSIONER TYLER: That is a major issue also.

SENATOR GARIBALDI: We have a \$125,000 projected annual cost for the next twenty-five years, in addition to the capital expenditures.

ASST. COMMISSIONER TYLER: That is consistent with the kinds of costs we're getting in terms of estimates from our engineering consultants for these other sites.

SENATOR GARIBALDI: Is this going to do our community any good?

ASST. COMMISSIONER TYLER: "This" meaning the \$10 million fund?

SENATOR GARIBALDI: Any dollars--

ASST. COMMISSIONER TYLER: I cannot answer the specific case sitting here.

SENATOR DALTON: Can you use the \$10 million, Mr. Tyler?

SENATOR GARIBALDI: For that purpose?

ASST. COMMISSIONER TYLER: We can use the \$10 million at the risk of not being reimbursed by the Federal government.

SENATOR DALTON: The \$10 million from the Spill Fund.

ASST. COMMISSIONER TYLER: Oh, excuse me. I'm sorry, I misunderstood the question. I thought the \$10 million you were referring to--

SENATOR DALTON: (interrupting) Can you use \$10 million from the Spill Fund?

ASST. COMMISSIONER TYLER: I think we have that available, and we are drawing it down as fast as we need to, consistent with our project management scheme. In other words, regarding the \$10 million appropriation bill -- what I said in the beginning that I didn't understand -- I think that money is there, ready for us to draw down, as we come to a need on any specific site. I suggest that the way to get the accelerator in effect is to put it in effect permanently by legislation, if that is the Committee's desire. I mean, that is what I thought I heard, a desire to raise the maximum amount of money possible and hold it in reserve for the future, when we have a need for these enormous maintenance costs.

For example, I propose that the entire issue of unspent monies will be gone in a year to a year and a half. The first time we sign a construction contract, we have to put up the 10% and commit, under Federal law, to operating a maintenance cost over a twenty-year period. We are going to have to show a source of money at Price's Pit of some \$20 million, a million dollar a year treatment cost over twenty years. I propose that the Bond Act will probably be the source we will point to in that case, in order to get the Federal money to do the construction.

Now, I may be wrong, because we are fighting in the Congress right now to correct Super Fund. Indeed, in Congressman Florio's and Senator Bradley's bill there is a provision to make the Federal

government liable for the maintenance costs, which would be a great victory for the State. Again, we would not need to get into the Bond Act. I would be the happiest person in the world if that happened. So, again, our policy has been to get the maximum amount of Federal dollars we can, either through the Congress or through EPA, and avoid using the Bond Act wherever possible. Thus far, our project schedule has kept us from getting to the Bond Act.

SENATOR DALTON: That is my question. Can you use \$10 million from the Spill Compensation Fund?

ASST. COMMISSIONER TYLER: My answer is, if we need to, it is there to draw down on for these purposes right now.

SENATOR DALTON: But, you are not drawing down on it.

ASST. COMMISSIONER TYLER: We are drawing down in the sense that we are obligating the money and moving on our thirty-five or thirty-six projects right now. If you are asking me if we can add more major projects in this fiscal year, the answer is, probably not, but certainly not without additional administrative costs, because those costs are for the staff that runs the projects. At the end of this fiscal year, we will have sixty-nine engineering, design, or construction projects underway in this State, with a staff that is now about 110, but will be about 150 to 160. That is on our side. Those administrative costs also include costs in the Treasury Department to administer the Fund, and costs in the Attorney General's office to run litigation associated with the Fund. So, the more money you want to draw down for additional projects, the more you undertake in administrative costs. Again, in addition to putting a project-by-project report before you, we will be glad to put our budget before you. I think we had to submit that as part of the Fiscal Year 1984 appropriations process, which is underway right now.

SENATOR DALTON: Let me ask you again, if we spend \$10 million from the Spill Fund, and we reserve \$10 million in the General Fund, dependent upon the outcome of the preemption issue before the New Jersey Supreme Court, would the Department feel that is a desirous way to go -- a good way in which to proceed?

ASST. COMMISSIONER TYLER: Having \$10 million in the General Fund in reserve, in case of possible preemption, would then permit us to use the \$10 million -- I think I am finally grasping the concept -- without the fear of being preempted. That would mean we could use the money in cases where the Federal government did not come through on Super Fund at the end of this fiscal year, for activities on a given site, for example, the removal of drums, where we do not want to wait for EPA. We have several sites around the State right now that are encumbered by being on the Super Fund list. We are waiting for the Federal government, which has the lead on those sites, to move in and take the first few steps. We have two sites which come to mind quickly, the Meyers property site in Hunterdon County, and the Swope Oil site in Camden County. These are both sites where we cannot spend Spill Fund dollars absent a cooperative agreement, under current legal advice; therefore, this money would allow us to go in and spend that money without fear. In that sense, it makes sense.

With respect to the accelerator clause -- I am not sure how it affects the accelerator clause and the \$5 million that would come in in additional money, because I think that under the law you have to actually have the money spent. It is not just set aside. But, you guys will have to look at that.

SENATOR DALTON: Now, I initially heard you say it would be a good idea, and now the more you talk, the less I think you think it is a good idea.

ASST. COMMISSIONER TYLER: What I said was, having some source of money in reserve that is not subject to the preemption question, would allow us to administratively proceed when an occasion arose.

SENATOR DALTON: Fine. Senator Garibaldi, I'm very sorry, but I just wanted to get that clear.

SENATOR GARIBALDI: I'm still not clear though.

SENATOR DALTON: Okay, go ahead.

ASST. COMMISSIONER TYLER: I'm not either, but I'll try.

SENATOR GARIBALDI: You know, I only referred to one site, and I understand you have a list of thirty-five sites. We have

problems crop up everyday with water contamination and a variety of other circumstances emanating from these landfills. I have the Edgeboro landfill, which is collecting garbage, and who knows what, from New York and Pennsylvania. Why do we have to continue to accept that? Is that in violation of the Supreme Court ruling to continue to accept these chemicals, or whatever else we are accepting, from out-of-state sources? We read about, and hear people complaining about, the contamination that is affecting their everyday lives, yet we allow this to continue to happen. What do we do? Can we attempt to utilize this source in an effort to prevent this from happening?

ASST. COMMISSIONER TYLER: You asked a lot of questions. The first point I would like to make is, I referred to thirty-five sites, and they would be the thirty-five top priority sites. In our management scheme, there are some 150 to 160 major sites, on which we anticipate drawing down Super Fund dollars over the next five years. We will make that management scheme available to the Committee, as we have to the Legislature in the past.

Secondly, there are no landfills in the State that are now licensed to accept liquid or solid hazardous waste. The Edgeboro landfill is one of some 200 landfills licensed by the Department to operate in the State. These involve quite a variety of monitoring and surveillance requirements, which we and the county departments of health impose on these landfills. Middlesex is a leading county in terms of its own solid waste enforcement effort, as well as the State's effort, with respect to the Edgeboro landfill.

With respect to the out-of-state waste question you asked, our Department passed regulations some years ago prohibiting absolutely all out-of-state waste from any New Jersey landfill. That was challenged by the City of Philadelphia, and a number of landfill operators -- private landowners -- in New Jersey. They successfully argued in the United States Supreme Court that that was a violation of the commerce clause of the Constitution, and we were ordered to rescind our regulations by the United States Supreme Court. We responded with a planning law which, in part, gives us a mechanism for dealing with out-of-state waste. We have, under the solid waste planning law, on

paper, banned out-of-state waste in various counties that have done adequate solid waste planning to pass legal muster there. Burlington County is a stellar example of how to do it right. They negotiated agreements with Philadelphia, Mercer County, a few towns in Bucks County, Pennsylvania, and some individual haulers from out of state and, indeed, they are now phasing out out-of-state waste. The State law that passed in 1975 makes it the counties' responsibility to run those kinds of negotiations.

The Hackensack Meadowlands Development Commission has engaged in a similar kind of defensible legal exclusion of out-of-state waste in the Meadowlands area. In Middlesex County, there are at least unilateral agreements with New York haulers that allow them to continue to dump for a period of time, and that is the same process, basically, that Burlington County followed, although it is less formal and, therefore, less defensible legally. So, the short answer -- I don't know if there is a short answer. I'm sorry to carry on, but you raised a number of points.

The origin of the \$10 million bill was to deal with the preemption issue, and to have a source of funding available that would not be clouded at all by preemption. This would be helpful; it would help us in certain cases to attack little pieces of sites, or maybe broader pieces of sites, the little pieces being, say, drum removal on a site on the Super Fund list. A broader piece might be if the Federal government did not come through with design money on a given site because of a Federal budget constraint in this fiscal year, our opting to take the risk where we felt the public's health demanded that we take the risk, and risking the possibility that the public fund would have to be paid back later.

SENATOR DALTON: Senator Laskin?

SENATOR LASKIN: Senator Dalton, it has been very enlightening to hear this discussion from the witnesses this morning, and I'm sure we are getting a lot of questions answered on environmental concerns. However, I am not so sure we are addressing the specific issue we are here about today. I have the bill for the \$10 million reserve fund -- I'll call it the reserve fund -- the



Hazardous Discharge Mitigation Fund. Maybe I'm oversimplifying it -- and I say this very respectfully because the Chairman of this Committee is the sponsor of the bill, and I know I shouldn't say anything that will get him upset -- but I really do not understand the necessity for this kind of bill. The DEP, every year under our normal budget process, can come in and say, "We need "X" millions of dollars this year for A, B, C, and D." I'm putting aside the preemption argument temporarily. This bill says, "Well, we won't go through that normal budget procedure anymore. There will be a fund set aside in reserve, and we can just use it when we want to do these projects." I am not so sure philosophically that I agree that you shouldn't go along and conform to the normal budget process each year -- come to the Legislature and say, "We need "X" millions of dollars for A, B, C, and D."

The way I read the bill -- and maybe I need it explained to me -- is, "Here's \$10 million we're going to stick in an escrow account for you." To me it is just making complex issues more complex. We are going to take \$10 million and have another fund, instead of the existing funds we have. We're going to say, "Look, here it is; you can play with it. It's your fund; keep it in your back pocket."

SENATOR CONTILLO: On what line does it say, "Play with it?"  
(laughter)

SENATOR LASKIN: That's what this is. I don't understand why we need this bill at all.

ASST. COMMISSIONER TYLER: Again, we only proposed it. I thought it was a supplemental appropriations bill, and we proposed it to have a source of money that was not under the cloud of preemption.

SENATOR LASKIN: See, if it is a supplemental appropriations bill, I look at it differently. It is a bill we have, and we are going to decide whether we want to appropriate \$10 million this year as a supplement.

ASST. COMMISSIONER TYLER: Yes.

SENATOR LASKIN: But, this very small, simple, one-pager says, "We are going to set up an escrow account permanently, which we are going to keep funded, and which really will not go through the

normal budget procedure." But, a supplemental appropriation, I can deal with that.

SENATOR DALTON: May I clarify it, if I can, Lee? I think what we are suggesting-- Presently, the bill is a supplemental appropriation of \$10 million. However, what we are suggesting we may do, is appropriate this \$10 million, but hold it in an escrow fund until the preemption issue is clarified. So if, in fact, we find that we are preempted from appropriating \$10 million from the Spill Compensation Fund and have to pay the origin of that \$10 million back, we have it, via the \$10 million.

SENATOR LASKIN: I understand that is what you want to do, Dan, but I am fearful we are setting up a new, permanent escrow account. That is the way I look at this thing. It doesn't really say what I think you would like it to say.

SENATOR DALTON: It doesn't say what I want it to say right now. Maybe after we get through all the speakers, it might say what we would all like it to say.

SENATOR GARIBALDI: Mr. Chairman, my thoughts coincide. That is the difficulty I find with this, you know, the Super Fund, the Little Fund, the Mitigation Fund -- we have more funds, and yet we can't get a dollar of it to clean up a site.

SENATOR DALTON: I think that's--

SENATOR GARIBALDI: (continuing) How do you get the money to do the job?

SENATOR DALTON: That is what we are here today to find out, Senator.

SENATOR GARIBALDI: Okay. You know, we don't have an answer about whether it's \$10 million, \$100 million, or whatever. We keep hearing about all these funds, but how do you get the funds to do the job? That is the key.

SENATOR DALTON: I think your question is the most appropriate question that we have to answer this morning.

SENATOR GARIBALDI: This bill doesn't do that, Senator. You know, my thoughts coincide--

SENATOR DALTON: (interrupting) My name is on that bill, but I have some thoughts about changing it.

SENATOR GARIBALDI: Okay, very good.

SENATOR DALTON: Senator Costa, and then Senator Contillo.

SENATOR COSTA: Thank you. You spoke about the balance in the Spill Fund; I believe you said \$16 million, is that correct?

MR. HUNT: That is correct.

SENATOR COSTA: You said \$8 million has been expended so far in administrative costs.

MR. HUNT: I would like to correct that figure. I reread another figure into the balance. It is fiscal year commitment.

SENATOR COSTA: All right. Are you going to give me the disbursements during the calendar years?

MR. HUNT: Well, let me just give you the fiscal year commitment in round numbers for administration. DEP is \$5.6 million; Treasury is \$560,000; and, Department of Health is \$145,000. That is roughly \$6 million.

SENATOR COSTA: Six million?

MR. HUNT: Yes, \$5.6 million, \$560,000 and \$145,000.

SENATOR COSTA: That's DEP, Treasury and the Department of Health?

MR. HUNT: Yes.

SENATOR COSTA: Of that \$8 million which you said is committed--

MR. HUNT: (interrupting) The other \$2 million was a line here that I did not separate out. It was actual expenses of \$2.5 million, roughly.

SENATOR COSTA: Two and a half million in expenses?

MR. HUNT: Through December.

SENATOR COSTA: What does "expenses" mean?

MR. HUNT: Cleanup.

SENATOR COSTA: That's cleanup.

SENATOR DALTON: So, you have \$8 million in administration, and \$2.5 in cleanup, so far?

MR. HUNT: No, six and two and a half; the eight was an incorrect number.

SENATOR DALTON: Okay. So, right now you're using \$6 million for administration?

MR. HUNT: That's right.

SENATOR DALTON: And, \$2 million has been used for cleanup?

MR. HUNT: Through the first six months; that's right.

SENATOR COSTA: Six months, \$2.5 million.

MR. HUNT: Now, in addition to that there is--

SENATOR COSTA: Excuse me. Six million is the annual figure -- for the whole year?

MR. HUNT: That's right.

SENATOR GARIBALDI: I'm no expert, but that is out of proportion.

ASST. COMMISSIONER TYLER: Senators, if I may interject just one thought. You have to look at the Super Fund expenditures and obligations, in addition to the Spill Fund, and balance that against the \$6 million administrative cost, because--

SENATOR COSTA: (interrupting) We don't have that. Are you going to give that to us?

ASST. COMMISSIONER TYLER: I will be glad to give it to you, but what our program is carrying is something like \$40 million worth of projects this year, most of which is Federal money. So, it does not show as a Spill Fund cleanup expenditure. It will by the end of the fiscal year, I hope, show as a Federal Super Fund expenditure, which is the same \$6 million in administrative costs.

SENATOR COSTA: It's the same difference, as far as I am concerned. Administrative costs are administrative costs, no matter--

ASST. COMMISSIONER TYLER: (interrupting) You can't run the projects without people, Senator.

SENATOR COSTA: I realize that. I was just getting some figures.

MR. HUNT: May I just add some more figures to that?

SENATOR COSTA: I am going to ask some questions; perhaps they can be answered by you.

MR. HUNT: Well, just based on the comment, I think the \$2.5 million has been spent. At this time, there is \$8 million committed through the balance of the year.

ASST. COMMISSIONER TYLER: That means contracts have been signed.

SENATOR COSTA: That leaves \$16 million after this?

MR. HUNT: That's right.

SENATOR GARIBALDI: That is already encumbered?

MR. HUNT: Yes.

SENATOR COSTA: All right. The \$8 million -- is that for feasibility studies?

MR. HUNT: I think most of it is, isn't it, George?

ASST. COMMISSIONER TYLER: Again, I don't want to speak off the cuff. It involves a variety of steps on a variety of projects. It is matching money, in many cases, against Federal expenditures, so you have to look at each project. For example, if I might take Burnt Fly Bog in Monmouth County, there is--

SENATOR COSTA: (interrupting) Would you be able to give us a report on that?

ASST. COMMISSIONER TYLER: Yes.

SENATOR COSTA: A breakdown on the moneys for each project?

ASST. COMMISSIONER TYLER: Yes, absolutely.

SENATOR CONTILLO: We asked for that already.

SENATOR COSTA: Yes, all right.

ASST. COMMISSIONER TYLER: The point I wanted to make very quickly is, that is all three phases at once. There is an immediate removal of surface contamination drums in lagoons; there is a design underway that has to happen simultaneously with that immediate removal; and, then there is long-term cleanup and water treatment plant construction, which will happen in the next fiscal year. So, you have money from the Spill Fund in that number that Bob read, obligated money, which is obligated against all three phases of that kind of work at that particular site, so you have to do it both ways.

SENATOR COSTA: Mr. Tyler, I have been working on the Spill Board for a long time, so you know I am familiar with the feasibility study, the focus feasibility study, and the remedial study, and I, for one--

ASST. COMMISSIONER TYLER: They are all Federal terms, I might add.

SENATOR COSTA: I know. I, for one -- if you knew me for a long time, you would know that I get hysterical over studies that go nowhere. If they are going to do something with them, then it is fine, but, unfortunately, too many studies go into an attic somewhere.

SENATOR LASKIN: That's true. I am going to remind you of that everytime we vote for another study in the Legislature.

SENATOR GARIBALDI: You had to say that.

SENATOR COSTA: Let me continue with my questions. What were the balances as of January 2, 1982 and 1983? Would you be able to tell me that?

MR. HUNT: I don't have the 1982 figures with me. But, as of December 31, 1983, the cash balance was \$33 million, and the operating balance, which is after the commitments, was \$16.3 million.

SENATOR COSTA: What were the disbursements during the calendar year 1982-1983?

MR. HUNT: I don't have those with me.

SENATOR COSTA: You don't have that. Could you get that information for me?

MR. HUNT: Sure.

SENATOR COSTA: How much in claims will be necessary to trigger the accelerator on the chemical tax?

MR. HUNT: In claims, in commitments?

SENATOR COSTA: Yes, in claims.

MR. HUNT: I believe it has to equal, or exceed the \$16 million. I would have to reread the statute, but I think that is what it is.

SENATOR CONTILLO: Is that the whole project, or the initial portion that you--

SENATOR COSTA: (interrupting) Does it have to be down to zero?

MR. HUNT: I recall that the automatic trigger is when the claims against the fund exceed the balance. However, there is another factor in there that says something about 70% of the balance. I am not familiar enough with the statute at this point to comment on that.

SENATOR COSTA: Will you get that information to us?

MR. HUNT: Sure.

SENATOR COSTA: Okay. If the current advice of the Attorney General is followed, when will the balance in the fund be enough to lift the tax?

MR. HUNT: I think that would be the same answer -- when the accelerator by definition goes in. You want to know when though?

SENATOR COSTA: Yes.

ASST. COMMISSIONER TYLER: I'm not sure I understand the question.

SENATOR CONTILLO: I think he answered that before.

SENATOR DALTON: What we are trying to find out, gentlemen, is when do you feel the fund is going to be zapped out -- zero -- at this point in time?

ASST. COMMISSIONER TYLER: All right. That was the question, and I said you would have to allow us to answer in some depth with a project-by-project analysis. The total obtained from that project-by-project analysis will yield when the Spill Fund will be in deficit. It is my recollection that we did that time line last year for Senator Lesniak, then Assemblyman Lesniak, and submitted it to the Assembly Agriculture and Environment Committee. It showed that during Fiscal Year 1985, the Fund will be in a deficit state.

SENATOR DALTON: If we appropriate \$10 million today from the Spill Fund, will the triggering mechanism be in any jeopardy of going off?

ASST. COMMISSIONER TYLER: I don't think so. To me, an appropriation bill won't do it. I think what Bob said, and he said he would have to check the statute--

SENATOR DALTON: (interrupting) It is the appropriation, plus commitments.

ASST. COMMISSIONER TYLER: It's the actual expenditure, or at least it is having an obligation to make after you can't make any more.

SENATOR COSTA: If you appropriate the \$10 million, you would have \$6 million left at this point.

ASST. COMMISSIONER TYLER: The \$10 million would still be there though.

SENATOR COSTA: I beg your pardon.

ASST. COMMISSIONER TYLER: That is what I said in the beginning. I said it is good to create--

SENATOR COSTA: (interrupting) No, if we were able to use this \$10 million, having the other appropriation in the General Fund stay there in case we are preempted and have to pay it back, you'd have \$6 million.

ASST. COMMISSIONER TYLER: Okay. I have tried to say this a number of times. I think there is a need for a nonpreemptive source, a source of money not subject to preemption. It would clear up one of the complexities that stops us from spending the money. However, we are now on a schedule where EPA has promised us the money. We are signing cooperative agreements, in fact, ahead of schedule. We are starting studies which in our Master Plan we were not due to start until the next quarter; we are starting them now. So, we are moving ahead of schedule in the low-cost end of these projects. Therefore, I do not foresee a need for the money right now, in terms of what is actually happening in the environment -- cleaning it up. There probably will be a need next year, and there may be a need, as I said, on pieces of sites now. We may move drums at Swope Oil, and we may move drums on the Meyers property, without regard to Federal preemption, taking the risk we won't be reimbursed, because you, in fact, set up a reimbursement source if we lose in the tax courts.

SENATOR LASKIN: Who asked for the \$2 million?

SENATOR COSTA: I don't understand your response, and I'll tell you why.

ASST. COMMISSIONER TYLER: Well, let me tell you. I said, at the point we offered the bill and suggested it, we were anticipating -- we were told by the Federal Environmental Protection Agency that we would only get about \$10 million to \$15 million for this fiscal year. Our needs are about \$36 million to \$40 million.

SENATOR LASKIN: But, that has changed now, right?

ASST. COMMISSIONER TYLER: Yes, it has changed.

SENATOR GARIBALDI: So then, you don't need this bill?

SENATOR LASKIN: So, there is no real need anymore.



ASST. COMMISSIONER TYLER: Again, the need can always reoccur, and that is why I agreed with Senator Lesniak and Senator Dalton that having the money in reserve was the right approach. Obviously, I have failed to say this clearly during the whole time I have been sitting here, and I apologize for that; but, that is what I meant. Having the money in reserve solves one of many legal problems that we go through. We have a series of laws and procedural hoops to jump through, which were not invented by the Spill Fund, and were not invented by us, but were invented by the Congress and the State Legislature working to put money in place for us to use. We have to respond to all of these steps. This is one pressure point that would be relieved. We would have a source of money, and if we hit a preemption question, we could draw on it. That is why I supported the bill as a reserve.

SENATOR GARIBALDI: May I ask you something, not to prolong this because I think I have a handle on what is going on now, but, just to clarify a point in the back of my mind? When a hazardous site is brought to your attention, in order to get your hands on whatever dollars, from whatever source, must the DEP perform its own study, or can you utilize information and studies that have already been prepared, certified--

ASST. COMMISSIONER TYLER: We do that, yes.

SENATOR GARIBALDI: (continuing) -- within municipalities, counties, etc.?

ASST. COMMISSIONER TYLER: Yes, we do both.

SENATOR GARIBALDI: But, do you still have to do your own studies, or can you waive that provision and accept that data?

ASST. COMMISSIONER TYLER: In the Price's Pit case, which is a case in point, we reimbursed a local governmental agency for work it had done, and we used that as the first part of the Federal work that had to be done. We took their study and, based on that, there is actual cleanup construction going on today. They had done the study; they took the risk, in other words, that they might not be reimbursed. They spent \$400,000 on their own. We took their case to the Federal government, we fought for it, and we were successful. That money was,

indeed, reimbursed through the Spill Fund to Atlantic County, and now we are getting credit for that \$400,000 expenditure in the \$16 million cleanup program which is underway down there.

So, it's not as if we are not spending the money, but that doesn't show up as a Spill Fund expenditure right now.

SENATOR GARIBALDI: Well, I was just looking at the duplication of effort, you know, that maybe this was an area where you could save. As we said, these studies all wind up in the attic anyhow, so let's not duplicate them to begin with.

ASST. COMMISSIONER TYLER: Let me take just a slight issue with that. These are studies that are feasibility studies which lead to engineering designs, just like when you build a building, or you build a highway, or you build anything. These are major construction projects, and you cannot just decide you are going to do it this way. You have to put some engineering talent to work to measure the problem, pull all the existing data together, and say, "It looks like what you ought to do is cap it and leave it there," or "Dig it up and truck it away," or "Build a treatment plant," or something in-between one of those.

SENATOR GARIBALDI: Right, but if someone has already performed that study -- and I am only talking about my own experience-- We have expended hundreds of thousands of dollars in my own community to develop this information over the course of years, without firms like Danes and Moore, etc., and we've paid for it.

ASST. COMMISSIONER TYLER: Absolutely. What I'm saying is, I agree with you 100%. We have tried to do that. In Atlantic County, we have done it. Right now, we are negotiating with Burlington County. They are in a position where they have studied a major site for new solid waste facilities. It happens to surround the Super Fund site. If we can get through all the legal things we have to get through with negotiating with the Federal government, the State government, and the county government, we are going to reimburse them for that work, and buy it as part of the Super Fund work for this site.

SENATOR COSTA: I hope so. Senator Garibaldi, one way you can stop your out-of-town trash from coming in, is by having your own landfill. Our county has bought one.

I have just two more questions. How much does the Spill Fund tax generate per year?

MR. HUNT: Roughly, \$10.5 million to \$11 million at the minimum.

SENATOR COSTA: And, how much will the tax generate if the chemical accelerator is triggered?

MR. HUNT: I would have to go back to what we were on at the chemical accelerator. I guess you're right; it was around \$14 million.

ASST. COMMISSIONER TYLER: I thought it was \$8 million regular, and \$12 million to \$14 million-- It depends on how much product moves through the State that is covered--

MR. HUNT: (interrupting) You see, there has been a different tax base too.

SENATOR COSTA: About \$14 million? Mr. Tyler, are you saying that the \$10.5 million to \$11 million is not the figure?

ASST. COMMISSIONER TYLER: My recollection is that it raises about \$9 million a year without the escalator, and maybe another four or five with it. But, it is a variable number, because it relates to how much product subject to the tax is transferred in the State. That is a function of the overall economy, for example, how much oil and gasoline moved through the State.

SENATOR COSTA: Well, since you are speculating, could you give us the actual figures we have generated?

ASST. COMMISSIONER TYLER: Sure.

SENATOR COSTA: Maybe you can also give us how much more would come with acceleration.

MR. HUNT: I guess we can give you some estimate on that -- on the acceleration.

SENATOR DALTON: Any estimates, or questions which remain unanswered on which you are going to get us information, please submit through the Committee staff, so that the staff can disburse the information to the whole Committee.

ASST. COMMISSIONER TYLER: Fine.

MR. HUNT: That would be Mr. Connelly?

SENATOR DALTON: That would be Mr. Connelly.

SENATOR CONTILLO: On the same subject, you indicated that in 1985, you feel the Fund will be depleted in an accelerated fashion. In other words, it is like a bottleneck until all these prices come on line.

ASST. COMMISSIONER TYLER: I believe our cash flow estimates for cleanup took us to zero without going to the Bond Fund in Fiscal Year 1985. (Asst. Commissioner Tyler has one of his staff come to the witness table.) This is Dr. Marwan Sadat, who heads our Division of Waste Management. I would just like him to check my memory. Marwan, wasn't it Fiscal Year 1985?

**D R. M A R W A N M. S A D A T:** Yes, 1985.

ASST. COMMISSIONER TYLER: Okay. That is the fiscal year that begins this July.

SENATOR CONTILLO: At which time the tax will not be enough to keep up with the projects you have?

ASST. COMMISSIONER TYLER: That's right.

SENATOR COSTA: Dr. Sadat, it is nice to see you again.

DR. SADAT: It's nice to see you again, Senator.

SENATOR COSTA: What is going to happen on Swope Oil, and when? If you recall, it was supposed to start last September.

DR. SADAT: Yes, Senator.

SENATOR DALTON: I'll ask you about GEMS too, as soon as Senator Costa gets finished.

DR. SADAT: On Swope Oil, the Federal government is doing feasibility studies. We asked them--

SENATOR COSTA: (interrupting) That was supposed to be done last year at this time.

DR. SADAT: Yes. You will recall, probably from the papers, that they had problems with their engineering contractor. They had just brought MUS on board, and it took them a little while -- since they had changed contractors -- to really get it going. But, the study is underway now. We had requested that initial remedial action be undertaken at the site, to make sure that we emptied the lagoons, and that the drums which were on the site were removed. They prepared a focus feasibility study, which you are familiar with, and agreed to do

that. Unfortunately, at the very last minute, the Office of General Counsel identified some generators and, under the law, they have to call the generators in to make sure they are given an opportunity to do the removable action by themselves.

Senator, your frustration is equal to mine, because every time we are ready to do a cleanup, someone comes along and says, "We have a generator on the hook," and then it is nine months of negotiations, which very often do not yield very much. That is the way the law is, and we cannot spend public money until we have complete refusal by these generators.

I think, in spite of what Assistant Commissioner Tyler has said, if we had \$10 million of the Fund we could use without the preemption issue, we would probably have cleaned it up last September.

ASST. COMMISSIONER TYLER: We would have done the fence; we would have removed the drums; and, we would have done the surface containment necessary to prevent the site from worsening while we--

SENATOR COSTA: (interrupting) What you're saying is, what we are trying to do today is needed -- what we are speaking of?

ASST. COMMISSIONER TYLER: Yes. That is exactly what I said, that it would give us an unpreempted source of moneys to make a judgment call free of concern about preemption on given pieces of given sites. That is where I was coming from.

SENATOR DALTON: In other words, what you're saying is that you do, in fact, need a bill and a supplemental appropriation to back up the Spill Fund in case the courts determine we are preempted from using the Spill Fund.

ASST. COMMISSIONER TYLER: That's right.

SENATOR LASKIN: That is what I'm talking about, maybe they will need it. That is the best they can say.

SENATOR COSTA: That is what we're all talking about.

SENATOR DALTON: He did not say "maybe." He said they needed it.

SENATOR COSTA: Right.

SENATOR DALTON: You said if you just had it, you would have been able to clean up Cathy's site.

SENATOR LASKIN: Last year.

ASST. COMMISSIONER TYLER: That's right, and you're absolutely right, Senator.

SENATOR LASKIN: But, you also said they received money from the other projects in the meantime.

ASST. COMMISSIONER TYLER: That's right. Now, EPA, as we advised, I think, Senator Costa--

SENATOR COSTA: I am sure there are other sites in this State which are just as bad as Swope.

ASST. COMMISSIONER TYLER: Well, I have to say there are pieces of other sites where we would use this money in a contingency--

SENATOR GARIBALDI: That is a heck of a way to handle such a serious and critical issue.

SENATOR LASKIN: It sure is.

ASST. COMMISSIONER TYLER: I am not guessing--

SENATOR GARIBALDI: (interrupting) I am not blaming you, Commissioner. What I am saying is, we have to devise a mechanism whereby we can address these problems. I'm telling you, people are dying out there.

SENATOR DALTON: We have the Spill Fund, but no one has the guts to use it, even after you got two court opinions.

ASST. COMMISSIONER TYLER: I am not permitted to make that kind of unilateral decision.

SENATOR DALTON: Okay, I'm sorry. Let me ask you two other questions. Right now you have what I see as two statutory impediments. Number one is the language in the 1981 bond issue, which precludes you from utilizing that until the Spill Fund is depleted. Would the Department like to see that language changed?

ASST. COMMISSIONER TYLER: Yes.

SENATOR DALTON: Changed so that we could use that regardless of the status of the Spill Fund?

ASST. COMMISSIONER TYLER: Yes. It would untangle part of the fiscal gridlock you referred to in your opening statement.

SENATOR DALTON: Number two, you also have a statutory impediment right in the Spill Fund itself. It says that no more than \$3 million can be utilized on pre-1977 sites by the Spill Fund. Would you be supportive of eliminating that impediment?

ASST. COMMISSIONER TYLER: Yes.

DR. SADAT: We have been, Senator.

ASST. COMMISSIONER TYLER: Absolutely.

SENATOR COSTA: Most of these sites go way back.

ASST. COMMISSIONER TYLER: Every time -- and I have said this before--

SENATOR LASKIN: (interrupting) It seems to me that those two things make sense. This is still really unclear, Dan, this \$10 million.

SENATOR DALTON: Thank you very much, gentlemen. Is there anyone here from the Public Advocate's office? Would you please come up, and identify yourself for the record?

**NANCY KEHAYES:** Good morning. My name is Nancy Kehayes. I am a Field Representative from the Department of the Public Advocate. I have prepared testimony, and I have it in writing if you would like copies of it for reference purposes.

The Department of the Public Advocate appreciates this opportunity to testify on Senate Bill 1120, an act concerning the mitigation and cleanup of hazardous discharge sites, and making an appropriation therefor.

The Public Advocate has had an ongoing involvement in hazardous waste management issues and the cleanup of existing hazardous waste discharge sites, as evidenced by our comments on the DEP Management Plan for Hazardous Waste Site Cleanups, our involvement in the State of New Jersey Department of Environmental Protection versus Signo, an instance where there are drums stored in Newark, New Jersey, and where we have intervened to get a consent agreement complied with, and our comments on DEP's hazardous waste disposal regulations for land disposal and for interim authorization permits.

It is clearly within the public interest to expedite the cleanup of existing toxic waste sites and, thereby, protect the environment and health and safety of the citizens of this State, who live, work and recreate near such sites. The Public Advocate recognizes that in order to achieve an expeditious cleanup process, funds must be made available for design, construction, and maintenance

operations. However, a scheme has already been carefully established by the Legislature to deal with the funding of hazardous waste site cleanups in New Jersey. This is the New Jersey Spill Compensation Act, which is intended to provide money for the cleanup of toxic waste sites in this State.

Senate Bill 1120, on the other hand, is a one-time appropriation that sets up a second system of funding -- or a third, if you want to include the Bond Act. The Public Advocate is not convinced that this is an appropriate way to respond to problems with existing legislation. This bill deals with only one small portion of New Jersey's hazardous waste cleanup needs. As such, it provides a piecemeal approach to a much larger problem in this State. The Public Advocate submits that there are alternative solutions to the lack of appropriations for cleanup operations of toxic waste discharge sites that are more effective, less costly, and which would fit more clearly into the established framework developed by the Legislature in the Spill Fund.

Before approving additional funding for cleanup operations, this Committee should review the existing legislation and address the problems therein -- and it looks as if you are headed in that direction. This would not only allow the Committee to develop a comprehensive understanding of present cleanup operations of toxic waste sites, but would also allow this Committee, if necessary, to amend S-1120 to fit more clearly into the framework developed for the Spill Fund.

In reviewing the present administration of cleanup operations, the Public Advocate suggests that this Committee address itself to the following considerations before taking any action on Senate Bill 1120-- I have with me the Public Advocate's comments on the DEP waste cleanup plan for New Jersey. I have one copy I would like to give you for your consideration.

SENATOR DALTON: We will make copies for the whole Committee.

MS. KEHAYES: Thank you. Our first question is, how is Spill Fund money presently being spent? You have asked the same question yourselves, but I do not think we have been satisfactorily answered.



Our second question is, if Senate Bill 1120 is approved, how will priorities be set? For which sites will the money be spent, and how much will cleanup and mitigation cost? Senate Bill 1120 presently contains no information on these important questions.

Thirdly, \$10 million is clearly inadequate for the funding of cleanups at all eighty-five Super Fund sites. We have already learned that it cost \$8 million just for the administration of the program. Will other appropriations be requested from the General Fund when the \$10 million is exhausted? If so, when, and how often?

Our fourth question is, out of the Spill Compensation Act, the State has the obligation and authority to recoup moneys expended for toxic waste cleanups from responsible parties. Will this \$10 million be paid back to the General Fund? There are no provisions S-1120 to guarantee this. If approved, S-1120 should be amended to place the administration of the appropriation within the jurisdiction of the Spill Compensation Administration, so that moneys spent can be recouped.

Lastly, and this is a point I don't think has been touched upon yet, why is money being allocated for feasibility studies, when EPA's current internal policy, based on their interpretation of the Super Fund Act -- the Comprehensive Environmental Response Compensation and Liability Act -- provides that the Federal government pays for 100% of feasibility investigations of Super Fund sites? I do not think that question has been addressed.

The Public Advocate agrees with the underlying intent of Senate Bill 1120 to provide for the immediate cleanup and mitigation of hazardous waste discharge sites. However, we strongly recommend that this Committee defer decision on the bill until the serious concerns we have raised in this testimony have been adequately addressed.

Our Department welcomes the opportunity to work with you and the DEP in seeking solutions to these important issues, and any other problems that are presently impeding the prompt cleanup of hazardous and toxic waste sites in New Jersey.

Thank you for providing us with this opportunity.

SENATOR DALTON: Are there any questions from the Committee?

SENATOR COSTA: Regarding the feasibility studies, I believe we may have touched on that when speaking of studies. Correct me if I am wrong, but I believe Mr. Tyler said we would be getting reimbursement under the Super Fund. Is that correct?

ASST. COMMISSIONER TYLER: For any of the moneys we have obligated for the policy change, we will be applying for retroactive credit for study and design work that is now covered by that 100% policy. We are not signing any contracts to spend money for work that the Federal government would otherwise pay for. We are seeking, as I said, every Federal dollar that is available. If they are willing to pay 100% of the study and design, then that is what we are dealing with.

SENATOR COSTA: When dealing with feasibility studies, do they necessarily have to be accomplished by the Federal government, or can the State go into feasibility studies and be reimbursed?

ASST. COMMISSIONER TYLER: Yes, in fact, of the -- again, in very rough numbers -- twenty or so feasibility studies and conceptual designs that are underway in New Jersey, we have approximately 50% of the work where the State is the lead, and approximately 50% where the Federal government is the lead. Again, when we give you our site-by-site breakdown, we will make that explicitly clear, but, what we have tried to do is maximize the staff resources that we both have available to get the most amount of work done in the shortest amount of time.

SENATOR COSTA: My question was, will we get reimbursed?

ASST. COMMISSIONER TYLER: Yes, if indeed we spend money. We may not even spend it. Even in the studies where we are the lead, the Federal government may well be paying 100% if it is on the Super Fund list, if, in fact, that is the case. So, while we manage the work, they pay the bill.

SENATOR DALTON: I would love to have at least five days with you guys, and then I think I would be able to understand you, because I am not understanding a whole lot right now.

ASST. COMMISSIONER TYLER: Well, Senator, I would be glad to come back with every site and go through each one.

SENATOR DALTON: George, it is not a matter of coming back with every site; it is telling this Committee that you have come here, and that your Department has asked for "X" amount of dollars -- \$10 million -- and now we are debating whether you are going to use it, or whether you need it or not.

ASST. COMMISSIONER TYLER: May I answer the question?

SENATOR DALTON: Yes, you may.

SENATOR COSTA: As they say on Seventh Avenue, "Plain talk, please."

ASST. COMMISSIONER TYLER: When we proposed the bill, there was a substantial budget shortfall from the Federal government. That was at a point in time last summer or fall. That has changed. It has changed because we (inaudible) for Federal money, so there is not a need for a large amount of money which is not subject to preempting at this point in time. There are always going to be pieces of sites where we could use this nonpreemptive source as a resource to decide to move ahead if we felt that was the case, but these cases are progressing. In the Swope Oil case, as Dr. Sadat pointed out, EPA has identified generators, and has started to negotiate with the generators to do the cleanup. If, in fact, they agree, then that need will disappear before the moneys, perhaps, are available. So, it is a moving target; that's what I'm saying.

SENATOR COSTA: May I stop you right there? That is a ridiculous thing, after all these years of looking for the generators, to finally find them. Why not go through with it? Although you have identified the generators, why stall the project? Send them the bill, but, you know, don't stall the project.

ASST. COMMISSIONER TYLER: I think we have advocated that position.

SENATOR LASKIN: Cathy, I don't think they have that discretion. I think they have to be concerned about what the law mandates. That is what should be changed -- the law.

SENATOR CONTILLO: The Federal law; we're talking about the Federal law. Is this a Federal policy?

ASST. COMMISSIONER TYLER: That's right. The Federal government must proceed, and the State must be in a position to recover costs from those who are responsible. We have taken the position that we can do the work, and sue later. But, the Federal government does not always take that position. In the Swope Oil case, they are in the midst of making that decision right now, which is why I am giving you an answer which is "yes" today, and might be "no" in a month, if they sign a consent agreement with those generators. I apologize if I didn't make that clear, but the situation with the Federal budget changed since last fall, and the situation on any given site can change as they are negotiating with the generators.

SENATOR DALTON: Isn't there always going to be a need for the cleanup of at least small sites in this State?

ASST. COMMISSIONER TYLER: Yes.

SENATOR DALTON: Okay, there is that need. You cannot do it with the Spill Compensation Fund? Right now, you are precluded from doing it with the Spill Compensation Fund, via the Attorney General's non-opinion?

ASST. COMMISSIONER TYLER: The rules which we are constrained under are that we apply for Federal Super Fund dollars on each site and, if we are rejected, then we may proceed to use the State Spill Fund. If we are approved, we must expend the State Spill Fund only in accordance with the agreement with EPA. So, the small sites generally fall out with a quick rejection from the Federal government.

SENATOR DALTON: What moneys do you use to clean up those small sites?

ASST. COMMISSIONER TYLER: The Spill Fund moneys.

SENATOR DALTON: Can you use the Spill Fund for the small sites?

ASST. COMMISSIONER TYLER: As soon as we receive a rejection from the Federal government. In fact, we have cleaned up some eighty sites in the State.

SENATOR DALTON: Now, you can use the Spill Fund for the small sites?

ASST. COMMISSIONER TYLER: Yes.

SENATOR DALTON: Okay. If there is no preemption at all for using the Spill Fund on the small sites, why are we considering this bill?

ASST. COMMISSIONER TYLER: There is preemption with respect to the small sites.

SENATOR DALTON: There is preemption with regard to the small sites?

ASST. COMMISSIONER TYLER: It is resolved by rejection by the EPA of our application for Super Fund. Once EPA rejects the application, it is not eligible for Super Fund, so that particular site is no longer covered by the cloud of preemption. Similarly, on a large site, there are pieces that we might want to do in advance of a final ruling from EPA, or in advance of an agreement with EPA.

SENATOR DALTON: If, in fact, the EPA rejects your bid to utilize Super Fund moneys to address a small site, then you have the alternative to utilize the Spill Compensation Fund?

ASST. COMMISSIONER TYLER: Yes, that's right.

SENATOR DALTON: My next question is, if, in fact, that is the case, what do you need this for?

ASST. COMMISSIONER TYLER: Again, it is a contingency, should we hit another case like Swope Oil or, indeed, should Swope Oil stay on in its present state to the point where that money would be available to deal with sites that are approved by EPA for Federal Super Fund, so that we cannot use Spill Fund dollars. EPA is not ready to move as fast as we think the public health demands movement. Therefore, we want a source of money to enable us to move ahead on those sites. But, as I tried to point out, at this point in time, it would be largely a contingency, or for use for small pieces of a few sites, because the larger amount of money we needed earlier has been alleviated by a Federal budget decision to give us the money.

SENATOR DALTON: Doctor, can you use this \$5 million right now to clean up a site?

DR. SADAT: Yes.

SENATOR DALTON: What site?

DR. SADAT: I can start by cleaning up drums at Swope. I can go to Meyers. In fact, I am negotiating with the Federal government right now to try to remove drums. There are eighteen drums on the Meyers property.

SENATOR DALTON: Where is that?

DR. SADAT: In Hunterdon County. For a year, I have been trying to negotiate the cleanup of these eighteen drums, and I have not been able to; neither has the Federal government been able to. I cannot use the Spill Fund because it is a Super Fund site. It is a Super Fund site, and we certainly don't want to lose the Super Fund option for the larger problem. But, regarding the small pieces, it would be very, very nice to have a certain amount of money we could use to do those. In addition, I am somewhat concerned that come September-- As you know, every September we get a slowdown. Between August and October -- the end of October -- the Federal government, basically with respect to signing cooperative agreements and contracts for feasibility studies, gets very delayed and, in fact, we lost about six months from our schedule last year, because of this delay in the Federal procedures, as they are trying to allocate the funds to be used for cleaning up. If we had that amount of money, we could proceed to do feasibility studies on a tiny basis, where we think that either the Super Fund is not going to reach it, or there are going to be such delays as to impact the design phase.

Now, specifically on certain feasibility studies this year, we may lose a certain amount of design money, because feasibility studies were not initiated in time.

SENATOR GARIBALDI: Mr. Chairman?

SENATOR DALTON: Go ahead, Senator Garibaldi.

SENATOR GARIBALDI: I would like to make a recommendation. I could support this bill, in my mind, under these conditions. But, first of all, we need a lot of information as to how the Spill Fund moneys have been spent, and how they are presently being spent. We do not know.

SENATOR DALTON: Right.

SENATOR GARIBALDI: We have not gotten that, and I don't think they have a handle on it. We need that information. Now, as far as this bill is concerned, I could support this bill if it prescribed, within the four corners, exactly what the priorities are, and for which sites the money is going to be spent, and how much it is going to cost, including the mitigation costs. If that can be incorporated within this bill, I can support it.

SENATOR DALTON: Thank you, Senator Garibaldi. Does anyone have any questions for Ms. Kehayes, from the Public Advocate's office? (no response) Hal Bozarth, would you like to testify next?

**H A L B O Z A R T H:** Yes, Senator, and I will be quick.

SENATOR GARIBALDI: You don't think anyone is going to believe that, do you? Everyone here today said they were going to be quick.

SENATOR DALTON: What organization do you represent, Hal?

MR. BOZARTH: I am with the Chemical Industry Council, Senator. My name is Hal Bozarth. The folks I represent -- seventy-two member companies -- pay approximately one-half the moneys generated into the State's Spill Fund. I, too, am a bit confused by all the things I have heard today, so I can fully understand the reticence in some of your minds. Let me just say philosophically, that from our point of view, we realize in the chemical industry that the cleanup of the abandoned dumps, and the problems inherent thereto, are the overriding environmental issues in the nation and in the State. We realize that the perception of those dumps still being around leads to a negative impression for the industry I represent. Therefore, we would like to see those sites cleaned up as quickly as possible, and funded through a fair and equitable tax base.

Let me just spend a few minutes telling you from the industry's side, since we pay the money, how it affects some of our members and what it does, having said what I've said. First of all, in 1982, my figures -- and I believe those from the Administrator of the Fund -- indicate that the escalator was in place for a portion of that year. That is eight-tenths of a percent. It works this way. When a company generates or manufactures material that is on a list -- feed

stock materials -- they are taxed at four-tenths of a percent of the fair market value of that material. Therefore, not everybody in the State of New Jersey is in the tax system, because they do not manufacture that material.

When the escalator goes in, it is at eight-tenths of a percent. Am I right so far?

MR. CONNELLY: Well, it is the first transfer into it. It is not manufactured.

MR. BOZARTH: The first transfer, right. I'm trying to show that specific point. It is the first transfer, but the people who end up making and paying the tax in New Jersey are those who make the material on that list, which is then transferred to downstream users. So, we have a small amount of people making roughly a minor amount of substances which are on the list, that are taxed at four-tenths of a percent of the fair market value of that substance. That is why you are getting fuzzy figures, because the value of the substance increases or decreases with the economic times. When your product cost goes up, there is more; when the product cost goes down, for whatever reason, you pay less.

In 1982, with the escalator at eight-tenths of a percent in place for a time, the Fund collected \$13.7 million. Of that \$13.7 million, the oil companies on one side paid a penny a barrel, in addition to what we paid at eight-tenths of a percent. There are two sides to the Fund. Oil companies pay a penny a barrel; we pay whatever the going rate is on the fair market value of those substances on the list.

In 1983, without the escalator being in -- therefore, back at four-tenths of a percent -- the Fund took in about \$10.4 million. The oil side paid \$5.6 million, and the chemical side paid approximately \$4.8 million. You can see the difference between 1983 at \$10 million and 1982 at \$13 million. So, roughly, those are the figures. When you escalate the tax, it only escalates in this case on the chemical side. The oil side stays fairly constant.

SENATOR CONTILLO: But, you said it was only for part of the year.

SENATOR COSTA: In 1982, what was the--



SENATOR CONTILLO: (interrupting) You said, "Part of the year." The escalator was implemented for only part of the year?

MR. BOZARTH: Senator, I don't believe it was in place for the full year. I do not remember at this point exactly how many months it was in place, or how many quarters. But, you can see that they raised more money in 1982 than in 1983, and I would have to work the projections, or ask the Administrator to get that report to you.

SENATOR COSTA: What was your breakdown for 1982?

MR. BOZARTH: My breakdown for 1982 was just a total of \$13.7 million from both sides. I don't have that for the chemical side.

SENATOR COSTA: You don't have that?

MR. BOZARTH: No, I don't have that; all I have is the 1983 breakdown. I'm sorry I don't have that.

As it turns out in practical reality, 220 people -- and, I'm talking just the chemical side now -- 220 companies pay the tax, whether it is at four-tenths of a percent or eight-tenths of a percent. The oil companies are constantly in the system, and they pay that constant penny a barrel.

DEP's figures in the Division of Waste Management show that there are 1,500 generators of hazardous waste in the manifest system; 1,300 of those pay absolutely no tax. Browning-Ferris, Senator, pays absolutely no tax. We have a situation where the chemical companies are paying -- if you look at the eight-tenths of a percent -- the lion's share of whatever the Spill Fund is and, in many cases, they generate less waste than other people who have caused some problems. Swope Oil is another example.

Let me give you one quick example, Senator.

SENATOR DALTON: Are you eventually going to talk about the bill?

MR. BOZARTH: Yes, I am. I just want to set the background so you will know why I am concerned about where that \$10 million comes from.

SENATOR DALTON: What you are doing is, you're setting the background of where the tax initiates from. That is what you're setting the background on. You're not setting the background on the bill.

MR. BOZARTH: That's right, and I'm only doing that because if you are going to take the \$10 million from the Spill Fund, my next point will show you what burden is placed on the taxpayers. I think it is instructive to the members of the Committee to know how the tax is applied.

SENATOR DALTON: We're here to talk about S-1120 and, if you would focus your remarks on S-1120, we would be very appreciative.

MR. BOZARTH: If S-1120 stays the way it is today, the Chemical Industry Council can support S-1120, for the simple reason that it does what George Tyler said it would do. It takes money and allows Dr. Sadat to use it in an unencumbered, or potentially unencumbered fashion. If the bill is amended to take \$10 million, not out of the surplus general revenues, but from the Spill Fund, then it has a determining affect upon the behavior of the people who pay into the Spill Fund.

One quick example, B. F. Goodrich in Gloucester County, in one year, generates approximately 181 tons of hazardous waste. That is not a lot of waste when you look at the totals I have. They pay, in fair market value tax at four-tenths of a percent, \$250,000. In addition to that, that same plant in Gloucester County pays \$400,000 per year to the Federal Super Fund. New Jersey is the only State that has the double taxing situation, where the chemical industry, which pays in an aggregate 88% of the Federal Super Fund, pays that tax, and whatever the payment is on the fair market value Spill Fund tax.

SENATOR DALTON: And, thus your court case.

MR. BOZARTH: And, thus the court case. Five companies -- some of them my members -- brought a case on the merits of preemption in the Federal statute. The CIC has not taken a position one way or another on that. That is their business. However, if you take that money from the Spill Fund, that does have an effect on my seventy-two members. If, in effect, it jumps up to a payment of \$500,000 for B. F. Goodrich, that will cause someone in B. F. Goodrich's chain of command to take a look at the viability of his facility. I could give you four or five other examples, but I won't do that. I think if you take the money from the Spill Fund, it is under the same cloud of

preemption that you have under the system now. The Supreme Court has heard the arguments. People have told me that in the spring, or in the summer, they will be rendering a decision; obviously, I can't tell when, but it would probably be a good idea to wait and see exactly what the status of preemption is, if you are going to take the money from the Spill Fund. If it is going to be general revenues, that is another point.

I think the Senator's point is well taken about let's delineate where the expenses are going to be. Obviously, we do not want to see another situation where \$26 million is spent at one site.

Without going back into how the tax works, Senator, that is all I would like to say, other than the fact that I would have strong reservations about supporting any bill which would take an additional \$10 million out of the existing Spill Fund when, number one, you are going to be under the same cloud of preemption and, number two, the money is already available. If they want to spend the money quickly enough, if they can spend the money quickly enough, the money is there.

SENATOR DALTON: Where is the money, Hal?

MR. BOZARTH: Well, I think the Administrator pointed out that there is excess money in the Fund now which is not committed. My figures showed earlier this year, that as of January 30, 1983, there was \$15 million to \$18 million in uncommitted money. I'm sure some of that money has been committed; that was six months ago.

SENATOR DALTON: But, you just said that the court case renders a cloud over the utilization of the fund.

MR. BOZARTH: On those sites where there are potential expenditures from the Super Fund at the Federal level.

SENATOR CONTILLO: We heard testimony that in 1985 the Fund will be dead, depleted, gone.

MR. BOZARTH: That's right.

SENATOR CONTILLO: Our projections and plans are working on it now.

MR. BOZARTH: I would assume that is because they have all the feasibility studies in and, therefore, then you started the expenditures of the money for the actual cleanup. When that happens, obviously the Fund will be depleted.

SENATOR LASKIN: When that happens, we go to the bond issue money, so that is really not a good issue for what we're talking about now. Then, we can go with the bond issue.

SENATOR CONTILLO: Also, the accelerator comes in.

MR. BOZARTH: There is just one point. You are going to have to have a constitutional amendment to get into the Bond Act, because it was done through a constitutional amendment with structures on how that money is to be spent.

SENATOR DALTON: We are aware of that. Senator Garibaldi?

SENATOR GARIBALDI: Mr. Chairman, not specifically on the bill, but he did raise some points. You alluded to one chemical company in Gloucester County, if I recall?

MR. BOZARTH: B. F. Goodrich; that is correct.

SENATOR GARIBALDI: This company produces hazardous waste or substance?

MR. BOZARTH: That is correct.

SENATOR GARIBALDI: What is this hazardous waste or substance, can you tell us?

MR. BOZARTH: Not specifically; there is a whole range of substances which are considered hazardous. But, 181 tons is the aggregate that they are, by law, supposed to report on the manifest system.

SENATOR GARIBALDI: Are these defined under our own Department of Environmental Protection as being hazardous, or toxic, or whatever else?

MR. BOZARTH: That is correct.

SENATOR GARIBALDI: Is it ever possible for these corporations to use elements other than the known hazardous or toxic materials?

MR. BOZARTH: Without gathering the ire of the Chairman, let me just briefly tell you that if the tax was structured differently, there would be an incentive to either change their processes or to recycle the waste.

SENATOR GARIBALDI: So, then you wouldn't have all these toxic or hazardous substances to be worried about.

MR. BOZARTH: Well, you are always going to have some, but if you change the system so that it is a disincentive to generate the same amount, you will have less to worry about.

SENATOR GARIBALDI: Or, if it cost your chemical companies more on a surcharge, they might turn to other substances?

MR. BOZARTH: See, the problem is, the tax now on the front end, Senator, has no cause and effect relationship to the waste generation. So, those companies which generate a lot of waste, and do not pay any tax, which the vast majority of the companies in the State do not, and are generating, there is no incentive for them to do anything else, unless you change the tax to a waste end disposal fee, which we are working on.

SENATOR CONTILLO: Or, you add a waste end disposal fee.

MR. BOZARTH: Or you add, depending on what is most fair and equitable. As it stands now, you have 220 people in the State paying the tax; you have approximately 1,500 or 1,600 people who generate hazardous waste, the vast majority of them who are not paying the tax.

SENATOR GARIBALDI: Is it a fact though that they could use other chemicals or other elements in their manufacturing processes -- I have heard this on many occasions -- rather than the less expensive hazardous and toxic materials?

MR. BOZARTH: It is positive, as technology develops and a specific recycling industry can respond to that in certain areas. You are still going to have waste generated.

SENATOR GARIBALDI: Maybe legislation on the State level prohibiting the use of these hazardous and toxic chemicals in manufacturing and operating might solve the problem.

MR. BOZARTH: I don't know whether you can do that, but if you tax on the waste end, it certainly is going to be a disincentive to keeping things done the same way.

SENATOR GARIBALDI: The state of the art is such that you could use other than the toxic materials?

MR. BOZARTH: In some cases, but you are still going to end up with a lot of hazardous waste.

SENATOR DALTON: You didn't want to get into this either, did you, Hal?

MR. BOZARTH: No. There is always one thing worse down the line, Senator. I'm sorry I digressed there; I didn't mean to take your time.

SENATOR DALTON: That's all right. Thank you very much; we appreciate it. The last speaker is Jim Lanard, New Jersey Environmental Lobby. Is there anyone else here who would like to testify? (no response) We had Tim Yiely and Michael Gordon on the list. Are they here? (no response)

**J A M E S L A N A R D:** Senators, my name is Jim Lanard; I am a Legislative Agent for the New Jersey Environmental Lobby. Maybe I don't understand as much as the earlier speakers, but I do not seem to be as confused as they are. Senator, you asked a series of questions at the beginning of this meeting, and I tried to jot them down as you were raising them. I am just going to go over what I think the answers are, and what the Environmental Lobby's position is.

The first question you asked was, "Why spend from the General Fund, when the bond moneys and the Spill Fund moneys would be available?" We don't think you should spend from the General Treasury when the Legislature has already enacted two laws, one of which the public voted on in a public referendum. We think the first priority for New Jersey's DEP should be to spend money from the Spill Fund, which was what the New Jersey Legislature declared as its policy in 1977. We think the next place you should go for sources of revenue should be the Hazardous Waste Discharge Bond Act, which the public voted on and supported overwhelmingly. If you run out of those moneys, which add up to a minimum of \$116 million today, then we should look for additional appropriations. I don't think the Committee should be looking at additional appropriations before that time.

Another question you asked was, "Should the \$3 million limit on the Spill Fund pre-Act discharges be amended?" The DEP supports that amendment, and the New Jersey Environmental Lobby also supports that amendment. The \$3 million "cap" for annual expenditures of pre-1977 discharges should be deleted from the Act. The reason it was in originally, Senator, as I understand it, was that the Spill Fund in 1977 was initially considered to be an oil spill fund reaction

contingency fund. It has since been amended five or six times to bring it into a hazardous waste issue. You should get some corroboration from other people who were around back then.

Another question you asked, Senator, was, "Should the bond money be available if the Spill Fund is not depleted right now?" As you know, the bond issue prohibits the expenditure of bond moneys if the Spill Fund has moneys in it. We have this question about preemption, but let's not even worry about that for the time being. Let's just amend the Bond Act, which would have to be a public referendum in November, and say to the public, "Do you want this money to be used if the Spill Fund, indeed, cannot be depleted?" I don't know exactly what the language is; maybe it is, "before the Spill Fund accelerator is triggered." The DEP supports that language, and so does the Environmental Lobby. We think that would be another way of making extra money available earlier.

We do not think there is a preemption issue involved here. We think that right now the two court decisions should be respected by both the Attorney General of New Jersey, and by this Committee. To say, as I understood the DEP to say, that it was following the Attorney General's opinion, is to say that the Attorney General has unilaterally decided to ignore a decision of an appellate court of New Jersey -- the judicial system. I do not believe the Attorney General is vested with that power, and this Committee should so act.

DEP also told you, and here I am a little bit confused, that they were looking at approximately thirty-five sites to do some feasibility, design and, possibly, construction work on. DEP, however, has estimated that there are as many as 900 sites in New Jersey which have to be investigated. Certainly, if we make money available, and we ensure that competent staff can be hired, and a priority listing of sites can be established and reviewed by the public, there would be additional moneys needed to do even the feasibility studies and, certainly, the design and construction work. But, to hear that maybe there isn't more money needed now because we are only looking at thirty-five sites is very frustrating to me when we hear about 900 sites being available.

I am not suggesting that we go out and just spend lots of money, but I think that if we make the money available, and the agency, with the cooperation of the Legislature, reviews the priority settings for the sites and looks at how the money is going to be spent, and why it should be spent, we can spend more money than is currently available. I would think that because we have a potential of 900 sites, the accelerator in the Spill Fund should be considered, and it might be wise for this Committee to look at whether that trigger should be triggered very, very soon, rather than waiting for later, when it may be too late.

We have an ironic situation here. The DEP Commissioner and the Administration have told us for a long time that New Jersey leads the country in Super Fund sites, because we have eighty-five, which is more than any other state in the country. They are very proud of the effort, and I think they should be proud. It was important to get those sites listed right away. But, once they get on the Super Fund list, they tell us that the Spill Fund moneys are no longer available. So, while they did a great job of getting us on the list, by getting us on the list all our State moneys have been shut off by the Attorney General's opinion. This is an ironic situation which I think the Committee could address today.

There is a DEP interpretation which was raised, I believe, by the DEP today, which we do not agree with. I am not sure I am competent enough to give you the full explanation, but let me try. I understood the DEP to say that when they identify a generator of waste at a site, the Spill Fund moneys cannot be used because the generator has to be requested to fund the cleanup initially. This DEP interpretation seems to be inaccurate with the way the law was originally written.

I just have one last comment, and that concerns the Chemical Industry Council's comments. It seemed to me when Mr. Bozarth was discussing the accelerator tax and where the taxes should be levied in the Spill Fund, really what he was debating was the wisdom of the Legislature's enactment of the Spill Fund, which was back in 1977. I don't believe that is the subject of this meeting. Certainly, there is



room to look at the taxation structure of the Spill Fund, but not today when we are trying to appropriate moneys to clean up some other sites.

SENATOR CONTILLO: I viewed that as him pointing out to us possibly other areas of companies which may be willing to help, also, with the Spill Fund.

MR. LANARD: I think that issue needs to be investigated.

SENATOR CONTILLO: I do too.

SENATOR DALTON: Thank you very much, Jim. I would like to try to articulate what I hope is the consensus of this Committee. I think, at present, the consensus of the Committee is not, in fact, to move this bill -- this specific bill -- today. However, what the Committee would be willing to do, is to consider, in the very near future, a list of sites DEP will bring forward which Spill Compensation Funds can be used for. I think you will have this Committee's full cooperation, as far as appropriating these moneys. We want the priority of the sites, and the breadth of those sites can be as large as you would like. We know there are a number of sites out there that are not being addressed, and we feel there are moneys available to address them.

Additionally, I am going to direct staff to change the language in the 1981 Bond Act to allow the moneys to be used in that Act, regardless of the status of the Spill Compensation Fund.

Thirdly, I am going to direct staff to draw up legislation to remove the \$3 million lid on the use of the Spill Compensation Fund for pre-1977 sites.

Lastly, I would like staff to direct a letter to Legislative Counsel, Mr. Porroni, and to ask him for his legal advice as to whether the Spill Compensation Fund can be used now on Super Fund sites, because it is my feeling that you have two courts which have indicated that you can, and you have the Attorney General, who has refused to come out, at least in writing, as to what his opinion is. I think we ought to get Legislative Counsel's opinion on this -- this branch of the government's opinion.

Additionally, I -- and I would like to be joined by the members of this Committee -- want to write a letter to the Governor,

outlining what actions we are going to take, specifically with regard to legislation, and ask for his support right up front for those actions.

If no one has any other concerns, or wishes they would like to be made known right now, I would like to adjourn this Committee meeting. However, please be aware, DEP, that we are going to be looking for this list in the very near future. We have a problem, and this Committee wants to address it.

ASST. COMMISSIONER TYLER: We will be happy to make that available to you, and we will do so as soon as we can put it together. We will consult with your staff as to an appropriate time to come back before the Committee to make an explanation of the site-by-site analysis available to you.

SENATOR CONTILLO: Mr. Chairman, if Mr. Porroni says, in effect, that we can use the money, notwithstanding the problems with the Super Fund--

SENATOR DALTON: Then it would be up to this Committee at that point whether we want to proceed based on Mr. Porroni's opinion.

SENATOR CONTILLO: Okay, but would there be any need for the constitutional amendment then?

SENATOR DALTON: There would still be a need for the constitutional amendment on the bond issue.

SENATOR CONTILLO: Even if it loosened up--

SENATOR DALTON: The preemption issue as to whether to use Spill Compensation moneys, and the issue relative to the bond issue, although interlocked, are two separate issues, and we would need language to address them.

SENATOR CONTILLO: Okay. I'm slipping off what we started out to do. Two other things came into my head as I listened to the testimony today. Mr. Tyler suggested that in 1985 the Spill Fund would be depleted. Why shouldn't we look down -- aside from the bond money -- the entire question of instituting an acceleration on that tax, either with those who pay it now, or to consider, if there are 1,500 or 1,200 other companies which generate hazardous waste material from their original manufacturing processes -- shouldn't we also bring them into the system?

**New Jersey State Library**

SENATOR DALTON: That may be a--

SENATOR CONTILLO: (interrupting) As part of what we are doing.

SENATOR DALTON: (continues) definite source for a topic of review -- definitely.

SENATOR COSTA: Instead of just a front end.

SENATOR DALTON: Okay. Do you feel comfortable with that, Senators? (affirmative response) This Committee meeting is now adjourned. Thank you.

(MEETING CONCLUDED)