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PUBLIC HEARING

before

SENATE SPECIAL COMMITTEE TO STUDY COASTAL AND OCEAN POLLUTION

on

SENATE BILL NO. 2787

"Clean Water Enforcement Act"

and

Proposed Senate Committee Substitute for S-2787,
identical to A-3831 ACS

April 5, 1989
Room 403
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Richard Van Wagner, Chairman
Senator John D'Amico, Vice Chairman

ALSO PRESENT:

Leonard J. Colner
Office of Legislative Services
Aide, Senate Special Committee to Study Coastal
and Ocean Pollution

* * * * *

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

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF THE HISTORY OF ARTS AND ARCHITECTURE

OFFICE OF THE DEAN

1100 EAST 58TH STREET, CHICAGO, ILL. 60637

AND

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RICHARD VAN WAGNER
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New Jersey State Legislature
SENATE SPECIAL COMMITTEE
TO STUDY COASTAL AND OCEAN POLLUTION
STATE HOUSE ANNEX CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE (609) 292-7676

March 29, 1989

NOTICE OF PUBLIC HEARING

The Senate Special Committee to Study Coastal and Ocean Pollution will hold a public hearing beginning at 2:00 P.M. on Wednesday, April 5, 1989 in Room 403, Fourth Floor, State House Annex, Trenton, New Jersey.

The purpose of this hearing is to receive testimony on Senate Bill No. 2787, "The Clean Water Enforcement Act," in its original form and a proposed Senate committee substitute for S-2787, identical to A-3831 ACS.

Anyone wishing to testify should contact Leonard J. Colner, Committee Aide, at (609) 292-7676.

STATE OF NEW JERSEY

INTRODUCED AUGUST 4, 1988

By SENATORS PALLONE, VAN WAGNER, PATERNITI,
CONTILLO, COSTA, DUMONT, RAND, RUSSO, LASKIN,
ZANE, GAGLIANO, McNAMARA, GORMLEY, AMBROSIO,
FELDMAN, BROWN, RICE, McMANIMON,
LIPMAN AND O'CONNOR

1 AN ACT concerning water pollution control, creating a Clean
Water Enforcement Fund, and amending and supplementing
3 P.L.1977, c.74 (C.58:10A-1 et seq.).

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

7 1. (New section) This act shall be known, and may be cited, as
the "Clean Water Enforcement Act."

9 2. Section 3 of P.L.1977, c.74 (C.58:10A-3) is amended to read
as follows:

11 3. As used in this act, unless the context clearly requires a
different meaning, the following words and terms shall have the
13 following meanings:

a. "Administrator" means the Administrator of the United
15 States Environmental Protection Agency or his authorized
representative;

17 b. "Areawide plan" means any plan prepared pursuant to
section 208 of the Federal Act;

19 c. "Commissioner" means the Commissioner of Environmental
Protection or his authorized representative;

21 d. "Department" means the Department of Environmental
Protection;

23 e. "Discharge" means the releasing, spilling, leaking, pumping,
pouring, emitting, emptying, or dumping of a pollutant into the
25 waters of the State or onto land or into wells from which it might
flow or drain into said waters, and shall include the release of any
27 pollutant into a municipal treatment works;

f. "Effluent limitation" means any restriction on quantities,
29 quality, rates and concentration of chemical, physical, thermal,
biological, and other constituents of pollutants;

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

Matter underlined thus is new matter.

1 g. "Federal Act" means the "Federal Water Pollution Control
Act Amendments of 1972" (Public Law 92-500; 33 U.S.C.1251 et
3 seq.);

h. "Municipal treatment works" means the treatment works of
5 any municipal, county, or State agency or any agency or
subdivision created by one or more municipal, county or State
7 governments and the treatment works of any public utility as
defined in R.S.48:2-13;

9 i. "National Pollutant Discharge Elimination System" or
"NPDES" means the national system for the issuance of permits
11 under the Federal Act;

j. "New Jersey Pollutant Discharge Elimination System" or
13 "NJPDES" means the New Jersey system for the issuance of
permits under this act;

15 k. "Permit" means an NJPDES permit issued pursuant to
section 6 of this act;

17 l. "Person" means any individual, corporation, company,
partnership, firm, association, owner or operator of a treatment
19 works, political subdivision of this State and any state or
interstate agency. "Person" shall also mean any responsible
21 corporate official for the purpose of enforcement action under
section 10 of this act;

23 m. "Point source" means any discernible, confined and
discrete conveyance, including but not limited to, any pipe, ditch,
25 channel, tunnel, conduit, well, discrete fissure, container, rolling
stock, concentrated animal feeding operation, or vessel or other
27 floating craft, from which pollutants are or may be discharged;

n. "Pollutant" means any dredged spoil, solid waste,
29 incinerator residue, sewage, garbage, refuse, oil, grease, sewage
sludge, munitions, chemical wastes, biological materials,
31 radioactive substance, thermal waste, wrecked or discarded
equipment, rock, sand, cellar dirt, and industrial, municipal or
33 agricultural waste or other residue discharged into the waters of
the State;

35 o. "Pretreatment standards" means any restriction on
quantities, quality, rates, or concentrations of pollutants
37 discharged into municipal or privately owned treatment works
adopted pursuant to P.L.1972, c.42 (C.58:11-49 et seq.);

39 p. "Schedule of compliance" means a schedule of remedial

1 measures including an enforceable sequence of actions or
operations leading to compliance with water quality standards, an
3 effluent limitation or other limitation, prohibition or standard;

q. "Substantial modification of a permit" means any
5 significant change in any effluent limitation, schedule of
compliance, compliance monitoring requirement, or any other
7 provision in any permit which permits, allows, or requires more or
less stringent or more or less timely compliance by the permittee;

9 r. "Toxic pollutant" means those pollutants, or combinations
of pollutants, including disease causing agents, which after
11 discharge and upon exposure, ingestion, inhalation or assimilation
into any organism, either directly or indirectly by ingestion
13 through food chains, will, on the basis of information available to
the commissioner, cause death, disease, behavioral abnormalities,
15 cancer, genetic mutations, physiological malfunctions, including
malfunctions in reproduction, or physical deformation, in such
17 organisms or their offspring;

s. "Treatment works" means any device or systems, whether
19 public or private, used in the storage, treatment, recycling, or
reclamation of municipal or industrial waste of a liquid nature
21 including intercepting sewers, outfall sewers, sewage collection
systems, cooling towers and ponds, pumping, power and other
23 equipment and their appurtenances; extensions, improvements,
remodeling, additions, and alterations thereof; elements essential
25 to provide a reliable recycled supply such as standby treatment
units and clear well facilities; and any other works including sites
27 for the treatment process or for ultimate disposal of residues
resulting from such treatment. [Additional] Additionally,
29 "treatment works" means any other method or system for
preventing, abating, reducing, storing, treating, separating, or
31 disposing of pollutants, including storm water runoff, or industrial
waste in combined or separate storm water and sanitary sewer
33 systems;

t. "Waters of the State" means the ocean and its estuaries, all
35 springs, streams and bodies of surface or ground water, whether
natural or artificial, within the boundaries of this State or subject
37 to its jurisdiction[.];

u. "Chronic violator" means a person who has a record of
39 recurring serious violations.

1 v. "Recurring serious violations" means four or more serious
2 violations of the same NJPDES or NPDES permit within a six
3 month period;

4 w. "Serious violation" means a violation of the effluent
5 limitations for any pollutant in a NJPDES or NPDES permit by
6 40% or more; except that the department, on a case-by-case
7 basis, may utilize a greater or lesser percentage in determining a
8 serious violation if the department states the specific reasons for
9 the determination based on permit values, test parameters and
10 harm to the environment or the public health. Serious violation
11 includes the failure to submit a completed discharge monitoring
12 report, but does not include contested permit renewals,
13 stormwater runoffs, or acts of God;

14 x. "Stipulated penalty" means a penalty that is payable for
15 each violation of a standard, condition, limitation or deadline
16 prescribed by a schedule of compliance agreed to by a violator.
17 (cf: P.L.1977, c.74, s.3).

18 3. Section 4 of P.L.1977, c.74 (C.58:10A-4) is amended to read
19 as follows:

20 4. The commissioner shall have power to prepare, adopt,
21 amend, repeal and enforce, pursuant to the "Administrative
22 Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.), reasonable
23 codes, rules and regulations to prevent, control or abate water
24 pollution and to carry out the intent of this act, either throughout
25 the State or in certain areas of the State affected by a particular
26 water pollution problem. Such codes, rules and regulations may
27 include, but shall not be limited to, provisions concerning:

28 a. The storage of any liquid or solid pollutant in a manner
29 designed to keep it from entering the waters of the State;

30 b. The prior submission and approval of plans and
31 specifications for the construction or modification of any
32 treatment work or part thereof;

33 c. The classification of the surface and ground waters of the
34 State and the determination of water quality standards for each
35 such classification;

36 d. The limitation of effluents, including toxic effluents as
37 indicated herein;

38 e. The determination of pretreatment standards;

39 f. The establishment of user charges and cost recovery

1 requirements in conformance with the Federal Act[.];

g. The establishment of a civil penalty policy governing the
3 uniform assessment of civil penalties in accordance with section
4 10 of P.L.1977, c.74 (C.58:10A-10).

5 (cf: P.L.1977, c.74, s.4)

4. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read
7 as follows:

6. a. It shall be unlawful for any person to discharge any
9 pollutant, except in conformity with a valid New Jersey Pollutant
Discharge Elimination System permit that has been issued by the
11 commissioner pursuant to this act or a valid National [Pollution]
Pollutant Discharge Elimination System permit issued by the
13 administrator pursuant to the Federal Act, as the case may be.

b. It shall be unlawful for any person to build, install, modify
15 or operate any facility for the collection, treatment or discharge
of any pollutant, except after approval by the department
17 pursuant to regulations adopted by the commissioner.

c. The commissioner is hereby authorized to grant, deny,
19 modify, suspend, revoke, and reissue NJPDES permits in
accordance with this act, and with regulations to be adopted by
21 him. The commissioner may reissue, with or without
modifications, an NJPDES permit duly issued by the federal
23 government as the NJPDES permit required by this act.

d. The commissioner may, by regulation, exempt the following
25 categories of discharge, in whole or in part, from the requirement
of obtaining a permit under this act; provided, however, that an
27 exemption afforded under this section shall not limit the civil or
criminal liability of any discharger nor exempt any discharger
29 from approval or permit requirements under any other provision
of law:

31 (1) Additions of sewage, industrial wastes or other materials
into a publicly owned sewage treatment works which is regulated
33 by pretreatment standards;

(2) Discharges of any pollutant from a marine vessel or other
35 discharges incidental to the normal operation of marine vessels;

(3) Discharges from septic tanks, or other individual waste
37 disposal systems, sanitary landfills, and other means of land
disposal of wastes;

39 (4) Discharges of dredged or fill materials into waters for

1 which the State could not be authorized to administer the section
2 404 program under section 404(g) of the "Federal Water Pollution
3 Control Act Amendments of 1972," as amended by the "Clean
4 Water Act of 1977" (33 U.S.C. §1344) and implementing
5 regulations:

6 (5) Nonpoint source discharges:

7 (6) Uncontrolled nonpoint source discharges composed entirely
8 of storm water runoff when these discharges are uncontaminated
9 by any industrial or commercial activity unless these particular
10 storm water runoff discharges have been identified by the
11 administrator or the department as a significant contributor of
12 pollution:

13 (7) Discharges conforming to a national contingency plan for
14 removal of oil and hazardous substances, published pursuant to
15 section 311(c)(2) of the Federal Act.

16 e. The commissioner shall not issue any permit for:

17 (1) The discharge of any radiological, chemical or biological
18 warfare agent or high-level radioactive waste into the waters of
19 this State;

20 (2) Any discharge which the United States Secretary of the
21 Army, acting through the Chief of Engineers, finds would
22 substantially impair anchorage or navigation;

23 (3) Any discharge to which the administrator has objected in
24 writing pursuant to the Federal Act;

25 (4) Any discharge which conflicts with an areawide plan
26 adopted pursuant to law.

27 f. A permit under this act shall require the permittee:

28 (1) To achieve effluent limitations based upon guidelines or
29 standards established pursuant to the Federal Act or this act,
30 together with such further discharge restrictions and safeguards
31 against unauthorized discharge as may be necessary to meet
32 water quality standards, areawide plans adopted pursuant to law,
33 or other legally applicable requirements;

34 (2) Where appropriate, to meet schedules for compliance with
35 the terms of the permit and interim deadlines for progress or
36 reports of progress towards compliance;

37 (3) To insure that all discharges are consistent at all times
38 with the terms and conditions of the permit and that no pollutant
39 will be discharged more frequently than authorized or at a level

1 in excess of that which is authorized by the permit:

3 (4) To submit application for a new permit in the event of any
5 contemplated facility expansion or process modification that
7 would result in new or increased discharges or, if these would not
violate effluent limitations or other restrictions specified in the
permit, to notify the commissioner of such new or increased
discharges;

9 (5) To install, use and maintain such monitoring equipment and
11 methods, to sample in accordance with such methods, to maintain
and retain such records of information from monitoring
13 activities, and to submit to the commissioner such reports of
monitoring results [as he may require] at least monthly, as the
commissioner may prescribe. Reports of monitoring results shall
be signed by the chief executive officer in charge of the facility
or municipal treatment works. A chief executive office may
authorize another responsible official to sign a monthly
monitoring report only in the absence of the chief executive from
the State for at least a two week period and if a report is
required to be filed during that period of time, but the chief
executive officer shall be liable in all instances for the accuracy
of all the information provided in the monitoring report;

21 (6) At all times, to maintain in good working order and operate
23 as effectively as possible, any facilities or systems of control
installed to achieve compliance with the terms and conditions of
25 the permit;

27 (7) To limit concentrations of heavy metals, pesticides,
organic chemicals and other contaminants in the sludge in
conformance with the land-based sludge management criteria
29 established by the department in the Statewide Sludge
Management Plan adopted pursuant to the "Solid Waste
31 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or
established pursuant to the Federal Water Pollution Control Act
33 Amendments of 1972 (33 U.S.C. §1251 et seq.), or any regulations
adopted pursuant thereto.

35 g. The commissioner shall have a right of entry to all premises
in which a discharge source is or might be located or in which
37 monitoring equipment or records required by a permit are kept,
for purposes of inspection, sampling, copying or photographing.

39 h. In addition, any permit issued for a discharge from a

1 municipal treatment works shall require the permittee:

3 (1) To notify the commissioner in advance of the quality and
5 quantity of all new introductions of pollutants into a facility and
7 of any substantial change in the pollutants introduced into a
9 facility by an existing user of the facility, except for such
11 introductions of nonindustrial pollutants as the commissioner may
13 exempt from this notification requirement when ample capacity
15 remains in the facility to accommodate new inflows. Such
17 notifications shall estimate the effects of such changes on the
effluents to be discharged into the facility.

(2) To establish an effective regulatory program, alone or in
conjunction with the operators of sewage collection systems, that
will assure compliance and monitor progress toward compliance
by industrial users of the facilities with user charge and cost
recovery requirements of the Federal Act or State law and
toxicity standards adopted pursuant to this act and pretreatment
standards.

(3) As actual flows to the facility approach design flow or
design loading limits, to submit to the commissioner for his
approval, a program which the permittee and the persons
responsible for building and maintaining the contributory
collection system shall pursue in order to prevent overload of the
facilities.

i. All owners of municipal treatment works [are hereby
authorized to] shall prescribe terms and conditions, consistent
with applicable State and federal law, upon which pollutants may
be introduced into such works, and to exercise the same right of
entry, inspection, sampling [and] , copying , and imposing
remedies, fines and penalties with respect to users of such works
as are vested in the commissioner by this act or by any other
provision of State law. Terms and conditions shall include limits
for heavy metals, pesticides, organic chemicals and other
contaminants in industrial wastewater discharges based upon the
attainment of land-based sludge management criteria established
by the department in the Statewide Sludge Management Plan
adopted pursuant to the "Solid Waste Management Act,"
P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the
Federal Water Pollution Control Act Amendments of 1972 (33
U.S.C.§1251 et seq.), or any regulations adopted pursuant thereto.

1 j. In reviewing permits submitted in compliance with this act
and in determining conditions under which such permits may be
3 approved, the commissioner shall encourage the development of
comprehensive regional sewerage facilities which serve the needs
5 of the regional community and which conform to the adopted
area-wide water quality management plan for that region.

7 k. No permit may be issued or renewed, or modified so as to
lower any water quality standard or limitation, until the applicant
9 or holder thereof, as the case may be, has paid all penalties and
finances assessed pursuant to section 10 of P.L. 1977, c.74, or has
11 entered into an agreement with the commissioner establishing a
payment schedule therefor.

13 l. Any facility subject to the provisions of P.L.1977, c.74
(C.58:10A-1 et seq.) shall be inspected by the department at least
15 once a year. An inspection shall be conducted within 6 months of
a permittee's submission of an application for a permit or permit
17 renewal, except that if a scheduled inspection cannot be made for
any reason, the inspection shall be rescheduled to be performed
19 within 30 days of the originally scheduled inspection or, in the
case of a temporary facility shutdown, of resumed plant
21 operation. Inspections shall include:

(1) A sampling of the effluent at each outfall for each
23 pollutant regulated by the permit;

(2) An analysis of all collected samples by a certified
25 laboratory other than one that has been or is being used by the
permittee, or that is directly or indirectly owned, operated or
27 managed by the permittee;

(3) An evaluation of the maintenance record of the facility's
29 treatment equipment;

(4) An evaluation of the permittee's sampling techniques; and

31 (5) An inspection of the permittee's sample storage facilities
and techniques.

33 m. The facility of a permittee identified as a chronic violator
shall be subject to an inspection by the department to evaluate
35 the cause of the violation or violations, which inspection shall be
in addition to the requirements of subsection l. of this section.
37 The inspection shall be conducted within 30 days of submission of
the discharge monitoring report, which report shall determine the
39 applicability of the requirements of this subsection. The

1 inspection shall be for the purpose of making recommendations to
2 enable the permittee to comply with permit requirements.

3 n. Notwithstanding any provision of P.L.1977, c.74
4 (C.58:10A-1 et seq.) to the contrary, any NJPDES permit issued
5 or renewed, or any NPDES permit reissued as a NJPDES permit
6 after the effective date of P.L. c. (C.)(now pending in
7 the Legislature as this bill) by the commissioner to an applicant
8 or permittee identified as a chronic violator, shall provide, as a
9 condition of the permit, that any testing of effluents required
10 under the terms of the permit be performed by a certified
11 laboratory, approved by the commissioner, which is not owned,
12 managed or operated, either directly or indirectly, by the
13 permittee.

14 o. To assist the commissioner in assessing a municipal
15 treatment works' NJPDES permit in accordance with paragraph
16 (4) of subsection b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a
17 municipal treatment works with an approved industrial
18 pretreatment program shall perform, on an annual basis, a
19 complete analysis that will, at a minimum, include a complete
20 priority pollutant analysis of the discharge from the treatment
21 works and the inflow to the treatment works. A mass balance
22 analysis based on the data so acquired shall be included in an
23 annual report to be attached to the annual report currently
24 required by the commissioner.

25 (cf. P.L.1988, c.56, s.7)

26 5. Section 7 of P.L.1977, c.74 (C.58:10A-7) is amended to read
27 as follows:

28 7. a. All permits issued under this act shall be for fixed terms
29 not to exceed 5 years. Any permittee who wishes to continue
30 discharging after the expiration date of his permit must file for a
31 new permit at least 180 days prior to that date.

32 b. The commissioner may modify, suspend, or revoke a permit
33 in whole or in part during its term for cause, including but not
34 limited to the following:

- 35 (1) Violation of any term or condition of the permit;
36 (2) Obtaining a permit by misrepresentation or failure to
37 disclose fully all relevant facts;
38 (3) If a toxic effluent limitation or prohibition, including any
39 schedule of compliance specified in such effluent limitation or

1 prohibition, is established under section 307(a) of the Federal Act
3 for a toxic pollutant which is more stringent than any limitations
upon such pollutant in an existing permit, the commissioner shall
5 revise or modify the permit in accordance with the toxic effluent
limitation or prohibition and so notify the permittee;

7 (4) The commissioner shall modify a municipal treatment
works' NJPDES permit whenever necessary to assure that the
parameters accurately reflect all pollutants, including toxic
9 pollutants, discharged from the municipal treatment works. The
NJPDES permit for a municipal treatment works with an
11 approved industrial pretreatment program shall include
parameters for all pollutants listed under the United States
13 Environmental Protection Agency's Categorical Pretreatment
Standards, adopted pursuant to 33 U.S.C. §1317, except those
15 pollutants that the municipal treatment works demonstrates to
the commissioner are not discharged and will not be discharged
17 from the municipal treatment works.

c. Notice of every proposed suspension, revocation or renewal,
19 or substantial modification of a permit and opportunity for public
hearing thereupon, shall be afforded in the same manner as with
21 respect to original permit applications as provided for in this act.
In any event notice of all modifications to a discharge permit
23 shall be published in the New Jersey Register.

d. Every final determination of the commissioner to grant,
25 deny, modify, suspend, or revoke a permit shall constitute an
administrative adjudication under the "Administrative
27 [Procedures] Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
seq.), which provides the permittee, or any other party, the
29 opportunity to contest the final determination in a hearing.
(cf: P.L.1977, c.74, s.7)

31 6. Section 10 of P.L.1977, c.74 (C.58:10A-10) is amended to
read as follows:

33 10. a. Whenever, on the basis of any information available to
him, the commissioner finds that any person is in violation of any
35 provision of this act, or any rule, regulation, water quality
standard, effluent limitation, or permit issued pursuant to this
37 act he shall:

(1) Issue an order requiring any such person to comply in
39 accordance with subsection b. of this section; or

1 (2) Bring a civil action in accordance with subsection c. of this
section; or

3 (3) Levy a civil administrative penalty in accordance with
subsection d. of this section; or

5 (4) Bring an action for a civil penalty in accordance with
subsection e. of this section; or

7 (5) Petition the Attorney General to bring a criminal action in
accordance with subsection f. of this section.

9 Use of any of the remedies specified under this section shall
not preclude use of any other remedy specified.

11 b. Whenever, on the basis of any information available to him,
the commissioner finds that any person is in violation of any
13 provision of this act, or of any rule, regulation, water quality
standard, effluent limitation or permit issued pursuant to this
15 act, he [may] shall issue an order (1) specifying the provision or
provisions of this act, or the rule, regulation, water quality
17 standard, effluent limitation, or permit of which he is in
violation, (2) citing the action which caused such violation, (3)
19 requiring compliance with such provision or provisions, and (4)
giving notice to the person of his right to a hearing on the
21 matters contained in the order. Within three months of the date
of issuance of an order under this subsection, the commissioner
23 shall determine what steps, if any, have been taken to comply
with the order.

25 c. The commissioner is authorized to commence a civil action
in Superior Court for appropriate relief for any violation of this
27 act or of a permit issued hereunder. Such relief may include,
singly or in combination:

29 (1) A temporary or permanent injunction;

31 (2) Assessment of the violator for the costs of any
investigation, inspection, or monitoring survey which led to the
establishment of the violation, and for the reasonable costs of
33 preparing and litigating the case under this subsection;

35 (3) Assessment of the violator for any cost incurred by the
State in removing, correcting or terminating the adverse effects
upon water quality resulting from any unauthorized discharge of
37 pollutants for which the action under this subsection may have
been brought;

39 (4) Assessment against the violator of compensatory damages

1 for any loss or destruction of wildlife, fish or aquatic life, and for
any other actual damages caused by an unauthorized discharge.
3 Assessments under this subsection shall be paid to the State
Treasurer, except that compensatory damages shall be paid by
5 specific order of the court to any persons who have been
aggrieved by the unauthorized discharge.

7 d. (1) The commissioner is authorized to assess, in accordance
with a uniform policy adopted therefor, a civil penalty of not
9 more than \$50,000.00 for each violation and each day during
which such violation continues shall constitute an additional,
11 separate, and distinct offense. Any amount assessed under this
subsection shall fall within a range established by regulation by
13 the commissioner for violations of similar type, seriousness, and
duration. The assessment shall also take into account and
15 reflect the harm to public health or the environment resulting
from the violation; the economic benefits from the violation
17 gained by the violator; the degree of recalcitrance of the violator
in remedying the violation or violations; and any unusual or
19 extraordinary costs directly or indirectly imposed on the public
by the violation. No assessment shall be levied pursuant to this
21 section until after the discharger has been notified by certified
mail or personal service. The notice shall include a reference to
23 the section of the statute, regulation, order or permit condition
violated; a concise statement of the facts alleged to constitute a
25 violation; a statement of the amount of the civil penalties to be
imposed; and a statement of the party's right to a hearing. The
27 ordered party shall have 20 days from receipt of the notice within
which to deliver to the commissioner a written request for a
29 hearing. After the hearing and upon finding that a violation has
occurred, the commissioner may issue a final order after
31 assessing the amount of the fine specified in the notice. If no
hearing is requested, then the notice shall become a final order
33 after the expiration of the 20-day period. Payment of the
assessment is due when a final order is issued or the notice
35 becomes a final order. A party to a final order issued in
accordance with this subsection may appeal the order to the
37 Appellate Division of the Superior Court upon posting with the
commissioner a refundable bond, or other security approved by
39 the commissioner, in the amount of the civil administrative

1 penalty assessed. Any interest payable on the bond or other
2 security shall be payable to the party posting the security. The
3 authority to levy an administrative [order] penalty is in addition
4 to all other enforcement provisions in this act, and the payment
5 of any assessment shall not be deemed to affect the availability
6 of any other enforcement provisions in connection with the
7 violation for which the assessment is levied. Any civil penalty
8 assessed under this section may be compromised by the
9 commissioner upon the posting of a performance bond by the
10 violator, or upon such terms and conditions as the commissioner
11 may establish by regulation, except that the amount compromised
12 shall not be more than 50% of the assessed penalty, or, as
13 hereinafter provided, the statutory minimum amount that shall be
14 assessed, whichever is greater.

15 The commissioner shall adopt, by regulation, a uniform
16 assessment of civil penalties policy within six months of the
17 effective date of P.L. c. (C.) (now pending in the
18 Legislature as this bill).

19 (2) Whenever the commissioner finds that any person against
20 whom the commissioner is authorized to proceed in a civil action
21 in accordance with subsection c. of this section is also a:

22 (a) A person who has committed a serious violation, the amount
23 of the civil administrative penalty assessed pursuant to this
24 subsection may not be less than \$1,000 per day of violation;

25 (b) Chronic violator, the amount of the civil administrative
26 penalty assessed pursuant to this subsection may not be less than
27 \$5,000 per day for each violation;

28 (c) Chronic violator for more than two consecutive six-month
29 reporting periods, the commissioner, in addition to pursuing any
30 other available remedies, shall petition the Attorney General and
31 the county prosecutor of the county in which the facility is
32 located to bring a criminal action in accordance with subsection
33 f. of this subsection.

34 e. Any person who violates this act or an administrative order
35 issued pursuant to subsection b. or a court order issued pursuant
36 to subsection c., or who fails to pay an administrative assessment
37 in full pursuant to subsection d. shall be subject upon order of a
38 court to a civil penalty not to exceed \$50,000.00 per day of such
39 violation, and each day's continuance of the violation shall

1 constitute a separate violation. Any penalty incurred under this
subsection may be recovered with costs in a summary proceeding
3 pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et
seq.). The Superior Court shall have jurisdiction to enforce "the
5 penalty enforcement law" in conjunction with this act.

f. Any person who willfully or negligently violates this act
7 shall, upon conviction, be guilty of a crime of the [fourth] third
degree and shall be punished by fine of not less than \$5,000.00 nor
9 more than \$50,000.00 per day of violation, or by imprisonment for
not more than one year, or by both. Punishment for a second
11 offense under this subsection shall be a fine of not less than
\$10,000.00 nor more than \$100,000.00 per day of violation[, or by
13 imprisonment for not more than two years, or both] and
imprisonment for not less than 10 days nor more than two years
15 and up to 90 days of community service. Punishment for a third
and each subsequent offense under this section shall be a fine of
17 not less than \$25,000 nor more than \$200,000 per day of violation
and imprisonment for not less than 30 days nor more than two
19 years and up to 180 days of community service. Any person who
knowingly makes a false statement, representation, or
21 certification in any application, record, or other document filed
or required to be maintained under this act or who falsifies,
23 tampers with or knowingly renders inaccurate, any monitoring
device or method required to be maintained pursuant to this act,
25 shall upon conviction, be subject to a fine of [not more than
\$20,000.00 or by imprisonment for not more than six months, or
27 by both] not less than \$10,000 nor more than \$100,000 per day of
violation and by imprisonment for not less than 10 days nor more
29 than two years and up to 90 days of community service.

g. All conveyances used or intended for use in the willful
31 discharge, in violation of the provisions of P.L.1977, c.74
(C.58:10A-1 et seq.), of any pollutant or toxic pollutant are
33 subject to forfeiture to the State pursuant to the provisions of
P.L.1981, c.387 (C.13:1K-1 et seq.).

35 h. (1) Every schedule of compliance shall:

(a) Include provisions for stipulated penalties of not less than
37 \$1,000 per day for each violation of a standard or limitation
required by the permit for which compliance is sought. In
39 establishing an appropriate stipulated penalty, the commissioner

1 shall take into account the duration and extent of, and the
2 toxicity of the discharge constituting, the violation which gave
3 rise to the schedule of compliance. The payment of any
4 stipulated penalties may not preclude, interfere with, or in any
5 way limit the commissioner's use of any other remedy available
6 under P.L.1977, c.74.

7 (b) Require the permit holder to demonstrate to the
8 commissioner the financial assurance, including the posting of a
9 bond or other security approved to the commissioner, necessary
10 to carry out the remedial measures required by the schedule of
11 compliance.

12 (2) A schedule of compliance may not:

13 (a) Exceed 18 months;

14 (b) Be renewed, extended, or relaxed except as a substantial
15 modification of a permit subject to the requirements of section 7
16 of P.L.1977, c.74;

17 (c) Except in the case of a schedule of compliance contained in
18 a currently valid permit, be issued within two years of the date of
19 issuance of that permit;

20 (3) Each permit holder shall be limited to one schedule of
21 compliance for each permit issued.

22 i. A civil administrative penalty imposed pursuant to a final
23 order issued in accordance with subsection d. of this section shall
24 constitute a debt of the violator or discharger. The final order
25 may be docketed with the clerk of the Superior Court and shall
26 have the same standing as any judgment docketed with the clerk
27 of the Superior Court pursuant to N.J.S.2A:16-1; except that no
28 lien shall attach to the real property of a violator pursuant to this
29 subsection if a violator posts a refundable bond or other security
30 with the commissioner pursuant to an appeal of a final order to
31 the Appellate Division of the Superior Court.

32 (cf: P.L.1986, c.170, s.3)

33 7. (New section) Whenever a permittee fails to submit a
34 monitoring report on the date specified by the commissioner or in
35 the permit, the report shall be considered overdue and the
36 permittee shall pay a fine for the submission of the overdue
37 report of \$100 per day for each permit parameter for which a
38 report is overdue. The fine shall be assessed and collected as a
39 civil administrative penalty in accordance with section 10 of

1 P.L.1977.c.74 (C.58:10A-10). A permittee may contest the
application of the penalty provisions of this act by notifying the
3 commissioner within 30 days of the date the monitoring results
were due of the existence of extenuating circumstances beyond
5 the control of the permittee that prevented timely submission of
the report. Fines shall accrue as of the fifth day following the
7 date that the monitoring report was due and shall continue to
accrue until submission of the overdue monitoring report, or for
9 30 days, whichever is the shorter period. Additional fines may be
assessed at the commissioner's discretion.

11 8. (New section) a. The commissioner shall publish at least
annually a report summarizing the following:

13 (1) The total number of facilities in violation of P.L.1977, c.74
(C.58:10A-1 et seq.) in the immediately preceding year;

15 (2) The total number of enforcement actions brought
thereunder by the department in that year;

17 (3) The total amount of fines collected as a result of
enforcement actions;

19 (4) A list identifying all persons having committed a serious
violation within the State;

21 (5) A list identifying all chronic violators within the State;

23 (6) A list identifying all referrals for civil action and the
disposition of each case.

(7) A list identifying all referrals for criminal action for
25 chronic violations pursuant to paragraph (2) (c) of subsection d. of
section 10 of P.L.1977, c.74 (C.58:10A-10);

27 b. The Attorney General shall have published at least annually
a report summarizing the following:

29 (1) A complete list identifying all cases filed under section 10
of P.L.1977, c.74 (C.58:10A-10) in the immediately preceding
31 year;

33 (2) A complete list of the final disposition of all cases filed
thereunder that were completed in that year.

35 c. The first reports required to be made pursuant to
subsections a. and b. of this section shall be published not later
than March 1, 1989 and shall cover the period beginning January
37 1, 1988 through December 31, 1988. Subsequent reports shall be
published on March 1 of each year. The reports of the
39 commissioner and the Attorney General shall be submitted to the

1 Governor and the Legislature and shall be available to the public.

3 d. Within 30 days of publication of the reports, the
3 commissioner shall publish for at least six consecutive days in not
5 less than two newspapers with statewide circulation and not less
5 than two regional newspapers with the widest circulation in the
State, a full page advertisement which shall:

7 (1) Identify the owner, trade name and location of all facilities
listed as chronic violators pursuant to paragraph (5) of subsection
9 a. of this section:

11 (2) Identify all of the chronic violators who have been assessed
11 fines pursuant to section 10 of P.L.1977, c.74 (C.58:10A-10), the
amount of the penalties assessed against, and the amount paid by,
13 each violator:

15 (3) Indicate the availability of the annual reports required
15 under this section, and the address and phone number for securing
copies.

17 9. (New Section) a. Any person may bring a civil action in law
or equity (1) against any person for past or continuing violations
19 of any provision of P.L.1977, c.74 (C.58:10A-1 et seq.), or any
rule, regulation, water quality standard, effluent limitation,
21 permit, or order issued pursuant thereto; or (2) against the
commissioner to compel the commissioner to enforce any such
23 requirement:

25 b. Any person may intervene as a matter of right in any
administrative, civil or criminal action which the commissioner
has brought pursuant to section 10 of P.L.1977, c.74
27 (C.58:10A-10);

29 c. The commissioner, if not a party, may intervene as a matter
of right in any action brought under this section.

31 d. The court may award, whenever it deems appropriate, the
costs of litigation, including reasonable attorney and expert
witness fees, to the parties bringing a successful action under this
33 section.

35 e. No action may be commenced under this section if the
department has commenced, and is diligently prosecuting, a civil
or criminal action to require compliance with the standard,
37 limitation, or order.

39 10. (New section) There is created, in the Department of
Environmental Protection, a "Clean Water Enforcement Fund."

1 All monies from penalties and fines collected pursuant to
subsubsection d. of section 10 of P.L.1977, c.74 (C.58:10A-10) and
3 section 7 of P.L. c. (C.) (now before the Legislature as
this bill) shall be deposited in the fund. Monies in the fund shall
5 be utilized exclusively for enforcement of the NJPDES program.

11. This act shall take effect immediately.

7

9

STATEMENT

11 This bill amends the New Jersey Water Pollution Control Act
by establishing a tiered response program to violations, setting
13 strict civil penalties and establishing mandatory criminal
penalties for chronic violators. The bill strengthens monitoring
15 and reporting requirements under the act. Dischargers are
required to submit discharge monitoring information on a monthly
17 basis. The Department of Environmental Protection is required
to verify discharge information through independent sampling
19 through annual on-site inspections. The bill requires increased
monitoring of repeat violators and prohibits repeat violators from
21 analyzing wastewater samples at laboratories owned, managed, or
operated by the permittee.

23 This bill tightens controls on discharges of toxic substances
from publicly owned treatment works and authorizes treatment
25 works to use all enforcement mechanisms available under the act,
including criminal penalties, to bring violators into compliance.

27 This bill increases citizen participation in permitting and
enforcement processes by establishing a citizen's right to
29 contest, any final permit decision made by the department and
the right of citizens to bring suit against violators of the act.
31 The bill requires the department and Attorney General to compile
any information, including names and addresses of serious and
33 chronic violators, referrals for criminal prosecution, and fines
assessed and collected under the act.

35

ENVIRONMENT

37

Air and Water Pollution

39

"The Clean Water Enforcement Act."

STATE OF NEW JERSEY

ADOPTED MARCH 20, 1989

Sponsored by Assemblymen BENNETT and PALAIA

1 AN ACT concerning pollution control, creating a "Clean Water
Enforcement Fund" and a "Wastewater Treatment Operators
3 Training Account," amending P.L.1974, c.169, P.L.1972, c.42
and P.L.1970, c.33, supplementing P.L.1983, c.230 (C.58:11-64
5 et seq.), and amending and supplementing P.L.1977, c.74.

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

9 1. Section 3 of P.L.1977, c.74 (C.58:10A-3) is amended to read
as follows:

11 3. As used in this act, unless the context clearly requires a
different meaning, the following words and terms shall have the,
13 following meanings:

a. "Administrator" means the Administrator of the United
15 States Environmental Protection Agency or his authorized
representative;

17 b. "Areawide plan" means any plan prepared pursuant to
section 208 of the Federal Act;

19 c. "Commissioner" means the Commissioner of Environmental
Protection or his authorized representative;

21 d. "Department" means the Department of Environmental
Protection;

23 e. "Discharge" means [the] an intentional or unintentional
action or omission resulting in the releasing, spilling, leaking,
25 pumping, pouring, emitting, emptying, or dumping of a pollutant
into the waters of the State or onto [land or into wells from
27 which it might flow or drain into said waters, and shall include]
the lands of the State, or into waters outside the jurisdiction of
29 the State, which pollutant enters the waters of the State.
"Discharge" includes the release of any pollutant into a municipal
31 treatment works;

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

Matter underlined thus is new matter.

1 f. "Effluent limitation" means any restriction on quantities,
quality, rates and concentration of chemical, physical, thermal,
3 biological, and other constituents of pollutants established by
permit, schedule of compliance, or administrative order;

5 g. "Federal Act" means the "Federal Water Pollution Control
Act Amendments of 1972" (Public Law 92-500; 33 U.S.C. 1251 et
7 seq.);

h. "Municipal treatment works" means the treatment works of
9 any municipal, county, or State agency or any agency or
subdivision created by one or more municipal, county or State
11 governments and the treatment works of any public utility as
defined in R.S.48:2-13;

13 i. "National Pollutant Discharge Elimination System" or
"NPDES" means the national system for the issuance of permits
15 under the Federal Act;

j. "New Jersey Pollutant Discharge Elimination System" or
17 "NJPDES" means the New Jersey system for the issuance of
permits under this act;

19 k. "Permit" means [an] a NJPDES permit issued pursuant to
section 6 of this act. "Permit" includes a letter of agreement
21 entered into between a delegated local agency and a user of its
municipal treatment works, setting effluent limitations and other
23 conditions on the user of the agency's municipal treatment works;

l. "Person" means any individual, corporation, company,
25 partnership, firm, association, owner or operator of a treatment
works, political subdivision of this State and any state or
27 interstate agency. "Person" shall also mean any responsible
corporate official for the purpose of enforcement action under
29 section 10 of this act;

m. "Point source" means any discernible, confined and
31 discrete conveyance, including but not limited to, any pipe, ditch,
channel, tunnel, conduit, well, discrete fissure, container, rolling
33 stock, concentrated animal feeding operation, or vessel or other
floating craft, from which pollutants are or may be discharged;

35 n. "Pollutant" means any dredged spoil, solid waste,
incinerator residue, sewage, garbage, refuse, oil, grease, sewage
37 sludge, munitions, chemical wastes, biological materials,
radioactive substance, thermal waste, wrecked or discarded
39 equipment, rock, sand, cellar dirt, and industrial, municipal or

1 agricultural waste or other residue discharged into the waters of
the State. "Pollutant" includes both hazardous and nonhazardous
3 pollutants;

o. "Pretreatment standards" means any restriction on
5 quantities, quality, rates, or concentrations of pollutants
discharged into municipal or privately owned treatment works
7 adopted pursuant to P.L.1972, c.42 (C.58:11-49 et seq.);

p. "Schedule of compliance" means a schedule of remedial
9 measures including an enforceable sequence of actions or
operations leading to compliance with water quality standards, an
11 effluent limitation or other limitation, prohibition or standard;

q. "Substantial modification of a permit" means any
13 significant change in any effluent limitation, schedule of
compliance, compliance monitoring requirement, or any other
15 provision in any permit which permits, allows, or requires more or
less stringent or more or less timely compliance by the permittee;

r. "Toxic pollutant" means [those pollutants, or combinations]
17 any pollutant identified pursuant to the federal act, or any
19 pollutant or combination of pollutants, including disease causing
agents, which after discharge and upon exposure, ingestion,
21 inhalation or assimilation into any organism, either directly or
indirectly by ingestion through food chains, will, on the basis of
23 information available to the commissioner, cause death, disease,
behavioral abnormalities, cancer, genetic mutations,
25 physiological malfunctions, including malfunctions in
reproduction, or physical deformation, in such organisms or their
27 offspring;

s. "Treatment works" means any device or systems, whether
29 public or private, used in the storage, treatment, recycling, or
reclamation of municipal or industrial waste of a liquid nature
31 including intercepting sewers, outfall sewers, sewage collection
systems, cooling towers and ponds, pumping, power and other
33 equipment and their appurtenances; extensions, improvements,
remodeling, additions, and alterations thereof; elements essential
35 to provide a reliable recycled supply such as standby treatment
units and clear well facilities; and any other works including sites
37 for the treatment process or for ultimate disposal of residues
resulting from such treatment. [Additional, "treatment works"
39 means] "Treatment works" includes any other method or system

1 for preventing, abating, reducing, storing, treating, separating, or
2 disposing of pollutants, including storm water runoff, or industrial
3 waste in combined or separate storm water and sanitary sewer
4 systems;

5 t. "Waters of the State" means the ocean and its estuaries, all
6 springs, streams and bodies of surface or ground water, whether
7 natural or artificial, within the boundaries of this State or subject
8 to its jurisdiction;

9 u. "Hazardous pollutant" means:

10 (1) Any toxic pollutant;

11 (2) Any substance regulated as a pesticide under the Federal
12 Insecticide, Fungicide, and Rodenticide Act, Pub.L.92-516 (7
13 U.S.C. §136 et seq.);

14 (3) Any substance the use or manufacture of which is prohibited
15 under the federal Toxic Substances Control Act, Pub.L.94-469 (15
16 U.S.C. 2601 et seq.);

17 (4) Any substance identified as a known carcinogen by the
18 International Agency for Research on Cancer;

19 (5) Any hazardous waste as designated pursuant to section 3 of
20 P.L.1981, c.279 (C.13:1E-51) or the "Resource Conservation and
21 Recovery Act," Pub.L.94-580 (42 U.S.C. §6901 et seq.); or

22 (6) Any hazardous substance as defined pursuant to section 3 of
23 P.L.1976, c.141 (C.58:10-23.11b.);

24 v. "Significant noncomplier" means any person who has:

25 (1) violated an effluent limitation, required by the United
26 States Environmental Protection Agency, the department or a
27 delegated local agency, for the same hazardous pollutant at a
28 discharge point source: (a) for which a monthly average is
29 established (i) in a permit or letter of agreement issued or
30 entered into prior to the effective date of P.L. , c.
31 (C.) (pending in the Legislature as this bill), or a schedule of
32 compliance relating to such permit or letter of agreement, and
33 the discharge of that pollutant exceeds the monthly average
34 established therefor by a factor of 1.4 or more for any two out of
35 six consecutive months, or (ii) in a permit or letter of agreement
36 issued or entered into on or after that date, or a schedule of
37 compliance relating thereto, and the discharge of that pollutant
38 exceeds the monthly average established therefor by a factor of
39 1.2 or more for any two out of six consecutive months; or (b) that

1 at any time, whether or not a monthly average has been
2 established for that hazardous pollutant, exceeds the effluent
3 limitation established therefor by a factor of 1.5 or more for any
4 two out of six consecutive months, except that this factor shall
5 not apply to a monthly average established for a hazardous
6 pollutant subject to paragraph (1)(a) of this subsection; or (c) that
7 exceeds by any amount the limitation established therefor for any
8 four out of six consecutive months;

9 (2) violated an effluent limitation, required by the United
10 States Environmental Protection Agency, the department or a
11 delegated local agency, for the same nonhazardous pollutant at a
12 discharge point source (a) that exceeds the monthly average for
13 the effluent limitation for that pollutant by a factor of 1.4 or
14 more for any two out of six consecutive months, or (b) that at any
15 time, whether or not a monthly average has been established for
16 that nonhazardous pollutant, exceeds the effluent limitation
17 established therefor by a factor of 2.0 or more for any two out of
18 six consecutive months, except that this factor shall not apply to
19 a monthly average established for a nonhazardous pollutant
20 subject to paragraph (2) (a) of this subsection; or (c) that exceeds
21 by any amount established therefor for any four out of six
22 consecutive months; or

23 (3) failed to submit a completed discharge monitoring report
24 for any two out of six consecutive reporting periods.

25 The department may utilize, on a case-by-case basis, a more
26 stringent frequency or factor of exceedance for a hazardous or
27 non-hazardous pollutant to determine a significant noncomplier
28 than set forth in paragraph (1) or (2), provided the department
29 states the specific reasons for the determination, which may
30 include the potential for harm to human health or the
31 environment.

32 w. "Local agency" means a political subdivision of the State,
33 or an agency or instrumentality thereof, that owns or operates a
34 municipal treatment works.

35 x. "Delegated local agency" means a local agency with an
36 industrial pretreatment program approved by the department.

37 y. "Upset" means an exceptional incident in which there is
38 unintentional and temporary noncompliance with an effluent
39 limitation because of factors beyond the reasonable control of

1 the permittee, including fire, riot, sabotage, flood, storm event,
2 or other natural cause, or other circumstance, which are the
3 proximate cause of the violation. "Upset" also includes a
4 violation consequent to the performance of maintenance
5 operations for which a prior exception has been granted by the
6 department or a delegated local agency. An "upset" does not
7 include noncompliance to the extent caused by operational error,
8 improperly designed treatment facilities, inadequate treatment
9 facilities, lack of preventive maintenance, or careless or
10 improper operation.

11 (cf: P.L.1977, c.74, s.3)

12 2. Section 4 of P.L.1977, c.74 (C.58:10A-4) is amended to read
13 as follows:

14 4. The commissioner shall have power to prepare, adopt,
15 amend, repeal and enforce, pursuant to the "Administrative
16 [Procedures] Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
17 seq.), reasonable codes, rules and regulations to prevent, control
18 or abate water pollution and to carry out the intent of this act,
19 either throughout the State or in certain areas of the State
20 affected by a particular water pollution problem. Such codes,
21 rules and regulations may include, but shall not be limited to,
22 provisions concerning:

23 a. The storage of any liquid or solid pollutant in a manner
24 designed to keep it from entering the waters of the State;

25 b. The prior submission and approval of plans and
26 specifications for the construction or modification of any
27 treatment work or part thereof;

28 c. The classification of the surface and ground waters of the
29 State and the determination of water quality standards for each
30 such classification;

31 d. The limitation of effluents, including toxic effluents as
32 indicated herein;

33 e. The determination of pretreatment standards;

34 f. The establishment of user charges and cost recovery
35 requirements in conformance with the Federal Act[.];

36 g. The establishment of a civil penalty policy governing the
37 uniform assessment of civil penalties in accordance with section
38 10 of P.L.1977, c.74 (C.58:10A-10).

39 (cf: P.L.1977, c.74, s.4)

1 3. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read
as follows:

3 6. a. It shall be unlawful for any person to discharge any
pollutant, except in conformity with a valid New Jersey Pollutant
5 Discharge Elimination System permit that has been issued by the
commissioner pursuant to this act or a valid National [Pollution]
7 Pollutant Discharge Elimination System permit issued by the
administrator pursuant to the Federal Act, as the case may be.
9 Any person who is in any way responsible for a discharge of a
11 pollutant, including a discharge which occurred prior to the
effective date of P.L. , c. (C.) (pending in the
13 Legislature as this bill), shall be strictly liable, jointly and
severally, without regard to fault, for the cleanup and removal of
15 the discharge, and for compliance with the requirements of
P.L.1977, c.74 (C.58:10A-1 et seq.). rules promulgated
thereunder, and permits issued pursuant thereto.

17 b. It shall be unlawful for any person to build, install, modify
or operate any facility for the collection, treatment or discharge
19 of any pollutant, except after approval by the department
pursuant to regulations adopted by the commissioner.

21 c. The commissioner is hereby authorized to grant, deny,
modify, suspend, revoke, and reissue NJPDES permits in
23 accordance with this act, and with regulations to be adopted by
him. [The] In accordance with applicable regulations, the
25 commissioner may reissue, with or without modifications, an
NPDES permit duly issued by the federal government as the
27 NJPDES permit required by this act. The department may
require and, on its own initiative, issue a permit to any person
29 who is in any way responsible for a discharge of a pollutant
regulated under P.L.1977, c.74 (C.58:10A-1 et seq.), or whose
31 actions have the potential for resulting in a discharge thereof,
including any discharge that occurred prior to the effective date
33 of P.L. , c. (C.) (pending in the Legislature as this bill).

35 d. The commissioner may, by regulation, exempt the following
categories of discharge, in whole or in part, from the requirement
of obtaining a permit under this act; provided, however, that an
37 exemption afforded under this section shall not limit the civil or
criminal liability of any discharger nor exempt any discharger
39 from approval or permit requirements under any other provision
of law:

1 (1) Additions of sewage, industrial wastes or other materials
into a publicly owned sewage treatment works which is regulated
3 by pretreatment standards;

5 (2) Discharges of any pollutant from a marine vessel or other
discharges incidental to the normal operation of marine vessels;

7 (3) Discharges from septic tanks, or other individual waste
disposal systems, sanitary landfills, and other means of land
disposal of wastes;

9 (4) Discharges of dredged or fill materials into waters for
which the State could not be authorized to administer the section
11 404 program under section 404(g) of the "Federal Water Pollution
Control Act Amendments of 1972," as amended by the "Clean
13 Water Act of 1977" (33 U.S.C. §1344) and implementing
regulations;

15 (5) Nonpoint source discharges;

17 (6) Uncontrolled nonpoint source discharges composed entirely
of storm water runoff when these discharges are uncontaminated
by any industrial or commercial activity unless these particular
19 storm water runoff discharges have been identified by the
administrator or the department as a significant contributor of
21 pollution;

(7) Discharges conforming to a national contingency plan for
23 removal of oil and hazardous substances, published pursuant to
section 311(c)(2) of the Federal Act.

25 e. The commissioner shall not issue any permit for:

27 (1) The discharge of any radiological, chemical or biological
warfare agent or high-level radioactive waste into the waters of
this State;

29 (2) Any discharge which the United States Secretary of the
Army, acting through the Chief of Engineers, finds would
31 substantially impair anchorage or navigation;

33 (3) Any discharge to which the administrator has objected in
writing pursuant to the Federal Act;

35 (4) Any discharge which conflicts with an areawide plan
adopted pursuant to law.

37 f. A permit issued by the department or a delegated local
agency, or a letter of agreement between a delegated local
agency and an industrial user of the agency's municipal
39 treatment works, under this act shall require the permittee:

1 (1) To achieve effluent limitations based upon guidelines or
standards established pursuant to the Federal Act or this act,
3 together with such further discharge restrictions and safeguards
against unauthorized discharge as may be necessary to meet
5 water quality standards, areawide plans adopted pursuant to law,
or other legally applicable requirements;

7 (2) Where appropriate, to meet schedules for compliance with
the terms of the permit and interim deadlines for progress or
9 reports of progress towards compliance;

11 (3) To insure that all discharges are consistent at all times
with the terms and conditions of the permit and that no pollutant
will be discharged more frequently than authorized or at a level
13 in excess of that which is authorized by the permit;

15 (4) To submit application for a new permit in the event of any
contemplated facility expansion or process modification that
would result in new or increased discharges or, if these would not
17 violate effluent limitations or other restrictions specified in the
permit, to notify the commissioner of such new or increased
19 discharges;

21 (5) To install, use and maintain such monitoring equipment and
methods, to sample in accordance with such methods, to maintain
and retain such records of information from monitoring
23 activities, and to submit to the commissioner, or to the delegated
local agency, [such] reports of monitoring results [as he may
25 require] for surface waters, as may be stipulated in the permit, or
required by the commissioner or delegated local agency pursuant
27 to paragraph 9 of this subsection, or as the commissioner or the
delegated local agency may prescribe for ground water.
29 Significant industrial users, major industrial dischargers, and
municipal treatment works, other than those discharging only
31 stormwater or noncontact cooling water, shall, however, report
their monitoring results for discharges to surface waters monthly
33 to the commissioner. Discharge monitoring reports shall be
signed by the highest ranking official having day-to-day
35 managerial and operational responsibilities for the discharging
facility, who may authorize another responsible high ranking
37 official to sign a monthly monitoring report in his absence from
the State, if a report is required to be filed during that period of
39 time. The highest ranking official shall, however, be liable in all

1 instances for the accuracy of all the information provided in the
2 monitoring report; provided, however, that the highest ranking
3 official may file, within seven days of his return to the State,
4 amendments to the monitoring report to which he was not a
5 signator. The filing of amendments to a monitoring report in
6 accordance with this paragraph shall not be considered a late
7 filing of a report for purposes of paragraph (3)(b) of subsection d.
8 of section 10 of P.L.1977, c.74 (C.58:10A-10), or for purposes of
9 determining a significant noncomplier;

10 (6) At all times, to maintain in good working order and operate
11 as effectively as possible, any facilities or systems of control
12 installed to achieve compliance with the terms and conditions of
13 the permit;

14 (7) To limit concentrations of heavy metals, pesticides,
15 organic chemicals and other contaminants in the sludge in
16 conformance with the land-based sludge management criteria
17 established by the department in the Statewide Sludge
18 Management Plan adopted pursuant to the "Solid Waste
19 Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or
20 established pursuant to the Federal Water Pollution Control Act
21 Amendments of 1972 (33 U.S.C. §1251 et seq.), or any regulations
22 adopted pursuant thereto;

23 (8) To report to the department or local agency, as
24 appropriate, any violation of an effluent limitation that poses a
25 threat to human health or the environment within two hours of
26 the time the permittee becomes aware of the circumstances, and,
27 within 24 hours of becoming aware thereof, or of a violation of an
28 effluent limitation for a toxic pollutant, provide the department
29 or local agency with such additional information on the discharge
30 as may be required by the department or local agency, including
31 an estimate of the danger posed by the discharge to the
32 environment, as to whether the discharge is continuing, and the
33 measures taken, or being taken to, remediate the problem and
34 any damage to the environment, and to avoid a repetition of the
35 problem.

36 (9) Notwithstanding the reporting requirements stipulated in a
37 permit for discharges to surface waters, a permittee shall be
38 required to file monthly reports with the commissioner or
39 delegated local agency if the permittee:

1 (a) in any month (i) exceeds the effluent limitation established
3 therefor by any of the numerical factors specifically set forth in
5 paragraphs (1) and (2) of subsection v. of section 3 of P.L.1977,
7 c.74 (C.58:10A-3), or (ii) fails to submit a completed discharge
9 monitoring report and does not contest, or unsuccessfully
11 contests, the assessment of a civil administrative penalty
13 therefor; or

15 (b) exceeds the effluent limitation for any pollutant by any
17 amount for four out of six consecutive months.

19 The commissioner or delegated local agency may restore the
21 reporting requirements stipulated in the permit if the permittee
23 has not committed any of the violations identified in this
25 paragraph for six consecutive months.

27 g. The commissioner shall have a right of entry to all premises
29 in which a discharge source is or might be located or in which
31 monitoring equipment or records required by a permit are kept,
33 for purposes of inspection, sampling, copying or photographing.

35 h. In addition, any permit issued for a discharge from a
municipal treatment works shall require the permittee:

1 (1) To notify the commissioner in advance of the quality and
3 quantity of all new introductions of pollutants into a facility and
5 of any substantial change in the pollutants introduced into a
7 facility by an existing user of the facility, except for such
9 introductions of nonindustrial pollutants as the commissioner may
11 exempt from this notification requirement when ample capacity
13 remains in the facility to accommodate new inflows. Such
15 notifications shall estimate the effects of such changes on the
17 effluents to be discharged into the facility.

19 (2) To establish an effective regulatory program, alone or in
21 conjunction with the operators of sewage collection systems, that
23 will assure compliance and monitor progress toward compliance
25 by industrial users of the facilities with user charge and cost
27 recovery requirements of the Federal Act or State law and
29 toxicity standards adopted pursuant to this act and pretreatment
31 standards.

33 (3) As actual flows to the facility approach design flow or
35 design loading limits, to submit to the commissioner for his
approval, a program which the permittee and the persons
responsible for building and maintaining the contributory

1 collection system shall pursue in order to prevent overload of the facilities.

3 i. All [owners of municipal treatment works are hereby
authorized to] local agencies shall prescribe terms and
5 conditions, consistent with applicable State and federal law, or
requirements adopted pursuant thereto by the department, upon
7 which pollutants may be introduced into such works, [and to] shall
exercise the same right of entry, inspection, sampling, and
9 copying, and, in the case of a delegated local agency, shall
impose the same remedies, fines and penalties, and shall be
11 entitled to recover costs or compensatory damages, as authorized
pursuant to section 10 of P.L.1977, c.74 (C.58:10A-10), with
13 respect to users of such works, as are vested in the commissioner
by this act, or by any other provision of State law, except that
15 the delegated local agency shall petition the county prosecutor or
the Attorney General for a criminal prosecution under that
17 section. Terms and conditions shall include limits for heavy
metals, pesticides, organic chemicals and other contaminants in
19 industrial wastewater discharges based upon the attainment of
land-based sludge management criteria established by the
21 department in the Statewide [Sludge] Sludge Management Plan
adopted pursuant to the "Solid Waste Management Act,"
23 P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the
Federal Water Pollution Control Act Amendments of 1972 (33
25 U.S.C. §1251 et seq.), or any regulations adopted pursuant
thereto. Of the amount of any penalty assessed and collected
27 pursuant to an action brought by a local agency in accordance
with section 10 of P.L.1977, c.74, 10% shall be deposited in the
29 "Wastewater Treatment Operators Training Account,"
established in accordance with section 9 of P.L. , c.
31 (C.) (pending in the Legislature as this bill), and used to
finance the cost of training operators of municipal treatment
33 works.

35 A local agency, other than a delegated local agency, may
exercise the same right to impose remedies, fines and penalties,
and to recover costs or compensatory damages as is provided to a
37 delegated local agency under this paragraph.

39 j. In reviewing permits submitted in compliance with this act
and in determining conditions under which such permits may be
approved, the commissioner shall encourage the development of

1 comprehensive regional sewerage [facilities] planning which serve
the needs of the regional community and [which conform to the
3 adopted area-wide water quality management plan for that
region] protects the needs of the regional community for water
5 quality, aquifer storage, aquifer recharge, and dry weather based
stream flows.

7 k. No permit may be issued, renewed, or modified so as to
relax any water quality standard or effluent limitation until the
9 applicant, or permit holder, as the case may be, has paid all fees,
penalties or fines due and owing pursuant to P.L.1977, c.74, or
11 has entered into an agreement with the department establishing a
payment schedule therefor.

13 l. Each permitted facility or municipal treatment works, other
than one discharging only stormwater or non-contact cooling
15 water, shall be inspected by the department at least once a year;
except that each permitted facility discharging into the
17 municipal treatment works of a delegated local agency, other
than a facility discharging only stormwater or non-contact
19 cooling water, shall be inspected by the delegated local agency at
least once a year. An inspection required under this subsection
21 shall be conducted within the six months following a permittee's
submission of an application for a permit, permit renewal, or, in
23 the case of a new facility, issuance of a permit therefor, except
that if for any reason, a scheduled inspection cannot be made the
25 inspection shall be rescheduled to be performed within 30 days of
the originally scheduled inspection or, in the case of a temporary
27 shutdown, of resumed operation. The exemption of stormwater
facilities from the provisions of this paragraph shall not apply to
29 any permitted facility or municipal treatment works discharging
or receiving stormwater runoff having come into contact with a
31 hazardous discharge site on the federal National Priorities List
adopted by the United States Environmental Protection Agency
33 pursuant to the "Comprehensive Environmental Response,
Compensation, and Liability Act," Pub.L. 96-510 (42 U.S.C.A.
35 §9601 et seq.), or any other hazardous discharge site included by
the department on the master list for hazardous discharge site
37 cleanups adopted pursuant to section 2 of P.L.1982, c.202
(C.58:10-23.16). Inspections shall include:

39 (1) A sampling of the effluent at each outfall pipe for each

1 pollutant regulated by the permit, except an outfall pipe from
2 which no effluent has been discharged in the preceding 12 months;

3 (2) An analysis of all collected samples by a State owned and
4 operated laboratory, or a certified laboratory other than one that
5 has been or is being used by the permittee, or that is directly or
6 indirectly owned, operated or managed by the permittee;

7 (3) An evaluation of the maintenance record of the
8 permittee's treatment equipment;

9 (4) An evaluation of the permittee's sampling techniques; and

10 (5) An inspection of the permittee's sample storage facilities
11 and techniques if the sampling is normally performed by the
12 permittee.

13 The department may inspect a facility required to be inspected
14 by a delegated local agency pursuant to this subsection. Nothing
15 in this subsection shall require the department to conduct more
16 than one inspection per year.

17 m. The facility or municipal treatment works of a permittee
18 identified as a significant noncomplier shall be subject to an
19 inspection by the department, or the delegated local agency, as
20 the case may be, which inspection shall be in addition to the
21 requirements of subsection l. of this section. The inspection shall
22 be conducted within 30 days of submission of the discharge
23 monitoring report that initially results in the permittee being
24 identified as a significant noncomplier. The inspection shall
25 include a random check of written summaries of all reports, for
26 the immediately preceding 12-month period, that certify the
27 accuracy of the test results, signed by a responsible official of
28 the certified laboratory providing the test results. A copy of
29 each summary shall be maintained by the permittee. The
30 inspection shall be for the purpose of determining compliance.
31 The department or delegated local agency is required to conduct
32 only one inspection per year pursuant to this subsection, and is
33 not required to make an inspection hereunder if an inspection has
34 been made pursuant to subsection l. of this section within six
35 months of the period within which an inspection is required to be
36 conducted under this subsection.

37 n. To assist the commissioner in assessing a municipal
38 treatment works' NJPDES permit in accordance with paragraph
39 (4) of subsection b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a

1 delegated local agency shall perform, on an annual basis, a
3 complete analysis that includes a complete priority pollutant
5 analysis of the discharge from, and inflow to, the municipal
7 treatment works. The analysis shall be performed by a delegated
9 local agency as often as the priority pollutant scan is required
11 under the permit, and shall be based upon data acquired in the
13 priority pollutant scan and from applicable sludge quality analysis
15 reports. The results of the analysis shall be included in an annual
17 report to be attached to the annual report to the commissioner by
19 the delegated local agency.

21 o. Except as otherwise provided in section 3 of P.L.1963, c.73
23 (C.47:1A-3), any records, reports or other information obtained
25 by the commissioner or a local agency pursuant to this section or
27 section 5 of P.L.1972, c.42 (C.58:11-53), including any
29 correspondance relating thereto, shall be available to the public;
31 however, upon a showing satisfactory to the commissioner by any
33 person that the making public of any record, report or
35 information, or a part thereof, other than effluent data, would
37 divulge methods or processes entitled to protection as trade
39 secrets, the commissioner or local agency shall consider such
record, report, or information, or part thereof, to be confidential,
and access thereto shall be limited to authorized officers or
employees of the department, the local agency, and the federal
government.

1 p. In order to protect human health and the environment, the
3 department may, by order or in a permit, or in a modification
5 thereto, require that a person execute and record a written
7 instrument which imposes an easement, covenant, restriction, or
9 servitude upon the present and future uses of all or part of any
11 real property of that person, which has been contaminated by a
13 discharge subject to the provisions of P.L.1977, c.74. The
15 easement, covenant, restriction, or servitude shall be no more
17 restrictive than necessary, as determined by the department.
19 The easement, covenant, restriction, or servitude shall run with
21 the land, regardless of the existence of privity or benefit to
23 particular land. If there is a significant change in the condition
25 upon which such easement, covenant, restriction, or servitude is
27 based, an owner may petition the department to determine
29 whether the easement, covenant, restriction, or servitude should

1 be modified or removed.

(cf: P.L.1988, c.56, s.7)

3 4. Section 7 of P.L.1977, c.74 (C.58:10A-7) is amended to read
as follows:

5 7. a. All permits issued under this act shall be for fixed terms
not to exceed 5 years. Any permittee who wishes to continue
7 discharging after the expiration date of his permit must file for a
new permit at least 180 days prior to that date.

9 b. (1) The commissioner may modify, suspend, or revoke a
permit in whole or in part during its term for cause, including but
11 not limited to the following:

[(1)] (a) Violation of any term or condition of the permit;

13 [(2)] (b) Obtaining a permit by misrepresentation or failure to
disclose fully all relevant facts[.];

15 [(3)] (2) If a toxic effluent limitation or prohibition, including
any schedule of compliance specified in such effluent limitation
17 or prohibition, is established under section 307(a) of the Federal
Act for a toxic pollutant which is more stringent than any
19 limitations upon such pollutant in an existing permit, the
commissioner shall revise or modify the permit in accordance
21 with the toxic effluent limitation or prohibition and so notify the
permittee.

23 (3) The department shall include in a permit for a delegated
local agency effluent limits or monitoring requirements for all
25 pollutants listed under the United States Environmental
Protection Agency's Categorical Pretreatment Standards,
27 adopted pursuant to 33 U.S.C. §1317, and such other pollutants
for which effluent limits or monitoring requirements have been
29 established for a permittee discharging into the municipal
treatment works of the delegated local agency, except those
31 categorical or other pollutants that the delegated local agency
demonstrates to the department are not discharged above
33 detectable levels by the municipal treatment works. The
department, by permit, may authorize the use by a delegated
35 local agency of surrogate parameters for categorical and other
pollutants discharged from a municipal treatment works, except
37 that if a surrogate parameter is exceeded, the department shall
require effluent limits or monitoring requirements for each
39 categorical or other pollutant for which the surrogate parameter

1 was used, for such period of time as may be determined by the
2 department.

3 c. Notice of every proposed suspension, revocation or renewal,
4 or substantial modification of a permit and opportunity for public
5 hearing thereupon, shall be afforded in the same manner as with
6 respect to original permit applications as provided for in this act.
7 In any event notice of all modifications to a discharge permit
8 shall be published in the New Jersey Register.

9 d. [Every final] A determination [of the commissioner] to
10 grant, deny, modify, suspend, or revoke a permit shall constitute
11 [an administrative adjudication] a contested case under the
12 "Administrative [Procedures] Procedure Act," P.L.1968, c.410
13 (C.52:14B-1 et seq.), which provides the permittee, or any other
14 person who shall be considered a party to the action, whether or
15 not that person is affected by the determination, the opportunity
16 to contest the [final] determination in a hearing. The department
17 shall grant a person other than a permit applicant the opportunity
18 to contest the determination only when the objections to the
19 action to grant, deny, modify, suspend, or revoke a permit were
20 raised by that person in the hearing held pursuant to section 9 of
21 P.L.1977, c.74 (C.58:10A-9), and relate to a significant issue of
22 law or fact that is likely to have a significant bearing on the
23 determination, or, if no hearing was held, the objections were
24 raised in a written submission and the objection relates to a
25 significant issue of law or fact that is likely to have a significant
26 bearing on the determination.

27 (cf: P.L.1977, c.74, s.7)

28 5. Section 10 of P.L.1977, c.74 (C.58:10A-10) is amended to
29 read as follows:

30 10. a. (1) Whenever, on the basis of any information available
31 to him, the commissioner finds that any person is in violation of
32 any provision of this act, or any rule, regulation, water quality
33 standard, effluent limitation, [or], permit, or order promulgated
34 or issued pursuant to this act, he shall, except as otherwise herein
35 provided:

36 [(1)] (a) Issue a notice of violation or an order requiring any
37 such person to comply in accordance with subsection b. of this
38 section; or

39 [(2)] (b) Bring a civil action in accordance with subsection c. of
40 this section; or

1 ~~[(3)]~~ (c) Levy a civil administrative penalty in accordance with
subsection d. of this section; or

3 ~~[(4)]~~ (d) Bring an action for a civil penalty in accordance with
subsection e. of this section; or

5 ~~[(5)]~~ (e) Petition the Attorney General to bring a criminal
action in accordance with subsection f. of this section.

7 Use of any of the remedies specified under this section shall
not preclude use of any other remedy specified.

9 (2) The commissioner shall assess civil administrative penalties
as required in paragraph (3) of subsection d. of this section, and
11 shall make any referrals required pursuant to paragraph (5) of
that subsection.

13 In the case of one or more pollutants for which effluent
limitations have been established pursuant to a schedule of
15 compliance issued by the department or a local agency, the
permittee shall be liable for the effluent limitations stipulated
17 therefor in the schedule of compliance.

 b. Whenever, on the basis of any information available to him,
19 the commissioner finds that any person is in violation of any
provision of this act, or of any rule, regulation, water quality
21 standard, effluent limitation [or], permit, or order promulgated or
issued pursuant to this act, he [may issue] shall utilize one or
23 more of the remedies available under subsection a. of this
section. If the commissioner elects to issue a notice of violation,
25 the commissioner shall determine, within three months of the
date of issuance of the notice, what steps have been taken to
27 comply with the notice. If the commissioner determines that the
permittee has not taken reasonable steps to comply with the
29 notice, the commissioner shall issue an order (1) specifying the
provision or provisions of this act, or the rule, regulation, water
31 quality standard, effluent limitation, or permit of which he is in
violation, (2) citing the action which caused such violation, (3)
33 requiring compliance with such provision or provisions, and (4)
giving notice to the person of his right to a hearing on the
35 matters contained in the order. Nothing herein shall be construed
to limit the authority of the commissioner to issue an order for a
37 violation without prior issuance of a notice of violation.

 c. The commissioner is authorized to commence a civil action
39 in Superior Court for appropriate relief for any violation of this

1 act or of a permit issued hereunder. Such relief may include,
singly or in combination:

3 (1) A temporary or permanent injunction;

5 (2) Assessment of the violator for the costs of any
investigation, inspection, or monitoring survey which led to the
establishment of the violation, and for the reasonable costs of
7 preparing and litigating the case under this subsection;

9 (3) Assessment of the violator for any cost incurred by the
State in removing, correcting or terminating the adverse effects
upon water quality resulting from any unauthorized discharge of
11 pollutants for which the action under this subsection may have
been brought;

13 (4) Assessment against the violator of compensatory damages
for any loss or destruction of wildlife, fish or aquatic life, and for
15 any other actual damages caused by an unauthorized discharge.
Assessments under this subsection shall be paid to the [State
17 Treasurer] "Clean Water Enforcement Fund," established
pursuant to section 8 of P.L. , c. (C.) (pending
19 in the Legislature as this bill), except that compensatory damages
shall be paid by specific order of the court, or administrative
21 order, to any persons who have been aggrieved by the
unauthorized discharge.

23 Upon an appropriate finding, the commissioner, by
administrative order, may assess a violator for costs or
25 compensatory damages authorized pursuant to paragraphs (2)
through (4) of this subsection.

27 d. (1) The commissioner is authorized to assess, in accordance
with a uniform policy adopted therefor, a civil administrative
29 penalty of not more than \$50,000.00 for each violation and each
day during which such violation continues shall constitute an
31 additional, separate, and distinct offense. Any amount assessed
under this subsection shall fall within a range established by
33 regulation by the commissioner for violations of similar type,
seriousness, and duration. In adopting rules for a uniform penalty
35 policy for determining the amount of a penalty to be assessed,
the commissioner shall take into account the type, seriousness,
37 including extent, toxicity, and frequency of a violation based
upon the harm to public health or the environment resulting from
39 the violation, the economic benefits from the violation gained by

1 the violator, the degree of cooperation or recalcitrance of the
2 violator in remedying the violation, any unusual or extraordinary
3 costs directly or indirectly imposed on the public by the violation
4 other than costs recoverable pursuant to paragraph (3) or (4) of
5 subsection c. of this section, and any other pertinent factors that
6 the commissioner determines measure the seriousness or
7 frequency of the violation. No assessment shall be levied
8 pursuant to this section until after the discharger has been
9 notified by certified mail or personal service. The notice shall
10 include a reference to the section of the statute, regulation,
11 order or permit condition violated; a concise statement of the
12 facts alleged to constitute a violation; a statement of the amount
13 of the civil penalties to be imposed; and a statement of the
14 party's right to a hearing. The ordered party shall have 20 days
15 from receipt of the notice within which to deliver to the
16 commissioner a written request for a hearing. After the hearing
17 and upon finding that a violation has occurred, the commissioner
18 may issue a final order after assessing the amount of the fine
19 specified in the notice. If no hearing is requested, then the
20 notice shall become a final order after the expiration of the
21 20-day period. Payment of the assessment is due when a final
22 order is issued or the notice becomes a final order. If a civil
23 administrative penalty imposed pursuant to this subsection is not
24 paid within 30 days of the date that the penalty is due and owing,
25 and the penalty is not contested by the person against whom the
26 penalty has been assessed, an interest charge shall accrue on the
27 amount of the penalty from the 30th date the penalty was due
28 and owing. The rate of interest shall be based on the prevailing
29 market rate for 90-day commercial paper in effect at the
30 Federal Reserve Bank of New York on that date.

31 The authority to levy an administrative [order] penalty is in
32 addition to all other enforcement provisions in this act, and the
33 payment of any assessment shall not be deemed to affect the
34 availability of any other enforcement provisions in connection
35 with the violation for which the assessment is levied. Any civil
36 penalty assessed under this section may be compromised by the
37 commissioner upon the posting of a performance bond by the
38 violator, or upon such terms and conditions as the commissioner
39 may establish by regulation, except that the amount compromised

1 shall not be more than 50% of the assessed penalty, but in no
2 instance shall the amount of the compromised penalty be less
3 than the statutory minimum amount prescribed in paragraph (3)
4 of this subsection.

5 An appeal of a penalty assessed in accordance with this
6 subsection, whether contested pursuant to the administrative
7 hearing provisions of section 10 of P.L.1968, c.410 (C.52:14B-10)
8 or by appeal to a court of appropriate jurisdiction, shall be made
9 only after posting with the commissioner a refundable bond, or
10 other security approved by the commissioner, in the amount of
11 the civil administrative penalty assessed. If the department is
12 the prevailing party, the department shall also be entitled to
13 interest on the amount of the judgment from the date of the
14 posting of the security with the commissioner, which shall be
15 either the interest earned by the security during that time, or, if
16 no interest is payable on the security, the prevailing market rate
17 on 90-day commercial paper in effect at the Federal Reserve
18 Bank of New York on the day that the penalty is due and owing.

19 (2) The commissioner shall adopt, by regulation, a uniform
20 assessment of civil penalties policy within six months of the
21 effective date of P.L. , c. (C.) (pending in the
22 Legislature as this bill).

23 (3) The department shall assess, unless the department is
24 actively pursuing other civil or criminal penalties that could
25 reasonably be expected to result in more stringent penalties, a
26 civil administrative penalty of:

27 (a) not less than \$1,000 for each day of violation against any
28 permittee whose discharge of a hazardous pollutant at any time
29 exceeds an effluent limitation established therefor by any of the
30 numerical factors of 1.4, 1.2, or 1.5, as the case may be, or, in
31 the case of a nonhazardous pollutant, by a factor of 1.4 or 2.0, as
32 the case may be, as set forth in paragraphs (1) and (2) of
33 subsection v. of section 3 of P.L.1977, c.74 (C.58:10A-3); except
34 that in the case of a significant noncomplier, the department
35 shall assess a civil administrative penalty of not less than \$5,000
36 per day of violation. Each day during which the violation
37 continues shall constitute an additional, separate, and distinct
38 offense;

39 (b) not less than \$100 for each permit parameter omitted on a

1 discharge monitoring report required to be submitted to the
2 department, and each day such information is overdue shall
3 constitute an additional, separate and distinct offense, except
4 that in no instance shall the total penalty assessed pursuant to
5 this subsection exceed \$50,000 per month for any one monitoring
6 report. The penalty shall accrue as of the fifth day following the
7 date the monitoring report was due and shall continue to accrue
8 for 30 days. The commissioner may continue to assess penalties
9 beyond the 30-day period until submission of the overdue
10 monitoring report. A permittee may contest the application of
11 the penalty provisions of this paragraph by notifying the
12 commissioner in writing, within 30 days of the date the
13 monitoring results were required to be submitted to the
14 department, of the existence of extenuating circumstances
15 beyond the control of the permittee that prevented timely
16 submission of the report, or portion thereof, or if the penalty
17 relates to an inadvertent omission of one or more parameters, the
18 permittee may contest application of the penalty within 30 days
19 of receipt by the permittee of notice of omission of the
20 parameter or parameters.

21 (4) A civil administrative penalty imposed pursuant to a final
22 order:

23 (a) may be collected or enforced by summary proceedings in a
24 court of competent jurisdiction in accordance with "the penalty
25 enforcement law," N.J.S.2A:58-1 et seq.; and

26 (b) shall constitute a debt of the violator or discharger.

27 A penalty assessed under this subsection may be docketed with
28 the clerk of the Superior Court, and shall have the same standing
29 as any judgment docketed with the clerk of the Superior Court
30 pursuant to N.J.S.2A:16-1; except that no lien shall attach to the
31 real property of a violator pursuant to this subsection if the
32 violator posts a refundable bond or other security with the
33 commissioner pursuant to an appeal of a final order to the
34 Appellate Division of the Superior Court. No lien shall attach to
35 the property of a local agency.

36 (5) The commissioner shall refer to the Attorney General and
37 the county prosecutor of the county in which the violations
38 occurred, for possible criminal prosecution pursuant to subsection
39 f. of this section, any permittee determined to be a significant

1 noncomplier as defined in (a) paragraphs (1) and (2) of subsection
2 v. of section 3 of P.L.1977, c.74 (C.58:10A-3), or (b) paragraph (3)
3 of that subsection for two consecutive six month periods.

4 Any action taken by the commissioner pursuant to this
5 subsection shall not preclude, interfere with, or in any way limit
6 the use of any other applicable legal remedy available to the
7 commissioner.

8 e. Any person who violates this act or an administrative order
9 issued pursuant to subsection b. or a court order issued pursuant
10 to subsection c., or who fails to pay [an administrative
11 assessment] a civil administrative penalty in full pursuant to
12 subsection d. shall be subject upon order of a court to a civil
13 penalty not to exceed \$50,000.00 per day of such violation, and
14 each day's continuance of the violation shall constitute a
15 separate violation. Any penalty incurred under this subsection
16 may be recovered with costs in a summary proceeding pursuant to
17 "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The
18 Superior Court shall have jurisdiction to enforce "the penalty
19 enforcement law" in conjunction with this act.

20 f. [Any person who willfully or negligently violates this act
21 shall, upon conviction, be guilty of a crime of the fourth degree
22 and shall be punished by fine of not less than \$5,000.00 nor more
23 than \$50,000.00 per day of violation, or by imprisonment for not
24 more than one year, or by both. Punishment for a second offense
25 under this subsection shall be a fine of not less than \$10,000.00
26 nor more than \$100,000.00 per day of violation, or by
27 imprisonment for not more than two years, or both.

28 Any person who knowingly makes a false statement,
29 representation, or certification in any application, record, or
30 other document filed or required to be maintained under this act
31 or who falsifies, tampers with or knowingly renders inaccurate,
32 any monitoring device or method required to be maintained
33 pursuant to this act, shall upon conviction, be subject to a fine of
34 not more than \$20,000.00 or by imprisonment for not more than
35 six months, or by both] (1)(a) Any person who purposely,
36 knowingly, or recklessly violates this act, and the violation is
37 capable of causing a significant adverse environmental effect,
38 shall, upon conviction, be guilty of a crime of the second degree,
39 and shall, notwithstanding the provisions of subsection a. of

1 N.J.S.2C:43-3, be subject to a fine of not less than \$25,000 nor
3 more than \$250,000 per day of violation, or by imprisonment, or
by both.

5 (b) As used in this paragraph, a significant adverse
7 environmental effect exists when an action or omission of the
9 defendant is capable of causing: serious harm or damage to
11 wildlife, freshwater or saltwater fish, any other aquatic or
13 marine life, water fowl, or to their habitats, or to livestock, or
15 agricultural crops; or serious harm or danger to, or degradation
17 of, any ground or surface waters used for drinking, agricultural,
19 navigational, recreational, or industrial purposes; or any other
21 serious articulable harm or damage to, or degradation of, the
23 lands or waters of the State, including ocean waters subject to its
25 jurisdiction pursuant to P.L.1988, c.61 (C.58:10A-47 et seq.).

27 A significant adverse environmental effect may be presumed to
29 have occurred if a violation of an effluent limitation, which is
31 measured by concentration or mass, for any discharge exceeds
33 the effluent limitation established in a permit or administrative
35 order by more than 50 per cent for a hazardous pollutant, or by
37 more than 100 per cent for a non-hazardous pollutant.

39 (2) Any person who purposely, knowingly, or recklessly violates
41 this act, including making a false statement, representation, or
43 certification in any application, record, or other document filed
45 or required to be maintained under this act, or by falsifying,
47 tampering with, or rendering inaccurate any monitoring device or
49 method required to be maintained pursuant to this act, or by
51 failing to submit a monitoring report, or any portion thereof,
53 required pursuant to this act, shall, upon conviction, be guilty of
55 a crime of the third degree, and shall, notwithstanding the
57 provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
59 of not less than \$5,000 nor more than \$75,000 per day of
61 violation, or by imprisonment, or by both.

63 (3) Any person who negligently violates this act, including
65 making a false statement, representation, or certification in any
67 application, record, or other document filed or required to be
69 maintained under this act, or by falsifying, tampering with, or
71 rendering inaccurate any monitoring device or method required to
73 be maintained pursuant to this act, or by failing to submit a
75 discharge monitoring report, or any portion thereof, required

1 pursuant to this act, shall, upon conviction, be guilty of a crime
2 of the fourth degree and shall, notwithstanding the provisions of
3 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less
4 than \$5,000 nor more than \$50,000 per day of violation, or by
5 imprisonment, or by both.

6 (4) Any person who purposely or knowingly violates an effluent
7 limitation or other condition of a permit, or who discharges
8 without a permit, and who knows at that time that he thereby
9 places another person in imminent danger of death or serious
10 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, shall,
11 upon conviction, be guilty of a crime of the first degree, and,
12 notwithstanding the provisions of subsection a. of N.J.S.2C:43-3,
13 shall be subject to a fine of not less than \$50,000 nor more than
14 \$250,000, or, in the case of a corporation, a fine of not less than
15 \$200,000 nor more than \$1,000,000, or imprisonment, or both.

16 (5) If the court sentences the defendant convicted of a third or
17 fourth degree crime to a noncustodial term, the court shall
18 require, pursuant to subsection b.(2) of N.J.S.2C:43-2, that the
19 defendant serve not less than 10 days imprisonment as a condition
20 of probation, and, in addition, that the defendant perform not less
21 than 30 days of community service.

22 g. All conveyances used or intended for use in the [willful]
23 purposeful or knowing discharge, in violation of the provisions of
24 P.L.1977, c.74 (C.58:10A-1 et seq.), of any pollutant or toxic
25 pollutant are subject to forfeiture to the State pursuant to the
26 provisions of P.L.1981, c.387 (C.13:1K-1 et seq.).

27 h. (1) (a) For the purpose of determining if a permittee is a
28 significant noncomplier, it is an affirmative defense to exceeding
29 an effluent limitation that the violation was the result of an
30 upset.

31 (b) A person asserting an affirmative defense of upset shall
32 submit documentation asserting the defense within 30 days
33 following the upset, and shall have the burden of proof to
34 establish the occurrence and to demonstrate, through properly
35 signed, contemporaneous operating logs, or other relevant
36 evidence, that:

37 (i) the upset occurred, and the permittee identifies the
38 proximate cause of the upset, including, if practicable, the
39 identity of the person causing the upset;

1 (ii) the permitted facility, including a municipal treatment
works, was at the time being properly operated;

3 (iii) the permittee submitted notice of the upset as required in
regulations adopted by the department, or, in the case of an upset
5 resulting from the performance by the permittee of maintenance
operations, the permittee provided prior notice to, and received
7 an exception from, the department or the delegated local agency;
and

9 (iv) the permittee complied with any remedial measures
required by the department.

11 A determination by the department on a claim that an
exceedance of an effluent limitation was caused by an upset is
13 not a contested case for which a hearing is required.

15 (2) If the department determines upon a claim made that an
exceedance of an effluent limitation was caused by an upset, the
commissioner may reduce or waive any civil administrative
17 penalty required to be assessed pursuant to paragraph (3)(a) of
subsection d. of this section.

19 Notwithstanding the provisions of this subsection, the
department may adopt regulations or permit conditions that
21 include or do not include an upset as a defense for an effluent
limitation violation that do not involve a significant noncomplier.

23 i. The penalty provisions of this section, as amended by
P.L. , c. (C.) (pending in the Legislature as this bill)
25 shall apply to violations occurring on or after the effective date
of that act.

27 (cf: P.L.1986, c.170, s.3)

6. (New section) a. Every schedule of compliance shall require
29 the permittee to demonstrate to the commissioner the financial
assurance, including the posting of a bond or other security
31 approved by the commissioner, necessary to carry out the
remedial measures required by the schedule of compliance.

33 b. A public hearing shall be held, if requested by one or more
persons, on the issuance of a schedule of compliance if the
35 schedule of compliance:

(1) Would exceed 18 months;

37 (2) Would renew, extend or relax an existing schedule of
compliance; or

39 (3) Is sought within two years of the date of issuance of the
permit for which a schedule of compliance is sought.

1 Public notice shall be given for any public hearing held
pursuant to this subsection, which hearing shall be held in the
3 municipality in which the violation occurred that necessitates the
schedule of compliance. The department may recover all
5 reasonable costs directly incurred in scheduling and holding the
public hearing from the person requesting the schedule of
7 compliance, or a renewal, extension or relaxation thereof.

7. (New section) a. The commissioner shall publish at least
9 annually a report summarizing the following:

(1) The total number of facilities in violation of P.L.1977, c.74
11 (C.58:10A-1 et seq.) in the immediately preceding calendar year;

(2) The total number of enforcement actions brought by the
13 department in that year pursuant to section 10 of that act
(C.58:10A-10), and the total amount of fines assessed or
15 collected thereunder;

(3) A list of all significant noncompliers;

17 (4) A list of all significant noncompliers for two consecutive
six month periods;

19 (5) A list identifying all referrals for civil action and the
disposition of each case.

21 (6) A list identifying all referrals for criminal action of
significant noncompliers pursuant to subsection d. of section 10
23 of P.L.1977, c.74 (C.58:10A-10);

b. The Attorney General shall publish at least annually a
25 report summarizing the following:

(1) A complete list identifying all cases filed under section 10
27 of P.L.1977, c.74 (C.58:10A-10) in the immediately preceding
year;

29 (2) A complete list of the final disposition of all cases filed
thereunder that were completed in that year.

31 c. The first reports required to be made pursuant to
subsections a. and b. of this section shall be published not later
33 than March 1, 1990 for discharges to surface waters, which shall
cover the period beginning January 1, 1989 through December 31,
35 1989, and not later than March 1, 1991 for discharges to ground
water, which report shall cover the period beginning January 1,
37 1990 through December 31, 1990. Subsequent reports shall be
published on March 1 of each year. The reports of the
39 commissioner and the Attorney General shall be submitted to the

1 Governor and the Legislature, and shall be made available to the public.

3 d. Within 30 days of publication of the reports pursuant to
5 subsection c. of this section, the commissioner shall publish for at
7 least six consecutive days in not less than one newspaper with
9 Statewide circulation and not less than one regional newspaper
with the widest circulation in the State that circulates in the
municipality in which the violation or violations occurred, a full
page advertisement which shall:

(1) Identify the owner, trade name and location of all facilities
11 listed as significant noncompliers;

(2) Identify all of the significant noncompliers who have been
13 assessed fines pursuant to section 10 of P.L.1977, c.74
(C.58:10A-10), the amount of the penalties assessed against, and
15 the amount paid by, each significant noncomplier;

(3) Indicate the availability of the annual reports required
17 under this section, and the address and phone number for securing
copies.

19 All costs incurred by the department, including administrative
costs, in implementing the provisions of this subsection shall be
21 recoverable on a pro rata basis from the significant noncompliers
identified in the advertisements. Any costs recoverable
23 hereunder by the department shall be included in the assessment
of penalties made pursuant to section 10 of P.L.1977, c.74
25 (C.58:10A-10).

8. (New section) There is created, in the Department of
27 Environmental Protection, a dedicated and revolving fund, to be
known as the "Clean Water Enforcement Fund." All monies from
29 penalties and fines collected by the department pursuant to
section 10 of P.L.1977, c.74 (C.58:10A-10) shall be deposited in
31 the fund. Monies in the fund shall be utilized exclusively by the
department for enforcement of the "Water Pollution Control
33 Act," P.L.1977, c.74 (C.58:10A-1 et seq.). Unless otherwise
specifically provided by law, monies in the fund may be used to
35 hire professional and clerical staff needed to carry out the
enforcement responsibilities of the department pursuant to
37 P.L.1977, c.74. Any unobligated monies in the fund at the end of
each fiscal year or monies not required for enforcement purposes
39 in the next fiscal year shall be transferred to the "New Jersey

1 Wastewater Treatment Trust," established pursuant to P.L.1985,
2 c.334 (C.58:11B-1 et seq.), for use in accordance with the
3 provisions of that act.

4 9. (New section) There is created in the Department of
5 Environmental Protection a dedicated and revolving account, to
6 be known as the "Wastewater Treatment Operators' Training
7 Account." Monies deposited in the account shall be used to
8 provide training, including continuing education, courses for
9 wastewater treatment operators. A court shall deposit into the
10 account 10% of the amount of any penalty assessed and collected
11 in an action brought by a local agency pursuant to section 10 of
12 P.L.1977, c.74 (C.58:10A-10) or a public entity pursuant to
13 section 7 of P.L.1972, c.42 (C.58:11-55).

14 10. (New section) There is established, pursuant to P.L. 1983,
15 c.230 (C.58:11-64 et seq.), in the Department of Environmental
16 Protection an Advisory Committee on Water Supply and
17 Wastewater Licensed Operator Training. Committee members
18 shall be appointed by the commissioner for three-year terms as
19 follows: four members who shall be representatives of the
20 department; two members who shall be representatives selected
21 from a list prepared by the New Jersey Section American Water
22 Works Association; one member who shall be a licensed operator;
23 one member who shall be a member of the education committee
24 of the Water Pollution Control Association; two members who
25 shall be selected from a list prepared by the Authorities
26 Association of New Jersey, one of whom shall be from a water
27 authority, and one from a wastewater treatment authority; one
28 member who shall be selected from a list prepared by the New
29 Jersey Business and Industry Council; three members who shall be
30 selected from a list prepared by educational institutions in the
31 State conducting courses in water supply or wastewater
32 treatment operations, or which conducted an appropriate course
33 in the immediately preceding academic year, one of whom shall
34 be the Director of the Office of Continuing Professional
35 Education at Cook College, the State University of Rutgers; and
36 two members who shall be selected from environmental groups in
37 the State actively concerned or involved in water quality or
38 wastewater treatment.

39 The advisory committee shall meet at least once a year, and

1 shall organize itself in such manner and hold its meetings in such
places as it deems most suitable. The department shall provide
3 staff assistance to the advisory committee, to the extent that
monies are available therefor.

5 The advisory committee shall advise the department on the
training and licensing of water supply and wastewater treatment
7 operators and on related matters, or on any other matter referred
to it by the department. The advisory committee shall review
9 the training programs for, and identify the training needs of,
water supply and wastewater treatment operators, and shall
11 approve the annual allocations of monies for wastewater
treatment operators' training programs from sums available in
13 the "Wastewater Treatment Operators' Training Account,"
established pursuant to section 9 of P.L. , c. (C.)
15 (pending in the Legislature as this bill).

11. (New section) a. The department may request that any
17 person who the department has reason to believe has, or may
have, information relevant to a discharge or potential discharge
19 of a pollutant, including, but not limited to, any person having
generated, treated, transported, stored, or disposed of the
21 pollutant, or any person having arranged for the transportation,
storage, treatment or disposal of the pollutant, shall provide,
23 upon receipt of written notice therefor, the following information
to the department:

25 (1) The nature, extent, source, and location of the discharge, or
potential discharge;

27 (2) Identification of the nature, type, quantity, source, and
location of the pollutant or pollutants;

29 (3) The identity of, and other relevant information concerning,
the generator or transporter of the pollutant, or any other person
31 subject to liability for the discharge or potential discharge;

(4) The ability of any person liable, or potentially liable, for the
33 discharge, or potential discharge, to pay for, or perform, the
cleanup and removal, including all applicable insurance coverage.

35 Information requested by the department shall be provided in
the form and manner prescribed by the department, which may
37 include documents or information in whatever form stored or
recorded.

39 b. The commissioner may issue subpoenas requiring attendance

1 and testimony under oath of witnesses before, or the production
of documents or information, in whatever form stored or
3 recorded, to him or to a representative of the department
designated by the commissioner. Service of a subpoena shall be
5 by certified mail or personal service. Any person who fails to
appear, give testimony, or produce documents in response to a
7 subpoena issued pursuant to this subsection, shall be subject to
the penalty provisions of section 10 of P.L.1977, c.74
9 (C.58:10A-10). Any person who, having been sworn, knowingly
gives false testimony or knowingly gives false documents or
11 information to the department is guilty of perjury and is subject
to the penalty provisions of section 10 of P.L.1977, c.74.

13 c. A person receiving a request for information made pursuant
to subsection a. of this section, or to a subpoena issued pursuant
15 to subsection b. of this section, shall:

(1) be required to conduct a diligent search of all documents in
17 his possession, custody or control, and to make reasonable
inquiries of present and past employees who may have knowledge
19 or documents relevant thereto;

(2) have a continuing obligation to supplement the information
21 if additional relevant information is discovered, or if it is
determined that the information previously provided was false,
23 inaccurate or misleading;

(3) grant the department access, at reasonable times, to any
25 vessel, facility, property or location to inspect and copy all
relevant documents or, at the department's request, copy and
27 furnish to the department all such documents;

d. No person may destroy any records relating to a discharge
29 or potential discharge to surface water within five years of the
discharge, or to a discharge or potential discharge to ground
31 water at any time without the prior written permission of the
commissioner.

33 12. Section 4 of P.L.1974, c.169 (C.2A:35A-4) is amended to
read as follows:

35 4. a. Any person may [maintain an] commence a civil action in
a court of competent jurisdiction against any other person [to
37 enforce, or to restrain the] alleged to be in violation of, any
statute, regulation or ordinance which is designed to prevent or
39 minimize pollution, impairment or destruction of the

1 environment. The action may be for injunctive or other equitable
2 relief to compel compliance with a statute, regulation or
3 ordinance, or to assess civil penalties for the violation as
4 provided by law. The action may be commenced upon an
5 allegation that a person is in violation, either continuously or
6 intermittently, of a statute, regulation or ordinance, and that
7 there is a likelihood that the violation will recur in the future.

8 b. Except in those instances where the conduct complained of
9 constitutes a violation of a statute, regulation or ordinance which
10 establishes a more specific standard for the control of pollution,
11 impairment or destruction of the environment, any person may
12 [maintain an] commence a civil action in any court of competent
13 jurisdiction for declaratory and equitable relief against any other
14 person for the protection of the environment, or the interest of
15 the public therein, from pollution, impairment or destruction.

16 c. The court may, on the motion of any party, or on its own
17 motion, dismiss any action brought pursuant to this act which on
18 its face appears to be patently frivolous, harassing or wholly
19 lacking in merit.

(cf: P.L.1974, c.169, s.4)

21 13. Section 10 of P.L.1974, c.169 (C.2A:35A-10) is amended to
22 read as follows:

23 10. a. In any action under this act the court may in
24 appropriate cases award to the prevailing party reasonable
25 counsel and expert witness fees [, but not exceeding a total of
26 \$10,000.00] where the prevailing party achieved at least some
27 success on the merits and not trivial or purely procedural
28 success. The fees shall be based on the number of hours
29 reasonably spent and a reasonable hourly rate for the counsel or
30 expert in the action taking into account the prevailing rate in the
31 area and the skill and experience of the counsel or expert.

32 b. The doctrines of collateral estoppel and res judicata may be
33 applied by the court to prevent multiplicity of suits.

34 c. An action commenced pursuant to the provisions of this act
35 may not be dismissed without the express consent of the court in
36 which the action was filed.

37 (cf: P.L.1985, c.531, s.1)

38 14. Section 7 of P.L.1972, c.42 (C.58:11-55) is amended to
39 read as follows:

1 7. a. Any person, corporation, or municipality who shall
3 violate any of the provisions of this act or any rules or
regulations promulgated thereunder shall be [liable to a penalty
5 of not more \$50,000.00] subject to the applicable provisions of
section 10 of P.L.1977, c.74 (C.58:10A-10), to be collected in a
civil action by a summary proceeding under "the penalty
7 enforcement law" (N.J.S.2A:58-1 et seq.), or in any case before a
court of competent jurisdiction wherein injunctive relief has been
9 requested. The Superior Court shall have jurisdiction to enforce
"the penalty enforcement law". [If the violation is of a
11 continuing nature each day during which it continues shall
constitute an additional separate and distinct violation.]

13 b. A public entity operating and controlling a public sewage
treatment plant [may] shall, in accordance with subsection a. of
15 this section, enforce any applicable pretreatment standard
adopted by [the commissioner pursuant to section 3 of P.L.1972,
17 c.42 (C.58:11-51), or by] the public entity pursuant to section 9 of
P.L.1972, c.42 (C.58:11-57), or [may] shall obtain injunctive relief
19 against a violation or threatened violation of a pretreatment
standard. A public entity operating and controlling a public
21 sewage treatment plant with pretreatment standards adopted by
the commissioner pursuant to section 3 of P.L.1972, c.42
23 (C.58:11-51), may enforce applicable pretreatment standards in
accordance with subsection a. of this section, or obtain injunctive
25 relief as provided in this subsection. The action shall be brought
in the name of the local public entity. Of the amount of any
27 penalty assessed and collected pursuant to subsection a. of this
section, 10% shall be deposited in the "Wastewater Treatment
29 Operators' Training Account," established in accordance with
section 9 of P.L. , c. (C.) (pending in the Legislature as
31 this bill), and used to finance the cost of training operators of
public sewage treatment plants.

33 (cf: P.L.1988, c.170, s.2)

15. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to
35 read as follows:

12. The department shall formulate comprehensive policies for
37 the conservation of the natural resources of the State, the
promotion of environmental protection and the prevention of
39 pollution of the environment of the State. The department shall

1 in addition to the powers and duties vested in it by this act or by
any other law have the power to:

3 a. Conduct and supervise research programs for the purpose of
determining the causes, effects and hazards to the environment
5 and its ecology;

b. Conduct and supervise Statewide programs of education,
7 including the preparation and distribution of information relating
to conservation, environmental protection and ecology;

9 c. Require the registration of persons engaged in operations
which may result in pollution of the environment and the filing of
11 reports by them containing such information as the department
may prescribe to be filed relative to pollution of the
13 environment, all in accordance with applicable codes, rules or
regulations established by the department;

15 d. Enter and inspect any building or place for the purpose of
investigating an actual or suspected source of pollution of the
17 environment and ascertaining compliance or noncompliance with
any codes, rules and regulations of the department. Any
19 information relating to secret processes concerning methods of
manufacture or production, obtained in the course of such
21 inspection, investigation or determination, shall be kept
confidential, except this information shall be available to the
23 department for use, when relevant, in any administrative or
judicial proceedings undertaken to administer, implement, and
25 enforce State environmental law, but shall remain subject only to
those confidentiality protections otherwise afforded by federal
27 law and by the specific State environmental laws and regulations
that the department is administering, implementing and enforcing
29 in that particular case or instance. In addition, this information
shall be available upon request to the United States Government
31 for use in administering, implementing, and enforcing federal
environmental law, but shall remain subject to the confidentiality
33 protection afforded by federal law. If samples are taken for
analysis, a duplicate of the analytical report shall be furnished
35 promptly to the person suspected of causing pollution of the
environment;

37 e. Receive or initiate complaints of pollution of the
environment, including thermal pollution, hold hearings in
39 connection therewith and institute legal proceedings for the

1 prevention of pollution of the environment and abatement of
nuisances in connection therewith and shall have the authority to
3 seek and obtain injunctive relief and the recovery of fines and
penalties in summary proceedings in the Superior Court;

5 f. Prepare, administer and supervise Statewide, regional and
local programs of conservation and environmental protection,
7 giving due regard for the ecology of the varied areas of the State
and the relationship thereof to the environment, and in
9 connection therewith prepare and make available to appropriate
agencies in the State technical information concerning
11 conservation and environmental protection, cooperate with the
Commissioner of Health in the preparation and distribution of
13 environmental protection and health bulletins for the purpose of
educating the public, and cooperate with the Commissioner of
15 Health in the preparation of a program of environmental
protection;

17 g. Encourage, direct and aid in coordinating State, regional
and local plans and programs concerning conservation and
19 environmental protection in accordance with a unified Statewide
plan which shall be formulated, approved and supervised by the
21 department. In reviewing such plans and programs and in
determining conditions under which such plans may be approved,
23 the department shall give due consideration to the development
of a comprehensive ecological and environmental plan in order to
25 be assured insofar as is practicable that all proposed plans and
programs shall conform to reasonably contemplated conservation
27 and environmental protection plans for the State and the varied
areas thereof;

29 h. Administer or supervise programs of conservation and
environmental protection, prescribe the minimum qualifications
31 of all persons engaged in official environmental protection work,
and encourage and aid in coordinating local environmental
33 protection services;

i. Establish and maintain adequate bacteriological, radiological
35 and chemical laboratories with such expert assistance and such
facilities as are necessary for routine examinations and analyses,
37 and for original investigations and research in matters affecting
the environment and ecology;

39 j. Administer or supervise a program of industrial planning for

1 environmental protection; encourage industrial plants in the State
to undertake environmental and ecological engineering programs;
3 and cooperate with the State Departments of Health, Labor, and
Commerce and Economic Development in formulating rules and
5 regulations concerning industrial sanitary conditions;

k. Supervise sanitary engineering facilities and projects within
7 the State, authority for which is now or may hereafter be vested
by law in the department, and shall, in the exercise of such
9 supervision, make and enforce rules and regulations concerning
plans and specifications, or either, for the construction,
11 improvement, alteration or operation of all public water supplies,
all public bathing places, landfill operations and of sewerage
13 systems and disposal plants for treatment of sewage, wastes and
other deleterious matter, liquid, solid or gaseous, require all such
15 plans or specifications, or either, to be first approved by it before
any work thereunder shall be commenced, inspect all such
17 projects during the progress thereof and enforce compliance with
such approved plans and specifications;

19 l. Undertake programs of research and development for the
purpose of determining the most efficient, sanitary and
21 economical ways of collecting, disposing or utilizing of solid
waste;

23 m. Construct and operate, on an experimental basis,
incinerators or other facilities for the disposal of solid waste,
25 provide the various municipalities and counties of this State, the
Board of Public Utilities, and the Division of Local Government
27 Services in the Department of Community Affairs with statistical
data on costs and methods of solid waste collection, disposal and
29 utilization;

n. Enforce the State air pollution, water pollution,
31 conservation, environmental protection, waste and refuse disposal
laws, rules and regulations, including the making and signing of a
33 complaint and summons for their violation by serving the
summons upon the violator and thereafter filing the complaint
35 promptly with a court having jurisdiction;

o. Acquire by purchase, grant, contract or condemnation, title
37 to real property, for the purpose of demonstrating new methods
and techniques for the collection or disposal of solid waste;

39 p. Purchase, operate and maintain, pursuant to the provisions

1 of this act, any facility, site, laboratory, equipment or machinery
necessary to the performance of its duties pursuant to this act;

3 q. Contract with any other public agency or corporation
incorporated under the laws of this or any other state for the
5 performance of any function under this act;

r. With the approval of the Governor, cooperate with, apply
7 for, receive and expend funds from, the federal government, the
State Government, or any county or municipal government or
9 from any public or private sources for any of the objects of this
act;

11 s. Make annual and such other reports as it may deem proper
to the Governor and the Legislature, evaluating the
13 demonstrations conducted during each calendar year;

t. Keep complete and accurate minutes of all hearings held
15 before the commissioner or any member of the department
pursuant to the provisions of this act. All such minutes shall be
17 retained in a permanent record, and shall be available for public
inspection at all times during the office hours of the department;

19 u. Require any person subject to a lawful order of the
department, which provides for a period of time during which
21 such person subject to the order is permitted to correct a
violation, to post a performance bond or other security with the
23 department in such form and amount as shall be determined by
the department. Such bond need not be for the full amount of the
25 estimated cost to correct the violation but may be in such
amount as will tend to insure good faith compliance with said
27 order. The department shall not require such a bond or security
from any public body, agency or authority, except as otherwise
29 specifically provided by law. In the event of a failure to meet
the schedule prescribed by the department, the sum named in the
31 bond or other security shall be forfeited unless the department
shall find that the failure is excusable in whole or in part for good
33 cause shown, in which case the department shall determine what
amount of said bond or security, if any, is a reasonable forfeiture
35 under the circumstances. Any amount so forfeited shall be
utilized by the department for the correction of the violation or
37 violations, or for any other action required to insure compliance
with the order.

39 (cf: P.L.1984, c.5, s.1)

16. This act shall take effect immediately.

1

ENVIRONMENT

Air and Water Pollution

3

The "Clean Water Enforcement Act."

TABLE OF CONTENTS

	<u>Page</u>
George F. Schlosser, Esq. Deputy Director Division of Enforcement and Regulatory Affairs New Jersey Department of Environmental Protection	5
James K. Hamilton Assistant Director for Enforcement Division of Water Resources New Jersey Department of Environmental Protection	5
William G. Dressel, Jr. Assistant Executive Director New Jersey State League of Municipalities	24
Jeannie Jenkins Biologist New Jersey Public Interest Research Group	33
Hal Bozarth Executive Director New Jersey Chemical Industry Council	44
Hank Van Handel New Jersey Chemical Industry Council	46
Camilla Fahmie Save Our Shores	65
Ben Forest Monmouth County Friends of Clear Water	66
James Sinclair Vice President New Jersey Business and Industry Association	69
Cindy Zipf Coordinator Clean Ocean Action	80
Ellen Gulbinsky - Authorities Association of New Jersey, and Water Pollution Control Association	87

SENATOR RICHARD VAN WAGNER (Chairman): Can we get everybody's attention? If you would, please, take a seat.

This is the first meeting of the Special Committee to Study Ocean Pollution. This Committee was formed, as you know, about three years ago under the Chairmanship of Senator Pallone, who has now moved onto far bigger and better things.

The Committee has been reconstituted under my Chairmanship. Before I make some brief introductory remarks, I would just like to make some announcements. Senator Weiss, who is also a member of this Committee, is also Chairman of the Senate Finance and Appropriations Committee, of which I am Vice Chairman. He is Chairing the Finance Committee meetings down the hall a bit, and will try to join us from time to time.

Senator Gagliano called me yesterday and advised me that he would be attending a meeting in New York, relative to the dispute regarding the limousine drivers, and the other problems that we're having relative to New York regarding taxation and things of that nature.

From what I read in the paper, at least, if I'm led to believe that, he may soon become something other than Senator Gagliano.

If that's true, whether he's going to be director of the transit agency or not, he's certainly been named a leading candidate by the Governor. He expressed his apologies for not being here today, and will receive a copy of the transcript. Senator Hurley is unable to attend.

Secondly, I should also advise you that the Committee will probably hold another meeting after this

meeting, after we take testimony today on this issue, and will probably hold another meeting in about three weeks in the Monmouth-Ocean County area, another hearing. I would advise you that basically this Committee is not a Committee of reference, but it is a Committee of recommendation. And at some point when the Committee is constituted, a quorum, we will probably take up recommendations regarding the various legislation that the Committee takes testimony on.

This particular bill that we're going to be taking testimony on today, known as Clean Water Enforcement legislation, A-3831, Assembly Committee Substitute, S-2787, would require the Department of Environmental Protection to enforce violations of the New Jersey Pollution Discharge Elimination System, better known as NJPDES, which exclude State permits or fail to properly report what they discharge in the streams and rivers and the ocean.

The legislation also broadens the rights of citizen groups to sue polluters, forces more frequent and stringent inspections of, and tightens limits on toxic discharges, provides for fines of up to \$200,000 for violations, and jail terms for up to one year for breaking water pollution laws.

In addition to that, there's a section that would provide for civil fines of up to \$50,000 per day. The bill came about in the wake of a report that was issued by the New Jersey Public Interest Research Group wherein it was reported that widespread violations by both the public sewage treatment plants and industrial facilities, which presently hold permits to discharge pollutants into the waterways, were being exceeded. That report, of course, was countered by both the DEP, which I understand is here today, but I should also mention that Commissioner Daggett who did indicate he would be here to testify, has indicated, or his Department indicated, that he is in Washington today, but will be available to testify at the next meeting.

DEP and others oppose the legislation feeling that it would create too much red tape, and force the DEP to use its resources on moderate polluters, rather than against our worst polluters. With that backdrop of togetherness and agreement, we find ourselves here today. But I have to say to you, and to everyone, on a very general basis, and then I'm going to introduce Senator D'Amico, that the Legislature, and we feel, to a large extent, the people of the State, are very concerned about sending a strong message across this State that New Jersey is serious about trying to clean up its waterways.

Last year in both of our districts, Senator D'Amico and I, we had business people and vendors who are extremely reliant on the success of the New Jersey shore season suffer 60% to 80% losses in business. I realize that there's been great controversy over that in terms of the publicity that the media gave certain events, which, in some cases, people said was overblown. Be that as it may, it was a widespread fact of life that New Jersey's beaches last year and the year before were hit with waste that ultimately kept people from coming here to our shore.

So, I just wanted to make it very clear that the Legislature is extremely serious about this problem. That it is not just the problem that is of concern to the shore legislators, but it is a problem of concern to all legislators, primarily because of the economic impact and the environmental impact it has had on the entire State.

With that, I'm going to introduce the Vice Chairman of the Committee, who has been a Freeholder in Monmouth County, and has demonstrated his great concern with issues revolving around clean water and a quality environment, for some opening remarks, Senator John D'Amico from Monmouth County.

SENATOR D'AMICO: Thank you very much, Mr. Chairman. In addition to the PIRG report, there is another report that heightens the necessity to address clean water enforcement, and I'm referring to a report that was issued in January, entitled "Coastal Waters in Jeopardy, Reversing the Decline and Protecting America's Coastal Resources," prepared by the Merchant Marine Committee and Subcommittee on Fisheries and Wildlife Conservation, and the Subcommittee on Oceanography of the United States Congress. That report warned that New Jersey's and the nation's coastal waters are in serious decline, and that things were getting bad, worse, and will get worse still if immediate and serious attention is not paid to improving water quality along our coasts.

The report indicated that the pollution assault on coastal waters is pervasive, and that despite the passage of the Clean Water Act some 15 years ago, that pollutants, some of them toxics, are still flowing into our coastal waters, creating ongoing damage to our bays and estuaries and coastal waters.

Perhaps the most significant problem identified by that report was pollution by toxic chemicals and metals which enter our coastal waters in industrial and municipal waste discharges. That is why this Committee is taking such a keen interest in the Clean Water Enforcement Bill.

I might say that, in addition to having a concern about clean water enforcement, and the fact of industrial and municipal discharges into our waters, we are here to solicit additional suggestions, and perhaps as we hold additional hearings, those suggestions will be forthcoming as to how to deal with these pervasive pollutants, and how to deal with our coastal water quality.

As Senator Van Wagner indicated, shore tourism and business was off by at least half, last summer. We can't afford, as a State dependent on tourism, to experience another summer of disasters like the one we experienced last year. Therefore, I am encouraged by the turnout, and I look forward to your input toward assisting the Legislature in coming up with reasonable and responsible solutions to these incredible problems. So, thank you very much, Mr. Chairman.

SENATOR VAN WAGNER: Thank you, Senator. I'd like to call first, today, and I guess all three individuals probably could save some time and come forward, but they are, James K. Hamilton, Assistant Director for Enforcement, Division of Water Resources, Department of Environmental Protection, Mr. George F. Schlosser, Deputy Director, Enforcement and Regulatory Affairs, Department of Environmental Protection, Joe Devaney, Director, Office of Legislation, External Affairs, Department of Environmental Protection.

Maybe the three of you could come up, and that way-- Mr. Hamilton or Mr. Schlosser, if you would.

G E O R G E F. S C H L O S S E R E S Q.: Mr. Chairman, I'd like to begin. I'm George Schlosser, Deputy Director of the Division of Enforcement and Regulatory Affairs, which are the attorneys within the Department of Environmental Protection, and within that Division, I have the responsibility for supervising the attorneys that work in enforcement and that work with the program elements that have the primary responsibility for enforcement.

SENATOR VAN WAGNER: Are you an attorney, Mr. Hamilton? Mr. Schlosser, I'm sorry, are you an attorney? And, Mr. Hamilton, are you an attorney?

J A M E S K. H A M I L T O N: No, I'm not.

SENATOR VAN WAGNER: Mr. Schlosser, you'll be referring to matters that are under your regulatory supervision as an attorney?

MR. SCHLOSSER: Yes, and I'll explain the relationship of the people that I supervise with the relationship to the people Mr. Hamilton supervises.

SENATOR VAN WAGNER: Good.

MR. SCHLOSSER: The way the Department is set up now, the Program Division, like the Division of Water Resources, has the primary responsibility for enforcement. Mr. Hamilton is the Assistant Director for Enforcement in the Division of Water Resources, and he supervises the staff of probably 150 people.

And the way that we're organized, Mr. Hamilton has divided the State into four enforcement regions, and he has a bureau chief in the field office in each of those regions.

I have assigned an attorney that works for me to work with Mr. Hamilton's staff in each one of those regions. We then work together to pursue violators, and people that are not in compliance with our statutes.

The rules and permits of the Department are what I'd like to discuss with you now, and the Department's perspective on this bill, the Assembly Committee Substitute for Assembly 3831. But, to start, I'd like to step back and go back in time to the report that the Chairman referred to and talk about where this whole process started, and where we find ourselves today. I think it's important to go back in time, because the focus of the bill and the focus of the intent, as I understand it, of the initial supporters of the bill is based on a period of time that occurred three years ago, the circumstances that occurred and were in existence at that time, and many of which are no longer in existence, I think we have to understand what we're talking about, and the impact of the changing circumstances from then until now.

SENATOR VAN WAGNER: Which circumstances?

MR. SCHLOSSER: Okay, there have been several changes within the Department, since, roughly, 1986, and I believe it was a period of 1986, 1987, that PIRG researched our enforcement files and assessed our enforcement record that resulted in the report that you referred to earlier.

SENATOR VAN WAGNER: Okay, so, you're focused on the relationship between the PIRG report and the enforcement record that was in existence at that time.

MR. SCHLOSSER: What I'd like to outline for you now are the changes that the Department has gone through over the last three years.

SENATOR VAN WAGNER: From the time that that report was made?

MR. SCHLOSSER: That's correct. One of the first and one of the most important changes we made was a structural reorganization. Before 1986, Mr. Hamilton, in his role as Assistant Director in the Enforcement Division of Water Resources, had the responsibility for multiple program areas in enforcement, not just the NJPDES program but also for other water programs, such as the Drinking Water Act, Safe Dam Act, Wastewater Operators Licensing Act, and at that time taking most of his time, most of his staff time. They were involved in major cleanups at hazardous waste facilities, primarily groundwater facilities. Some of them included Superfund sites and other sites that were not on the Superfund list, but very serious sites that posed very serious concerns to us.

We decided, as a Department, back during that time, that to focus on the cleanup of those hazardous waste sites was the most important priority that Mr. Hamilton should focus on. At the same time, he was also dealing with enforcement under the other areas, including NJPDES.

Since that time, we have divided off that responsibility for cleanup of hazardous waste sites. It's no longer within the Division of Water Resources.

Mr. Hamilton is not responsible for that. We've given that to Hazardous Waste Management. And our intent was to enable Water Resources and the enforcement element in that Division to focus on the primary water issues that that Division was charged with enforcing, the primary program being the NJPDES program under the Water Pollution Control Act.

We have taken away one of the major obstacles that consumed a lot of the time of the staff at the time that the PIRG report was researched and written.

In addition to that, the Legislature, in late 1986 changed the Water Pollution Control Act and increased the amount of penalties that we could assess under that statute, and they changed tenfold, from a maximum of \$5000 a day to a maximum of \$50,000 a day.

In August of last year, we were able to adopt the final rules which implemented those changes in the amounts of civil penalties that we have assessed. As you know, last year in August we got a new Commissioner. Christopher Daggett is now our Commissioner. One of his top three priorities was to improve our enforcement record. He directed us very early on and very clearly that he wanted us to pursue aggressively and consistently but fair enforcement of all of our environmental statutes.

The focus of the Water Resources Enforcement element last year was on what we refer to as the July 1, 1988 cases. There were a number of facilities, both public and private, that had not yet met the secondary effluent limitations required by Federal law in their permits. We then focused our attention, over late 1987 and early '88, to focus on those facilities.

A lot of those facilities, particularly POWTs were along the shoreline areas and were and are discharging either directly or indirectly into the ocean waters. We thought it was very important that we get all of these

facilities on the compliant schedules and commitments from them to make necessary changes to upgrade treatment facilities.

During this time, we were able to negotiate and sign consent orders with over 100 different facilities to get them into compliance schedules. We had each of those facilities paying up-front penalties for failing to comply with the secondary requirements. And it's my understanding we collected over \$1 million in penalties from those facilities just for their failures up to that point in time in those agreements. They also agreed to pay us stipulated penalties if they failed to comply with the statements of compliance schedules with the agreements.

We think that was an important step in improving the water quality along the coastal waters. The fruit of that is going to be shown over time, as they are able to meet their secondary limitations. We were also able to streamline some of our internal processes as we took away some of the responsibilities that Water Enforcement previously had, and to focus on taking more timely and more aggressive enforcement action.

I think this has resulted in us taking a more focused view on surface water enforcement. We have been able to take more timely enforcement actions, and we have significantly increased the amount of penalties that we have both assessed and collected.

Last year, in 1988, we assessed approximately \$8 million in administrative penalties -- that was for Fiscal Year 1988. This year, in Fiscal Year 1989, we're already up over \$10 million. With another three or four months to go, we could get as high as \$15 million or \$20 million in penalties that we will be assessing for violations of NJPDES permits. We think this is a significant change in our own approach and our own perspective on enforcement. It's a little different situation than the situation that

existed three years ago, when the PIRG report was researched and rewritten.

SENATOR VAN WAGNER: Penalties that you assess now, do they go into a separate enforcement fund?

MR. SCHLOSSER: No, they go into the general treasury. The bill would change that if it becomes law and it would go into a special fund available for the Department, and, to a certain extent, some of the penalties would be available for local entities as well, the ones that they would be assessing.

But, given that background, and those changes, we then have been involved for the last six or eight months with discussions with a lot of individuals, a lot of groups, over Assembly Bill 3831, the Clean Water Enforcement Act. And it's important to focus on that bill now, and to evaluate what that bill did for us, what kind of added enforcement authority it gave us, and how it was designed to help us.

But, initially, if you look at the original draft of the bill, I'd have to ask--

SENATOR VAN WAGNER: Can you stay with the substitute rather than the original draft?

MR. SCHLOSSER: Okay. What the substitute has done, it has given us some additional authority, but not in the area of surface water discharge violators. It hasn't increased our authority to assess higher penalties, other than \$50,000 that was already in the bill. It hasn't increased the scope of our authority to include new people within our jurisdiction and regulations under the program. It doesn't give us any new enforcement tools.

What it did, in fact, was to take away our discretion in implementing that program the way that we thought was best, given all the violations that occur, and given our resources, and it would take away our discretion to focus our resources where we thought they were most

needed to make the positive statement that you referred to before, that we all want to make to all the polluters of this program, that we want to take swift and an effective and aggressive enforcement action.

One thing it does is mandates us to take enforcement action against each violator, whether it's industrial, three times over their permit limit, or a tenth of a percent over their permit limit. And we think that this is inappropriate, and kind of a wasteful use of our resources, because it focuses our attention away from the worst violators. We have to deal with all violators.

At a minimal level, that's going to take time and effort away from our worst violators. We think that is one of the worst points of this bill. It is not going to help us enforce this program, but will, in fact, hinder the enforcement of this program.

SENATOR VAN WAGNER: Do you know now who the worst violators are?

MR. SCHLOSSER: We're learning. If we went back--

SENATOR VAN WAGNER: Could you-- Like you say, it takes away time from our pursuing the worst violators, not by name, but maybe by specific generic group. Do you know who those worst violators are? If you are making a value judgment that it's going to take away from your time to follow them, then you must know who they are.

MR. HAMILTON: Yes, we think we do know who they are. The definition that's used by the government is the significant non-complier, that is, the Department has supported throughout this process--

SENATOR VAN WAGNER: Who are the significant non-compliers?

MR. HAMILTON: There is a two-stage definition based on severity and frequency, and it can get pretty complicated, quickly.

SENATOR VAN WAGNER: Let's take the next step in degree of severity and frequency, who are they?

MR. HAMILTON: On frequency, those violators who violate any permit limit four out of any six consecutive reporting periods.

SENATOR VAN WAGNER: Do you have a list of those?

MR. HAMILTON: I don't have a list of those here with me.

SENATOR VAN WAGNER: You keep a list?

MR. HAMILTON: Yes, we have a computer system.

SENATOR VAN WAGNER: Now, you found that-- What do you do now that would force you not to be able to do that if this bill passed?

MR. HAMILTON: There's nothing that is going to not force us to do that. We are doing that now. We are going forward at this present time. As we come across each significant non-complier, we are enforcing appropriate action.

SENATOR VAN WAGNER: What I'm trying to determine here, your colleague made a statement. He said, in effect, this bill, A-3831 ACS, will divert your efforts away from the worst violators. So, I started asking who are the worst violators. You didn't give me an answer, but you said this is what -- this is the significant non-compliers, and this is what it means.

How does this affect your ability to go after significant non-compliers?

MR. SCHLOSSER: Let's go back to answer the question, who are the significant non-compliers? We looked at permittees under our program now. We divided them under municipal permittees and other permittees, generally industrial permittees.

Looking at the definition of significant non-complier that we would support, we were able to determine a percentage in each group that would be in

violation, to define who would be the significant violators under our proposed definition on a percentage basis.

SENATOR VAN WAGNER: Then how would the Clean Water Enforcement Act, as it's presently proposed by the Assembly Committee, interfere with your ability to continue on your road?

MR. SCHLOSSER: It has to do with the timeliness of our response against those significant violators. If we have, for the sake of argument, 10 people doing this, and right now they are focusing on the worst violators, if-- Now, this bill becomes law, and we're mandated. We have to take action against people in other categories that are not significant violators. We have to take action against them, then we have to take some of the time of those 10 people away from dealing with the most important violators and working with the people who are less significant.

SENATOR VAN WAGNER: So, you're saying to me that the compliance standards that you use, which are set by the EPA, are significantly lower than the compliance standards that are set in this bill?

MR. SCHLOSSER: The bill would require us to take an action against each and every violator.

SENATOR VAN WAGNER: Would you give me a yes or no? In other words, you may have a non-compliance criteria that says they can be 51% beyond their discharge level or whatever, and this bill may say 10%; is that what you're saying, that it gives you a whole new class of people to deal with?

MR. SCHLOSSER: No, no, I don't think-- I'm not trying to avoid your question. All those people--

SENATOR VAN WAGNER: I'm trying not to let you avoid my question.

MR. SCHLOSSER: All of the people that violate the statute, whether it's by 1% or 50%, they are all

violators, and we have the authority now to take enforcement action against each and every one of them. What we have done is establish a threshold based on the Federal definition that, as soon as someone steps over that threshold, we will assess a penalty against them, not only for those violations, but for all the violations they have had that we have not assessed a penalty for.

SENATOR VAN WAGNER: How does this affect your threshold?

MR. SCHLOSSER: This would increase-- It would lower the threshold in one way, because it addresses not only violations of monthly permit averages, but daily permit averages. EPA "of significant compliers" focused on violators, monthly violators, of the permit.

SENATOR D'AMICO: I thought that I understood the earlier part of your testimony in terms of its thrust, to indicate that by reason of other changes in staff and assignments, that additional resources are now available to the Department to pursue violations. Is that the correct characterization?

MR. SCHLOSSER: That's correct, yes.

SENATOR D'AMICO: So that, you would therefore presumably be in a better position to deal with the additional work that this Assembly bill would require, isn't that a fair or logical conclusion?

MR. SCHLOSSER: Almost, but not quite. The point is, we've made these changes over the past two or three years, and we have re-focused the attention of those new personnel that were in effect available to us, and that's how we were able to focus our attention on the 115 July 1, 1988 cases that we focused on last year.

Without that re-focusing and the changes in the organization, we would not have had the people available to negotiate and to resolve all those cases, to negotiate over

\$1 million in penalties, and get all these people on compliance schedule.

SENATOR D'AMICO: I realize we don't live in an ideal world. Wouldn't it be the case in an ideal world, to want to punish or deal with as many violations as you could?

MR. SCHLOSSER: Yes.

SENATOR D'AMICO: I gather that this Act and its standards would require you to deal with more violations than you feel the Department currently has the resources to deal with?

MR. SCHLOSSER: That's correct.

SENATOR D'AMICO: Do you have some kind of estimate or projection as to what kind of resources would be required to enforce the provisions of the Assembly bill?

MR. HAMILTON: Unfortunately, in this process, the bill has been changing rapidly and at periods daily over the course of the last few months, and at this present time, we have not calculated what the present bill would cost us.

But, as we continue through it, and the changes are made, we have some substantial problems with doing definitely parts of the bill.

SENATOR D'AMICO: With existing resources?

MR. HAMILTON: Definitely with existing resources.

SENATOR D'AMICO: Doesn't the bill set up an enforcement fund, though, which would enable the DEP to hire additional personnel?

MR. HAMILTON: Yes, it does.

SENATOR D'AMICO: So that, in a sense, the bill contains within itself a mechanism for dealing with the very problem that you're talking to us about, doesn't it?

MR. HAMILTON: Partially, yes.

SENATOR D'AMICO: Can we ask you to give priority to the calculation that needs to be done, so we

can have a better sense of just what it means when you say that you are somewhat short in resources?

SENATOR VAN WAGNER: Before we go too far here, you originally said you didn't need any money for this. That was your original comment.

MR. HAMILTON: Keeping in mind that the bill has been changing rather quickly.

SENATOR VAN WAGNER: So does life. Let me just say this: I get a little upset when you say resources are important and your Department should have them. I know, like other departments. Let's talk about resources. In 1988, the Governor signed Chapter 90, which allocated \$18.5 million for sewer overflow. We passed this law in time to have the program in place well before this tourist season.

It cost \$1 billion in business last year, primarily, for the publicity over ocean pollution. You haven't spent a cent to set up the program yet, you know.

MR. HAMILTON: Unfortunately.

SENATOR VAN WAGNER: We're in there struggling with the deficit because the projections are so far short. This disaster, that we had, had a lot to do with that. If we could rely on the lead agency in the State of New Jersey to carry the ball-- I realize \$18.5 million is only a small part of the billions that is necessary to address CSO. Still, the perception would have been that we were moving forward.

MR. HAMILTON: I hear you. Unfortunately, we're here to talk about the enforcement aspect. We have other people that can explain that.

SENATOR VAN WAGNER: You're talking about, do we have the money? When you have the money, you don't move forward.

MR. HAMILTON: Just to answer the other Senator, there is another area we've just realized we have a problem with the present bill, as constituted, it would

require us to go out and sample every discharge.

Okay, presently, we have a program in place where we sample all the major discharges, which is roughly in the neighborhood of 300 facilities. There's another 1000 minor facilities that we would have to go out now and sample.

It also requires us to sample each of those facilities for every pollutant that is regulated under their permit. At the present time, we have bio-acid requirements in approximately 400 permits. The Department has the capability at this time to do about 10 bio-acids per year and the laboratories on the outside have limited capabilities at this time and also require us now to do those additional 390 with the possibility -- not the possibility, the definite increases coming. As we ratchet it down on these permits and impose stricter and stricter requirements in the next few years, we will probably be getting up to 800 or over 1000 facilities that require bio-acid requirements.

The State doesn't have the resources in effect to do that requirement that's in the bill presently.

SENATOR D'AMICO: I think I need to know more about that. I share Senator Van Wagner's doubts about what you're telling us, until you can actually assuage them with facts and figures.

There's one other aspect of the testimony that I would like to hear more about. You said in some areas the bill does not confer on the Department the additional authority to deal with dischargers that you feel you need or that would be desirable. Could you expand on that a little bit?

MR. SCHLOSSER: The bill, as originally drafted, was not designed to give us new authority, new tools for enforcement. It was designed to mandate certain

action, to require us to do things, taking away our discretion to make decisions and make judgments on where to put our limited resources.

SENATOR D'AMICO: I understand that. I want to have some examples of what kinds of new tools you feel that you would like to have. What are you talking about?

MR. SCHLOSSER: One of the things that we've attempted to do is to evaluate this program and to compare the enforcement regulations that we have under this program and other programs.

One of the problems that has been identified throughout the process of testimony on the Committee Substitute was our inability to collect, in a timely manner, the penalties once they are assessed. We assess administrative penalties to a violator. That violator then has a right to request a hearing. We have to go through an administrative law hearing in the Office of Administrative Law for an initial decision. That process now takes about 18 months just to get the initial decision. Because of the increased enforcement efforts, there's more hearings being held.

The penalties are higher, so people are taking more time to debate the issues supporting the penalty, and what this bill hasn't focused on is a way to shorten that process to somehow make a violation and penalty assessment and a payment all occur in a much shorter period of time.

SENATOR D'AMICO: Could you put together some recommendations along those lines?

MR. SCHLOSSER: Yes.

SENATOR VAN WAGNER: Have you yet? Did you put anything down? Did you give them a little structure?

MR. SCHLOSSER: One of the things that the Department proposed and was included in the Committee Substitute was a requirement that individuals that request a hearing put up the amount of money that they are

appealing. Because, if you can keep in your pocket the money that you're going to have to pay, for 18 months, to the Department, and use it for other things and collect interest on it, then it's to your benefit to string out the appeal. We want to get money and put it into an escrow account.

If the Department would win the appeal, we would then get the entire penalty, as well as any interest that was accrued.

SENATOR VAN WAGNER: How about if you lose?

MR. SCHLOSSER: It would then go back to the person with the interest. If it was split, we would have to prorate it.

SENATOR VAN WAGNER: Similar to a tax?

MR. SCHLOSSER: Right. That would discourage some people from even starting that process. We haven't yet proposed anything to specifically focus on the process itself, and how could it be done.

SENATOR VAN WAGNER: Would you do that?

MR. SCHLOSSER: Yes.

SENATOR D'AMICO: What are some of the other enforcement tools that you feel this bill does not give you that you feel you would like to have?

MR. SCHLOSSER: It was interesting-- I think the discussion on the amount of the dollars, the amount of the penalties, was held in the Legislature three years ago, and the bill was passed in December of '86, but with increased enforcement. We've already seen a significant increase in penalties that we've assessed under those increased amounts, and we've seen, to a certain extent, both public and private groups, violators, willing to pay the higher penalties, some of them without arguing and without appealing.

So, we knew before that the \$5000 per day per violation was absolutely too small, but even under the new

penalty scheme, people still seem -- some violators seem -- to be paying that almost as a cost of doing business.

SENATOR VAN WAGNER: Why do you think that is?

MR. SCHLOSSER: They are making more money by not complying.

SENATOR VAN WAGNER: That's the whole point. That's why we're chasing ourselves around this place.

MR. SCHLOSSER: Perhaps we should talk about increasing the amount of the civil penalties we can assess.

SENATOR VAN WAGNER: I think we should set that aside and go to your original point, which is, the time span between assessment, hearing, and collection. Maybe if there is some reasonable process put in place, then that, in and of itself, without increasing penalties beyond what we have now, may change people's minds to the extent that someone may say, "Hey, wait a minute, we can get nailed three times instead of the usual two, or one, by dragging it out." Do you know what I'm saying?

MR. SCHLOSSER: I understand. We agree that would be an important change in this program.

SENATOR VAN WAGNER: It was a tenfold increase, and they still weren't discouraged.

MR. SCHLOSSER: Some of them weren't. Some certainly were, because of the timeliness of the payment, having it close in time to the violation.

SENATOR VAN WAGNER: I think that's more of a deterrent than increases.

SENATOR D'AMICO: Are you saying that the penalties that would be in place, assuming the Assembly bill passed, would be inadequate, that they are not high enough even now?

MR. SCHLOSSER: The Committee Substitute does not address the maximum amount of the fine at all. The Department supported the increase in the penalties from \$5000 to \$50,000.

In fact, I think we gave testimony at that time that we would support higher penalties than \$50,000.

SENATOR D'AMICO: I'm new to this Committee in the Senate. If you could give me some material on that, I would appreciate it. I don't have that other testimony.

In addition to these two things, expediting the enforcement and adjusting penalties, are there any other enforcement tools that you were referring to when you made the comments earlier in your testimony?

MR. SCHLOSSER: One of the other things we had discussed with the staff in the Assembly Committee was the idea of giving the Department some of the authority that the existing statute only would give to a court, in giving the Department the authority to assess damages, to assess money, either in the form of penalties or damages, for people that discharged and damaged the natural resources of the State.

Right now we would have to go to court, and only a court would determine those kinds of things. Only a court could order a violator to pay the Department for the cost of investigations and inspections of the facility, or the cost of bringing the enforcement action. If we had the ability to include all those costs, including damages to natural resources, we would be able to determine that administratively, it is a much quicker and more efficient way to go, than going to court and having to initiate a complaint and going through that process.

We prefer the administrative venue, but we would like to see more authority given to the Department that is now only given to courts for determining some of these other enforcement remedies.

SENATOR D'AMICO: I'll just say, as you know, I am a member of the Energy and Environment Committee. I would be interested in some suggested amendments for possible consideration along these lines. Any input that

you could provide in detail with specific language, I'd be happy to consider.

SENATOR VAN WAGNER: Are there some other further points?

MR. SCHLOSSER: Only to make you aware that we have suggested other changes that were incorporated into the bill that gave us additional authority and clarified some of the legal issues that have been debated in litigation that we've been involved with.

On the advice of the Attorney General's Office and Division of Law that works with us, we have recommended some changes that have been incorporated into the bill. So, there are some additional things that are in the bill now that weren't in the original version of the bill.

SENATOR VAN WAGNER: Okay, that's it. Anything else?

MR. SCHLOSSER: If I can just make one final point, when Deputy Commissioner Catania first testified on this bill in front of the Assembly Committee, he made some remarks. I would like to reemphasize those here; that is, the impact of this bill on municipalities. There are a lot more municipal permittees than industrial permittees. Financially, based on our evaluation of the violations that they have had, they are going to incur significant penalties, based on their past behavior, and it seems important that you understand that sometimes the Department finds itself caught in the middle; that we are told by the Legislature to get tough, go get the violators and assess high and significant penalties. When we start doing that on an individual basis, then we get calls from legislators saying, "What are you doing to my guy and my town? Can't you cut them a break?" This is not what was intended. Some people then want special consideration. And we're being told two different things, being caught in the

middle, and it's tough for us to perform to everyone's satisfaction, given those circumstances.

So, I think you have to understand the implications we have here. We have debated in the Assembly Committee whether or not the bond for appealing should also be imposed on municipalities. Right now, under another existing law, that gives us the general power outside the Water Control Act. We have the authority to post financial insurance. That statute is in Title 13. It now specifically exempts municipalities.

So, another issue is, are we going to make that change to require municipalities to post those bonds for compliance schedules, which we can't do now, and for appeal of the penalties, which we can't do now? And what impact is that going to have on municipalities?

SENATOR VAN WAGNER: Thank you. Anything else?

MR. SCHLOSSER: No, sir.

SENATOR D'AMICO: Is there a witness from the League of Municipalities?

SENATOR VAN WAGNER: He's going to be next.

SENATOR D'AMICO: Okay, fine.

MR. HAMILTON: I think I did testify before the Assembly Committee on the need for additional funding at the time. At the time I said, "No," we didn't get into a detailed explanation, but there's certainly going to be a lag period of time before we get this money, and there's going to be a need for some starter money to get this program started.

SENATOR VAN WAGNER: Based on some of the things we discussed today, what we request is to give us some of the things you talked about, and Mr. Schlosser talked about those today, so we can look at those in terms of, you know, has that affected you as a Department?

MR. HAMILTON: All right.

SENATOR VAN WAGNER: Including your view of the appropriation necessary.

We're going to schedule another meeting in the Monmouth-Ocean area. To make it more convenient for the members, if you could get it to us before then, it would be helpful.

MR. SCHLOSSER: There are additional concerns that we have with the bill. I'm not prepared to go into those, but there are additional concerns that we have with the bill, some of which evolve around the sampling requirements and relative need.

SENATOR VAN WAGNER: I would like it in detail, if you would, rather than going through line by line today, which you're going to get a chance to do in the Senate Committee of reference, anyway. I'd like you to detail that, if you can, to some degree for the Committee.

MR. SCHLOSSER: At this time?

SENATOR D'AMICO: No, in writing, so we'll make that part of the record.

MR. SCHLOSSER: Thank you, Mr. Chairman.

SENATOR VAN WAGNER: William Dressel.

W I L L I A M G. D R E S S E L, JR.: Thank you, Senator. My name is William Dressel. I'm Assistant Executive Director of the State League of Municipalities.

Mr. Chairman, I have a statement I would like to read into the record, and then I have a number of concerns I would like to make, to highlight a number of the points in my formal testimony.

I thank you for the opportunity to present testimony here today in opposition to Senate 2787, and Assembly 3831 as amended, the Clean Water Enforcement Act. Though we embrace the goal of clean and safe water for all New Jerseyans, we hold the provisions of this bill to be unrealistic and potentially counterproductive.

Intergovernmental cooperation is the sine qua non of New Jersey's economic and environmental future. Yet, this bill will set one level of government against another. Further, it will impose an unnecessary and nonproductive burden on our property taxpayers. Finally, it will drive good people away from municipal government and from careers in water quality control.

The solution to our environmental problems requires the judicious application of three resources. These are time, money, and expertise. A-3831 will draw these resources away from communities all around our State and toward the DEP bureaucracy in Trenton.

The bill places cumbersome paperwork burdens on the local officials' limited temporal reserves. Under the terms of this bill, the penalty for not filing a monthly discharge monitoring report is as serious as the penalty for a toxic discharge. Further, this bill encourages litigation involving treatment works operators. This will inevitably take valuable and experienced quality control people out of the facility and into the courtroom. Time better spent attending to the operation of the plant will, instead, be spent preparing for and responding to the avalanche of lawsuits, which this bill will produce.

That litigation will, of course, place a further strain on municipal budgets. We cannot expend our fiscal assets more than once. Money spent in the prosecution and defense of environmental lawsuits is not available for the improvement and expansion of treatment facilities, neither is money paid in the form of fines and penalties. Several recent studies have highlighted the need for massive infrastructural investments in our State. Those same studies have described the constraints which will prevent local government from meeting those needs on its own. Yet, this bill will require all levels of government to expend public funds in legal contests, while it will produce not

one new dollar for the improvement and expansion of water treatment facilities.

Finally, by imposing potential mandatory imprisonment on treatment works operators, this bill runs the risk of driving the people who run these facilities into other careers. And, by possibly imposing that same liability on elected municipal officials, this bill runs the risk of destroying the foundations of part-time, volunteer citizen involvement in local government in our State. Both cases produce a net loss of expertise in the conduct of the people's business. Both cases endanger, rather than encourage, the goal of clean and safe water for all New Jerseyans.

We believe that the key to improved environmental quality in our State is intergovernmental cooperation. Each level of government must be willing to commit its own unique resources to the battle for clean and safe water. We must act in concert, not in conflict. We must be allies, not adversaries. Perhaps, most importantly, we must understand and respect each other's abilities and limitations.

Although we stand ready to work with the Legislature and with the DEP toward our mutual goals, we believe this bill runs counter to those goals. Therefore, we stand opposed to A-3831.

SENATOR VAN WAGNER: How come you never use that in front of the Senate County and Municipal Government Committee? Do you save those until you come in here?

MR. DRESSEL: I was reluctant to do that, Mr. Chairman. I thought, for the record, I would put that in.

Mr. Chairman, I sent a letter dated March 30 to you and to members of your Committee outlining a number of concerns from local government officials throughout the State. There were three letters, one from the Mayor of Verona; one from Roxbury Township; and another one from the

City of Hackensack. They, I believe, are typical. They represent, I think, the broad spectrum of concerns, the urban, rural, suburban concerns with this piece of legislation. They highlight the administrative paperwork, the problems that communities face in complying with the regulations and continuing changing regulations that they have from time to time.

And I would encourage you to, if you have not already, read them and to be aware firsthand of their concerns.

SENATOR VAN WAGNER: Could we have copies of those notices? Staff only has apparently one copy of one letter that--

MR. DRESSEL: I will make sure you have additional copies. I have a punch list of some of the objections that were set forth in those letters, and also-- I think they highlight the concerns which were set forth in those letters. I can summarize a few of them that I feel are important.

Primarily, we believe that the enactment of this bill will only further frustrate the process with more administrative impediments, more fines, and, mandatory criminal action.

This legislation as presently drafted as it impacts on local government entities -- and keep in mind that I have my blinders on-- I represent the municipalities throughout the State. I do not represent the other commercial-industrial interests who are also covered in this piece of legislation. So, therefore, from where I sit, from where the local government officials that I represent sit, they do not see this legislation as being productive. They do not see this legislation as cleaning the water. They say to advance this legislation is almost to perpetuate a fraud on the public; that the fines and the additional paperwork, the administrative burden which it's

going to create is not going to clean the water. It doesn't produce-- This legislation does not produce one dollar to clean the water.

SENATOR D'AMICO: Can I address this?

SENATOR VAN WAGNER: This is not focusing on cleaning the water. This is a focus on people who might be a little bit lax in dirtying the water.

MR. DRESSEL: But the way you get to clean water is to put the monies into the infrastructure, into improving the water and sewer plants throughout the State.

SENATOR VAN WAGNER: The way we get to do that is to not lose \$200 million in one year from our Treasury, combined loss, and this is an estimate based on last year's disaster, and the publicity surrounding it. It's estimated that we lost from the State Treasury, in combined sales, income, corporate, gas, hotel, motel, and other taxes, approximately \$200 million.

MR. DRESSEL: That's directly related to municipal sewer plants.

SENATOR VAN WAGNER: Well, directly related to the fact that we had pollution, and, in some cases, as you well know, unfortunately, some of the sources of that were identified as overflows, which is why I was so angry before over the fact that the Legislature had appropriated a small amount of money to get a Sewer Infrastructure Improvement Act under way, so we could have a handle on what we would really need, which is considered to be somewhere between \$700 million and \$1 billion, to address that single issue.

And, yet, no program is in place. So, I don't say it's all attributed to that. What I'm saying, it's kind of a double-edged sword. And I sympathize with what you're saying.

I'm not saying that it's not a harsh thing when a person's municipal sewer operator might face a criminal penalty. But, yet, if you talk to the people in Alaska

about the guy that drives the ship up there, he's probably a very nice guy, and no one wants to put a ship driver in jail. That's what's going to happen to him, because he destroyed an entire industry.

I'm not saying sewer operators are responsible for that. Bill, you know me better than that. The perception that we're dealing with now is a difficult one for all of us to overcome. So, although we don't intend to jail operators -- and I don't think the authors of this legislation intended to jail operators -- at the same time there is a feeling among the public, and not just the groups that are involved, but the public in general, that we're not tough enough. You know -- and maybe it doesn't clean the water -- but it discourages people from dirtying it any further.

SENATOR D'AMICO: That's-- I subscribe to what you're saying. Therefore, I'm going to have to ask your indulgence. As I understand it, we do have a Wastewater Treatment Bond Act or fund available for precisely the type of infrastructure upgrades that you're talking about. Isn't that correct? Are you saying that is inadequate?

MR. DRESSEL: I'm saying that is inadequate. What I hear repeated time and time again: There is not sufficient money available from the State either. In fact, all of the State funds have dried up, and I think it's been a long, established fact that all of the Federal moneys for this purpose have been dried up as well.

SENATOR D'AMICO: So, I assume that you would not necessarily be here testifying in opposition to this bill if the State of New Jersey and the Federal government were also supplying, or making available to POTWs, the resources with which to put themselves in compliance?

MR. DRESSEL: The funding issue is a major concern to municipal officials throughout the State. As you may or may not know, tomorrow we're having a rally at

the War Memorial for additional moneys for municipal purposes generally. Even if there was money available for infrastructure purposes related to this issue before us, we would still have problems with a number of the provisions in the bill.

SENATOR D'AMICO: But there are fewer of them that do without the resources?

MR. DRESSEL: Yes. I mean, we are for clean water, Senator, and we think that you can draft a bill which would be responsive to local government entities. We do not think that this bill is responsive to local government entities. We think we're a little bit different than the industrial and the commercial concerns throughout the State. We have to react to what's offered.

In the water, when you have the chemical and industrial concerns, you can almost turn off the spigot. We can't--

SENATOR D'AMICO: I guess the thrust of what we're saying here is, it's well and good, and I appreciate the dire consequences which you feel will ensue to the municipalities and POTW from the proposals. I think at this point in the development of this legislation and in dealing with the problem of water pollution, what we need are some positives. What would be your suggested amendments to the bill, number one?

Number two, what would a description of the needs for wastewater treatment upgrade and the funding required for that look like? And I would invite, therefore, you, or people that work for you or with you, to submit that information as soon as possible.

SENATOR VAN WAGNER: Wouldn't a municipal governing body operating the water treatment, wastewater treatment facilities either themselves or through an MUA or POTW-- Wouldn't they impose upon themselves, as part of their licensing or permit requirements, some type of

monitoring monthly or orderly reporting on what they were discharging anyway?

MR. DRESSEL: They are already doing that. That's already been in place. You may want to look at number seven of the punch list that I have, the second handout that I've provided you with. I mean, I think that doesn't make a whole lot of sense, incomplete or monthly reports are equated with discharges.

There's the same problem. If you're late in filing a report, that's equated with, the way the bill is presently drafted, being equal to a discharge.

And there are mitigating circumstances, particularly at the local level, where you have strain on personnel and the overburdened administrative responsibilities that are going to be placed on us as a result of this bill.

SENATOR VAN WAGNER: Did you address that in the Assembly Committee?

MR. DRESSEL: Yes, we did. Another concern we have, Senator, is that it appears that there's too much emphasis placed on DEP as being the policeman and the enforcer, rather than DEP as being there to help and be of assistance to local governments.

I hear complaints, and I think if you look at the letters from Verona and Roxbury in particular -- and I'm sure you've heard from your own constituents -- I know in Monmouth County I've talked to officials that say they are under consent order, and they are taking positive steps, and they are having problems right now having DEP come out and help in a positive way, helping them comply.

I think that is a most annoying state of affairs, and what is even more annoying is that, under the provisions of this bill, you're further exacerbating that situation. You're making them more of a policeman. You're making their badge even bigger.

To hear Senator D'Amico make the point that his concern, and I share his concern, presently is that they do not have the administrative wherewithal to administer what they have on the books, you know, it's going to really increase that problem. We're very much concerned. And we think rather than having DEP do it, an internal analysis of that through, I think, the Senate Appropriations Committee or Senator Dalton's Committee-- It should be looked at a little bit more, not only the fiscal fact, as far as the State is concerned, and the administrative bureaucratic menagerie, but also at the local level.

There's another provision in here that talks about the fines and where you have to put up bonds. I think it's item number six. Municipalities and authorities put most surety bonds on the appeal and enforcement action. Not only is this going to be very costly, but, I think, it's going to discourage due process. I didn't quite understand that provision when it was being discussed in the Assembly.

But, if the local government has to put up the fine -- and these fines are several thousand dollars in a trust fund -- then that's money that can't go for the improvement of its sewer plant or the water plant. That's public taxpayers' moneys that are being held in a trust fund and it's not only inhibiting due process, but, you know, what is the purpose? Local officials have to take an oath of office to conduct the government's business. They're not out there polluting willfully.

I think this legislation-- Again, as you know-- As former Chairman of the Senate County Government Committee, you know the League's concern is directed to the local government and the municipalities. I, again, say that our concerns, our situation, are a little bit

different than the commercial and the industrial sectors which are also back in this legislation.

SENATOR VAN WAGNER: Thank you, Mr. Dressel. I appreciate your coming.

MR. DRESSEL: Mr. Chairman, I would like to add that the League has created a committee of technicians. We are working very closely with the Authorities Association in New Jersey. They are here, and we will avail ourselves to you, to your Committee, and to Senator Dalton's Committee, to work as this bill proceeds through the Legislature.

SENATOR VAN WAGNER: Thank you. I'd like to call Ms. Jeannie Jenkins.

J E A N N I E J E N K I N S: Good afternoon. My name is Jeannie Jenkins. I'm a biologist in the New Jersey Public Interest Research Group. New Jersey PIRG is the largest public interest group with 75,000 members statewide. New Jersey PIRG strongly supports the Clean Water Enforcement Act. The bill goes to the heart of water quality problems, the economics of polluting.

For 15 years, we have had the Clean Water Act permitting program, and still we are not seeing appreciable improvements in water quality, and we are not seeing abatement of violations of the Clean Water Act. The citizens of this State strongly support the Clean Water Act. At present, there are 80 business, labor, scientific, and environmental groups that have endorsed the campaign to pass this bill, and more are adding on every day. Strong support for a strong bill has engendered strong opposition.

It's useful to examine who opposes this bill and why they oppose this bill. Some of the same industrial facilities that are voicing the strongest opposition to this bill have lengthy records of their own for polluting our waters. Citizens have taken an active role in stopping water pollution in this State. New Jersey PIRG has sued

three industrial facilities over the last five years. We have now filed notices of our intent to sue seven more industrial facilities. These facilities include the Exxon facility in Bayonne, Hercules in South Jersey in Gibbstown, which, by the way, is the second time a Hercules facility has been in violation -- a Hercules facility in Kendall Park agreed to pay \$1.2 million in penalties as a result of a citizens' suit; GAF in Wayne; and two James River facilities in Milford. James River has been sued previously, a different facility.

If one looks at the types and amounts of violations self-reported by these facilities, one quickly realizes the objections raised by industry to this bill are self-serving. Looking at Exxon, 60% of the self-reported violations by Exxon since October of 1986 were at least 50% over the permitted limit. This includes a February, 1988, violation for the highly toxic chemical toluene. That was 191,000% over the permitted limit. And also in November of 1988, toxicity tests on the wastewater from this facility showed if you polluted their wastewater to only 6% of its original concentration, that it was toxic to aquatic organisms. This means if you took another drop of clean water, and added six drops of Exxon's wastewater, it would be toxic to aquatic organisms.

Half of Hercules' violations reported since 1985-- These are only discharge violations; these do not include non-reports, late reports, or incomplete reports, or any of the other myriad of violations that corporations can have. Hercules had at least 50% over the permitted limit.

One-third of the discharge violations reported by James River since 1986 were at least 50% over the permitted limit.

New Jersey PIRG also sent a notice of intent to sue Borden-Snow Foods in Cape May -- this was highlighted

in "Polluters Playground" -- because of the conflicting nature of their violations and also because of the refusal in a letter to DEP to come into compliance until a satisfactory result was achieved on their permit limits, which they have not done.

This facility -- to DEP's credit -- which discharges into the ocean has been cited for 93 violations since 1985; 17 of these violations were at least 1000% over the permitted limit.

Automatic Switch Company also received a notice of our intent to sue. They only turn in discharge information on a quarterly basis, even though they have a long history of serious problems, by their own admission. Automatic Switch Company has been violating their permit since 1983. They self-reported 30 instances of violating their quarterly limits for copper, zinc, and silver. Twenty-three of these violations were at least 50% over permitted limits. The actual number of violations by this facility may, in fact, be higher than what we know, because they only report on a quarterly basis. Given the chronic nature of their violations, one can assume that they actually have eight times the violations that they have reported, or 240 toxic violations for the five-year period that we examined, which they are being sued for.

Whether citizens or the DEP take action, it doesn't really matter in terms of what the action means. When someone is assessed a \$1 million fine, such as in the Hercules case, or when the Department fines someone \$1 million, the only way you can get a fine that is that high is if a facility has a long history of chronic violations that are of high magnitude over their permit limit, and are of the nature that indicates that they are degrading the environment. Citizens don't want to see a \$1 million settlement. They don't want to see that kind of penalty assessed. What they want to see is clean water.

The way that you do that is by addressing a violation when it occurs, not a violation in 1985; as a pattern of a long-term violation, but addressing the violation when it occurs.

We don't want to see people put in jail. What we want to see is people meeting the limits that they agreed to under their contract, their permit with the DEP. And that's the major thrust of the Clean Water Enforcement Act. It sets up a mechanism for mandatory fines the first time a significant violation of their permit occurs.

We're not asking the DEP to fine over a limit. We're using the same requirements that the DEP uses in reporting to the EPA for monthly averages; in other words, 20% over. If you're 20% over your permitted limit for a toxic parameter, or 40% over for a conventional pollutant, then we want that violation addressed. We've gone further than that in saying, if there are daily violations that are of a significant magnitude, and we're unhappy with the level that that has been set at, 50% or over for toxic pollutants, and 100% for nontoxic pollutants or conventional pollutants, in that case we want the Department to address the violations, because we don't want to wait for even a month to pass. If you can take action sooner, it will be more effective.

The other part of the mandatory fines, which I think is very important, is the fines for non-reporting of information. The bill specifically allows the Department to waive any fine for a late report of information if there is a good reason for that report, and it was beyond the control of the permittee. If the lab didn't get the information to the permittee, then the fine doesn't have to be assessed. It can be waived.

The only time that the fine has to be assessed is if the permittee has no excuse for not turning in the

data. And it's very important that data be turned in, because without that information we don't know what's going into the water. We don't know if they are meeting their permit. There's no reason that it should not be turned in.

We've given an incredible, I think, amount of good will in assuming that if there is any reason at all that a plant says, or permittee says, they can't get their information in, and they can show the DEP that is true, then we'll accept it. We're not asking for anything more than, turn in their data as soon as they can, when they can.

The bill also requires that facilities that are in chronic violation, in the cases where a facility is in chronic violation, that the name of that facility be referred to the Attorney General's Office and the county prosecutor for possible criminal violation. All of the facilities that would have been referred fall into that category. We think when a facility is a chronic violator, there should be criminal penalties when a decision is made that it is cheaper to pollute than to meet your permit limit.

The other thing that this bill does is requires those facilities that are considered to be toxic dischargers, major facilities, to turn in reports detailing what they are discharging to our waterways on a monthly basis. That would have solved the problem of Automatic Switch Company which is discharging heavy metals since 1985. They are only turning in reports on a quarterly basis. What kind of timely action could you take if you only find out about a violation three months down the road? We want the Department to have that information and to act on it as quickly as they possibly can.

The other major point that this bill addresses that I want to address this afternoon, is the ongoing

discharge of industrial waste into our sewers. This is a huge loophole in the Clean Water Act as it exists now.

In New Jersey, four-fifths, or 4000 out of 5000, of the known industrial dischargers in the State -- 4000 of them -- are discharging into the sewers of this State. This bill gives tools to all the municipal treatment works to control toxic dischargers. It gives new powers to the sewage treatment plants that the DEP has delegated the responsibility to write, monitor, and enforce permits for. There are 23 sewage treatment plants in this State -- and a couple more are being added to the list -- that have the responsibility to write, monitor, and enforce permits for industrial users to those facilities.

PIRG believes that over 90% of the industrial wastewaters are going to sewers in this State, and go into facilities that were in an industrial pretreatment program. Those 23 -- whether it's 23 or 25 -- are out of 500 sewage treatment plants in the State, but they are a very important small number of sewage treatment plants. Those sewage treatment plants would have additional powers and obligations that would allow them to control the toxics that are going into our sewers. The sewage treatment plants will have additional costs, because now these 23 or 25 sewage treatment plants are going to be required to have more information on discharges to the sewers coming into them. They will be required to sample -- and I think most of them are doing this anyway. So, I don't know that it would be an additional cost.

Assuming the worst case scenario, there would be additional costs for sampling facilities discharging into them, although, again, just as in the DEP-run program, sewage treatment plants assess a fee to anyone discharging. So, all those costs can be covered in the fees for the program. There will be additional costs, but the advantages to the sewage treatment plants are many.

First of all, the sewage treatment plants that have the bulk of industrial waste will be allowed to fine industrial users that violate their permits at the same levels that the DEP can now. There are sewage treatment plants-- Passaic Valley Sewage Commissioners, in my last conversation with them-- They are fined on the book for violations.

On the book, the fine is listed as \$50 a day, compared to the \$50,000 per day per violation which the DEP can assess against an industrial violator.

What kind of enforcement program can you have if you have minimal fines on the books? There are sewage treatment plants that have no fines on the books. You can't run an effective program that way. We would give them the power to assess \$50,000 per day per violation, just like the DEP can. We would also give them additional powers in terms of sampling and how the monitoring programs are to be run. That would be a great asset to them. Any fines that the sewage treatment plant assesses would go back to the sewage treatment plant and can go right into the enforcement program or actually into any program they want. That would be 10% of the money that goes back to sewage treatment plants has been earmarked for wastewater treatment operator programs, so we can assure the State of high quality operators running these facilities.

We think that's a great idea, and we feel that sewage treatment plants, authorities, and leading municipalities should be extremely excited about these programs and additional moneys coming into them. For other sewage treatment plants -- the 475 sewage treatment plants that were left -- we're giving them additional powers, but we are not requiring them to have additional responsibilities. Where the DEP has had responsibility for industrial users that discharge to sewage treatment plants,

the DEP would still have that responsibility. We're not putting additional responsibility on the smaller sewage treatment plants. All we're doing is giving them the power to take it, if they want to.

I think that's very important, so the additional cost to the various majority of the sewage treatment plants in the State are not additional costs incurred because of the additional responsibilities. It's the cost in meeting their permit which they are supposed to be doing now.

There are other important aspects of this bill that I'm not going to go into now. I think there are a lot of people that want to speak, and hopefully the other points will be addressed, either pro or con. But they do include increased monitoring and sampling requirements that will give us better information on what's being discharged through our waterways, and also its expansion of citizens rights, particularly in the area of allowing citizens to contest poor permit decisions. We do not have that right, in fact, now. And it's something that's very important if we're going to tighten up enforcement. Then the permittees are going to challenge the permit more rigorously and the citizens need to be very active in that process.

I urge you, and I hope that you will, to move quickly on this bill. It's very important to many of us. We see it as-- It only affects the permitting program, but I think it will make a significant change in the way we do business in the State and on our effectiveness in using the permitting program to improve water quality in the State. I thank you very much.

SENATOR VAN WAGNER: Thank you, Jeannie. Any questions?

SENATOR D'AMICO: I think you've made some very good points. The previous witness was seemingly offering, as a reason not to tighten up enforcement, the argument that not enough money is being spent on infrastructure,

treatment upgrade, and so forth. Do you have any comments about that?

MS. JENKINS: No. It's obviously a related problem. I guess our concern there is that, as you're aware, the Clean Water Act has been in place for 15 years or so now. There were grants for a number of years, outright grants, for improvements of sewage treatment plants.

Obviously, that money is not available any more, and, obviously, you can cry about the fact that it wasn't used all in the State. We would be happy, and we have expressed our willingness to talk to the League and the authorities about their concerns and ways we can address them. And we are still willing and eager to talk to them about those problems.

I do see it as a problem, but I do see it as a problem that exists. They exist right at this moment and we are accentuating that problem and spotlighting that problem by saying they will be fined, instead of letting them slide, perhaps. But the problem does exist and we are aware of it, and we're willing to talk about it with them.

SENATOR D'AMICO: I don't accept as a premise for saying that we should not have clean water, the fact that we're not doing enough to improve wastewater treatment or dealing with other related problems. I, instead, take that as a challenge to us to also do more, perhaps, to assist the municipal or public treatment works to comply with the standards, rather than as an argument for saying we shouldn't have stricter standards.

You mentioned the industrial discharges into sewers. And I know this is another one that's a little off this bill, but of great concern to me, and that raises the issue of combined storm sewer. Would you say there's a relationship between that discharge and the problems in

terms of pollution that results from combined sewer water overflows?

MS. JENKINS: You mean combined in terms of water degradation? Certainly it is a major problem. We're very concerned about that also.

SENATOR D'AMICO: That should be another area that we can focus on and see if we can devote more resources to?

MS. JENKINS: Yes.

SENATOR VAN WAGNER: I want to focus a little bit on your study, okay? And I want to narrow it to NJPDES. What were your conclusions as to the effectiveness of the NJPDES reporting system?

MS. JENKINS: We found a number of problems with the reporting program as it was run in '84 to '86. And we did do follow-up work through 1987 on some of the facilities that concerned us the most. And we have continued to look at those problems.

SENATOR VAN WAGNER: Were you able to look at the increase in NJPDES permit costs in relationship to the ability of either municipal or private plants to be more comprehensive in their reporting?

Were you ever able to do any comparisons?

MS. JENKINS: We did not look at the cost assessed.

SENATOR VAN WAGNER: You weren't able to look at utilization of that permit money which was being collected, which was greatly increased over the past seven years?

MS. JENKINS: I'm sure the Department can clarify or correct whatever I say. My understanding is that money goes into one fund. If one facility is assessed \$25,000, there's not \$25,000 with that company's name on it sitting out there for work on that company.

SENATOR VAN WAGNER: Apparently, from what the Department tells me-- I don't know if they are here.

We'll find out anyway. They seemed to say before, this money goes into the general fund.

MS. JENKINS: Oh, you mean the penalties go into the general fund?

SENATOR VAN WAGNER: They are--

MS. JENKINS: Yes, it goes into the General Fund for monitoring and day-to-day running of a NJPDES program.

SENATOR VAN WAGNER: You've been able to determine that?

MS. JENKINS: Yes, that's correct. But in terms of whether increased fees increases performance, we are not able to comment on that.

SENATOR VAN WAGNER: In reviewing the basis for the violation of the permits, of the publicly-owned treatment works, as well as the industrial discharging, were you able to determine in what specific areas and for what specific reasons most of these discharge violations came about?

MS. JENKINS: I can only speak for the industrials, because, in the cases where the citizens groups are, that is a more telling example of what we see as the problem here. Under the citizens' groups that we have brought, which have been against industrial dischargers, as soon as we file the suit, we try to get a preliminary injunction against further violations by the facility. And, usually, the judge gives a facility 30 days to come into compliance with their permit, and this is following years of chronic violation.

Facilities do that, and the only way that they can do that is through improved maintenance of their facility. If they had to make capital improvements, they would not be able to come into compliance within 30 days.

SENATOR VAN WAGNER: Was it a lack of pre-treatment facilities, or a lack of money or will? Was it a lack of awareness on the part of operational personnel, or was it just an attitude of, "The fine is less than trying to pay the price to fix it"? So--

MS. JENKINS: I don't think I can give a definitive answer on that. The pre-treatment programs have nothing to do with compliance at this point, because there are no toxics limits. It is very unusual for limits to be discharged from sewage treatment plants, so the industrial pre-treatment problem is completely separate from the permit limits for municipal.

SENATOR VAN WAGNER: Should it be?

MS. JENKINS: No, it shouldn't be. One of the things that this bill does is require sewage treatment plants to have limits on toxic discharges in their permit for all the facilities that have industrial programs. We think that's very important to connect those two.

I wanted to focus on that, Senator, because one of the strong recommendations was the relationship of the pre-treatment facility meeting certain discharge standards, which is ultimately whether we say so or somebody says so. It's going to be said so.

SENATOR D'AMICO: That's important.

SENATOR VAN WAGNER: That's an important factor. Thank you.

We would like to call Mr. Hal Bozarth, who will introduce to the Committee Mr. Hank Van Handel from the New Jersey Chemical Industry Council. Mr. Bozarth?

H A L B O Z A R T H: My name is Hal Bozarth, and I'm the Executive Director of New Jersey Chemical Industry Council. We're glad that this Committee has given us another opportunity in a somewhat long saga to try to explain the very, very important, significant, but complex issues that are involved in this bill.

Before I introduce Mr. Van Handel, just let me tell you that we're talking, in a sense, not only for the 90 members of the Chemical Industry Council, but also for a coalition of business organizations, including the four large trade associations that you're aware of, Chamber of Commerce and Petroleum Council, and Hank Van Handel has been one of the chief negotiators on the Assembly side.

We've been working on this bill for a long time. We've put together probably the best brains in the area of wastewater discharge and permit levels that we could probably do. We have two Ph.D.s involved, a slew of engineers, and assorted lawyers, who have given input both to the Assembly Committee and individual people.

Hank is one of our primary spokespeople. In order to really understand this issue, and the whole NJPDES permit program, it will take longer probably than today. We will offer to you, at your convenience, and at Senator D'Amico's convenience, the opportunity to meet with you in an in-depth process to explain the program.

Very frankly, the only way good legislation can come out of this process, is to make sure that you have as much of an understanding of the process as you can. I don't say that lightly. This is not a simplistic issue. Violators can be treated thus and so. Within that definition of a violator, there is a large contingent of different types of people and different types of behavior which leads me to the concept of the bill; that is, in effect, those people who are egregiously and willfully and knowingly violating for their own purposes. Their permits -- water discharge permits -- should be treated as, in effect, bad apples. We agree with that. We have no problem with that concept.

SENATOR VAN WAGNER: How badly do you think they should be treated?

MR. BOZARTH: A criminal fine and probable prosecution--

SENATOR VAN WAGNER: Excuse me, what I'm trying to say is this: Do you think besides the penalties that we've discussed, and things of that nature, that they should be denied the ability to get their permit renewed?

MR. BOZARTH: I think in some cases if the fact pattern would show that, I would say, yes, having seen this. The DEP denies permits to people who have already had permits. I don't think this bill gives them a new set of hammers and tongs with which to do that. We'll be glad to supply you with people who have lost their permits within the last five or six years, just as an example.

Let me move away a second and say, when you look at violators, you've got to look at the differences. If you violate a permit, as Hank will show you, you may not be willfully, egregiously, and knowingly violating it. Those people should not be treated the same.

Who should be the one-- Who should be the ones to lose their permit? The Chemical Industry Council of New Jersey is here today to try to give you some basis for how these programs work, what the bill does within that schematic, and then answer some questions. Thank you.

H A N K V A N H A N D E L: I'd like to thank you and your Committee for the opportunity to comment on A-3831, as companion to S-2787.

I feel that the more we educate on the real impacts, costs, and adverse outcomes of this bill, the more you'll see that it's not really an environmental bill, but an administrative and regulatory nightmare which will divert DEP resources from important issues by binding up enforcement and inspections in a huge volume of environmentally, legally mandatory actions.

I'd like to comment on a number of specific issues:

- 1) The lack of any scientific basis for the definition of "significant non-complier."

2) The lack of acknowledgement or understanding of how current permits were negotiated.

3) Broad cost benefit issues that are raised by mandatory requirements of the bill, both now and as future permits come on-stream.

4) I'd like to speak to the growth of the bill whereby marginally related issues with broad regulatory impacts have been tacked on to the bill, which has grown from 19 pages to 40 pages with 25% growth in just the last 30 days before its passage.

Lastly, I'd like to talk about the myth that the bill must be good because it's the result of extensive negotiation and compromise. There has been a lot of work, but there's still a lot of work yet to be done.

First, I'd like to talk about the definition of significant non-complier. According to the DEP, in 1988, using their definition of significant non-complier, which is less stringent than that which is currently in the bill, 75% of the major POTWs, and 15% of the major industrial dischargers, would have been captured by their definition, which, again, is significantly less stringent than that which is currently in the bill.

According to the DEP, it would have resulted in \$1 million in fines. And I don't know what percentage of POTWs they fined in Fiscal Year '79. They said they generated over \$10 million in fines. I think you can imagine if they generated mandatory fines of a minimum of \$5000 a day, and up to \$50,000 a day against 75% of the POTWs, it would mean many millions of dollars. POTWs are publicly owned works. The sewage ratepayer, taxpayer, winds up paying the hidden tax of these very, very large fines, which will be imposed for non-discretionary--

Please, when we have the next hearing, or in private conference, we will confirm those numbers with DEP. I don't want to be speaking for the Department, and

ask them for a specific date in the calendar year '88 for major discharges, both in numbers of, and major permits generated, and the fines that would have been generated to date. We've had many hours of negotiating sessions which the Authorities Association, League of Municipalities, various environmental groups, DEP, and various and sundry groups have participated. We have not seen one shred of supporting scientific data that's been presented either by the Department or by environmental groups to show that permit exceedences of the magnitude that would have significant non-complier penalties have in any case had an adverse effect or environmental impact.

What we saw with prior testimony here were numbers that had very high percentages. The reason those numbers have such high percentages is because the permit limits are very, very low. Okay, permit limits are in parts per billion for toxic pollutants. Toxic pollutants are regulated in many cases 1000 times more tightly than nontoxic pollutants, so that you have built-in many orders of magnitude of safety factors, because of the recognition that some substance has some amount of toxics either to humans or to the environment.

SENATOR VAN WAGNER: You're saying that the procedure which might set a parameter or threshold in parts per billion in the case of hazardous discharge is measured in parts per million, so that the parts per billion parameter presents a more stringent requirement?

MR. VAN HANDEL: That's correct. So that the environmental vulnerability from exceedence of either discharge is relatively equal.

SENATOR VAN WAGNER: So it's good.

MR. VAN HANDEL: That's the way it should be. I'm not disagreeing with that. What I would like to point out is that many, many instances are toxics in some amount and are not toxic or even beneficial in other amounts, and

that we have to look at what these ratios are and what these percentages are when we evaluate risk, damage, and harm. Two aspirins help a lot of people; whereas seventy-seven will kill half of the people who take them. Okay, that's a very low multiplier, 2 to 77.

I was talking to somebody who lectures at Rutgers, and he was saying that one of the things he does is, he puts a box of white powder on his desk when he's giving the lecture, and he goes through the lecture, and during the lecture he eats some of the white powder, and he says the white powder is a toxic substance. It's sugar. To certain people sugar is a very toxic substance when taken in the wrong amounts. So, toxicity is a concept.

SENATOR VAN WAGNER: We're talking about significant other kinds of pollutants here, right? I know the analogy you're making. You're saying to me, there are significant differences?

MR. VAN HANDEL: What I'm saying is there really aren't significant differences in the toxicity of some of the things that we're talking about. At 50 parts per billion, it's not more toxic than two aspirins, and we've got to make a recognition. I'm not saying that these things at some amounts are not toxic. For instance, there are levels of chlorinated compounds that are present in drinking water, okay, because of the chlorination of drinking water to destroy pathogenic disease producers. The levels of these chlorinated compounds in drinking water are, in many cases, higher than the groundwater standards for these chlorinated compounds.

Okay, so, the water you get out of your tap, it's permissible to have a higher level of this chlorinated compound than the groundwater standard, which would be the groundwater permit limit for that compound.

SENATOR VAN WAGNER: That's because in relationship to the amount of water you use in your house, it is an insignificant amount.

MR. VAN HANDEL: No, that's because they can't do anything about it. They have to chlorinate the water to get rid of pathogenic bacteria. There's chloroform which comes from--

SENATOR VAN WAGNER: Are you saying they allow more chlorine going into the water than they allow into the ground?

MR. VAN HANDEL: Yes, there's a lot of absurdities in this, Senator Van Wagner.

Industry has presented written documentation showing that the current definition does not adequately take into account measuring variability and also the expectations of exceedences. That's inherent in the federally defined development progress. Industry has also presented to the Assembly Committee an alternative definition which we feel would better serve to capture those people with significant problems in terms of permit compliance, versus those people who have random and relatively minor exceedences which would also be captured under this current definition.

SENATOR VAN WAGNER: Would you submit that here?

MR. VAN HANDEL: We plan on submitting specific amendments to the bill as passed out of the Assembly Committee.

SENATOR VAN WAGNER: No, what I would like to see is your definition of "significant."

MR. VAN HANDEL: Yes, we will submit that.

SENATOR D'AMICO: Let me ask you one question in regard to that: Previously, the information was given somewhere that the bill, as presently defined, with its present definition, would place 75% of the municipalities that have discharges, in violation, and 15% of the

industrial dischargers. What would be the effect on those numbers if your amendment was adopted, your proposed amendment?

MR. VAN HANDEL: I've asked the DEP for that information, but I have not gotten it.

One thing I would ask PIRG-- They have our definition-- Maybe somebody else could.

SENATOR VAN WAGNER: You can't ask them. They can't ask you anything, either.

Before addressing the PIRG data directly on the suits that they had, how many of those would be significant non-compliers under the industry's definition?

MR. VAN HANDEL: I think that's a significant case; that some people have problems with their permits, and we have to recognize that. That world, you know, may be subject to mandatory penalties. But we believe that the world that's encompassed by this bill is much too broad a world, and will subject too many people to mandatory non-discretionary penalties.

On measurement of variability, industry has presented case studies based on actual laboratory accuracies where a person who is totally in compliance with this permit. Let me hand this out. (distributes materials)

What we're talking about here is a person who has no actual exceedences. He is discharging at his permit level, not a bit above his permit, but because you can't measure things perfectly, according to this study, this person would be fined \$25,000, and would be labeled a significant non-complier simply because of measurement error. And this study is based on the Hook Study that was presented in "Environmental Science and Technology."

SENATOR VAN WAGNER: Let me get a clear view of what you're presenting here. Are you saying that you're using the criteria established in this bill under the definition?

MR. VAN HANDEL: Right.

SENATOR VAN WAGNER: And assuming that this permittee is--

MR. VAN HANDEL: Is discharging at his compliance limits. He is not discharging more than he is allowed to.

SENATOR VAN WAGNER: But they would be a significant non-complier?

MR. VAN HANDEL: Because of the significant error in measuring very low levels, very low quantities of these various toxic materials.

In here we're talking about-- To detail the study: If a facility is regulated for six metals, these are all considered toxic metals, and they have had permit limits for 50 parts per million, or five parts per million, which are regulatory.

Under the significant, monthly testing, and actual effluent levels that were at these limits, but not above the allowable limits, because of the variability that's inherent in the testing process, the permittee would have been labeled significant non-complier. He would have had significant exceedences in four out of six parameters. He would have been fined a minimum of \$25,000. He could have been fined 10 times that amount, all with no actual permit exceedence. We feel that's a bit harsh for mandatory penalties.

SENATOR VAN WAGNER: Let's assume that sometime, a long time ago, New Jersey had a law like this. What do you think this person would be doing to try to meet these parameters? Do you think they would have a way to find out how to deal with it?

MR. VAN HANDEL: Again, let me get into-- And the answer to that is, perhaps.

SENATOR VAN WAGNER: True.

MR. VAN HANDEL: I say perhaps, because there may not be technological solutions, but the point, Senator Van Wagner, is that these permits on this current round have been set in many cases at what the limit of technology is, or what is in the future rounds of permits -- which we're getting into now, and I'll get into this a little more -- are set on what's called "water quality based permits." They look to a water body and develop what they call waste load allocations -- how much waste load the water body can assimilate without environmentally detrimental effects. Then they go back and allocate a percentage of that to the dischargers into that water body and say, "You can discharge so much of a particular pollutant without adversely affecting the water quality of that water body." That's how the permitting process is set up.

SENATOR VAN WAGNER: Why is it so important? And I ask this not to be a wise guy, believe me. Why is it so important, or why has it been, and I assume you're a chemist or you have a technical background?

MR. VAN HANDEL: Yes, yes.

SENATOR VAN WAGNER: Why was it so important for a lot of industry, not your industry alone, to discharge into the water like that? How come, you know, years ago, no one ever said, "Gee, maybe we ought to not discharge into the water." Is there, like, an industrial reason or scientific reason why it's better to do it that way than it is to come up with some other kind of process?

MR. VAN HANDEL: A certain percentage of any industrial process or any chemical manufacturer is going to wind up in some type of waste medium. Now, that waste will wind up--

SENATOR VAN WAGNER: Most of these plants are placed on rivers and stuff like that. Was that for transportation reasons?

MR. VAN HANDEL: There's two things. Transportation is one, and water is necessary for very many industrial processes. Could you imagine cooking without water?

SENATOR VAN WAGNER: We're maybe getting to that point. I'm serious. I'm not being facetious. Before, in order to cook-- I didn't ask that to be facetious.

MR. VAN HANDEL: In order to cook, to manufacture different things, you need water, okay?

SENATOR VAN WAGNER: As a technical person, aside from your industry relationship, did you ever sit down and think and say to yourself, knowing all of the things that we know, whether you're responsible or not responsible, "Wouldn't it have been smart years ago to start to change the manner in which we do business?"

MR. VAN HANDEL: I think we have.

SENATOR VAN WAGNER: That's what I'd like you to address, if you would.

MR. VAN HANDEL: I think that you've hit on a very, very, very important point. I think that, at this time, the major impacts of point sources of pollutants have been mitigated to a very large extent. So that the effect is that POTWs -- and not all POTWs -- are meeting their secondary standards, even in spite of those 15% of the industry who would be significant non-compliers. The cumulative net effect of all these source discharges is about 10% of the water quality problem in the State of New Jersey.

By and large, water quality problems in the State of New Jersey are non-point sources, such as storm runoff, combined sewer overflows, agricultural pesticide discharges, a whole arena of different sources of water pollution which are not addressed at all in this bill.

PIRG, in their prior testimony, said that combined sewer overflows were a major problem in terms of meeting water quality standards in this State. My whole

contention here is that this bill, as it is currently constituted, will divert a majority of DEP resources to a relatively minor problem of point source discharges, as opposed to very major problems, which are very difficult to deal with.

It is very difficult to deal with non-point source pollution, with runoff from 200 miles of the New Jersey Turnpike, which is at this time not permitted at all.

Okay, the level of oil and grease discharge from our roads into our storm sewers and directly into our water bodies far exceeds, in terms of pounds and mass, the level of discharge of oil and grease from the industrial permitted facilities in this State.

So, you know, that's a lot of what our concern is with this bill. We don't live in a world of unlimited resources. We live in a world of limited resources. And if we divert those resources to the wrong thing, we lessen the chance of solving the real problems that we have.

To get back into what I was talking about, remember, I said a new round of permits is coming up which will do what you ask for. They will ratchet down even tighter on what industries are allowed to discharge, because they will be water quality based permits.

The 1987 Clean Water Act amendment enforces this specifically for toxic discharges. The State of New Jersey has just put together a 304-L short list, and they have submitted to EPA individual control strategies which are permits which will allow water quality standards to be met in our most polluted water bodies that are due to point source discharges. I know it's a funny thing, Senators D'Amico and Van Wagner, only five beaches out of the hundreds of beaches and water bodies in this State were impacted substantially or totally by point source toxics -- only five beaches out of hundreds of beaches.

I think it's significant, when we talk about these NJPDES numbers, exceeded by a thousand times,

exceeded by a hundred thousand times, what environmental impact did that have, as compared to the amount of runoff that is totally unregulated from our roads and our highways?

SENATOR D'AMICO: Do you know which five beaches those were?

MR. VAN HANDEL: I don't have them-- Upper New York Harbor, the Arthur Kill below the Elizabeth River-- I don't know what the other three are.

SENATOR D'AMICO: Northern New Jersey?

MR. VAN HANDEL: I don't know if the other three were. I really don't. Okay, that's not to say they are the most polluted water bodies.

SENATOR D'AMICO: When you talk about coastal pollution which is the focus of this Committee, that's where the stuff is coming from?

MR. VAN HANDEL: I asked, you know, to think about the testimony that you've received on coastal pollution and ocean pollution, and look at what percentage of the ocean problems were due to combined sewer overflows, due to non-point source discharges, were due to floatables and medical waste which are not addressed by this bill.

SENATOR D'AMICO: Let me just interject here: I acknowledge what you're saying. I think we should look at all of those problems. I think I kind of made that clear already in what I've said earlier in this hearing. But, I don't know that that's an argument for not continuing to work on the point source pollution problem. So, maybe you could move forward in your testimony.

SENATOR VAN WAGNER: To be honest, I don't mean to be at all disrespectful, but, we understand what you're saying, and we understand that there are non-point sources. But we're also cognizant that point sources are a problem.

MR. VAN HANDEL: And we are cognizant, also, and, as I said, we have offered a definition which we feel

will put the problems in the proper perspective. The current definition for many pollutants is that a 20% exceedence is significant.

In order to give you a better feel for 20% on the parts per billion levels that toxic pollutants are regulated at, if you looked at 100 people on the face of the earth having a particular characteristic, and somebody went out and did a study and said, "Yup, there's 100 of them out there." And somebody else does a study, and says, "I think on the entire earth there's 121 people with that characteristic." That's the same relative difficulty as trying to decide whether you have 50 parts per billion in an effluent, or 60 parts per billion in an effluent.

It's very, very difficult to do, and, as a matter of fact, it just isn't practical as this data shows. Okay, technology does not exist to do that on a repeatable basis, yet, we're calling that significant.

Another analogy I'll give, and let me remind you that the industry definition for nontoxic pollutants which are regulated at a parts per million level, which is still very small but a thousand times higher than a parts per billion level-- We said 40% on a nonhazardous pollutant is acceptable exceedence. You can measure that kind of variability, okay? So we didn't argue with that analogy. You can measure the difference between driving at 65 miles per hour and 78 miles per hour, which is a 20% difference. I don't think anybody can get in their car without knowing if they are going 58 or 78.

If you're driving at five miles per hour, try to drive at six miles per hour, and the reason I give that analogy is because, on a highway, on an interstate, people have deemed it safe to drive 55 miles per hour. We're going to call that a nonhazardous highway. That's a

nonhazardous highway. You can drive 55 miles per hour. And you set whatever it is, where you should get a mandatory fine and a mandatory penalty.

Now, you have a hazardous roadway, so you have a much lower speed limit; a hazardous pollutant, you have a much lower permit limit. Now, all of a sudden, you have that limit set a lot lower, okay, but the significance of exceeding that limit by 20% gets to be a lot less real because of the difficulty in measuring that difference at a very low level. That's precisely what happens with these toxic pollutants which are measured more stringently than the nontoxic pollutants.

As a matter of fact, in the bill that we have in right now, criminal penalties are raised from a third degree offense to a second degree offense, based on exceedences which could occur in a statistically well-operated plant.

Again, with no scientific justification presented, if you look at EPA histories-- The way the EPA develops permits-- They look at what well-operated plants achieve with a given technology, okay, and plants will achieve a statistically varying effluent quality. And it's determined on percentiles versus levels.

So, 50% of the time you meet this level; 75% of the time you meet a higher level, okay, and 95% of the time you could meet a level that's maybe up here, but that 5% of the time you're going to exceed even that level.

That 95% level is what they set their permit at. So, there is an expectation that people will exceed their permit when they get their permit, and we've submitted documentation from EPA permit writers' guides with the quote highlighted that there is an expectation that permits will be exceeded.

SENATOR VAN WAGNER: Suppose, for example, the DEP were to decide to impose more stringent permit levels, and so notified you, and did it by regulation. What would your response be to that?

Suppose the DEP said to you, "We're now going to adopt regulations that set more stringent levels, so your present permit levels that you're meeting now are not allowed"? It's a regulation. It's a new criteria set by the DEP. They took it on their own to do it.

MR. VAN HANDEL: I would ask them on what basis they set it.

SENATOR VAN WAGNER: Would you get prepared for that?

MR. VAN HANDEL: No, I'd litigate it.

SENATOR VAN WAGNER: That's a great answer.

MR. VAN HANDEL: I'd like to touch on how current permits were negotiated. That comes to the heart of what you just asked, okay?

SENATOR VAN WAGNER: I thought it would.

MR. VAN HANDEL: A lot of current permits were negotiated kind of as informal agreements with kind of trial limits. We know the DEP isn't going to come down on us too hard. We'll live with this permit, rather than litigate this permit, okay, and companies may have not taken into account that there are other people looking over their shoulders. And even though they may have reached these informal agreements with DEP, there are such devices as citizen suits which don't enter into these informal agreements, and maybe they misjudged how they should have viewed a permit.

SENATOR VAN WAGNER: As a citizen of New Jersey, how comfortable are you with a negotiated process that's determining permit levels of water that you or your children or someone else may drink?

MR. VAN HANDEL: Having been involved with that negotiated process, I'm quite comfortable. And I mean that truly, because there is a lot of give and take. There is a lot of professional expertise at DEP, and there is a lot of background to what they do through the EPA. The EPA has set effluent guideline limitations for most major industries in the State. So the DEP does not do it in a vacuum.

The DEP sets limits on very extensive and significant Federal research as to what are acceptable permit limits. You don't negotiate out of the blue. You negotiate based on very narrowly defined allowances which are based on Federal requirements. And the State cannot issue a permit that is less stringent than the Federal requirements, though they can issue a permit that is more stringent than a Federal requirement.

One of the arguments we've had in this bill, and it's one of the things that we had to discuss with the enforcement people in the DEP-- They said, "Well, we'll give you less stringent permits and let you meet them, unless the DEP does not have the authority to do that." The DEP must set federally mandated effluent guidelines which are quite strict and they are based upon 5% exceedence factor in the permits.

SENATOR D'AMICO: Okay, as I understand it, this bill did make an attempt to allow some leeway. And we're talking about 20% and 40% and so on. Are you saying that those margins are inadequate or insufficient?

MR. VAN HANDEL: In terms of toxic pollutants which the 20% to 40% old permit-new permit issue addressed, that's the difference, again, between 121 people and 141 people on the face of the earth. It's an insignificant difference at the levels that we're talking about. At the parts-per-billion level, it's a very, very insignificant difference. The Department of Environmental Protection--

SENATOR D'AMICO: Let me ask one more question to follow up on that: Isn't the reason that we are concerned about parts per million or parts per billion in the first place that these substances, even when they get into water or discharge in that minute amount, can cause damage or harm?

MR. VAN HANDEL: Not correct.

SENATOR D'AMICO: Let me see if I can ask it a different way: I assume that permits deal in terms of parts per million or parts per billion because it has been determined that at some point a part or a number of parts per billion or million can cause harm.

MR. VAN HANDEL: Correct.

SENATOR D'AMICO: Okay.

SENATOR VAN WAGNER: What wasn't correct?

MR. VAN HANDEL: At those low parts per billion they can cause harm. A lot of times we leap to that.

In other words, if we discharged a lot of pounds of something, okay, if we discharged a 1% solution of something, and it would be highly toxic, there is an adverse effect from discharging one part per billion. A lot of times-- That's why I tried to bring in the aspirin analogy. But because something is toxic-- Zinc is a beautiful example. People take zinc pills. Zinc is a toxic pollutant. My own permit, zinc is regulated at one-fifth of a part per million.

SENATOR D'AMICO: What about arsenic? Does the argument work the same there?

MR. VAN HANDEL: I don't know of any beneficial use for arsenic. There are certain levels among which there are no toxics. The benefits of that would be in parts--

SENATOR VAN WAGNER: In essence-- We're going to have some more chance to discuss this. In essence, I guess what you're saying is that the bill attempts to set standards, which, your position is, cannot be set in the law because of the wide variance of measurements.

MR. VAN HANDEL: At the very thresholds of where the permits are.

SENATOR VAN WAGNER: Just so people are aware, the way I have this set up, a public hearing like this is important in the sense that we be thorough. I realize people come to these things with other schedules and things like that, but I try to schedule these so we hear from opposing sides on an alternating basis, and some people have asked-- They have to leave and they want to be heard, and I try to do that if I can.

But I just want you to be patient. If it's not-- If you're not specifically next, we'll get right to you thereafter. And, hereafter, when we have a hearing, if you would, those people who do have to leave, if they would tell Len here (referring to Aide) that they would like to go on early, we'll try to accommodate them.

MR. VAN HANDEL: Senator Van Wagner, basically, I said up-front that I had five major points. Basically we've explored about 90% of the first point, which is the definition of significant non-complier. The other four issues that I mentioned have equally intriguing and complex facets to them. I offer you that I could either continue on them, or perhaps you might want me to briefly touch on them and then come back and testify at the next hearing.

SENATOR VAN WAGNER: Would you do that? And then what I'd like to do, is to conduct a hearing where we as a group have a more open, free flow of information back and forth, and where you can specifically address your points, and the other side can specifically address their points.

MR. VAN HANDEL: Fine.

SENATOR VAN WAGNER: The other side-- There's going to be four sides.

MR. VAN HANDEL: Point and counterpoint, fine. Just to go over the other issues, cost benefit of the bill

and mandatory testing of parameters of all discharges: The DEP didn't give you an estimate. We can estimate that it's at least over \$1 million for testing 20 POTWs. With pre-treatment programs, they would have to conduct thousands of tests.

The point that's not brought out is, permits are getting more and more complex, so that five years from now, this cost may be 10 times what it is now in terms of testing and specs. However, if the bill achieves what it wants to achieve, and there are no violations, then there will be no fines to fund this.

There will be no money coming in except for permit fees through the direct dischargers, and the sewage fees for the indirect dischargers. That's the only way you're going to have to fund it, obviously, in answer to your question.

If you give me more stringent permit limits or more significant penalties, what am I going to do? I'm going to litigate, and that is going to raise a new spectrum of costs in terms of litigation.

SENATOR VAN WAGNER: Are you litigating anything now?

MR. VAN HANDEL: Right now we are adjudicating an expired permit. We were issued an NJPDES permit that became effective August 1 of '86. There were outstanding issues on that permit, and the permit was issued for 18 months, so that the permit expired at the end of January in '88.

We filed to adjudicate that permit. And we're granted stays on certain parameters, because the Department felt that our issues had enough merit that they stayed the permit limits. They don't automatically do that. That case has never come up for adjudication between when we filed in August of '86 and currently. We are operating under an expired permit that was never adjudicated, and

we're waiting for a new permit for over 14 months. I would expect that to snowball very significantly with this bill. And that's a pretty big snowball when that's your starting snowball.

The original bill had 19 pages. It's grown to 40 pages. As I said, 10 pages were added in the last month. A lot of broad issues have been raised, which are not just point source discharges; make the polluter pay. There are joint and severally strict liability, maintenance of records, subpoena powers, easements, removal of any cap for attorneys fees, mandatory publishing of names of people referred for criminal and civil actions -- not guilty of, referred.

I think that there's a lot to talk about there. There is a very, very significant broadening of powers, and very dangerous traps that are in the very recent wording of the bill.

SENATOR D'AMICO: And you have specific suggestions as to amendments?

MR. VAN HANDEL: Yes, we have. And we will get specific amendments to your Committee.

The idea that it's been a good compromise, that was heard. People get tired of keeping on beating the same issues. It was a bad bill to start, and it had bad basic assumptions and discounted many types of DEP enforcement action, such as sewer bans.

SENATOR VAN WAGNER: You're talking to the sponsor now.

SENATOR D'AMICO: It's a better bill now. Is that not what you're saying?

SENATOR VAN WAGNER: It has improved dramatically.

MR. VAN HANDEL: There are very interesting provisions still left in the bill. Right now, if the chief executive officer is in a coma in the hospital in the

State, nobody is authorized to sign a DMR form unless you relieve him of his position.

SENATOR VAN WAGNER: I think we can address that for comas.

MR. VAN HANDEL: I know it's hard not to support a bill with the title "Clean Water Enforcement," but there's a lot of questions that still have to be asked.

And when I appear the next time, hopefully I'll present those questions. I think I may have already -- some of them.

SENATOR VAN WAGNER: You're going to have more time, believe me.

SENATOR D'AMICO: Thank you very much.

SENATOR VAN WAGNER: I had next listed a representative of the Business Advisory Group of Clean Ocean Action. Cindy is here.

Camilla Fahmie, who is Save Our Shores, said she has a class to attend and would like to make a brief five-minute statement. Is that all right with you? (affirmative response from audience)

You were going to be next, and then Ben who also has a time constraint.

C A M I L L A F A H M I E: I speak on behalf of the Save Our Shores co-founders. Save Our Shores applauds the current bill which is an expansion of the current New Jersey Water Pollution Control Act, the statute by which New Jersey administers the Federal program under the Clean Water Act.

We applaud the increased enforcement authority under the DEP and the increased requirements for permittees to discharge into the waterways.

We are happy to see that increased requirements have been placed upon publicly owned treatment works to require appropriate pre-treatment programs for industrial waste before they enter the municipal treatment plants.

We are encouraged by the substantial civil

penalties allowed against violators. We would like to see the Legislature provide additional enforcement resources for the DEP to carry out the program of enforcement. We would encourage the Legislature to provide at least a minimal study of street litter at shore communities to prevent the street litter from becoming beach litter through the storm sewer system.

We are encouraged by the pre-treatment portion of the Act, which would substantially improve the quality of wastewater discharge and render the sludge left over in the process to be more easily managed and ultimately allow the sludge to be disposed of in ways other than in the ocean.

Lastly, we would be happy to serve as an environmental representative on the advisory committee on water supply and wastewater licensing operator training.

SENATOR VAN WAGNER: Thank you. We appreciate your coming in.

Ben Forest of the Monmouth County Friends of Clear Water.

B E N F O R E S T: Our organization couldn't more strongly endorse the Clean Water Enforcement Act. In fact, we feel that the Department of Environmental Protection has failed in many critical ways to enforce laws to protect our environment.

I'm here to illustrate two examples locally: This is a picture, a 1974 picture, of IFF. This is a natural peninsula, on which you may note there is a black substance to the water flowing. This is 600 yards long to give you some idea.

Eighteen years later, the DEP is about to release Phase I of a report that defines what the problem is at IFF, and we feel that's very unsatisfactory. Indeed, that very flow you see there, that black substance which has carcinogens in it, and something called benzene--

SENATOR VAN WAGNER: Is that--

MR. FOREST: That is a-- The black substance was oozing out of the ground because it was saturated toxic waste that was stored on the site, which, in fact, is still there at IFF. That picture is accurate up until around 1985, when stopgap measures were taken to stop that incredible flow into the water -- which you could do, by digging a ditch.

Anyway, the problem has not been completely resolved. Phase I will be released next week in the Department of Environmental Protection's report on exactly what the problem is, and we find that amazing; that it took 18 years for that to happen.

We also, I'd like to point out, in light of what the Department representatives were saying, the first people who spoke about enforcement in their budget that-- Clear Water probably has a budget of something less than \$20,000. We're all volunteers. I'm taking off from work to be here, and we're able to find these problems. And I can specifically say that IFF is one of the biggest toxic waste problems in Monmouth County, without having to do any special project to find that out.

Also, I would like to point out the Keyport Landfill problem. One of the things the Department of Environmental Protection representative has pointed out at the beginning of this hearing, was how in the last three years they are turning the place around. It's not the same as it was when the "Polluter's Playground" report was written.

Well, in the case of the Keyport Landfill, a little over three years ago they dug testing wells to monitor the water pollution in -- I guess it would be the monitoring wells for that drinking water -- the water tables, to find out if it was being contaminated, and sure enough it was.

And, subsequently, the Department of Environmental Protection required that landfill to monitor those test wells quarterly. Since 1986, since the problem initially came to light, the landfill has never sent in any of those tests. And, in fact, according to the Department of Environmental Protection's own file on the subject, they have not even-- The Department of Environmental Protection has not even sent so much as a form letter to remind them of their obligation to report the findings of those test wells. We find that also incredible.

SENATOR VAN WAGNER: Keyport Landfill?

MR. FOREST: We have learned that in a very rare display for the Department of Environmental Protection that after two years they actually went themselves to test those wells and see what the problem was. And they did find violations of current environmental laws. So, we would only assume the reason those reports were never given to the DEP is probably because they have been finding those types of results.

Also, on that matter, when we went last month to DEP, the person who is putting in the information in the new data base that they are creating asked Clear Water for the DEP files on the Keyport Landfill.

Apparently, the Department of Environmental Protection has misplaced those files.

SENATOR VAN WAGNER: I have a copy. I have a copy in my office.

MR. FOREST: We gave them our copy. And we were, needless to say -- our environmental chairperson was -- stunned with that event. Anyway, our last thought is that we find-- I'm flabbergasted, and I'm sure I speak for the rest of our organization, with the idea that we -- some of the persons up here -- were sounding as if the problem in New Jersey's environment is exaggerated.

As you know, anybody-- I can't imagine living in this State and not realizing that something is not working, some part of our environmental protection structure is failing, to allow these kinds of incredible violations to continue. Anyway, I thank you very much, Senator Van Wagner, for your time, and Senator D'Amico.

SENATOR VAN WAGNER: Is it your feeling, Ben, that this type of legislation will address the kinds of problems you've identified?

MR. FOREST: We have three environmental committees, and rarely do we agree on everything. The Clean Water Bill that is in front of us now is something we really all strongly believe in. It's-- I feel, and our environmental committee feels, it is really mandatory. We really want to seriously fight the pollution problem in New Jersey.

SENATOR VAN WAGNER: Is there anyone else who has a class? (no response)

Jim Sinclair, New Jersey Business and Industry Association.

J A M E S S I N C L A I R: Good afternoon. I am Jim Sinclair, and I'm Vice President of the New Jersey Business and Industry Association. I'm not an attorney. I have testimony here and I'd like to enter that into the record. And I think that probably at this late stage, it would be better if I just went off on a couple points, instead of reading through here, although it's nice testimony. It will probably read as well as I can speak it.

SENATOR VAN WAGNER: You can paraphrase it.

MR. SINCLAIR: Okay. There are some points that I would like to hit on. I loved your comment that you like independent analysis. And I like independent analysis, too. And, representing the New Jersey Business and Industry Association, we are the largest employer

association in the State of New Jersey. We represent 12,000 corporate members, which represent a lot more businesses than that -- that's corporate entities that are members of the Association-- The employees of our Association, we're talking about perhaps one million employees. And we have all kinds of businesses that are in the Association, from people that have NJPDES permits to people that have manufacturing processes that are hooked up to sewer systems, to people who are attorneys, or environmental consultants.

We represent the broad business community. And our concerns here are perhaps just a little bit different from what Hank Van Handel was doing, but in many ways what he's saying is something that we want you to take cognizance of.

We, as the business community, the generic business community, pay 40% of the taxes in this State -- 40% of the taxes to local government. How effective government is in doing what it's supposed to do, and how efficient it is, is really an important issue to us. We, as the Business and Industry Association, are concerned with the quality of life in the State. We're concerned with clean water, both getting it in the tap and having it in the ground. We have bought into the system of enforcement that we have, the NJPDES program, something that Senator Van Wagner knows the history of, because he was here in the Legislature back in the '70s when it was enacted.

The premise behind the NJPDES program was that this was going to be an enforcement program that was going to be constantly ratcheting down. This was going to be an enforcement program that was going to be somewhat self-monitoring. This was going to be a program that was going to show improvement over the long run. And, in fact, I assert to you that that's what happened.

I think that the NJPDES program has been effective. If you look at the quality of water in the State from when it was instituted, you see a dramatic improvement in the quality of what the water was. You see a massive investment of public money, billions of dollars of public treatment facilities that are upgraded to street discharges of all kinds, and a lot of private money that's gone into this program.

You'll see the Department of Environmental Protection that has increased its enforcement capabilities, has ratcheted down on fines and penalties, has attempted to attract good, qualified, technical people to run the program. Are they perfect? No. Are they subject to political whims?

What is interesting to me, as an observer of what happens in Trenton, and what you heard them say in their testimony about the NJPDES program, was that when the PIRG report was issued, they were spending all of their time, or a great deal of their time, dealing with enforcement actions due to dump sites.

And, if you remember the history, that was the number one project in the State -- the hazardous waste cleanup. And at the time, just for Senator D'Amico's edification, what we were saying, at the time, was that we thought that the process of hazardous waste cleanup was too dependent on an adversarial relationship between the people that were in the site, and the Department.

And what we needed was a more cooperative thing, where people that were in the courts, should be acknowledged that they were in the courts and that they should come to agreements with them that we should get out of the courts and get into cleaning up.

But, you see that the Department was focusing on cleaning up that area. So, there was a manpower shift. I

say this because what we're talking about here is clean water enforcement, but what we're really talking about is environmental priorities. This is a shifting of priorities. Now we're looking at clean water enforcement, and now that the NJPDES program is enforced, we're looking at a radical restructuring of the system.

And, really, the fundamental question -- back to your question about independent analysis -- is, does the system, that NJPDES system, need a fundamental restructuring? And I think you presented the case that it was the PIRG report that brought this to the public's attention, and, in fact, it was.

And I assert that the PIRG report was filled with facts, filled with figures, but it was far from an independent assessment of what the problems are with the regulatory system; far from an independent assessment of what the problems at DEP are. And I think that it's a faulty premise to build a fundamental restructuring.

Today's hearing was the best hearing that we've had on this process, because the questions that were asked today of all the participants were the questions that should have been asked in the first place. You know, what are you guys doing? DEP, even today, was more informative about what it is that they were doing. Maybe they were asked the right questions, but DEP has not reported to anybody of the Legislature here, that I know of, as to how the program is doing.

Now, you say, well, maybe in the DEP report something is going to be a bit skewed and slanted, and that goes to the independent analysis. I think we really do need an independent analysis of how well the program is working and what the pitfalls are.

We have a massive restructuring. In its original form we can all look back at it. We're talking about your version of it right now. It was really, really

a terrible bill. I mean, it was a bill that was designed to be bad. And I think the people that did it knew how bad it was when they did it. I think that they did. I think that this is a good process. I think Hank Van Handel told you about the problems of, you know, when you're dealing with slogans on one hand and trying to explain parts per billion on the other, it's tough to go back. But the full hour he was speaking, he was saying what the real nuances are in testing variability. The world is not exact.

SENATOR VAN WAGNER: I just want to say something to you about that: I realize what you're saying. If you spend a little time on the water in the Raritan Bay, and some areas of the ocean, you start to get the feeling that it's not just slowness.

MR. SINCLAIR: It's our members that lost in the bills. It's our concern about that loss of revenue. I think part of that concern is real concern about the quality of the water.

SENATOR VAN WAGNER: I'm going to tell you, I know the Real Estate Coalition. I've gotten some very strong statements from them about this bill, in support of it. Obviously, they are having a tough time selling homes on the shore.

MR. SINCLAIR: Your responsibility is to have a bill that makes sense. That will give the citizens that confidence back.

SENATOR VAN WAGNER: Let's not go too far afield.

MR. SINCLAIR: It's really our responsibility, where the bill goes off, to try to inform you. And we have made a good-faith effort. And I say this for the record: The Business and Industry Association, along with the State Chamber of Commerce, and the Chemical Industry Council, and the Authorities Association, and the Petroleum Council -- and I probably missed somebody there -- the League of Municipalities -- have made a good-faith effort in this .

process to come up with a bill that you and the Assembly could go forward with and say, "Yes, you know, this is a bill that's really going to attack those significant non-compliers. It's going to get those bad apples. It's going to make sense and do it." We've made that effort. We've been part of the process.

I want you to know that we came forward right in the beginning. Our first draft that we put on the table for what would be a significant non-complier, what would make sense, is still our draft. We weren't haggling over nuances here. We came forward with a good proposal. We will give you that. I hope you look at that.

SENATOR D'AMICO: Would that be the same as the one Mr. Van Handel was speaking of?

MR. SINCLAIR: Yes, yes. It just doesn't make sense to me, from a person who is a student of the governmental process. It doesn't make sense to put local officials, the kind of good people that you have in sewage authorities, put them at risk on statistical things.

I'm sure it doesn't for industry also, but the numbers are so gross out there in comparison. There are real problems as to why they are, and we know that. The bill addressed the money issue, and this is not a money bill, other than what it is going to cost. I can tell you this from implementing governmental programs. It is going to cost a lot of money to gear up to do the program the way it is now. There are other ways to do it. But, it is going to cost a lot of money. That's a fact of life. It's something that we learned with the ECRA program, and every other program. You've got to put the money up-front, put the people on board, put the system in place, put the payoffs in place, or be able to measure those payoffs. That's a reality.

I think the Department will show you that. We're not making this up as we go along. It is a reality. It's going to have an impact on local taxpayers. Shouldn't those facilities be built anyhow? If they need those facilities, and they need to be built, the answer is, "Yes." Shouldn't that be the way we attack the biggest or most important problems first? Shouldn't there be a way that makes sense, a logical way, automatic penalties, automatic fee schedules? Taking discretion away from DEP, from the business community-- That doesn't make sense at all.

We, in the State, would like to think that the Department of Environmental Protection is well-managed. Now--

SENATOR VAN WAGNER: Now you've really got me worried.

MR. SINCLAIR: You don't think so? You, collectively, meaning the Legislature-- You don't think it is well-managed?

SENATOR VAN WAGNER: I would say what we hear primarily from the business constituents in many areas, especially about the permit process, we're told by them that it is well-managed. Interpretation of what does it mean when a permittee says, "It's not well-managed--" Does it mean because he's not getting his permit fast enough? Does it mean because the regulators are overly regulating? Or, does it mean because he's facing incompetence? Those are the issues that we have to decide.

MR. SINCLAIR: Wouldn't you think that with a permit program that is self-supporting, which NJPDES is, and a number of other programs, that you should be able to present your data and get it back in a timely fashion? Yes, right, and they should have enough people to do it.

They should be able to make technical decisions. Those are all things that we expect. It's a little difficult doing that right now. I think, for the

next administration, the Department of Environmental Protection is going to be a focus. I think that management improvement is probably -- no matter who the Governor is -- going to be a priority consideration.

By management improvement, I don't mean different staff. I mean applying different techniques and different systems. This system, the way it is right now, is like dumping a pile of paperwork on top of it. The manpower necessary to do this will be staggering, if you want to really do it right. If you wanted to have a timely program that made sense, that allowed you to appeal, that allowed you to go through the process and do what you wanted, what Mr. Van Handel said-- I think you can multiply that times 1600 times, which is the number of NJPDES permits out there, just permits that everybody is going to litigate, as far as they can with the best attorneys they can get, because of their concern about what this bill says.

Now, that just in itself is going to be staggering. That doesn't seem to be a system that's cooperative, that allows you to focus on the main problems first. That's philosophy, but it's also practicality. I think that's, from an administrative standpoint, what we can expect from just one nuance there.

Let me just hit a couple other points that I think are important, that are in my testimony.

SENATOR D'AMICO: You will be then suggesting ways in which the administrative difficulties that you described can be addressed?

MR. SINCLAIR: Yes. We are still in this process. And we are in the process to have a bill at the end. We don't think this bill is necessary. That's our first premise, and I think it's in my statement. But, you think it's necessary. And so, we have been part of this as a good-faith effort. There are other parties that haven't

been. But we have made a good-faith effort to come up with a bill that makes sense, that is workable.

SENATOR VAN WAGNER: We're going to get a chance to do that.

MR. SINCLAIR: A concern of ours -- this is on page four of my testimony -- is sort of the ex post facto application of this whole system: Two people with existing permits, that doesn't seem to make sense at all.

SENATOR VAN WAGNER: Why doesn't it?

MR. SINCLAIR: Because of what Mr. Van Handel said: The reality of the system, whether you like it or not, whether the reality of the system is that when limits were set, they were, you know, try this. And if you think about the philosophy, think back to what I said, the philosophy is the ratcheting down. The pressure on DEP is to get down to zero discharge. That's what this program is about. That's where this program should be heading. The technical staff there is under pressure to keep moving down; to be looking for the best available technology; to be moving those things down.

There's also a pressure to ratchet down. So, you either litigate, or try to do it. Yeah, I think we might be able to do that. You see the nuances there between saying, "No, you've got to take me dragging and kicking--" One of the things that Mr. Van Handel didn't say, one of the things you get out of this program, if you buy the program, that sets the absolute ironclad limits that you go to jail if you go beyond this. You have everybody fighting to have higher limits. What you get, sort of contrary to what you want to do, is you get higher limits and people designing and discharging at those higher limits.

Now, is that an adverse environmental impact? I don't know. That seems to be the--

SENATOR D'AMICO: That occurs because the new rules, in describing point three on page four, are perceived as being too restrictive?

MR. SINCLAIR: Right. They are designed.

SENATOR D'AMICO: Or are insufficiently flexible?

MR. SINCLAIR: If you really believe that they set the limits, and we haven't asked how they set the limits--

SENATOR VAN WAGNER: See, a lot of things that you're saying to me, and Hank said to me, are bothering me. You wouldn't smile if you knew why they were bothering me. They are bothering me because what I'm getting a view of up here, as you go on, is a system that was negotiated, a system that really counted on the fact that a limit would never be met. So, it was therefore set in a parameter that was comfortable for people to meet.

And then you say to me -- and I'm just saying the way you read it-- And then you said to me, from that point on, the DEP, because of public pressure, ratchets down.

MR. SINCLAIR: No, I wasn't saying that at all. What I was saying was, the DEP is always ratcheting down and they are always pushing, and they will push a little bit farther. That's what their role is in this process. That's the role.

SENATOR VAN WAGNER: See, I almost feel -- and this is just an observation of the day, okay? -- from what I have been listening to, primarily from the industry side so far, I get the feeling, almost, that years ago, if we had sat down and established strict limits in areas that were clear and observable, with a process for meaningful legislation and not legislation on the basis of appeal, and so on and so forth, and arbitration, that maybe 10 years later we would be a heck of a lot better off than we are today.

I think part of the problem is that it has been -- and this is the fault, to some extent, of the Legislature back in the '70s when we set this program up -- that perhaps we made it too much of a negotiated program,

so much so that people's expectation of what it would produce could never be met.

MR. SINCLAIR: I think that perhaps that is the case with a lot of legislation, but there is a public perception given that is beyond the capacity of government or the private sector to deliver on.

SENATOR D'AMICO: The challenge, of course, is to see whether or not these two things are, in fact, inconsistent; whether this bill and the idea of encouraging compliance, rather than creating antagonism and litigation, can work together.

MR. SINCLAIR: That's what I would hope that we've gotten to.

SENATOR D'AMICO: So I look forward to your suggestions along those lines.

MR. SINCLAIR: I'd like-- We're committed to that process. I'd like to comment on what Senator Van Wagner said about 10 years ago. Ten years ago, sir, the technology was not the same technology as we have today. There has been a leap in technology. We've gone from the parts per million to parts per billion.

Consequently, where we haven't gone is in being able to assure the testing in the laboratories. In your county-- I'll give you a little story that I heard last week: In your county, there is a facility, which I won't name, that is a sort of a state-of-the-art model company, a chemical company, or I guess they are a manufacturer, really sort of a hi-tech industry in telecommunications, and they are really up there in the Fortune 200. They have this model facility which they designed 10 times more than they need for a little discharge coming out of their facility.

Yet, in their reports, the alarms and bells went off in some daily samples that they were doing because they got some nickel out of nowhere, and they are not dealing

with nickel. It is not like they are doing anything with nickel. They got a report that would have put them, in terms of this bill at least, on one rung to being a significant non-complier, and they ran back and did all kinds of testing, and stuff like that, and never found anything else to indicate that. That was just sort of a testing sample.

I'm a little bit concerned about things happening in the world, problems in the testing process. I think you should be, too. I think the bill should protect people from that kind of thing.

SENATOR VAN WAGNER: Thank you. Why don't you submit it as written testimony, because you'll be able to come back.

MR. SINCLAIR: Okay, fine. I would really like to spend some time on the citizen suit part of it.

SENATOR VAN WAGNER: We'll spend some time on that.

Okay, we have Cindy Zipf of the Business Advisory Group.

C I N D Y Z I P F: Good afternoon. My name is Cindy Zipf, and I'm the Coordinator of Clean Ocean Action, which is now a coalition of over 120 organizations ranging from commercial fishermen to boards of Realtors.

Increasingly, the businesses, particularly the tourism industry-type businesses, have become very actively involved in their desire to help solve the pollution problems that New Jersey is facing. And I am therefore also representing the Business Advisory Committee of Clean Ocean Action, which is an association for businesses to get more actively involved.

We currently have over 200 businesses, particularly along the Jersey shore area, actively involved in our coalition. Many of them discuss problems ranging from 50% of business loss to thousands of dollars of business loss, but they are getting actively involved. So, for that business community, I am also speaking.

I also just want to briefly say that I'm honored to speak here today.

This is my first time back to the Senate Special Subcommittee on Coastal Pollution, and when Senator Pallone was here, we had a number of hearings that Senator Van Wagner sat through, and the Committee came up with some excellent recommendations. I'm looking forward to that ongoing now with the Chairman and the Vice Chairman, both of whom have terrific records on the environment. I look forward to this Committee once again and to moving forward on the grounds that have been laid.

Why Clean Ocean Action so much supports the Clean Water Enforcement Act is for reasons that are unseen. We have a floatable problem. We have other kinds of visible problems, medical waste in particular. However, it's the insidious, constant effect of toxic pollutants, and nutrients that are being dumped into our waterways on a constant daily basis, that are truly affecting the water quality of New Jersey.

In fact, the total discharge for municipal and industrial discharges per day is three times the natural flow of the Raritan River per day. It is a huge volume of material. So, when Business and Industry talks to you about parts per billion and how it's a small amount, and how you have to understand that -- there is a huge volume of material that's represented. And this can add up to significantly high amounts of toxic materials that are getting into our waterways.

Under the current allowable permits, not only considering the violations and the exceedence of those levels that are occurring on a daily basis, Mr. Van Handel, also from Exxon, by the way, raised a couple of points, and I just want to clarify a couple of those points for you.

He recognized that there are hot spots due to direct dischargers that have been identified by the State, and there are only five areas that have been identified. That is a very mini list. DEP has already said that the list is much larger and they are proceeding along the lines of a long list. So, I think that it was a half truth that there were five -- only five hot spot areas due to point dischargers, that there's this other list that's being developed.

In order to come up with a list for the Federal government under the time limit that they had, they had to come up with something fast, and they came up with these five areas. But, they are sort of like the Superfund program. When we first had the Superfund program we had a few Superfund sites. As we began to look, we found more and more and more. So, I wanted to point that out.

I also want to point out the fact that although we have made improvements in water quality because of the programs that we have in the State of New Jersey, in the last 10 years, fishable, swimmable waters for New Jersey have gone from 27% of our waterways, fishable and swimmable, and today there are 31% of our rivers that are fishable and swimmable. So, we've undergone a big, whopping 4% increase in ten years, and I think with the Clean Water Enforcement Act that we would be able to achieve much more than that.

And that's some of the reasons why Clean Ocean Action feels that the Clean Water Enforcement Act is important.

I also wanted to briefly mention the points about the CSO and infrastructure problems that have been raised. Senator D'Amico, I couldn't agree more that they are critical areas that do need to be addressed, but not one before the other. We have a program in place that needs to be beefed up. And this would be simple, compared to the task that you all have before you now.

And, Chairman Van Wagner, you have expressed that you are going to hold a hearing on the CSO issue. So, these are things that we need to work on, and we need to move forward on those. Those are critical problems, and I think citizens ought to pay. And if it's going to cost more for infrastructure to be built, and if it's going to cost us more to use the amounts of water and to use the wastewater treatment plants that we have in the State, then we're going to have to pay for them.

But those are problems that I think we're going to have to address in the future. Right now, right here, we have an opportunity to do something about the insidious toxic waste that's being discharged into our waterways by the permits that are available for industries, and the violations that are occurring.

SENATOR VAN WAGNER: What is your response to the comments that were made regarding the cost of this particular legislative proposal to taxpayers, users, notwithstanding the criminal elements, criminal penalties and so on? In other words, I don't remember which person it was who spoke, but it was said that the cost to utility ratepayers--

MS. ZIPF: POTWs.

SENATOR VAN WAGNER: --property taxpayers for the enforcement and the litigation that would come from a bill like this, should it become law, would be far beyond any estimates that we could contemplate.

Do you have a response to that?

MS. ZIPF: Well, if they plan on violating the law, then, you know-- I mean, if they are in violation, the key is the permits will be set and that they won't violate their laws. That's the goal. If they think that they are going to violate anyway, or if they are planning to violate, then that may be true for just the municipalities. But you'll have to talk--

SENATOR VAN WAGNER: Industry is saying, "Not only are we talking about it, but we'll litigate. That's what they are saying, "We'll litigate."

MS. ZIPF: Industry is saying they will litigate to the municipalities.

SENATOR VAN WAGNER: We'll litigate to the State of New Jersey. We'll say you're being arbitrary, capricious, and unfair. You've changed the rules of the game in the middle.

MS. ZIPF: Because the legislation itself copes with those problems. First of all, you're not changing the game in the middle. There are ways in the bill that these permits -- that these are being incorporated. We're not changing the rules in the middle of the stream.

The other point of fact is, when they apply for their permit, they come to an agreement on the amount of toxics that they are going to discharge out of that pipe. They come to an agreement, okay, and if they are not willing to come to an agreement for the discharging out of that pipe, then the permit doesn't happen. They agree ahead of time to a number. And then the Clean Water Enforcement Act even gives them a little bit of a buffer, even says 20% to 40% depending on toxic or nontoxic material, that you can even go over those levels before you're considered a significant non-complier.

The bill incorporates a buffer. I don't see how industry feels they are going to have to litigate, unless they have long since felt that the permitting process, and the Clean Water Act were just pieces of paper that were not to be complied with at all.

SENATOR VAN WAGNER: I don't think they were saying that. I think they were saying just the opposite, that they regarded it as a very serious piece of paper.

MS. ZIPF: Well, then why are there so many violations?

SENATOR VAN WAGNER: My feeling is that we started in the wrong spot 10 or 15 years ago; that we should have started tough with arbitrary standards, limitations spelled out, and by this time, today, industry and everybody else would know what the game was. They would have a clear view of it.

Instead, we started off with a negotiated process.

MS. ZIPF: Which has to be rectified, and that's what the bill is all about. The one thing I did want to talk to you about, the one thing that I feel very strongly about, is that I want to let you know how this bill is going to help us stop ocean dumping of sewage sludge.

The pieces of paper-- The piece of paper that I gave you-- It was distributed by the Department of Environmental Protection in a meeting to discuss how these sewage sludge authorities that are currently dumping in the ocean are going to get out of the ocean, and their plans are on the back here. You can see that most of them are planning on going into incineration of toxic waste.

And, with the exception of Middlesex County, which we commend very much for their efforts, they are going to be implementing a reuse of the product. They are going to be making landfill-covering material out of it.

Now, on the other side of the piece of paper, this currently shows you the toxicity levels of sludge dumped in the ocean. Right now -- and I have handwritten on top the current discharge rate -- when those dumpers dump the sludge 15,000 gallons per minute, which is just basically opening up the floodgates and letting it rip-- They have finally done some toxicity testing on the sludge at the sewage treatment plants.

For instance, Passaic Valley Sewage Authority, now that they've done the toxicity testing and found out just how bad this material is or just how contaminated this material is at three knots, they will only be allowed to discharge 210 gallons per minute in order to comply.

SENATOR D'AMICO: In order to achieve the dilution?

MS. ZIPF: In order to achieve the proper dilution levels. And that's primarily because of the toxicity of the sludge.

SENATOR VAN WAGNER: You're telling me that's against the current discharge rate of 17,000 gallons per--

MS. ZIPF: That's what they are doing now. This is the proposed-- They are dumping right now, today, 15,000 gallons per minute.

SENATOR VAN WAGNER: At three knots.

MS. ZIPF: That if they go nine knots, they can dump 630. Now, the way we're going to stop ocean dumping of sewage sludge is by cleaning up that sewage sludge. We do not support incineration. There are other kinds of alternatives that reutilize that product, but not if it's contaminated with toxics.

The Clean Water Enforcement Act would give specific rights to the municipalities to stop the toxic discharges.

It would, one, put toxic limits on sewage treatment plants, so they would have to comply with these toxic limits.

It would allow sewage treatment plants to require industrial users to put in proper monitoring equipment to find the violators right at their facilities, before it gets to the sewage treatment facility.

And it would provide the ability for these municipal treatment works to fine industrial users to the same level of DEP, and Jeannie Jenkins talked about that earlier.

This would allow for the municipals to get much more aggressive at stopping toxics before they get to the sewage treatment plants. Once it gets there, it's a toxic, and nobody is going to separate out the toxics at the sewage sludge plant. It must happen at the point of source, and that is at the industry.

And this would allow municipals, and give incentives to municipals, to keep the toxic dischargers out. That way we can begin cleaning up the sludge that's currently dumped into the ocean and get it out of the ocean and do with it what the rest of this nation is doing, which is introducing land-based alternatives.

That's why-- My main point today was to bring up those specific points, and to encourage swift passage of the bill.

SENATOR D'AMICO: There's 17,000 gallons per minute at three knots.

MS. ZIPF: Fifteen thousand gallons per minute is at, I believe, it's three knots. It may be nine knots. I'm not sure. That's a good question.

SENATOR D'AMICO: Why don't you find out?

MS. ZIPF: It still is a lot.

SENATOR VAN WAGNER: Even if you went to the nine knot recommended dumping rate at 630--

MS. ZIPF: If you look at Linden, Roselle, fourth one down, it's even more restrictive. They could only dump 85 gallons per minute because of the high toxicity.

SENATOR D'AMICO: I like very much the pre-treatment provisions of this bill. And I agree with your analysis in that regard.

SENATOR VAN WAGNER: Yes. Thank you. Ellen Gulbinsky.

E L L E N G U L B I N S K Y: Thank you very much for the opportunity to address your special Committee today. I'm representing the Authorities Association of New

Jersey, which are managers and the commissioners of the water, sewage, and solid waste authorities across the State of New Jersey. There are about 136 that are members of AANJ.

In addition, I'm also presenting comments for the Water Pollution Control Association, which represents over 1500 licensed operators who daily dedicate themselves to the control of water pollution, and the reclaiming of one of New Jersey's most precious resources.

I understand that the Committee's interest is in the ocean, and I presented a statement to you on that before, saying that we do not believe that 3831 is primarily an ocean issue bill. It has other implications of it. It is not primarily an ocean issue, and I would be remiss in representing the technical committees that are part of the Authorities Association of New Jersey, if I didn't say that when it comes to ranking the priorities of what issues need to be addressed, and what programs need to be implemented that would help the ocean waters the most, we tend to take a look at storm water management, and non-point source pollution.

From your other statements, you are also recognizing this. I just wanted to go on record as establishing that, as our list of priorities on how things should go ahead. That's not to say that we're minimizing the role of point sources, except to say that the Authorities Association feels that the status quo is that point sources are being addressed.

And, especially, if we go back to the comments made early this morning by Jim Hamilton and George Schlosser, and we take a look at the change in the legislation and regulatory environment that has just come about within the last couple of years, history is history. We could go round and round on what the permit system should have been, would have been, might have been, could

have been, but let's take a look at what we have today and where we're going with existing situations.

SENATOR VAN WAGNER: "He who does not have a sense of history is doomed to repeat it."

MS. GULBINSKY: True, but now we must move on from that. What we have working for us right now is the increased penalties that have been put into effect by DEP, to the tune of about \$9 million, and George, I believe, said to you earlier that he is predicting by the end of the year, some \$15 million to \$20 million will be levied in fines.

So, my thought is, and the Authorities Association would like to see those penalties, and we ask you to take a look at what's going on now. If those penalties begin to bring about a difference in compliance, let's take a look at that and analyze that and give that an opportunity to work.

And, for that reason, we question whether it's necessary to move this bill right now, because we are in the process of waiting to see if a good bill that was placed in motion is working well now.

SENATOR VAN WAGNER: You're not necessarily opposed to this bill?

MS. GULBINSKY: We need to see some amendatory language in this bill. We started out working with this bill to make it better. Believe me, a lot of work has been done on the bill, and a lot of recommendations were put into the bill.

As I go on later, I'll point out to you, the major stumbling block we have is the definition of "significant non-complier." Unless some middle ground or new ground can be decided upon with that definition, therein is a key to the entire bill. I'll come back to that, if you don't mind, okay?

The other thing that I would like to reference back to is the fact that S-2349, which was sponsored by

Senators Connors and Cardinale, was passed in December of this year. This bill gave delegated local agencies the right to take dischargers to court, and they've just begun to do that.

For instance, I know at this point alone, Passaic County Sewer Commissioners have 17 cases that are outstanding at this point, and they have levied fines against dischargers in their systems. These two are examples of issues that are in the bill that we already have in existing law.

My point is, if these are good points that you would like to see definitely implemented or expanded, we have them right now in place. You don't need a new bill to continue on with those.

Okay, the other thing is, basically, I think the premise of this bill in large concern is, as Bill Dressel said, with the municipalities. We're very concerned with the issue and the incarceration of the wastewater operators. What's going to happen with these people? We have a limited number of people who get licensed every year, and we have a crying need for more and more personnel.

Other areas in this bill are going to increase those needs for personnel among the authorities and the municipalities. What are we going to have as an incentive to have these people come into this field, when they are going to be held responsible criminally for things like the DMR report which is incomplete, or for situations which they inherit for treatment plants that are older, at capacity, or above, and they step into situations in some cases where they are badly needed? They are hired because the authority or the municipality says, "Look, we want you to really do something with this plant." As they are about to do it, the way the bill is going, the way the time clock

is going on this, the two strikes out of the four that are involved with the bill, this means that this individual is liable for criminal liability as a result of that.

SENATOR VAN WAGNER: Why did Mr. Bennett say in his comments upon releasing this bill from the Assembly Committee to another Assembly Committee that no-- If I remember-- I may be quoting him somewhat out of context. If I recall the article in the paper, he said, "No operator need fear incarceration under these amendments." Are you saying he's wrong?

MS. GULBINSKY: Sure. You have the highest ranking official with day-to-day managerial responsibility. Who would that be?

SENATOR VAN WAGNER: The mayor? The Governor?

MS. GULBINSKY: Mayors aren't thrilled either. Mayors aren't thrilled with being the ones who would carry out that responsibility either.

SENATOR VAN WAGNER: Are you saying to me that Mr. Bennett was wrong in his assumption?

MS. GULBINSKY: The way my members have read "highest ranking official with day-to-day managerial responsibility" places the onus on the operator. That's the way we see it.

SENATOR VAN WAGNER: Okay.

MS. GULBINSKY: In the bill we also talked about a situation. We requested-- The Authorities Association requested some sort of methodology for the operator to demonstrate that he was informing and trying to let the governing body that has fiscal responsibility, and is the one who actually determines policy in municipal areas, that a need was there, that needed to be addressed, and then it's up to them. Do they address it, or do they not address it? And then the onus goes up the chain to elected officials. That's now stricken from the bill, because the Attorney General's Office came in and rewrote the legislation again with the criminal findings.

This will be a presumption, or this is something that's usually done in law, but basically at this point there is nothing written in the bill that helps to determine who is going to go to jail. We asked that question from the very beginning. But even beyond that, let's go to the issue of, is it fair for someone to be prosecuted or to go to jail for late reporting of information, false reporting? There's already something the law deals with. False reporting is a whole separate thing. Late reporting is the same as toxic discharge. Should that be what we wanted to do, threaten these people?

SENATOR VAN WAGNER: I don't know. Are you raising that as a rhetorical question?

MS. GULBINSKY: And as one for consideration for change.

SENATOR VAN WAGNER: If you read the paper, conveniently, the Division of Taxation is indicting four people for filing their 1986 and '87 tax forms late. They are being indicted. Did you know that?

MS. GULBINSKY: I didn't know.

SENATOR VAN WAGNER: Did you know that the average citizen could be indicted for filing his tax return late, even if he pays his taxes? Did you know that?

MS. GULBINSKY: He paid them, but they were late? That's what you're saying.

SENATOR VAN WAGNER: No, he didn't pay his taxes and file for an extension. He can be indicted criminally.

MS. GULBINSKY: You're saying that's equivalent to this situation?

SENATOR VAN WAGNER: I'm saying when you raise a rhetorical question, do you think that failing to report should, in and of itself-- My answer to you is, no, I don't think so, perhaps. But it depends on the nature of the report, I guess the answer is.

MS. GULBINSKY: There are healthy fines.

SENATOR VAN WAGNER: You're saying that a man or woman who misses a monthly report or is late in filing a report, quarterly report, should not go to jail for that? I agree with you. I don't find this in the bill.

MS. GULBINSKY: The penalty goes on day-to-day. You're going to file the information because you can't let the municipality file late, and the permittee cannot go on forever leaving the information out.

SENATOR VAN WAGNER: I don't find anything in the bill where a person goes to jail.

MS. GULBINSKY: Two DMR reports-- Yes, it is in there. That's part of it. They are eligible for criminal--

SENATOR VAN WAGNER: We were told they took that out.

MS. GULBINSKY: It's my understanding that it's criminal.

UNIDENTIFIED MEMBER OF AUDIENCE: If a facility failed to report for two consecutive -- two times during two consecutive six-month periods, then the name of that facility would be referred for criminal prosecution.

MR. BOZARTH: And the pictures would be put in the paper.

UNIDENTIFIED MEMBER OF AUDIENCE: Two six-month reports.

SENATOR VAN WAGNER: But it's not an automatic jail sentence.

MS. GULBINSKY: Automatic publication in the papers. It's criminal. Again, it comes back to whom? Correct, the permittee.

SENATOR VAN WAGNER: I don't know what they mean by that.

MS. GULBINSKY: If it's a referral, it's a recommendation.

SENATOR VAN WAGNER: We have to get the lawyers. They call it the dictum of the Committee to find out what, in fact, they were discussing when they made certain changes. But, right now, it says referral. So, whatever that means by "referral," I guess it refers the name.

MS. GULBINSKY: My presumption is referral and then prosecution. If that's wrong, from our discussions and so forth, that's our interpretation.

SENATOR VAN WAGNER: It doesn't say that.

MS. GULBINSKY: Okay. One of the other items I'd like to raise is the fact that under the permit that exists, it's a 95% system, which means in the understanding that 5% of the time with the limits that are raised in the permit, you would be out of compliance. So, this would mean that in most cases the POTWs would pay a fine, at least.

Now, let's hope that is only one occurrence, so and so, that you don't have the recurrence or the repetition which triggers the rest of the bill. But, even so, we have a situation where there's a potential for everybody to pay a fine as a result of the fact that 95% of the time is all that the limits are set for, with an understanding that most likely you'll meet them 95% of the time.

So there's a 5% problem in there that's already part of the bill. That becomes costly, as far as the taxpayers' money that the authority will be paying, when it pays that fine. Other areas of cost, now: We have an assumption in the bill that the bill is going to pay for itself.

We also have an assumption in the bill that there will be something, such as the Clean Water Enforcement Act, and the moneys will be dedicated. That's

providing Treasury will go along with that, and Appropriations will go along with that. I worry about the situation in the event that those things are not forthcoming.

Now, we have a large fiscal note to think about. The entire burden of the administration of the bill is going to fall on the taxpayers and be passed on, due to the fact that these administrative fees are going to have been raised; up-front, of course, with any new programs, just as has been mentioned before, start-up costs for DEP, that is, a delegated local agency, and now has additional reporting and testing requirements that perhaps they did not follow before.

So, there will be an increase in the number of personnel that you need to hit the deadlines, to hit the reporting requirements, to do the kinds of inspections required by the bill. So, we're looking at more salaries, more bills, more laboratory work. No, it's not in there.

The requirement for litigation, which is now in there-- At this point, under the new Connors law, you have the ability to go ahead and prosecute, should you choose to do that, should you have a good case. You can take a discharger to court and then prosecute them. The way I read the bill right now, using the word "shall," it is now mandatory that should you have--

SENATOR VAN WAGNER: Right, it is permissive.

MS. GULBINSKY: If you had a weak case, this means the entity, the public entity, must then go to court with a weak case, lose, and pay the administrative fees. This is a problem, because this now becomes taxpayers' money that we're speaking about.

SENATOR VAN WAGNER: I'm looking at it and you seem to be drawing out conclusions.

MS. GULBINSKY: I am, Senator, because I'm telling you from the point of view of reality, the way the

authorities function and then the new rules, what they do to the authorities. You're not going to find what I'm saying to you, word for word. I'm telling you how this is going to play in the new, real world.

This is what's going to happen in order to effectuate, or to actually begin the law. This is what's going to happen.

SENATOR D'AMICO: I'm going to have to leave shortly, and I would like to give the other witnesses an opportunity. But, would it be possible for you to render some of this analysis in writing as an assistance to us? Because we are going to have another hearing and there is going to be some intervening time for us to consider what you have to say.

MS. GULBINSKY: Okay, I certainly can do that.

SENATOR D'AMICO: There will be hearings in which I will be participating with the Senate Energy and Environment Committee.

MS. GULBINSKY: I will be happy to acquiesce to your wishes. I do enjoy the fact with this, if there is something that I raise that you question, you can ask me right away, sort of give and take.

SENATOR D'AMICO: You will have a couple of additional opportunities to testify. But when you start talking about sections, and we're fishing around, it makes it a little tough. It might be more meaningful to have something in writing to specify sections, provide the analysis, something which I'm interested in studying at greater length, and then maybe we can have the interchange at the next hearing, if you're available, or the one after that. Would that be a reasonable approach?

MS. GULBINSKY: All right, if you would like me to do that, I will. There were a couple comments by other speakers.

SENATOR VAN WAGNER: I'd like you to comment on the bill specifically, if you would.

SENATOR D'AMICO: What I suggested was, since there's going to be one more hearing of this Committee--

SENATOR VAN WAGNER: Go ahead, whatever you have to say.

MS. GULBINSKY: The one comment that I wanted to go back to is, we were talking about the Wastewater Trust, and there was a question you raised before: What happened to the money that's there, or isn't that money available?

First of all, it isn't an adequate amount of -- inadequate amount of money, and, in fact, there is a press article. They had a conference a couple of weeks ago and stated wastewater needs in New Jersey, \$1.4 billion. We certainly don't have that in the Wastewater Trust Fund.

SENATOR D'AMICO: Was that including the Trust Fund?

MS. GULBINSKY: Perhaps that should be included. Right now my understanding is, it's not there.

The other point is that Wastewater Trust Fund is the only fund existing, which means that plants down the shore or redeveloping areas that are-- The wise thing to do when you manage is to think in terms of a 10-year approach, how much capacity are you going to need in 10 years. Somebody goes and builds construction for existing needs. They always anticipate what the future is and they build a bigger plant. It may be filled by the time you get there, but they did try.

SENATOR VAN WAGNER: They build a bigger plant, if the local governing body doesn't beat up on the idea and say, there are very few wastewater treatment plants that were planned 10 years into the future. Let's face it, that's reality. Taxpayers in that community would go bananas over the bond issue capability. I just went through one, in which a community attempted to give itself

clean water and assess what it would be to build a water treatment plant that would be five years down the road at capacity, and they ran into trouble with it.

One of the basic problems we have now is the fact that a lot of these facilities were inadequately planned. It's not the fault of the municipal governing body or the authority members. It's a matter of what was fiscally sensible for them to do on it, and politically what they were able to do.

MS. GULBINSKY: There is a segment in the bill now that requires delegated agencies to be sure, when they are close to capacity, they must begin plans and they must begin to expand. That's in the bill right now.

In view of what you just said, what are the political realities of being able to follow that portion of the law, knowing what is involved with bonding and financing for taxpayers -- for the communities that contribute into a regional system? How is that going to work? But, that's a requirement now.

SENATOR D'AMICO: What you appear to be stating is a case for another look at our State programs and funding in this area.

MS. GULBINSKY: Yes, I am, and what I'm trying to impart to you is that the implications go over lots of boundaries of what's in this bill.

SENATOR D'AMICO: If I may ask you to spell out some of those implications in writing, too, that would be helpful, rather than--

MS. GULBINSKY: I believe I hit most of the points that I needed here. Certainly I will put something together for you in writing, and thank you very much for letting me testify.

SENATOR VAN WAGNER: Please give us specific

areas of concern that authorities have in relationship to the sections that you referred to.

MS. GULBINSKY: One last thing on the definition of "significant."

SENATOR VAN WAGNER: We have nothing from the Assembly on the record. So we're going to have to rely on what you give us.

MS. GULBINSKY: I see, okay. The definition of significant non-complier-- First of all, the definition that we see in this bill was one that was never truly completely discussed in negotiations. There are two segments that were added in this bill that came out later that were news to everybody who was at that bargaining table constantly discussing this issue. From the very beginning, the Authorities Association raised the issue of the definition of significant non-complier.

SENATOR VAN WAGNER: We've got the document. Apparently, Ellen, just so you know, Bill Dressel submitted it -- your memorandum dated March 15.

MS. GULBINSKY: That's 10 fast points. There's a lot more I could say on that, but I just took that down to the wire for you.

SENATOR D'AMICO: It's two things: The technical comments on the bill and also a further explanation or amplification of the points that you're making about what the State can do to assist the municipal and sewer authorities.

MS. GULBINSKY: That's right, because I don't want you to be misled to say that there's a Wastewater Trust out there. It really is not for the problems in this bill, that's for sure.

SENATOR VAN WAGNER: Very good. Thank you very much.

The utilities authorities and the environmentalists are still here. Could I ask you, before you begin-- The issue of this significant non-complier definition, or whatever, we're going to focus on that in one meeting, if we could, for a section of time, at your next meeting-- So, if you get yourself ready for that--

Rosemary Brewer is next.

R O S E M A R Y B R E W E R: Thank you for the opportunity to address you today. I represent the New Jersey Junior League's Environmental Committee. We just formed last year in an effort to restore a safe environment. We are a group that advocates on behalf of women, children, and the elderly.

New Jersey Junior Leagues have been studying the environment because of where we live and the effect of a healthy environment on individuals. I represent over 4000 women throughout the State who are very concerned about the quality of our water. We have come to realize that we can no longer remain oblivious to the estuaries and offshore water. The food we eat and the water we drink depend upon this precious resource.

The Clean Water Act of 1972 forbade the discharge for municipal authorities until 80% of pollutants and bacteria had been removed. The original compliance was to 1987. This was extended to July of 1998. Now, why? Money, yes, but perhaps more important, no real incentive. There have been no significant penalties imposed. Why should the municipalities, after all? The pollution just discharges into the waterways. We have waited long enough. It is time to prevent other polluting substances from continuing to contaminate our waterways, or we're going to have catastrophic cleanup costs in the future and a very unhealthy population.

We only need to look at millions of Superfund dollars being spent to clean up the carelessly kept landfills, to learn prevention is much less costly.

The New Jersey Junior Leagues urge you to support the Clean Water Act, because it will establish a system of mandatory fines, require limits on toxic discharges, and, if necessary, make jail terms mandatory for repeat violators. It is a sad commentary on our State that we have to go to these lengths to have something as necessary as clean water, but time and the quality of our water have shown that the laws on the books and the permit regulations are absolutely useless unless they are enforced.

The number one priority of business, industry, DEP, municipalities, and individuals should be to prevent water pollution. Through compliance with permits, and the use of pre-treatment resources, it is possible to protect our waterways. This will allow the economy of New Jersey to prosper and the health of our population to be assured.
(applause)

SENATOR D'AMICO: Thank you very much.

SENATOR VAN WAGNER: You mentioned cost and the fact that you thought that municipalities-- You mentioned municipalities particularly, because the lack of heavy enforcement, sort of slipped away?

MS. BREWER: Sure.

SENATOR VAN WAGNER: You know the municipality is you and I.

MS. BREWER: Right. But it's our water.

SENATOR VAN WAGNER: I've had the experience of working with the Junior League in a number of areas going back to the 1970s, on preschool, handicapped bills and things like that.

Do you think in your own view -- and nobody is going to hold you to this -- that as a sort of a public group that selects various projects from year-to-year to work in, that perhaps not enough has been said on the issue to the taxpayers to educate them on the fact that if they

want a clean environment, they've got to understand that there's a cost involved.

MS. BREWER: Very definitely.

SENATOR VAN WAGNER: Let me tell you why I say that: I have letters from all kinds of people who will write to me and say, "Clean up the ocean. Get tough with these polluters. Do this. Do that. You guys in Trenton aren't doing enough. The guys in Washington aren't doing enough. Nobody is doing enough."

And then two weeks later, I'll get a letter from the same person, who maybe Hank wrote to, and said, "By the way, there's a bill going through the Legislature that may cause us to lay off 500 people," or something. He didn't do that. But, all of a sudden, the same person is writing me a letter saying, "Don't you dare pass that bill." And sometimes I think that as much as various groups can be very, very influential in getting good legislation passed -- I sometimes think that the public really needs to be educated in terms of what these things really cost.

MS. BREWER: They do, but sometimes the cost now is not going to be nearly what the cost is going to be in the future.

SENATOR VAN WAGNER: That's part of the education.

MS. BREWER: It's going to take something like this bill to sit there and say, "We need to do something now. We've waited too long."

SENATOR VAN WAGNER: In your view, this bill does that?

MS. BREWER: I think so. I think you will find that most taxpayers, given the reasons why they may be paying more for sewage or whatever, because they will have clean water, are willing to pay that. I don't think there

are many-- Take Monmouth County, when was the last time they had an increase? Long time.

SENATOR VAN WAGNER: Monmouth County Sewage Authority?

MS. BREWER: Northeast Monmouth County Sewage Authority.

SENATOR D'AMICO: From \$35 to \$50 about six years ago.

MS. BREWER: And before that it's been--

SENATOR VAN WAGNER: I can tell you that I have seen very fine projects put forth by utilities authorities, where great thought and engineering have gone into it, as far as a good, long-range plan on the part of the authority. I then watched it become a complete political football, because when you start talking about \$25 million, \$50 million, \$100 million over 30 years, you know, all of a sudden, I started picking up the newspapers and I read about how this authority who was trying to build the water treatment plant is mortgaging our children's future, you know.

And you say to yourself, "Gee, what could be a better mortgage to pay than to make sure you have an ample supply of quality water in your community? Wouldn't that be important for your children?" That's not the way it plays out. I have a feeling that's a part of our problem, an educational problem.

MS. BREWER: Definitely.

SENATOR VAN WAGNER: Your view is that this bill helps to address that.

MS. BREWER: I think it does.

It will sit there and say it must be done, and if you follow the existing rules, and you enforce them, we've got a real good chance. It's going to cost money. Nobody is going to say it's not.

If the rules are made, the permits are made-- Why make them if you're not going to enforce them? We've had 15 years of the Clean Water Act to show it hasn't been enforced. So it's time to start doing the penalties. And if it costs them, it costs them.

SENATOR VAN WAGNER: Thank you, Rosemary. Jane Nogaki from the New Jersey Environmental Federation. And the final person speaking today, Karen Kiss, anchorperson. J A N E N O G A K I: I guess I should sort of say good evening, almost.

SENATOR VAN WAGNER: My evening started at 9:30 this morning.

MS. NOGAKI: Thank you. I wanted to thank you, Senator Van Wagner, and Senator D'Amico, for holding this hearing today on the Clean Water Enforcement Bill, and thank you for your active support as sponsor and co-sponsor of the legislation.

My name is Jane Nogaki, Chairperson of the New Jersey Environmental Federation. The Federation is a coalition of 45 environmental, labor, and citizens groups. We also have 40,000 individual members who are recruited through our door-to-door canvass.

The Federation is New Jersey's chapter of the national organization, Clean Water Action, which helped lead the fight for passage of the amendments to the Federal Clean Water Act in 1972. Every single member of our organization joined with us in the fight for clean water, because they have personally been threatened by a pollution problem, whether it be a leaking landfill, a toxic dump site, a polluting factory, like IMF, or a contaminated water supply.

Toxic hot spots have tended to gain public attention over the last few years, and the Federation has worked on enforcing New Jersey and Federal government laws

which have responded to these hot spots by laws; by the Superfund Act, the Spill Fund, ECRA, RECRA, and so forth. Enforcement of these laws has been a top priority, and we have often focused on DEP's ability or inability to focus on these laws.

Although we are still concerned with toxic hot spots and environmental cleanup, our Water Pollution Control Act, an act which has been on the books since 1972, the shift was prompted by the PIRG report, "Polluter's Playground." This report laid bare the poor enforcement record on the part of NJDEP in holding industrial polluters accountable. The report stated a clear pattern of a laissez-faire approach that government agencies have created; according to "Polluter's Playground," "An atmosphere in which chronic and substantial polluters are routine."

Sadly, the report continues that, "The quality of surface water in the State has not improved substantially since 1977, and only 29% of the monitored waterways in New Jersey are now meeting the swimmable and fishable goal of the Clean Water Act."

The bill before you, S-2787, is PIRG's response to the clear need for strict and consistent enforcement of the clean water laws in our State. The Federation has joined with PIRG in a campaign to bring about the passage of the legislation by Memorial Day. We do not want a repeat of last year's summer shore season, a season in which beach closings, because of high bacteria counts, ruined summer vacations for tourists and cost shore tourism millions of dollars of lost income.

We want to stop the uncontrolled discharge of toxics by industry into our sewer systems, and from there into our streams, rivers, and oceans. New Jersey fishermen and consumers need the assurance that the food chain, starting with the fin fish and shellfish in our estuaries, bays, and ocean, will be safe to eat.

Without strict enforcement of clean water laws, there will be no such improvement of quality and safety of our rivers and oceans. I'd like to share with you a report that was published by the DEP, Right-To-Know Department, a couple of weeks ago, under the new Federal SARA Title III reporting requirement. About 840 of the largest industries in New Jersey were required to report environmental releases to air, land, and water. And of these 840 reporting, DEP did a report on 61 of the most toxic chemicals out of a list of 340 that were required to be reported.

The top chemical in poundage listed as being discharged into POTWs by 840 industries was five million pounds of total toxics. Of the 61, three million pounds of that was toluene, discharged directly into publicly owned treatment works, which are, for the most part, unable to cope with changing toluene into something innocuous. That means the discharge of toluene is directly going into the rivers, streams and oceans.

The industry pointed out that maybe publicly owned treatment works aren't the largest place that toxics are going into. And this report verifies that for chemically specific compounds, many more pounds of chemicals are going into the air than into the water, but that does not say we should not address what's going into the water. We totally disregard their claim that water isn't the largest place that toxics are going into, because five million pounds of 61 of the 384 chemicals for 840 plants -- five million pounds of toxics is a very considerable amount, and this is just the tip of the iceberg.

These were 61 chemicals that were chosen because they are known to cause cancer or are suspected of causing cancer. This report you will find extremely interesting. The New Jersey Environmental Federation and New Jersey PIRG have joined together in this fight to gather public support

for the passage of the legislation, and we know it's a tough fight. Over 70 organizations have joined with us in this campaign, people like Ducks Unlimited, citizens groups, labor unions, the Shore Regional Tourism Council. They all care because they are directly affected by poor water quality in their neighborhoods.

We have gained 41 Assembly co-sponsors, 25 Senate co-sponsors, but, as you know, just to have co-sponsorship doesn't ensure that a strong bill will be reported out. There have been attempts to weaken this bill, to reduce or expand the limits for significant non-compliers.

The DEP is acting like it doesn't want to enforce the law across-the-board; that they only want to attack the top large polluters. We totally disagree with that approach. We feel that everyone should be treated the same. We feel that municipalities should be held to that level of accountability. We think this law has been on the books for 15 years, and it's got to be enforced.

The bill came out of the Environmental Quality Committee on March 20. It came out in fairly good form, but there were compromises made even at that level, and we do not want to see the bill compromised more; particularly the levels of compliance and noncompliance.

It was sent to the Appropriations Committee, which disappointed us, because this bill doesn't have any appropriations attached to it. We see this as a delaying tactic, and we don't want to see this bill stalled any longer. So, what we're asking you today is to vote this bill out of your Committee. I recognize that you can't do that today, because you don't have a quorum, but at the very next meeting.

And, send this bill to Senator Dalton's Committee, the Senate Energy and Environment Committee, with the recommendation for full action, so the Senate can vote.

SENATOR VAN WAGNER: On May 4, the Senate Energy and Environment will hear the bill. How is that for quick?

MS. NOGAKI: That's good, very good.

SENATOR VAN WAGNER: That's only because Senator D'Amico is the Vice Chairman and he told me.

MS. NOGAKI: We were very pleased with the quick passage of the Medical Waste Tracking Bill. That was a very visible problem on the shore, because medical waste was something you could see, feel, and be affected by. This bill addresses things that are unseen. For the most part, bacterial pollution is invisible. Toxic pollution is invisible. That does not mean it isn't having a severe effect on the quality of our water and our rivers and our streams and our oceans, and, therefore, we urge your quick action on this bill.

You've asked, through the course of the day, what other areas will address this problem? The Clean Air Act will address toxics. Toxic use reduction legislation will help this. More stringent pesticide control is needed, but that's not to set aside this bill and say, "Let's put this aside and work on other things." We have to do them all, and this is a start. Thank you.

SENATOR D'AMICO: I just wanted to say that I may agree with that. Because we may not be getting the job done and combating pollutants in other areas, does not mean we should not be addressing this area or those areas. That's a very clear message that you have made.

SENATOR VAN WAGNER: Are these all of the organizations that you've referred to?

MS. NOGAKI: Right.

SENATOR VAN WAGNER: Thank you very much.

Our final witness, at quarter after six, Karen Kiss.

K A R E N K I S S: My name is Karen Kiss. I'm

President of the Alliance for a Living Ocean. We're a group that formed in the Long Beach Island area in the summer of '87, because of the medical waste.

We have approximately 2800 members, not only from our area but statewide, and we are deeply concerned about the health of the coastal area, as we share the concerns that have been expressed today about the toxics that you can't see in the waterways.

I'd like to emphasize, especially, a perspective from our area people that are directly or indirectly 100% dependent upon the tourism economy. The core of the Alliance people make their living through tourism one way or another.

I find it rather offensive when I hear numbers tossed around of additional costs of \$1 million for POTWs, when last year's loss ranged from \$1 billion to \$2 billion. And this is directly due to the mismanagement of the Asbury Park situation, and, of course, the medical waste washings.

Tourism was the number one industry in the State and the number one employer. Commercial fishing was approximately a \$1 billion industry. I use the word "was," because heaven knows when the new reports come out where we will fall in the State, as far as the ranking goes. These two major industries in this State, both highly dependable, are being destroyed. Then you really have a reason to be concerned.

Interestingly we hear in the press recently that New Jersey is recognized as having some of the best environmental laws on the books. I say two major industries are failing. That is like saying, "The operation was a success, but the patient died." We have a situation here where we have more mismanagement than environmental protection.

Also, I'd like to emphasize today, that as long as we choose the technological choice to discharge 35%

of the nation's effluent into our coastal waters, then we really do need to beef up the way we look at how the permits, the waterways, the Clean Water Enforcement Act will do that. It will shift some of the burdens, somewhat, to the POTW operators to scrutinize the discharge and the permit limits.

I'd like to also make mention here and emphasize also, what Cindy Zipf said. We also need to get the sludge out of the ocean. The Clean Water Act will help clean up the sludge to get land based.

Senator Van Wagner had mentioned that he was concerned about the costs and what the people are going to say, whether these additional costs for land-based alternatives were going to be assessed to the--

SENATOR VAN WAGNER: I didn't say I was concerned. I said they should be made known to them.

MS. KISS: Here again, you brought up the point just very well, because they are apparently putting out advertisements right now talking about-- Passaic Valley's the one putting out the advertisements.

They will be building the largest sludge incinerator in the world and the most expensive. This is exactly what's going to incense the people. Here we have a lot of technology that is far cheaper and far better for the environment in dealing with our sludge, with something from the Clean Water Enforcement Act. We are going to clean it up so we can deal with cheaper technologies.

Your education point is also really valid. We have a State DEP that's supposed to have a large educational arm, when it comes to these kinds of things; for instance, the incinerator versus a composting facility. You don't see that kind of information being disseminated as readily to the public so they know what the choices are. You see many, many people when you talk to them down at the shore. They want the land-based

alternatives. They really don't know what the choices are. If there weren't people like us out there trying to say what the choices are, then the only other people out there is the State DEP, and they are not doing the job on that particular point. That would be it.

One other point, the May 4 hearing is a public hearing. We would like to see if we can get it more of a hearing where we could possibly get the bill passed out of Committee that day, and from that point to the Senate floor for a full vote.

SENATOR D'AMICO: That's up to the Chairman, Senator Dalton.

SENATOR VAN WAGNER: What we're going to attempt to do is have a public hearing previous to the May 4 hearing. And then reach some conclusions on some recommendations at that hearing, which we'll report to the Committee, along with any additional comments that you may want to make.

So that on the 4th, hopefully that Committee will have had the benefit of all of the work that was done over in the Assembly, plus two -- this hearing and the second hearing, from this Committee, and whatever else is said at that hearing on the 4th. And that-- I don't know what else you can say after that.

Thank you all for coming, and for being patient, and bearing with us. Thank you.

(HEARING CONCLUDED)

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