

Committee Meeting

of

SENATE ENVIRONMENT AND ENERGY COMMITTEE

"Excerpt of Committee meeting regarding testimony from representatives of the Department of Environmental Protection and members of the public concerning the Department's implementation of the Site Remediation Reform Act"

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: December 9, 2010
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Robert M. Gordon, Vice Chair
Senator Linda R. Greenstein
Senator Christopher "Kip" Bateman
Senator Jennifer Beck



ALSO PRESENT:

Judith L. Horowitz
Amy Denholtz
Office of Legislative Services
Committee Aides

Kevil Duhon
Senate Majority
Committee Aide

Christina Gordillo
Senate Republican
Committee Aide

Excerpt of Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
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(This is an excerpt of the Senate Environment and Energy Committee meeting held December 9, 2010, concerning the Department of Environmental Protection's implementation of the Site Remediation Reform Act)

SENATOR BOB SMITH (Chair): It's my great pleasure to welcome the DEP to talk to us about the LSRP program. This, for the benefit of Committee members -- and you were all here except for Linda -- is the program that, last year, we enacted to reform the cleanup process in New Jersey, the remediation process, from the command and control process that it had been to a system similar to Massachusetts. We now have a year of experience, and the DEP asked for the opportunity to come back and report to us.

I don't know whether I turn to David first or to Irene first. Let me turn to David Glass first, representing the DEP, to start to tell us about how the program has been working.

DAVID GLASS: Mr. Chairman, thank you for the opportunity.

David Glass, Deputy Chief of Staff for the DEP. I'm joined today by Deputy Commissioner Irene Kropp. In her previous role she was Assistant Commissioner of Site Remediation. And I'm also joined by Assistant Commissioner of -- our new Assistant Commissioner of Site Remediation, Dave Sweeney. Today we've provided you charts that you have. As we're going through our testimony, we'll reference the charts for you that provide our statistical data of where we are in our Site Remediation Program, coming out of the Site Remediation Reform Act.

Irene will start in with a little bit of history of where we were and where we are, and I will transition to Assistant Commissioner Sweeney to present where we are going in the program, and then we'll be happy to take any questions from members of the Committee.

Thank you.

Irene.

DEPUTY COMMISSIONER IRENE KROPP: Good morning, Mr. Chairman, members of the Committee.

Thank you for the opportunity, on behalf of Commissioner Martin, to provide testimony today. I want to kind of recognize the fact that we've been through this many, many times and I don't want to go back and repeat the history, but basically talk about where we -- where and where we've gotten to.

So sort of as a really brief reminder, the Site Remediation Reform Act was passed in February of '09 and signed into law in May '09. At that time, there was a complementary executive order that was put into place, E.O. 140. Both the statute and the executive order set very, very tight timeframes within which the Department was to act to ensure that we started the program up -- not just the reforms of the Site Remediation Act, but also the Licensed Site Professional Program. Again, the Licensed Site Professional Program was mirrored after the Massachusetts program. The Department had 180 days after enactment of the law to start the program. So that by November of '09, all new cases or cases that were initiating remediation for the very first time had to have an LSRP assigned to them. They had an affirmative obligation to clean up, and they had to clean up without the Department's direct oversight.

It was our responsibility to make sure that licenses -- temporary licenses were in place and rules were in place between May '09 and 11/09. There were a lot of folks in our stakeholder groups, and opponents, who were banking on the fact that we would miss all of our deadlines. But I'm here to say, for all intents and purposes, we met every deadline and met it with a little time to spare.

So what we did was, we started developing an online application process, complements of some phenomenal staff in the Site Remediation Program, so that we had temporary licenses issued by September '09. By 11/09, we had emergency regulations, as required by the statute, in place. They were effective upon filing, so there was no public comment process. Admittedly, because it was an emergency rule, without a lot of public comment process, there were some issues with the rule. But that's okay, because since then we've been working very, very closely with a stakeholder group -- a steering committee with a lot of folks on the outside to put out an additional rule to amend the emergency rule.

We issued guidelines, as required by the statute and the executive order, for presumptive remedies. Presumptive remedies that are more protective than normal for schools, childcare facilities, and residential development. We issued guidelines for when someone would come into direct oversight by DEP within that same time period. We had prepared and issued requests for proposals to start the true examination process so that we could move from temporary licenses to permanent licenses. And more importantly, the thing that we've done above and beyond what we were required to do by either the statute or the executive order is that we

have been evaluating 100 percent of the documents that have come in from the licensed site professionals since 11/09.

So how did we succeed? We succeeded because we have phenomenal staff in the Site Remediation Program and managers who embrace the program, stepped up to the plate, and worked diligently to make all of this happen. But more importantly, one of the highlights of this program going forward has been the call to arms that has included all the stakeholders from the site remediation community.

We have over 100 volunteers. Many of the people who we all worked on -- worked with (laughter) from the stakeholder community. Worked on -- sorry about that, guys.

SENATOR SMITH: Both statements are true. (laughter)

DEPUTY COMMISSIONER KROPP: We worked them over.

UNIDENTIFIED SPEAKER: Yes, you did.

DEPUTY COMMISSIONER KROPP: We worked with, not worked on, 100 or so volunteers who have worked with us as part of the original legislative stakeholder group -- are still working with us today.

I want to talk very briefly about how they are working with us. And we have a steering committee.

Let me just take a step back and say everybody here is dedicated to making sure that this program is successful going forward, hence the amount of volunteers internal and external to the DEP who are working very closely on making this happen.

We have a steering committee of about 30 people who are working to look at policy, direction, procedures, changes that need to be made to the program. We meet on a monthly basis. We have five or so

additional teams -- a near-term priority team. Again, all the teams meet monthly, and they all have about 30 people. The near-term priority team is looking at everything that pops up on a daily basis that is an impediment, or a problem, or is unclear -- so that people don't understand where they need to go or what they need to do. That team looks at training, education, webinars, quick reference guides and information put on the website so that everybody is on the same page and folks know exactly where we are and where we need to go.

We have a team that's working on the technical regulations. For those of you who sat through a lot of our stakeholder processes in the past, the number-one complaint we had on the outside was that our regulations were overly prescriptive. We've heard that complaint. We have a team now. It was originally headed by Assistant Commissioner Dave Sweeney -- and it's still headed by Dave Sweeney and George Nicholas -- to make sure that we are working with folks on the outside to get the prescriptiveness out of the regulations, put more in guidance documents, and ensure that the Licensed Site Professional Program and the licensed site professionals can use best professional judgement going forward and are not doing something in a cookbook manner.

The same thing with guidance documents. There needs to be a marriage between regulations and guidance documents. There are a lot of guidance documents that dictate the science and the art of how you do a cleanup. We have a bunch of different teams working on approximately 10 to 20--

ASSISTANT COMMISSIONER DAVID SWEENEY:
Fifteen.

DEPUTY COMMISSIONER KROPP: --15 guidance documents. So simultaneously we're working on all these documents with stakeholder groups.

We have a measures of success team. We needed to come back and report, via the statute, as to how successful we were going to be now and going forward. We have, again, a stakeholder group that's looking through how you measure success, what metrics do you collect -- not just because I'm DEP, but four different lenses: What does DEP deem as a measure of success? What does the LSRP Association and community deem as a measure of success? What does the public and the environmental community deem as a measure of success? And what does the regulated community and development community deem as a measure of success? So we didn't look at it through one lens, but four lenses. And those documents are very, very close to being finalized and are part of the handout that you received today.

Lastly, the statute required us to put together a new remedial priority ranking system for all of the sites in site remediation. We had to do that within one year. We did do that, and we started a new team also working at looking at the remedial priority system. So that's out there being evaluated and tweaked with stakeholders.

So when we started doing our testimony a couple of years ago, we talked about 20,000 sites in the site remediation program. Today we have a little over 18,000 sites that are in the system. So we are decreasing the number of sites that were in the Program in backlog.

SENATOR SMITH: The 2,000 decrease -- what is that mainly due to?

DEPUTY COMMISSIONER KROPP: You cut me off in my next sentence. (laughter)

SENATOR SMITH: Go ahead.

DEPUTY COMMISSIONER KROPP: The LSRP Program and the Unregulated Heating Oil Tank Program are the reasons for the decrease in the number of cases coming in and the expedited manner in which cases are being closed out.

SENATOR SMITH: All right. Of the 2,000, what's the ratio of underground storage tanks versus sites that had hazardous chemicals on them other than oil-related.

DEPUTY COMMISSIONER KROPP: The majority are unregulated heating oil tank cases, because that program was up and running prior to the LSRP Program. So I'm going to say about 1,500 versus 500.

SENATOR SMITH: Okay. But you've had 500 of the other cases closed.

DEPUTY COMMISSIONER KROPP: I don't have the-- I do have the stats right in front me, but we were going to talk about that in a second.

Dave, what was that number?

Yes, around 400-and-some to 500.

SENATOR SMITH: Right. Have you ever had a year like that where you've done 1,500 and 500?

DEPUTY COMMISSIONER KROPP: No, and that's a great question, Chairman. On Chart No. 2, you'll see for the very first time in the Site Remediation Program the number of cases coming in is now less

than the number of cases being closed. For the very first time ever -- and it started around 2008 -- because of the Underground Heating Oil Tank Program and the LSRP Program. And we intentionally put lines to show you where each of those programs started.

SENATOR SMITH: Great.

DEPUTY COMMISSIONER KROPP: Okay. And so one of the other things I just wanted to mention is, as a reminder to everyone, November '09 -- anybody who was a new case, a case initiating remediation, needed to get into the LSRP Program. It's not until May 2012 that all cases need to hire an LSRP and go through the clean-up program. So we have this gap period between now and May 2012 where we still have about 18,000 cases that are in the system. Many of them are unregulated heating oil tank cases that will move through quickly. A lot are not. A lot are the larger cases -- the LSRP-type cases that have to either move through the system or get an -- and get out of the system, hopefully getting an NFA by the Department by May 2012. But the odds of them -- 18,000 cases going through -- are slim to none. So we encourage everyone in the regulated community to make their business decision. Do you go with an LSRP now or do you opt into the Program?

And I wanted to personally and publicly thank Buddy Bealer, who works for Shell, who is one of the very first entities who came in. They opted in with over 300 cases throughout the State of New Jersey. They've taken on that ability to use an LSRP, move forward without waiting for the Department. And it set the bar for other petroleum refineries that have stepped up to the plate and came in with hundreds of cases -- up to the point that we're almost at 600 cases just from that

universe of petroleum refineries alone -- through his leadership moving forward.

The other thing I wanted to do really quickly -- and I'm sorry, this is a public service announcement, but I have to do it. I just need to say that I am so proud of the Site Remediation managers and staff because they embraced this program after we went through many, many years of debate -- open, public debate. They've embraced this program, and they're indefinitely dedicated to making sure that it happens, and it goes forward, and is extremely successful. A lot of folks volunteered to change jobs, take on additional responsibilities, do things they've never done before. So I just want to acknowledge them publicly.

So, in closing, the number one thing is, we are not here today, as the Department, to ask for any legislative changes. We've been working very, very closely, again, with a hundred-plus stakeholders on the outside from all different walks of life. We've been working closely together to make sure there's a success of this program. We don't need any legislative changes right now, but we will come back and report at any time with regard to when we, as a steering committee, think there are changes -- not as a consensus opinion, but here is where we think we would want changes, or here is where individuals want changes, but we all are not on the same page.

So we're here to, again, thank you for the opportunity we went through, in terms of the stakeholder process going forward. We want to continue that stakeholder process and really envelop the entire community in the continuing success of the program.

SENATOR SMITH: We have a couple of questions. First, of the 500 -- somewhat under 500 non-leaking underground storage tank situations, have any of the 500-- I assume they've all received RAOs. That's what we're considering to be closure.

DEPUTY COMMISSIONER KROPP: Correct. If we're saying they're closed, they have received an RAO from an LSRP, and we have reviewed that RAO and have not invalidated it.

SENATOR SMITH: Okay. And do you know if any of these sites have now begun to be developed? That's not something that would be in your database. But maybe anecdotally you can tell me whether-- One of our premises here was that we were going to get sites cleaned up faster, better, and hopefully back on to the tax rolls with productive development.

DEPUTY COMMISSIONER KROPP: There's a very, very close correlation between the number of sites that have come in through the initial investigation stage, the preliminary assessment site investigation stage, and the number of RAOs. So that's a good thing, because what they're doing is, through ISRA or through an initial investigation to develop, they've done a PASI and come in and said, "Hey, there are no problems," or, "We've addressed the problems," or, "We can address them quickly." And then the RAO is issued. So, yes, the answer is, yes, there is a correlation between the number of cases that have come in and sites that are in productive use, can continue to be in productive use, or can start to be in productive use because they were not in the past.

SENATOR SMITH: That would be helpful information. And I don't know if the program has the ability to do that. But I would love to -- and I'm sure Committee members would love to hear about the sites that

have been reclaimed and what new industries or what new companies are now utilizing those sites and hopefully employing some New Jersey citizens who wouldn't be in place. If you could get us a little bit more in the way of information on that, I'd appreciate it.

DEPUTY COMMISSIONER KROPP: Absolutely. And, through the Chair, we can actually slice and dice the data pretty well, so we will provide that information.

SENATOR SMITH: All right, tell me about the auditing side of this. Part of our job under that law is to make sure that nobody is cheating. So have you caught any problems?

DEPUTY COMMISSIONER KROPP: We absolutely have caught some problems. But I don't want to portray it as an LSRP cheating. I want to portray it as it's a program in progress. Perhaps there are times when we haven't done the right thing with regard to being very, very clear with the rules, the regulations, and the guidelines. We have had people who have submitted documents that were unacceptable. We've stated publicly that we're in a compliance mode and a hand-holding mode. We call those people in, we sit down with them, we explain to them where they went awry and give them another opportunity to resubmit. There are a handful. I don't know the number, but Dave probably does. But there's a very small number of RAOs that we've invalidated -- definitely less than 10, maybe less than 5.

But let me also just say -- and this is, again, a public service announcement -- honestly, Chairman, there are a lot of people who are in the LSRP world who are phenomenal, up-to-speed, engaged, doing a great job. And there are people who still have not fully read the statute, the

regulations, the guidance documents. And hopefully they're the ones who are not submitting right now. But we have a team of people who audit every single document that comes into the Department. So I absolutely believe that we're covered with regard to inspection and protecting the environment.

SENATOR SMITH: Okay. When we were doing this legislation, the CWA expressed their concern that this outsourcing of some of the functions under the former command and control regime would result in the loss of -- or the layoffs of DEP workers. Has it happened; has it not happened?

DEPUTY COMMISSIONER KROPP: It absolutely has not happened. The only loss of staff in the Department since this law was passed has been related to attrition. We lose about 170 to 200 people across the Department every single year. No one has lost their job in the Site Remediation Program because of this program. But let me just also, again, complement the Site Remediation staff, because they have done such a phenomenal job in this program. Many of them have stepped up to the plate and offered to laterally move to other parts of the Department as a part of Commissioner Martin's transformation program. They are so proud of what we've done here, they're trying to move on to other programs, such as landuse, to seed that program with new ideas and thoughts.

SENATOR SMITH: Okay. I read a recent, I think, press release that there was a granting of an extension of time for some of the sites to get engaged. Would you flesh that out for the Committee?

DEPUTY COMMISSIONER KROPP: Absolutely. So, when we put the emergency rule together -- and we have the ability, through the

statute for the first time, to put mandatory timeframes in place for every contaminated site. Knowing it was an emergency rule, it was put together in a very, very short time period and without public input or comment. We only established mandatory timeframes for four things that we thought were extremely important. The first one being: if you have an immediate environmental concern at your site. Vapor intrusion issues are the most important one, and wells that are contaminated. If you have to do a PASI under the ISRA program-- And all these mandatory timeframes were a one-year mandatory timeframe. One year to put in the PASI, one year to submit a receptor evaluation -- initial receptor evaluation for any new site coming in -- and one year after discovery that you have LNAPL or floating product at your site -- to start to take action to get the floating product out of the environment. So we've put those in the rule with a one-year time frame.

What we realized, because the program was so new, it spurred on a lot of activity, which was great, but the external resources were not out there in terms of the ability to tackle and take a large company that has potentially 300 sites-- How do you tackle 300 sites at one time within one year, in terms of the number of consultants, and well-drillers, and labs, etc.? So we had a lot of discussion in our stakeholder committee and decided they still have to do the same actions, but we're only going to extend the mandatory timeframe for one more year so we can gear up the entire community of all of those who are part of the Site Remediation Program -- not just the regulated entities and the consultants, but all the ancillary entities and businesses that support it. So that was the thing that-- The majority of that rule had to do with that.

Also, we were very, very unclear. There was a lot of calculating from the statute: 180 days from this, 90 days from that. So we had some conflicting pieces of the regulation that needed to be clarified.

And then the last thing: We looked at our vapor intrusion trigger. We still have to take the exact same actions for vapor intrusion -- didn't lessen the number, didn't lessen the actions taken, just said that the mandatory timeframe triggered off of a slightly higher number than the slightly lower number. And I'm not scientific enough to explain that as well. But we didn't back off the environmental protection aspect, just the mandatory timeframe. And just to clarify: Why back off the mandatory timeframe? Because the mandatory timeframe -- one exceedence of one mandatory timeframe puts an entity into direct DEP oversight. So we potentially could have had tens of thousands of facilities that now would require more DEP oversight than we have ever given in our lives. And there is just no way that we were staffed up to be able to handle that.

SENATOR SMITH: Right. The entities are required to go forward. However, with all of the other activities, it's just that you pushed the one-year deadline to a second year, as I understand it.

DEPUTY COMMISSIONER KROPP: Absolutely, yes.

SENATOR SMITH: I'm sure there are questions from Senators.

Does anybody have any questions?

Senator Gordon.

SENATOR GORDON: Thank you, Mr. Chairman.

I want to thank our friends from DEP for being here and giving us some news that's encouraging. I don't think it's an overstatement to say

that what we did in enacting this legislation is one of the most important things that this Committee has done. I think we all understand how critical solving these problems are. Because these sites that have languished -- aside from their potential health and safety impact -- are a real drag on the New Jersey economy. And you've heard me say it before: One of the most important things we have to do as a State is reinvest and redevelop our cities and older suburbs. And the old system is clearly an impediment to that.

So given the importance of this and the effort that this Committee has invested in this initiative -- particularly our Chairman who really did the heavy lifting on our side of this -- I would recommend to the Committee that we maintain this oversight process in the months ahead. Perhaps in six months we have another oversight hearing to see where we are, what do the numbers look like. Maybe at that point you will have some more experience with the way it's working and will be able to recommend some legislative changes that are needed to improve the process. So I just throw that out for the Committee's consideration.

I do have a couple of questions. First, what I have been hearing from the regulated community is that there still is an awful lot of paperwork and that some in the Department have been reluctant to let go. Could you just respond to that? Is there any validity to that? If there is still a lot of paperwork, what are you doing to try to address that?

DEPUTY COMMISSIONER KROPP: Sure. There is a lot of paperwork still. And our goal, quite honestly, Senator, is to go electronic. It's one of Commissioner Martin's goals -- is to do as much electronic submittals and approvals as we can possibly do without requiring paper.

We have, again, our near-- So that is something that we are focused on. It is something that, obviously, takes--

SENATOR GORDON: If I can clarify, I think the issue is not so much whether it's paper or digital, it's just a lot of reporting that has to be done as opposed to what other states are doing.

DEPUTY COMMISSIONER KROPP: Understood, and that's a part of what our near-term priorities group was looking at -- is where we were asking for redundant information or more information than was necessary. I think what you'll see when our technical regulations that Assistant Commissioner Sweeney has been working on and our technical guidance documents are complete-- Our goal is to lessen the amount of information that comes in as appropriate. But it's really important-- The Chairman just asked, can we slice and dice this data a little bit differently? In order to have the data, and slice and dice it, you need to ask for submission of information and data. In order to inform the public of what's happening at all these contaminated sites, you have to have information that's appropriate to inform the municipalities and the public as to what is happening.

I haven't heard specifically that there are certain types of information that we're requiring that do not need to be required. I'm sure if the regulated community has that issue they'll raise it through the committees that we have in place and through the steering committee, and it can be part of our ongoing discussion going forward.

SENATOR GORDON: Follow-on questions: I've also heard from the regulated community about the-- They're concerned about the cost of buying insurance policies and getting letters of credit to cover the

financing of these cleanups. It's been suggested that a more cost-effective approach might be a self-guaranteed program. But I think the Department has been resistant to that. Could you comment on that?

DEPUTY COMMISSIONER KROPP: Sure. Publicly, I fought to eliminate self-guarantee in the Site Remediation Reform Act. Losing that battle, I fought to limit the use of self-guarantee in the Site Remediation Reform Act. Losing that battle, I've fought to make sure that at least when you have your site cleaned up, and all you need is a remediation permit to monitor groundwater and soil contamination over the life of 30, 50, 100 years, that there is an environmental protection in place through an escrow or an insurance account so that subsequent property owners are not stuck with any liability or cleanup costs going forward. It's highly doubtful that when a large corporation sells a piece of property and they've self-guaranteed that permit, that a subsequent homeowners association or small business is going to be able to access what was a self-guarantee for a long-term protection of that piece of property. So I absolutely am opposed to allowing for self-guarantees for the permitting process and would love to come back and talk about eliminating self-guarantees for the clean-up process.

SENATOR GORDON: Okay. Just a couple of other points. The regulated community has also expressed concerns about the approach taken to commingle plumes where you've got a couple of responsible parties involved. My understanding is, up to now, those parties have been engaged in litigation with one another, which is costly and time consuming. Has the Department considered another approach to dealing with these more regional issues -- area-wide issues?

DEPUTY COMMISSIONER KROPP: It's a very difficult and legally difficult discussion in terms of evaluating commingled plumes. Just as if you look at what we're doing in the Passaic River, there's-- In any river system, there are a lot of contributors to contamination on a regional basis, whether it's surface water, groundwater, sediment, etc. It's hard to often say, "It's this individual, not the other individual." The baseline issue needs to be: How do you address the resource, whether it's a surface water system or a groundwater system; and how do you appropriately require all parties that have contributed to pay their fair share? So commingled plumes is one small piece of this overall issue of several -- joint and several liability that has been in our statutes for a very long time.

SENATOR GORDON: I don't want to monopolize the time, but just one other issue -- and I've raised this before -- and that is the issue of the appropriateness of our standards. We are trying to streamline the process, but I'm concerned that even if we are able to reduce the complexity of the process and expedite the process that we still may not be able to achieve the standards that we have in the State, which some would argue are the most stringent in the country and not based on science. Certainly they differ from those in other states.

Is the Department considering a review of those standards, and particularly, adopting standards that are related to risk of receptor contact with the contamination? I wonder if you could comment on that.

DEPUTY COMMISSIONER KROPP: Absolutely. So our current statutes require our cleanup standards to be based on, from a carcinogen perspective, a one-in-a-million health risk. I don't believe that Commissioner Martin has any desire to move away from that standard at

all. And I do absolutely know that what we base our standards on is science -- sound science.

Interesting-- Defer the debate on science. But we absolutely base all of our standards on sound science. And when we have any issues going forward where science is something that people are questioning, we now have a science advisory board to look at that. There is an issue of where you measure compliance, and that could be a point of discussion going forward. But actually touching the ten to the minus six is nothing that this Commissioner is willing to look at or debate at this time.

SENATOR GORDON: Okay. Thank you.

SENATOR SMITH: Any other questions?

Senator Beck.

SENATOR BECK: Hello, good morning.

Thank you for your testimony. And, of course, I was happy to support this legislation when it went through. And I'm happy to hear, Irene, that you've had so much progress. I remember talking to you about it -- I guess it was a year ago now.

One of the things that you sort of touched on -- but if you could clarify. So you have these 18,000 cases. Are they examined in terms of priority? These are the absolute worst, and most hazardous, and have to get cleaned up first, versus these are -- not that they don't have to get cleaned up, but they're not as important to the health and safety of our citizens. Is that part of how this 18,000 is reviewed?

DEPUTY COMMISSIONER KROPP: That's a great question. It's basically the reason for the Site Remediation Reform Act: to try and take cases that could move forward that are less of a priority -- and let them

move forward under the LSRP Program or the Underground Heating Oil Tank Program while retaining staff to focus on the cases that are most important to us. That is why there was a requirement in the statute for us to put together a new remedial action -- remedial priority system that's underway.

So, right now, we're in that in-between world. Prior to the act being passed, we had to work on everything. And, quite frankly, whoever picked up the phone and called-- You have a lot of homeowners. It might be not the most outrageous or egregious site from an environmental perspective. But when homeowners can't sell their houses, that's horrible. And there are economic growth issues. So we balanced as much as we could. We were way overworked. Staff couldn't get to the things that we wanted to do.

Where we want to be in May 2012 is that staff in the DEP are focusing their resources on the things that are the most egregious in terms of public health and the environment, and that all other cases are moving forward proactively without DEP input to get cleaned up. And then we audit those cases. So that's exactly where this legislation is taking us.

SENATOR BECK: So in that case, can you give me a breakdown of the 18,000? How many of those are really serious, how many are-- Sort of categorize them.

DEPUTY COMMISSIONER KROPP: No, I cannot at this particular point in time. And that's why the new remedial priority scoring system-- We're going to run all of those cases, other than the underground heating oil tank cases, because they have to move. This is the homeowner stuff. So somewhere around 11,000, 12,000 cases will be put through the

system, ranked, and will be put into tiers. And those tiers, via the statute, will dictate where we put our resources.

SENATOR BECK: All right. I have to say I'm a little disappointed by that, because it's a year-and-a-half, and I would think-- If I was you sitting there and saying, "We've got 18,000 cases," the first thing I'd want to know before I was working on guidance documents or anything else is, where are the most serious ones so we can make them a priority and where are the least serious ones? I mean, I don't know how you get through a day of work without having at least that as a structure. I mean, how do you even know-- I mean, then everyone is just running around sort of doing anything, right? So that's got to be-- It's a year-and-a-half. I would think that would have been-- Right?

DEPUTY COMMISSIONER KROPP: There are multiple statutes that require us to act, whether they're Federal statutes such as CERCLA and RCRA, or State statutes -- underground storage tanks, brownfields, ISRA. So we have to act consistent with all of those statutes. And we have to act within certain timeframes consistent with those statutes. We know of the cases that are the most egregious to us, and we try to focus on them. But there are cases, quite frankly, Senator, that I don't have data on -- or I don't have the most up-to-date data on -- and that's the intent of this statute -- is to require people to move forward, gather that data, submit it to the Department so we can put it through a ranking system so we can get to the point where we absolutely know which are the most egregious cases.

In a year-and-a-half we've done a lot. In a year-and-a-half--

SENATOR BECK: I agree.

DEPUTY COMMISSIONER KROPP: --we've definitely put out this remedial priority scoring system. But it takes stakeholder involvement and making sure that everybody buys into it before we put it on the street. Because if I put it on the street without everybody having some input, we'll just be sued, and then I won't be able to use that system going forward.

So I agree with you. When we started these legislative sessions years ago-- The reason I came here was because I couldn't sleep at night. I'm at least being able to sleep a couple of hours a night. (laughter) But you're right, we want to focus the resources of the Department on the things that are best used for public health, environmental protection. And it's also why we carved out extra protections for childcare, schools, and residential development. Those are the things that are most key, not just industrial sites or redevelopment projects that are going to take 10 years and then another 5 years for somebody to live there. So we built it into the statute, and we're trying to get there. And hopefully by May 2012 we're there.

SENATOR BECK: So, the ranking-- So you're saying that we won't have a ranking until May of 2012.

DEPUTY COMMISSIONER KROPP: No, we can have it sooner. We just need to get everybody's input and finalize the system.

And let me just say, it's built. It's a GIS-built system with lots of different overlays, and it looks at two things primarily -- hundreds of things, but two categories -- how contaminated is the site, what types of contamination and what levels; and how sensitive is the environment around that site. If you have a contaminated site that is on a peninsula in

the middle of an area where there is no children, etc., that's different than, "I've got serious vapor intrusion problems with a daycare center nearby, or a school."

SENATOR BECK: Perfect.

DEPUTY COMMISSIONER KROPP: So that's exactly what the system does. The system is built. It's just being ground truthed with people from the outside, because our data is not 100 percent perfect. There's a lot of data that needs to be cleaned up so that we don't put information out that's false information.

SENATOR BECK: Right, or bad information.

So is your-- What is your sense of timing on that -- of the ranking system in particular? And my colleagues may not agree with me, but it's kind of like when I get up in the morning. I have the top four things I have to do today. And I assume the Department has got to be the same. You said there are some real egregious ones that you know about. I don't know if you have a number for how many egregious ones we have, but I'd be curious to hear that. But the ranking system, I think, is more important than almost anything, right? So do you have a sense of timing? When is that going-- We're a year-and-a-half in, and it's built. Is it another six months, is it another two months, is it--

DEPUTY COMMISSIONER KROPP: Senator, can I get back to you, through the Chair, on that?

SENATOR BECK: That would be great. And actually I would say it would be best to go through the Chair, and he can disseminate to the Committee, because I would like to know if of those 18,000, 17,000 are

egregious sites, or is it that there are 50 egregious sites. And I'd like to know that as soon as we could.

One of the other things I noted in your testimony is that you said you're examining 100 percent of the documents from the licensed site professionals, and then you went on to say you have a team of people who audit every document. I wrote that down only because-- Maybe I misunderstood how the licensed site professional was supposed to work. I thought it was supposed to alleviate DEP from having to review every single, solitary document. I thought these are people who are an extension of you, you're delegating some authority, you're counting on them to be professionals and feed back, sort of, top-line data. But you're-- So am I misunderstanding the process there? You're not really reviewing every single, solitary document.

DEPUTY COMMISSIONER KROPP: No, it's semantics. You're absolutely right. That is-- The way the program works is the LSRP does the work to evaluate the site, determine what needs to be done in terms of cleanup, and put that in documents similar to the documents they always submitted to the Department.

We have -- here goes the paperwork issue -- we have forms that go on top of every single document that gets sent in that is based on the statute that gives us basic information -- going back to your point: What's most egregious? Are there PCBs at the site, is there arsenic on the site, is there a childcare facility at the site or nearby? Those are the-- That information is provided to the section chief in charge of the auditors, and they make the determination there: Do you do a Level 1 review, Level 2 review, Level 3 review? We are not reviewing documents, as we did in the

past, in terms of reading from Page 100 to Page 1,000. We're saying, "Hey, look at this site. Not a big issue, because there's no childcare, or there's no PCBs, there's no vapor intrusion." That gets a very quick review, and future documents for that site would get a quick review. "But this site has childcare nearby, or residential, or PCBs," or sometimes it's a real serious review -- and go out and inspect. So the level of review is dependent upon the site, the information, and the surrounding community.

SENATOR BECK: Okay, great. So it's semantics. It's not literally every single, it's dependent on--

DEPUTY COMMISSIONER KROPP: We review the submittal. But how much of a review we do is dependent upon the--

SENATOR BECK: How serious it is.

DEPUTY COMMISSIONER KROPP: You got it.

SENATOR BECK: Got it. Thank you.

Good, because I think that's-- Well, that's what we had hoped for when we structured the statute.

I know the EPA is involved in a number of sites. And in some cases -- because I deal with the Imperial Oil site in my district, in Marlboro Township. In some cases they delegate to you guys, in some cases they don't. But for those folks, do they have a DEP caseworker and an LSRP? Do they have one or the other? Do they have both? I mean, how will that happen in 2012? I assume they don't need both, right?

DEPUTY COMMISSIONER KROPP: Correct.

SENATOR BECK: What are you thinking about -- how do we deal with the-- Those ones are some egregious ones; certainly Imperial Oil is.

DEPUTY COMMISSIONER KROPP: So, we cannot trump Federal statute. So for the Federal CERCLA sites or RCRA sites, or RCRA-regulated components on a site, they are being handled by the Federal government with assistance from the Department. They are not required to hire an LSRP at this time. Down the road they might want to. I'm not sure how many people will be left who are not LSRPs. But we are not imposing the State statute upon the Federally-funded sites at this particular point in time. However, again, they do provide us funding for oversight and assistance, because they don't have case managers, geologists, scientists to the degree that we do. So through the funding that we're provided, we give them support on those sites.

SENATOR BECK: Maybe I can ask the question a little more clear. So in a case where EPA says, "We don't want to handle it. Have one of your case workers manage it," you will not then have the responsible party also hire an LSRP, because they will have a DEP case manager. They won't need one.

DEPUTY COMMISSIONER KROPP: We are saying that Federal lead sites where they are in charge--

SENATOR BECK: How about -- no--

DEPUTY COMMISSIONER KROPP: They don't have an LSRP.

SENATOR BECK: No, DEP lead sites.

DEPUTY COMMISSIONER KROPP: State lead sites -- they would require an LSRP.

SENATOR BECK: So why would we need-- In a State-led site -- a superfund site -- why would you need a DEP case manager and an

LSRP? Why wouldn't you just need one individual instead of having to report to multiple? And actually, in some ways -- even though DEP might be taking the lead, to some degree that responsible party is still reporting to EPA sort of tangentially. So now you're really reporting to three people. So why wouldn't we just have them report to the DEP case manager?

DEPUTY COMMISSIONER KROPP: They do not report. A State lead, Federally regulated site does not report to an LSRP.

SENATOR BECK: No, I wasn't saying-- I was saying the responsible party has to work with a DEP case manager on those sites.

DEPUTY COMMISSIONER KROPP: Correct.

SENATOR BECK: Why would they also have to hire an LSRP in addition to having a DEP case manager? Because I would think the DEP case manager, in this case, replaces the role of the LSRP. You don't need one, so it's an additional cost you don't really need because you have a DEP case manager.

DEPUTY COMMISSIONER KROPP: Back to your original question: The way we constructed the statute, there are a series of egregious sites that will always have a case manager in addition to an LSRP. So there are sites in the statute that state, "If you are a chromium site, if you're a site" -- I can't remember off the top of my head -- "arsenic, or PCBs, or a Federal lead site, as of May 2012, you're going to hire an LSRP, but the level of DEP oversight is going to be higher than all the other types of cases because these are the cases that are most important to us with regard to the need to have resources." These are the cases that are going to have the greatest impact on public health or the environment, and we want to have a greater level of oversight on those cases.

Let me just also say: For any case where there is an immediate environmental concern condition, an IEC, you're also going to have a case manager in addition to an LSRP, because it's our responsibility to make sure that these most egregious sites get the greatest level of oversight. So it's not just Federal lead sites--

SENATOR BECK: I guess, Chairman, maybe I misunderstood. See, I really thought for the egregious sites DEP is hands-on, they have their own team, they don't refer to an LSRP. I don't understand the role of an LSRP in those serious cases. If you have your own team on the ground, why do you need to force the hire of this ancillary person who really doesn't have a role in this case? It seems very duplicative to me.

DEPUTY COMMISSIONER KROPP: Can I just -- one more comment, which is: I need to make sure everyone is clear that having an LSRP provides the State of New Jersey -- not just the DEP -- with a higher level of enforcement and accountability than we have ever had before. Having an LSRP is having a licensed professional that deals with environmental protection under the Site Remediation Program, just like having a professional engineer is a licensed professional. So having LSRPs is good overall. Regardless of the type of site or the lead for the site, you want to hold professionals accountable for their work. So it's not a duplicative role. They're completely separate roles. It's a licensed professional doing what they are doing and being held responsible for their actions, and it is the Department making a determination that their limited resources will be spent on the highest, most egregious cases and not so much on the cases that aren't all that egregious.

SENATOR BECK: Right.

DEPUTY COMMISSIONER KROPP: There is no duplication. There's not the same amount of work. It's not the same function. They're doing their job, as environmental consultants, to evaluate the site. We're doing our job, inherently governmental, to do the review to ensure that the residents of the State of New Jersey are protected. It's two separate things.

SENATOR BECK: Maybe we'll talk offline about that, because I don't think we're-- I might just not be communicating it well. Because you're, I think, responding-- I understood that part.

SENATOR SMITH: Okay. So we're going to have an offline conversation, continuation.

SENATOR BECK: So we'll move on, because I think maybe we aren't communicating well on that issue.

The last thing that I did want to bring up is, we've had a lot of conversation about guidance documents: the role of them, what's appropriate, what's not appropriate. And I thought we had gotten to the point where guidance documents were to be a guide and that they weren't necessarily to include punitive measures, because these are a guide -- a guideline. And I somewhere along the way had learned there is about 18 committees that meet to generate guidance documents. It sounds like a lot to me, but maybe not because our laws are complex -- including the Federal laws are very complex and lots of different issues. But I just wanted to sort of check in with you on that. And I guess my instinct too was, I'd rather see 18 committees meeting on prioritizing our 18,000 sites than 18 committees generating guidance documents.

Maybe you could just tell me: What is the status of our guidance documents? Do they or do they not include punitive measures? And if they do, I guess I'd be curious as to why they might.

ASSISTANT COMMISSIONER SWEENEY: Thank you.

We have-- When we began the guidance document process in the early part of this year, we had identified guidance committees that were necessary to help streamline a tech reg and make that goal- and objective-oriented. But we also then opened up to the stakeholder community, "What existing guidance documents that the Department has would you like to participate in updating?" And that's how the number got up. We added existing guidance like immediate environmental concern, LNAPL, receptor evaluation so that, moving forward, the process was more consensus on how these cases would be investigated and remediated with agreement from both the outside consultant and the inside subject matter experts. So the number went from what could have been two or three guidances to streamline the rule, up to 15 related to the immediate task at hand. And that's been a very productive process.

The rule in-house -- the philosophy -- is that there are no *musts*, *shalls*, *have to's* in any of the guidance documents. Anything in the guidance is used by the licensed site remediation professional to inform him. And eventually, if there is a problem, he would be--

SENATOR BECK: Or her.

ASSISTANT COMMISSIONER SWEENEY: I'm sorry, him or her would be held against-- That would be the measure of their use of best professional judgement. So there is no rule language in any of the guidance.

SENATOR BECK: Great, good. I mean, I think that was our other goal -- is to make sure that we have guides out there so you don't have to recreate the wheel every time.

Well, I know-- Hey, it's not an easy job.

And, Irene, I think you have done an excellent job. It's tough. You have a lot to juggle. But I do look forward to hearing about the prioritization, because I think that's key to us making sure that we're dealing with those sites that are most dangerous to our citizens in a timely way. And I think it implements the heart and soul of the LSRP Program itself.

So thank you for your time.

DEPUTY COMMISSIONER KROPP: And, Senator, we absolutely would welcome you to attend one of the committee meetings or to have a presentation. That would be great.

SENATOR BECK: Great.

SENATOR SMITH: Senator Greenstein.

SENATOR GREENSTEIN: Thank you, Mr. Chairman.

Good morning. I also want to commend you on your hard work on this. You and I worked together a little because of various situations in my district several years ago. So this happens to be an area of the environment that I did get a bit active in.

But I just want to review this since I missed all the Committee discussions on the LSRP. And this is somewhat redundant, I think, but I want to just make sure I understand it. I've always heard talk of these 18,000 cases. Within the 18,000 are the home storage tanks, that sort of

thing. Are there other categories in the 18,000 besides the home tanks? Did you say 11,000 are the home systems and--

DEPUTY COMMISSIONER KROPP: The 18,000 cases are made up of everything that we're involved in, from underground storage tanks that are regulated, to underground storage tanks that are unregulated, to ISRA sites, to brownfields, to--

SENATOR GREENSTEIN: Your total number is 18,000?

DEPUTY COMMISSIONER KROPP: --Superfund sites, to immediate environmental concern, to funding sites like HDSRF and grant moneys.

SENATOR GREENSTEIN: So that's your total.

DEPUTY COMMISSIONER KROPP: That's the total -- is around 18--

ASSISTANT COMMISSIONER SWEENEY: 194.

SENATOR GREENSTEIN: Okay. And so, of those, how many are the home situations with the storage tanks?

ASSISTANT COMMISSIONER SWEENEY: About 3,000, Senator.

SENATOR GREENSTEIN: Oh, it's only a relatively small number.

And the LSRPs could be involved in any of the 18,000? Is that the idea of the LSRP?

ASSISTANT COMMISSIONER SWEENEY: Yes, that's correct. We have another group of professions, subsurface evaluators, who can work on unregulated heating oil tanks. LSRPs can also work in that environment. The intention of the LSRP is to work on the more

complicated cases. Their educational background, their experience is more sophisticated than the subsurface evaluators.

SENATOR GREENSTEIN: So, theoretically, the 3,000 that would be the home tanks -- they probably would be less involved with, but the rest-- Okay. That just gives me an overall picture.

The other thing I wanted to ask -- sort of a lawyer question, which we talked a little bit about yesterday on the phone -- was the whole idea of who the LSRPs are responsible to. And you indicated to me they are individual professionals. I guess they would have their own malpractice insurance and that sort of thing.

But I was just looking at this paper -- and I don't know if this person is going to testify today -- from the American Council of Engineering Companies -- Ms. Ivanciu I think the name is. I don't know if that person is--

SENATOR SMITH: Yes, she's here.

SENATOR GREENSTEIN: And she is indicating that there is an issue of liability with the LSRPs -- an issue of who they're responsible to, are they individually responsible. Was that spoken to in the law, or is this-- Because she seems to be saying that she thinks needs further working.

SENATOR SMITH: Well, I don't know that we feel the same way. When the law was constructed, the issue of liability came up. And the thought was that the engineers had to be on the hook. This is not-- Your license is at risk if you cheat, and your license is at risk if you are negligent or you don't do what you're supposed to do.

SENATOR GREENSTEIN: That makes sense to me.

SENATOR SMITH: I mean, the professionals may feel they want to change it. Right now I have no reason to change it. Unless somebody comes up and tells me there's been this terrible thing that's happened, but nobody is saying it.

SENATOR GREENSTEIN: I think it makes sense to have them be objective and independent and then not responsible to either side, so, therefore, neither side is insuring them. I mean, that makes sense to me.

SENATOR SMITH: No, no, no. Well, they're insuring themselves.

SENATOR GREENSTEIN: Right, they're insuring--

SENATOR SMITH: But they have a responsibility also to their client. They've got to do work and like professional work. And if they don't, if they get their client in further trouble, I imagine they would be -- they could be subject to a lawsuit for malpractice.

SENATOR GREENSTEIN: Okay. That's it. Thank you.

SENATOR SMITH: Thank you.

We have a number of witnesses who want to testify today, and we're going to try to give them an opportunity to do so. We ask that you be succinct.

Bill Wolfe, New Jersey PEER.

B I L L W O L F E: Thank you, Mr. Chairman.

Bill Wolfe, New Jersey PEER.

Very quickly through four quick issues: Number one, there were two fundamental premises of the LSP bill that I think are not being -- that are being violated in how the Department has conducted themselves. Number one, there was an expectation that the LSPs would comply with

the then-existing technical standards. There was extreme emphasis by all members of this Committee and the testimony at the time, as I recall, that we weren't going to change the standards, that the--

SENATOR SMITH: We're not.

MR. WOLFE: Exactly right.

SENATOR SMITH: Right, and we haven't. That was Senator Gordon's question. Senator Gordon would like us to look at risk-based standards, and Irene said ten to the minus six is the standard, and the Commissioner is not looking to change it.

MR. WOLFE: Well, as we all know, a standard is more than a number. A standard is how it's monitored, and measured, and enforced. Those things all come together. And what we heard today is that not only -- that there are five committees working on all aspects of the technical requirements for site remediation. Those are the core technical requirements dealing with how you delineate the soil. The soil standard is meaningless if you're not measuring it in the field. So my point is that there are technical workgroups right now -- that the Department testified about the existence of -- that are 95 percent, if not 100 percent, composed of regulated members. And I think they are hollowing out the technical requirements. And I talk to DEP staff on a regular basis -- not as regular as Irene, obviously -- but there are serious concerns that are expressed to me, from staff, that there's pressure to relax those requirements.

SENATOR SMITH: What you need to do is be more specific.

MR. WOLFE: I will do that.

SENATOR SMITH: I'd appreciate it in an after communication to us. I will share it with the Committee. Give me a

specific example or several specific examples where you feel what, in effect-- What you're saying is, the standards, in your opinion, need to be gutted or circumvented. I want to hear a specific.

MR. WOLFE: Impact to groundwater requirements, vapor intrusion investigation requirements, subsurface delineation requirements. Those are all the technical requirements of the program. I will give you them in writing.

SENATOR SMITH: Give me the specifics.

MR. WOLFE: Fine.

The second point -- and you mentioned it in one of your questions -- was that not only was the private sector going to comply with the then-existing technical requirements in the program, but they were going to do so under mandatory timeframes. And as your question went to, and as the Department indicated, the emergency rules -- mandatory timeframes-- First of all, number one, they were only proposed for four technical functions in the program, which did not include the fundamental objective, which is: When is the site going to be cleaned up? So the Department didn't even put out a timeframe for actual cleanup. They only put in the four easiest, and they put in a year deadline. And now, just recently, they proposed rules to eliminate that. I see that as a fundamental bait and switch.

So the technical requirements are being hollowed out and weakened, and the mandatory timeframes-- The only positive objective of the program, from an environmental standpoint-- Because as we know, and your communities in Hamilton, and communities I'm dealing with in Pompton Lakes -- time -- in the private sector, time is money. In the

environmental sector, time is risk. So delays in cleanups translate directly into risks to people and the ecosystems. So the Department's taking them off the table now is, again, a backtrack on a fundamental premise that we saw from -- and we thought we had commitments on.

SENATOR SMITH: Right. Not to be argumentative, but I thought what Irene said was that the one-year delay did not delay any of the activities related to the cleanup. They still had to go forward. It's just that one-year did not automatically put them into direct supervision of the site. I'm getting a lot of--

MR. WOLFE: No, as the statute reads, that's a discretionary call from the Department.

SENATOR SMITH: I actually had a legal opinion done, and it is discretionary.

MR. WOLFE: Correct.

SENATOR SMITH: I will show you the legal opinion if you'd like to see it.

MR. WOLFE: All right. In any--

SENATOR SMITH: I was wondering about that myself.

MR. WOLFE: All right. So I just don't buy the argument.

So we will move on. That last two more points quickly. If you look at the composition of the stakeholder groups that have been established by the Department-- There was a representation here by Deputy Commissioner Kropp that they somehow considered environmental viewpoints. I just beg to differ with that. And I will give you the membership of those committees if you would like. They're not representative of the public interest, and they're surely not representative of

environmental interests. They're completely industry-dominated, including LSPs who are writing their own-- It's like a blank check to the technical consultants to write their own requirements. This is what's going on right now.

And just to put a final point on that, there was a presentation by the Department -- by the Site Remediation Advisory Group, which is a long-standing body that preceded the statute -- that I was invited -- back when Rick Gimello (phonetic spelling) was running the program. I've been going there for 10 years. They're public, they're open. There was one in the Department's public hearing room, which I attended -- and I was talking to Deputy Attorney General George Schlosser before the hearing, and the State Police came in and escorted me out. And that was at the direct order of the Commissioner of the Department of Environmental Protection. So that's the kind of tactic that the Department is willing to deploy. I don't ever recall in my career -- I've been here 30 years. I don't ever recall any Environmental Commissioner ever invoking the State Police other than to throw consultants out of the air permit program for pilfering records from competing firms. So this is the kind of game we're in right now. It's not a pretty picture.

And the last point-- I completely agree with Senator Beck's concern about the remedial priority system. As you know, that priority system was established by legislation in 1982, and we had commitments here. And we had Ron Corkery (phonetic spelling). And I remember a colloquy with you and Corkery, and you called Corkery to the table, saying, "Wolfe is saying you're obligated to do this, and he's got internal documents saying you're refusing to do this. Is this gentleman credible?"

And Corkery confirmed my testimony. That was three years ago. So a statutory requirement created in 1982 is still not in place, and it's a fundamental -- it's a core -- it should be the first thing done. So when the Department is invoking priorities for reviewing LSPs, they don't have any priorities. And the system they put on the table -- I attended that briefing. They did start to roll out the GIS-based remedial priority system. And it only looked at one factor, and I can't remember. I think it was soil. It was their first iteration, and it needed a lot of work.

That would be-- I'm thankful that the oversight is occurring, and those kinds of things you can move along and get moving. Because they're the things that deal with-- When the communities of concern find out what's going on, and they've been out of the loop-- And this is redounding in Pompton Lakes on a daily basis. There is another disclosure about what the community didn't know and what the Department and DuPont were doing behind the scenes. When communities learn that, people get angry that government is not working in their behalf; it's not transparent; and it's not keeping them and their town councils, and mayors, and local officials in the loop. And this program has only created less transparency. So there needs to be more effort on the part of the Department to make those things work. And I don't see any commitment to that at all.

SENATOR SMITH: Thank you for your comments.

Nick DeRose, New Jersey Licensed Site Professionals Association.

Mr. DeRose, if you're passing around testimony, we Senators do read. So don't read the testimony; give us the nutshell.

NICHOLAS DeROSE: I was afraid you were going to say that, Chairman. (laughter)

I hope you can appreciate that I think I'm a good consultant. I'm not so sure how good I am as a testifier. If you would allow me the liberty to read--

SENATOR SMITH: No.

MR. DeROSE: --some of my testimony.

SENATOR SMITH: No reading. Tell us what you want to say. This is six pages long -- five pages long. (laughter) And we will read it.

Guys, are we going to read this? (affirmative responses) (laughter) We're going to read it.

Give us your points, quick.

MR. DeROSE: I do want you to know who I am. I'm Nick DeRose, President of the New Jersey Licensed Site Remediation Professionals Association. I've been an environmental consultant in the State of New Jersey for 30 years. The LSRPA does have 200 members who -- I'm sorry, 400 members, the majority of whom are LSRPs. So I do want to go off my written testimony.

SENATOR SMITH: Good.

MR. DeROSE: There was a point Senator Beck mentioned about this priority system, which I wholeheartedly agree on the importance of. But there was something that was overlooked, from the LSRPs' perspective, was a high priority to ensure that the most egregious -- or sites that were impacting the public were singled out and addressed with the Site Remediation Reform Act and the LSRP process. That's the IEC sites. Up until the Site Remediation Reform Act, I would say dozens, maybe

hundreds of sites with groundwater impacts with volatile plumes -- plumes that create vapors -- were waiting for DEP case managers to review those sites and compel responsible parties and consultants to act on those sites. With the Site Remediation Reform Act, the LSRP was one of the stakeholders who, with the Department, endorsed the idea that we have to single those sites out and, in an expeditious manner, make them a priority. So, in fact, there are mandatory timeframes, regulatory timeframes that have driven action on these sites that otherwise would not have been addressed. And, in fact, the consultant community and the LSRPs -- dealing with them more on our own, without the oversight of DEP case managers -- for those sites that do have LSRPs -- are dealing with a fairly significant role to act on behalf of protecting human health and the environment and seeing that these sites move forward. And that probably has created the biggest uptick in environmental cleanup and activity for consultants in the last year-and-a-half. That's what we've been dealing with, and we support that.

SENATOR SMITH: Good.

MR. De ROSE: Okay. We believe we're -- the Senate Committee and the public of the State of New Jersey needs to understand that we are at a half-way point in the transition period that was deliberately set up in the legislation to allow for establishing this seat change that needs to occur for this transformation from the Department's role as primary overseer of the work to the LSRPs. And given that -- in this three-year period, only sites that -- new sites are covered -- required to be covered by LSRPs. Of the 18,000 sites -- if they existed before May -- let me make sure I get this date right -- before -- I guess it's a regulation -- the regulation went

into effect November 2009 -- they do not have to use an LSRP until May 2012. So to expect that you could measure metrics that would say, "How are we doing with these 18,000 sites--" It's an important discussion to have. But realize, those sites that existed before November 2009 have the option, up until May 2012, to opt in.

SENATOR SMITH: So you're saying we're going to have a really good oversight hearing in 2013. (laughter) I got it.

MR. DeROSE: Yes. Thank you.

SENATOR SMITH: All right.

MR. DeROSE: And to assess the success or failure of the program in that context, now, I think, is premature.

SENATOR SMITH: That being said, I thought the first report was very impressive. Two thousand less sites on the inventory is fabulous, of which at least 500 were seriously contaminated sites, not just the leaking underground. I thought it was a great report. I can't wait to see next year's.

MR. DeROSE: I agree, Chairman. Please, I cannot underscore enough that if you were to capture a metric around these IEC sites and these vapor-intrusion sites that you would see a huge uptick in the number of cases that are being addressed with those issues.

The other metric that the Association focuses on is the build-out of this new framework. Now, I've heard debate and discussion about the concern about the revamping of the technical regulations and the development of these guidance documents. These are complex, complicated issues. To really, fully understand them today -- you can spend as much time as you want talking about a specific issue.

My view is -- and what we've heard from the professionals in Massachusetts -- was, LSRPs, LSPs need to exercise professional judgement. They have a code of conduct, which compels them to protect human health and the environment. But at the end of the day, in the world of science, New Jersey was sort of an outlier. In the past, we were the only state that had, in regulations, scientific methodologies. Scientific methodologies change year-to-year, particularly in this profession. Moving to this approach that we have puts us sort of where, I think, practicing professionals feel we always need to be. Regulations that speak to goals and objectives -- specific methodologies and guidance documents.

SENATOR SMITH: So you're a happy camper on that issue.

MR. DeROSE: Yes, Senator. And I would also point out that there's a metric there in terms of the work being done that also points to progress in the program.

SENATOR SMITH: Good. Is there anything you want changed in the program?

MR. DeROSE: There was mention about the safe harbor provision for liability protection. Let me clarify, because you made an important point. We're not talking-- The only thing we're talking about -- as consistent with police officers, with the DEP, with professional engineers -- if you are-- We're talking about situations where you're shown to be non-negligent, fully compliant with the code of conduct -- there's no protection for these professionals. The engineers speaking later today will further elaborate on that. And we think that is--

SENATOR SMITH: A place where you'd like to see a change.

MR. DeROSE: --a problem.

SENATOR SMITH: Thank you. Unless there is something else--

MR. DeROSE: There are other points I want to make.

SENATOR SMITH: Sure.

MR. DeROSE: Senator Gordon speaks about the clean-up standards. And there is-- It's not all about ten to the minus six, ten to the minus fifth. Most states, including Massachusetts, use the standards developed on the ASTM guide for risk-based corrective action.

SENATOR SMITH: Right.

MR. DeROSE: It is time for New Jersey to understand how the -- understand that guide fully and to understand how it could apply in New Jersey's regulatory framework.

SENATOR SMITH: Go see the Commissioner; convince him.
(laughter)

MR. DeROSE: Well, he's talking about ten to the minus six. That's the wrong way to take this one.

SENATOR SMITH: All right. Well, I think you have a proponent in Senator Gordon. And someday we will take a look at that but not in the near future.

MR. DeROSE: Thank you.

SENATOR SMITH: We appreciate your testimony.

John Galandak, CIANJ.

John, brevity is the soul of wit. Oh, and he has testimony. Can you say it in 30 words or less? You're happy.

JOHN GALANDAK: Yes.

SENATOR SMITH: Okay.

MR. GALANDAK: That's a good start.

SENATOR SMITH: You did it in two words. (laughter)

SENATOR GORDON: Thank you for your testimony.

MR. GALANDAK: Well, this is one of those-- Senator, this is one of those rare occasions when we come with complements around the board. I thank you and other members of the Committee for shepherding this legislation through. And we really come here to commend both you and the Department for embracing its spirit and passionately moving it forward.

I think what it's basically doing -- the intent is being met. It's significantly accelerating environmental cleanups while maintaining environmental quality, and you captured that a few minutes ago when you talked about this first review being fairly impressive. Because a reduction of 2,000 cases is significant.

SENATOR SMITH: It's huge.

MR. GALANDAK: It's huge. And I think that were the economy more robust, there would be more of a driving factor, cleanups more quicker.

But I think that what needs to be said and remembered is that there were several steps along the way that the Department had to take, including seating -- selecting and seating a licensing board, which only recently was accomplished. So it was a painstaking process in many ways, or at least very time-consuming to do all the things that needed to be done to do it right. But I do think that it holds high promise. We're as enthusiastic now as the day the legislation was passed, and maybe even more so. And it holds great promise as a model that could be transferred or

replicated in other areas like landuse and even in other departments. So I commend the Committee, the DEP.

But it's a little bit too early to get any kind of final and compelling assessment, because there are too few cases that have been involved.

SENATOR SMITH: Thank you, sir.

MR. GALANDAK: Thank you.

SENATOR SMITH: John Semple, K. Hov; Andy Robins, NJBA, Environmental Counsel -- Builders Association -- on the issue of LSRP implementation.

Go ahead, guys.

And we have testimony which we're not going to read. (laughter) Go ahead. Which we are going to read, but you're not going to read it.

Go ahead.

A N D R E W B. R O B I N S, ESQ.: Thank you, Mr. Chairman.

I'm just going to have a few brief introductory remarks, and then I'm going to turn it over to Mr. Semple, who is Vice President with K. Hovnanian's Northeast Division.

The reason why I brought Mr. Semple here, I think, speaks to the question, Mr. Chairman, you asked earlier about how this impacts development on the ground.

Just briefly, the Department's measurements they put forward will be useful in the future and are useful now for a snapshot of where the program is. But the real issues are: Are sites getting remediated? Are the obstacles that were there in the past -- that were impediments to new

investment -- being removed or being moved aside? How is this being impacted on the ground? Are jobs being created and being saved? Is investment going forward? And Mr. Semple will speak to an example of that, which is really both a win and a save. And the details -- what he is going to go through -- I think will be most informative.

The only thing I would also add though is that it's important -- and I think you'll hear from his testimony how it worked in that particular case -- that the ongoing process of communication between everyone -- the regulated community, the environmental groups, the community groups, and the Department -- on how this program evolves is critical. And the Department needs to be continually commended on being part of that process and the effort that's being put into that.

So I will turn it over to Mr. Semple rather than read my remarks.

JOHN F. SEMPLE, ESQ.: Thanks, Andy.

Very quickly -- I've got a short success story about this new statute.

SENATOR SMITH: Please.

MR. SEMPLE: An affiliated company with K. Hovnanian is the designated redeveloper of site -- the Champale Redevelopment Site, which is only about a mile or so from here. It's just east of the Route 29 Tunnel, just a little bit south of Waterfront Park.

Our community that we are building there includes 84 townhomes: 13 are affordable homes, and there are 71 emerging market units, which are known as *workforce housing*. The pricing there starts at about \$159,000.

We purchased the property in October of 2009, and we did so based on the fact that no further action determinations had been issued for this site. Despite the fact that the NFAs had been issued when we started our site work, about three months into it we discovered contamination that had not been previously determined, and we found underground tanks.

At that point in time we were about four months into the project. We had incurred a pretty significant amount of cost. We had put most of the infrastructure in. We had already started one of the buildings, which had 12 homes in it. And, in fact, several of the homes were under contract.

Now, I can tell you, I've been in this business about 10 years. And under the old program, this project probably would have failed. That has certainly been my experience. Under the old program, we would have done work plan submissions. That would have taken DEP time to review, evaluate, give us comments. We would have done new submissions, we would have done testing, we would have had comments on the testing, we would have submitted new testing. And I can tell you, this particular project probably would have been stalled for about a year. And the consequences of that would have been that we would have had to let go of our contractors, we would have had to let our buyers out of their contracts with us, and we certainly would not have been able to -- and this may be the most important thing -- meet our construction schedule under our financing agreements with our lenders. So the bottom line is: the project would have stopped.

Fortunately, this new program had been put in place. And the Department's approach under this program allowed us to communicate

quickly and efficiently with DEP personnel. Our LSRP was able to use the information and this enhanced communication to prepare the necessary reports. And the amazing thing that I can say is that we were actually able to get our response action outcome in about three months, as opposed to about a year.

So what does this mean? It meant that the project remained viable so we were able to actually complete the remediation. So that's good for the environment. Secondly, we didn't lose the important construction jobs. Thirdly, the City is certainly going to benefit from the new taxes that are going to be generated by this new housing development. And we were able to spend our time, and our money, and our resources on building houses, doing the cleanup, and not defending lawsuits that would have happened as a result of us backing out of the project.

As part of your evaluation of this new statute, I really encourage you to drive a mile to see our project. I mean, this is the type of urban redevelopment infill that we're all trying to encourage. And it's programs like this that are making it possible.

Thank you.

SENATOR SMITH: Are there any members of the media present?

SENATOR GORDON: Whenever you need them, where are they?

SENATOR SMITH: Something good is happening in New Jersey, and there's nobody here to hear it other than the 50 people who are in the room.

Thank you, John. I appreciate it.

SENATOR BECK: Chairman, actually, if I could just say that no system is perfect, but it's good to see the trend of progress. And I do remember Irene Kropp coming to our caucus and talking about the successes of Massachusetts and really, frankly, pleading with us to embrace this new vision that she and the Department had. And it's great to hear that even though everything is not perfect, and we still have more work today, that we do have some concrete results that highlight we're on the right track.

So thanks for taking the time to come down to Trenton today. It certainly is great to hear that.

MR. SEMPLE: Thank you, Senator.

SENATOR SMITH: Thank you.

Joe Fiordaliso and Ileana Ivanciu, from the ACECNJ.

What is the ACECNJ?

J O E F I O R D A L I S O: First let me ask you: Which one was easier, Fiordaliso or Ivanciu? (laughter)

SENATOR SMITH: Fiordaliso was easier. Is your dad on the BPU?

MR. FIORDALISO: Yes, sir.

SENATOR SMITH: That's how I knew the name a little better.

MR. FIORDALISO: It takes a little practice.

SENATOR SMITH: Ileana, did I say your last name correctly?

I L E A N A I V A N C I U: It's Ivanciu. (indicating pronunciation)

SENATOR SMITH: Ivanciu. (indicating pronunciation)
Hungarian?

MS. IVANCIU: Actually, Romanian.

SENATOR SMITH: Romanian, okay.

What is the ACECNJ?

MR. FIORDALISO: Mr. Chairman, first of all, thank you for the opportunity to testify; members of the Committee.

I am Joe Fiordaliso. I am President of the American Council of Engineering Companies of New Jersey. Try saying that three times.

SENATOR SMITH: You love the bill, but you hate the liability.

MR. FIORDALISO: Very briefly, Mr. Chairman, we've offered voluminous written testimony, and it's very comprehensive. In the interest of brevity, I've asked Ileana, who is the Chair of ACECNJ's Environment Committee, to offer just a brief highlight or two.

SENATOR SMITH: Okay.

MS. IVANCIU: Chairman, members of the Committee, thank you for allowing us to testify here today on behalf of the LSRP bill. It is a good thing. You were right, Chairman.

SENATOR SMITH: With one exception. (laughter)

MS. IVANCIU: Something good is happening in New Jersey. And we are concerned that the issue of liability may end up really curtailing the progress. If we're not paying close attention, I think large firms -- LSRP professionals who do have something to lose in the process will think twice before engaging, and we don't want to see that happen.

Nick DeRose spoke earlier about our concerns. It's not concern over errors and omissions, and it's not concerns over mistakes, intentional or unintentional misconduct. That's not what we mean. We are concerned

about having the same liability protection that current NJDEP employees have when we, as LSRPs, conduct the same kind of work as they do.

SENATOR SMITH: Let me ask you a question. Do you have a horror story to tell me?

MS. IVANCIU: I have a number of firms that are large consulting firms that are on the fence about whether or not they are going to--

SENATOR SMITH: No, no, no, that's not a horror story. Risk -- the acceptance of risk by any business entity is a normal part of business activities. The question is: Do you have a specific engineer who has been sued unjustly, in your opinion, under this program in New Jersey?

MS. IVANCIU: I believe we are way too early in the process, Chairman, to assess whether or not this will happen and to what extent this will--

SENATOR SMITH: My comment would be then: We're way too early to change the liability, because we don't know that this is not working.

MS. IVANCIU: I'm not asking to change it today. I'm just asking to consider the consequences.

SENATOR SMITH: Let me tell you the rules for engagement. The rules of engagement are: You have to go through her.

MS. IVANCIU: Absolutely.

SENATOR SMITH: If Irene Kropp says to legislators that we have dealt with the professionals with a heavy hand and that there needs to be a change, that recommendation would make all the difference in the world. But without a horror story, without you telling me this has not

worked -- without being able to point to an example -- I'm very unwilling to make any changes.

MS. IVANCIU: My concern--

SENATOR SMITH: See the lady in red. (laughter)

MS. IVANCIU: The lady in red, and I, and my entire organization really have worked very well together. We have spoken and worked together since the beginning of this program. We support it significantly.

SENATOR SMITH: I know. You'd just like one change.

MS. IVANCIU: And we want it to succeed.

SENATOR SMITH: We do too.

MS. IVANCIU: The reason why we raise it is because this one issue might slow things down. And, yes, we will work together on that.

SENATOR SMITH: Okay. Thank you.

MR. FIORDALISO: And just to add to that, Chairman.

SENATOR SMITH: Yes.

MR. FIORDALISO: The point is more looking at the program prospectively. We feel it's very important to have a robust pool of LSRPs in order to make the program a success.

SENATOR SMITH: We're doing well. How many hundreds have we certified?

DEPUTY COMMISSIONER KROPP: Four hundred and twenty-seven.

SENATOR SMITH: So 427 said, "I don't care what the liability is. I want to be one."

MS. IVANCIU: Well, consider the fact that this is provisional license. And when the program goes in full force a year-and-a-half from now-- If we still have only 427 LSRPs, I don't think that would be a measure -- a true measure of success.

And one more thing, Chairman, if I may.

SENATOR SMITH: Yes, ma'am.

MS. IVANCIU: I am concerned with waiting for a true horror story to occur. Because if that happens, that will be curtailing our passion for the program and our ability to really support it. And we will work together.

SENATOR SMITH: We appreciate your comments.

MR. FIORDALISO: Thank you, Mr. Chairman.

SENATOR SMITH: Thank you very much.

MS. IVANCIU: Thank you, Mr. Chairman.

SENATOR SMITH: Tony Russo, Site Remediation Industry Network.

Tony, are you here?

T O N Y R U S S O: Yes.

SENATOR SMITH: Brevity is the soul of wit. (laughter)

MR. RUSSO: I can appreciate that.

Good afternoon, everyone. Thank you for allowing me to testify on behalf of the Site Remediation Network.

First, I just want to thank the Committee for its leadership in passing the law.

Also, I want to take a moment to commend the Commissioner and the Department for prioritizing the success of this program. I can tell

that a lot of our members are engaged in the stakeholder process. It's time-intensive. A lot of resources have been applied.

I just want to get to the issues, and I think Senator Gordon and Senator Beck hit on them. Where we're going to need your help, legislatively, is, basically, there is a provision in the Act which says that if a party does not complete its remedial investigation by 2014, they're subject to direct oversight. Plain and simple: they lose control of that cleanup, lose control of that money. There is nothing that the Department can do.

Building on what Senator Beck said about -- if you have sites that are under U.S. EPA RCRA corrective action -- RCRA being the Resource Conservation Recovery Act. It's a Federal program, which there are about 80 sites that-- If you're still going to have Department overview and review of reports, and they don't get to those reports in time, then there's really nothing in the Act that says that that's okay. If the Department is the cause for that delay, you're not subject to direct oversight.

SENATOR SMITH: See the lady in red.

MR. RUSSO: Well, I think it's going to need a legislative fix, Senator.

SENATOR SMITH: See the lady in red. If she gives us a recommendation that there needs to be a change in that, we'll consider it.

MR. RUSSO: And (indiscernible) there is just carve out those RCRA sites.

SENATOR BECK: Chairman, if I could.

SENATOR SMITH: Yes, Senator Beck.

SENATOR BECK: You and I spoke directly about this. We have a specific case where we have documents sitting in a room for three years waiting for DEP review. So it's not a matter to be dismissed out of hand.

SENATOR SMITH: What's the case? What is the case with the documents in the room for three years?

MR. RUSSO: She's aware of it. It's a pharmaceutical company. We actually had the Commissioner there.

SENATOR SMITH: Irene, could you come over please? Your program is--

SENATOR BECK: Only because I think that, indeed, there are sort of two sides to every story, and we have to figure out the right-- If these cases are big, and complex, and they can't be gotten to in a timely -- then we have to figure that out, because that's what this program is supposed to do.

SENATOR SMITH: Irene.

MR. RUSSO: She shut off my microphone. That's good.
(laughter)

DEPUTY COMMISSIONER KROPP: We built the statute so that it was -- cases that have been in the Department for over 10 years, prior to the enactment of the statute, had an additional 5 years to just complete the remedial investigation, not the cleanup. So if you've been in the system for a really long time, that's problematic. You can complete that. You've had five years now to do it. You do not have to wait for the Department to review your documents. You can actually move forward with an LSRP and have it happen without waiting for my approval.

And as I recall, the environmental consultant for this site is an LSRP. So the claim that we have six boxes of information that's been sitting in the Department for three years-- Well, pull it all back, move forward under the LSRP Program, and do it within five years and you don't have to wait for my approval.

MR. RUSSO: I think we need to clarify that, Mr. Chairman. But the only "ask" here is that as far as a legislative fix, there needs to be that carve out. Because right now, if you read the statute, it doesn't allow for that flexibility. So our companies that are going to be subject to Department review and oversight -- even if that licensed professional -- he or she runs with that cleanup -- at the end of the day, there is paperwork out there -- letters from EPA, letters from DEP saying that they have to provide that oversight and review. It's plain and simple. We can't be held responsible. We need that safe harbor -- that if the delay is the cause of the Department delay and review in those reports-- That's all we're asking for -- is to have that carve out.

SENATOR SMITH: Yes, but I see that as antithetical to the concept behind the legislation. The legislation said, "Hire yourself the best professional in the field. Evaluate the site. Decide on a cleanup plan and clean it up. And then certify that it's clean." They're going to watch that you do it right, but you don't have to wait for them to do anything.

MR. RUSSO: You do if it's a U.S. EPA RCRA State lead site.

SENATOR SMITH: Is that true, Irene?

MR. RUSSO: Yes. (laughter) I have copies of the letter.

SENATOR SMITH: Let her speak for herself.

DEPUTY COMMISSIONER KROPP: It depends on the site itself. If it's a Federal lead site, as I said, we don't need to have an LSRP. They can just move ahead. There are virtually no Federal lead superfund sites. I think there is one or two.

If it's a RCRA lead site, all we're interested in is-- All EPA is really regulating are the RCRA components. We're interested in the rest of the site. Very often on these large facilities it's the RCRA corrective action unit or the containment and storage unit that is EPA subject. Everything else can move forward with an LSRP.

SENATOR SMITH: So you know the site that he's referring to, correct?

DEPUTY COMMISSIONER KROPP: Tony and I will speak again.

MR. RUSSO: Yes.

DEPUTY COMMISSIONER KROPP: Commissioner Martin and I actually went up to the site. We're more than willing to get back together with him.

SENATOR SMITH: Okay. All right. And at the end of that process, the two of you send us a letter. Okay?

MR. RUSSO: Okay. Great.

Next issue: again, self-insurance for remedial permits. I think we need to just appreciate what that means for a lot of our companies. Again, in the spirit of the Red Tape Review Commission, in the spirit of the Governor's executive orders to reduce cost on business-- Where before companies could self-guarantee or self-insure their cleanups, they now have to go out and purchase insurance or take out a line of credit and project

out. So the Department is going to hold my response action outcome or NFA until I get post-financial insurance for 30 to 50 years. That is a big-ticket item, Mr. Chairman. And that-- Again, we were allowed to do it before -- self-insure. Now the Department has arbitrarily chosen to not allow that anymore. And really the Act is silent on that.

SENATOR SMITH: My recollection of that process was that we lighten up on the insurance requirements in some way.

Irene, can you come back? (laughter)

DEPUTY COMMISSIONER KROPP: Yes.

MR. RUSSO: I really just want to state that it really boils down to -- it's a hidden tax. It's a cost.

SENATOR SMITH: Yes, but the difference is, you're not spending 15 years in front of the DEP. You now can take the ball by the -- or the bull by the horns and get this done. And we still need to protect the public.

Irene, clarify, please.

DEPUTY COMMISSIONER KROPP: Again, when you get a permit, your cleanup is done, for all intents and purposes. And this was the permit that we were requiring to ensure that future property owners did not purchase a piece of property, which had happened in the past.

SENATOR SMITH: Right.

DEPUTY COMMISSIONER KROPP: Unbeknownst to them, it was a contaminated site. So having the permit run with the property was the one thing we had complete consensus on going into the legislation. Tony's issue is: We're requiring some sort of financial assurance to maintain the fact that you're going to be doing this monitoring, which is

very, very cheap. It's not a cleanup, it's monitoring over time. And we did not allow for self-guarantee of that, because there is no way for a subsequent property owner or business to be able to access that money if the company defaults, bankrupt, moves away. So they can get an insurance policy -- which is relatively cheap -- for \$10,000 or \$5,000 a year going forward.

MR. RUSSO: It really is site-specific, and it really depends on the remedy. You could have expensive groundwater pump and treat systems. So that issue aside, I will move on, again, for the sake of time.

SENATOR SMITH: All right.

Irene, stay there, because he's -- so far he's had the really interesting stuff.

Go ahead. Anything else?

MR. RUSSO: Yes. I just want to, again, support Senator Gordon's call for every six months for this Committee to meet. Because I really do think it's about how many sites are cleaned up and not the guidance documents and everything else. It's how many have received those RAOs, NFAs, or closed up -- put back into good use.

And then the standards applicability-- And let me be clear, we do not support change in the ten to the minus six. If somebody's drinking water is impacted, then it should be cleaned up to that standard. Really, the issue is where those standards are applied -- standards applicability. And to give everyone an appreciation of what we mean when I say -- or when there's a standard down to one-part-per-billion -- just to give you a reference of what that means. One-part-per-billion is the equivalent of one

second in 32 years. So I am-- You're asking our companies to clean down to one second in 32 years.

A lot of times, Mr. Chairman, you cannot even get down to that level. There are many, many sites that won't cross that finish line because they'll never get below that standard. And it gets to the issue of risk. If I'm a refinery, am I ever going to be a residential development? And yet I'm still chasing that (indiscernible) molecule.

SENATOR SMITH: Talk to Commissioner Martin.

MR. RUSSO: Well, we have.

Thank you.

SENATOR SMITH: Okay.

MR. RUSSO: That's it.

SENATOR SMITH: Thank you for your comments.

Mike Egenton and Dave Brogan. They love the LSRP Program.

DAVID BROGAN: One minute.

SENATOR SMITH: One minute.

MR. BROGAN: I can do it in one minute.

Thank you.

Mike had another meeting, so he apologizes for not being able to be here.

But we're very pleased with the progress of the Program. We appreciate your work on the legislation. We are cautiously optimistic. We do have some similar problems as Tony mentioned and others have mentioned. But we are working with the Department, and we appreciate what they've done.

The stakeholder process has been amazing, to tell you the truth. After going through what we went through over the previous number of years, it is, I think, a very open process. What they're doing with the guidance documents is right in line with legislation that has been sponsored, as well as what the Red Tape Review group has advocated for.

We look at it as the most significant change in the Site Remediation Program since its inception. We understand you can't go from zero to 60 in two seconds, so we're cautiously optimistic.

Thank you.

SENATOR SMITH: That's the most positive testimony I've had from the State Chamber of Commerce and BIA in a decade.

MR. BROGAN: And there are no reporters.

SENATOR SMITH: And nobody here to record it.

Nicole Dallara.

Nicole, are you here from the Sierra Club?

Oh, this is in the wrong pile. It's on the other bill.

I don't know how the rest of the Senators feel, but I think we've made some amazing progress with this program.

Irene, at a minimum, if you wouldn't mind -- I mean, we're going to get you back periodically -- but at a minimum, maybe every six months, could you send us what the new numbers are?

DEPUTY COMMISSIONER KROPP: Absolutely.

SENATOR SMITH: The number of LSPs that have been certified, the number of sites that have received RAOs? And then if you have any information about how the sites are being put back into

productive use, that would be information that we would love to get every half-year.

DEPUTY COMMISSIONER KROPP: Absolutely, Chairman. And if you look at the numbers in the charts that we've provided today -- if there's anything that you want in addition to those, we can put together a standard report that we can send you quarterly, every six months, however you want it.

SENATOR SMITH: Six months is good.

DEPUTY COMMISSIONER KROPP: It's very good to put together. So through Kevil or Judy, if you want to let us know things you want added, or sliced and diced differently, that would be wonderful.

SENATOR SMITH: Great.

DEPUTY COMMISSIONER KROPP: Thank you.

SENATOR SMITH: Thank you so much for coming in today. Senator Gordon.

SENATOR GORDON: I would just ask in the future fewer acronyms. (laughter) If you're going to use acronyms, tell us what they are. For example, BFO. I mean, I figured out what UHOT is, but-- Brownfield office?

DEPUTY COMMISSIONER KROPP: Absolutely. We will do that.

Thank you.

SENATOR SMITH: Thanks so much for your good work and the DEP's good work on this.

(EXCERPT CONCLUDED)