# PUBLIC HEARING

before

## ASSEMBLY REGULATORY EFFICIENCY AND OVERSIGHT COMMITTEE

(Problems encountered in interpreting and complying with regulations governing implementation of the Environmental Cleanup Responsibility Act - ECRA)

November 17, 1986
Room 368
State House Annex
Trenton, New Jersey

**MEMBERS OF COMMITTEE PRESENT:**

Assemblyman Arthur R. Albohn, Chairman
Assemblywoman Kathleen A. Donovan, Vice Chairperson
Assemblyman Robert E. Littell
Assemblyman John S. Watson
Assemblyman Jimmy Zangari

**ALSO PRESENT:**

Darby Cannon, III
Office of Legislative Services
Aide, Assembly Regulatory Efficiency
and Oversight Committee



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

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

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New Jersey State Legislature
ASSEMBLY REGULATORY EFFICIENCY
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October 30, 1986

NOTICE OF A PUBLIC HEARING

# "Problems Encountered in Interpreting and Complying with ECRA Regulations - Part II"

The Assembly Regulatory Efficiency and Oversight Committee will hold a second public hearing on the problems encountered in interpreting and complying with regulations governing implementation of the Environmental Cleanup Responsibility Act (ECRA) on Monday, November 17, 1986, from 10:30 A.M. to 1 P.M. in Room 368 of the State House Annex, Trenton, N.J. This will be the second hearing conducted by the committee, as directed by Assembly Resolution No. 110, on the services performed by the Department of Environmental Protection.

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

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mjz: 1-68

**ASSEMBLYMAN ARTHUR R. ALBOHN:** Good morning. Thank you for being here. I think our recording specialist is ready, so-- There is one other member of the Committee who I know is in the building. Whether or not he will get here from wherever else he is, I don't know. Our procedure will be pretty much as before, with one exception. We will be hearing those who have asked to speak in sequence, according to the timing with which they have indicated their desire to speak. We will have a break about 11:30 for exactly 10 minutes, in order to give our transcribers a chance to catch their breath, and give everyone else a chance to stretch.

We ask of those who speak, if you are speaking extemporaneously or from notes, that if you have a statement you would like to give us, please let us have it by Friday, because Friday will be the cutoff. This is the second, and I expect the last hearing we will be having on ECRA, at least for the time being. We are already starting work on some possible drafts of amendments to the legislation, and I understand from John Gaston, just a few moments ago, that they have some revised regulations that they are just about ready to release.

At the first hearing, we had a certain amount of duplication. That is one of the reasons for not extending the hearings a great deal longer, because the impression I get, at least, is that many of the problems with ECRA have been repeated over and over again. The primary one, I would say, is the question of time difficulties, the timing of response by DEP. The second one might be the wide variety of real estate transactions that are included, and whether or not all of these really need to be included. The third one would be the difficulty in distinguishing between landlord and tenant responsibilities, and perhaps the fourth -- and maybe it belongs right up at the top -- is the question of cleanliness standards and how clean is clean when it comes to cleaning a site.

So, we will be examining all of the testimony from those points of view, trying to come up with some chances, unless DEP beats us to the punch, which would be delightful if they did, because we would simply say then that we endorse what they provided.

So, along those lines, I would like to ask John Gaston, who is here to represent the Department this morning, to present his testimony, and then we will go into the list of volunteer speakers.

**A S S T. C O M M. J O H N W. G A S T O N, J R.:** Thank you very much, Assemblyman Albohn, for allowing us to kick off round 2 of the ECRA hearings. We appreciated the opportunity to have the Commissioner and John Trela here last time, in effect, to frame where we've been and to discuss a little bit of the problems.

What I would like to do today is give you an outline response to the questions you raised. I have given you a written response from the Commissioner to the seven questions you have, and I have additional copies here for the Committee and, you know, those who might be interested in it. In addition, I have prepared written remarks that we can cover today.

But, before I go on to the written remarks, let me just cover the one item on your list that we didn't cover in detail in the written remarks. That is the question of how clean is clean, which is a very nasty, difficult question to deal with because, in effect, it asks you to look at an environmental question that really has not been dealt with in a straightforward fashion at the Federal level, which is, how clean is the groundwater? -- that is really the appropriate question -- and what kind of a system do we have for making orderly decisions?

Admittedly, the present circumstance at the Federal level and, to a degree, at the State level, is that we make

case-by-case decisions. It was okay to do that when you had to make 25 or 50 decisions a year, but with the ECRA Program, we are faced with making 500 or 1000 decisions a year, so we have to move to a better way of making decisions in the area of groundwater standards and groundwater cleanup standards.

The Department is absolutely committed to acting in that area and, in fact, we have kind of a four-point program that we have put together to deal with the how clean is clean issue. The first level, the toxic substances and the cancer-causing substances-- We have developed some guideline numbers that we intend to apply on a case-by-case basis, and we also intend to propose as regulations. So, you know, the moving target for the toxic components and the cancer-causing volatiles and other compounds will be dealt with in the form of regulations. I would expect that we would do that over the next several months.

The second area of interest is the area of base neutrals and acid extractable compounds. We are working -- between the Hazardous Waste Programs and the Division of Water Resources to come up with similar guideline numbers and, again, those guideline numbers would be translated into regulations which would stop the moving target.

The third thing we need to do is deal with the soils and come up with a rational way of having cleanup standards associated with the soils. That is also the subject of a working group activity between Water Resources and the Hazardous Waste Programs.

The final thing that ties it all together, is something called "groundwater classification." Fortunately, in New Jersey, because of the expansive way in which the water statute was crafted by the Legislature in the late '70s, we have the ability to develop groundwater classification standards and regulatory programs in this State, without the need for additional legislation, which is something that the

Feds will need, in spite of RCRA and Superfund being reenacted in the last few days, in the case of Superfund, and the last couple of years in the case of RCRA.

The Division of Water Resources has been working on a project to devise a scheme for classifying the groundwater in New Jersey. What that would do is provide for some differentiation of the target cleanup arrangements that would exist in different areas of the State. The Pine Barrens, obviously, would have one target level of cleanups. If you moved up to northwest New Jersey, you might have a slightly different one, and if you moved into the urban industrial areas you would have a third target level of cleanup standards that would match classifications that would be different from one area to the next.

Now, that distinction is a critical one, and one that will require us to do a good deal of public road work because, in effect, what we are saying is the common sense statement, that cleanup standards in Newark and Jersey City -- where groundwater is not used as a direct source of drinking water supply -- should probably be different than the cleanup standards that exist in Morris County, Somerset County, or in Atlantic, Burlington, and Cumberland Counties, in the South, where almost always the groundwater is used directly, often without treatment.

So, that is the overview on where we stand on how clean is clean. Certainly, it is a priority for us, because we know that in addressing the pressures that go along with the ECRA Program, we can't effectively address those pressures without making significant progress on having a rational, understandable administrative framework for specifying how clean is clean. I did want to take a moment to explain that that question really is a very large question as it relates to environmental management because, in effect, what it causes us to do is establish a framework similar to the framework that

exists in the Surface Water Program for determining what kind of pollutants can be discharged into the waterways of the State. It does take a bit of forethought to establish such a scheme.

So, with that in mind, let me switch now back to my prepared remarks which, in large part, respond to the questions that were framed as a result of the last hearing.

The first public hearing, held on October 27, 1986, brought out many of the problem areas associated with implementing the ECRA Program. Let me just also say that we have been attempting to listen to those who have criticized -- quite rightly -- the ECRA Program. We tried to get the list of problems that exist with the Program clear in our heads and, obviously, we are as anxious as you here in the Legislature, and as many of the constituents who are dealing with the ECRA Program, to effectively deal with the problems of the Program.

I want to elaborate on the changes in the regulations that we are working on and the other major changes to the ECRA Program. For the last two and a half years, the ECRA Program has existed on interim regulations. We intend to change that mode of operating by getting into a situation where fully adopted regulations that have gone through public notice, public comment are available and adopted, and then become utilized by the Program. With the written material that we turned over to you today, we did provide a copy of a couple of sections of the final regulations that are in draft form for discussion purposes. We intend to make available to this Committee and, in a fairly broad sense, to outside interests, copies of these working developmental regulations prior to going to the register with a published proposal. So, that is another step we are taking to try to elicit the maximum amount of input on an informal basis, so that when we do publish the regulations we will have something that will reflect a broader consensus of: A, what the problems are, and B, what the answers might be.

The most important topic to be addressed in the final regulations deals with the determination of what events require an ECRA review and what the actual trigger event is that requires the industrial establishment to notify the Department. We intend to provide considerably more detail on these two areas than currently exists. Many of the questions that are raised of the Program are questions that are legal property type questions and, you know, we are in the environmental business, and we would like to focus on environmental questions. So, we are going to make an effort, in concert with the lawyers, to try to anticipate the questions, and let the regulations speak, as opposed to having always to deal with staff on the matter.

The applicability section will include many of the specific events that have been determined to be subject based upon the Department's interpretation of the law. The section lists events such as the sale or transfer of stock and when that would be subject to ECRA; sale or transfer by a parent or subsidiary corporation which owns an industrial establishment; bankruptcy proceedings; condemnation; foreclosure, sale, transfer, or cessation of a lease; cessation due to fire, explosion, or flood; and, other events that subject an industrial establishment to ECRA.

As important as when an event is subject to ECRA is the actual trigger event that requires the industrial establishment to notify the Department that it now must begin the ECRA process. Some of the trigger events are straightforward, such as signing sales agreements, public notice of cessation of operations, notice of lease termination, and notice and agreement to exercise an option to purchase. However, other events are more complicated, and the regulations will specify what the trigger event is for all applicable events that subject an industrial establishment to ECRA. Now, that is a qualified attempt to cover everything, realizing that

the real estate marketplace has a way of developing an exception to every problem. But we are using the experience of the last two and a half years and the mainstream of problems we have been faced with to try to anticipate as many as we can.

Besides the applicability section, there will also be a section that specifies certain events as not being subject to ECRA. The list of events that are not subject to ECRA include the generic areas where many requests for applicability determinations have been received, at the rate, I might add, of about 5000 a year. It is hoped that the specification in the regulations will allow the types of transactions listed to occur without the Department having to be involved in any form. And we would just as soon not be involved on applicability determinations that are clearly specified by law or regulations as not being appropriate.

Another topic that has been discussed in the past and is being re-looked at now, is allowing the partial sale of an industrial establishment or limited conveyance. When this possibility was first proposed by the regulated community, the Department was concerned that it would allow the sale of the majority of assets -- the clean land -- and not leave the industrial establishment with enough capital to mitigate any environmental degradation at the site. I think that is an understandable concern on the part of the Department as the protector of the environment for this environmental statute. We have been evaluating ways to allow limited conveyances to occur without leading to a site requiring the use of public funds to accomplish the cleanup. The proposed regulations will include a section on limited conveyances that would allow for the partial sale or sales of an industrial establishment, provided a specified percentage of the approved value of the real property of the industrial establishment is not exceeded by the sale or the sales.

The Department has received many suggestions that industrial establishments with very small quantities -- de minimus -- of hazardous substances or wastes should be exempt from the ECRA process. The logic of the suggestion is obvious, in that if very limited quantities of hazardous materials are present at the industrial establishment, then that facility is not likely to have caused any environmental pollution as a result of those quantities being present. However, it must be remembered that the ECRA Program reviews the conditions at the site, as well as the activities of the industrial establishment. I want to emphasize that activities and conditions at the site are one thing; the activities at the establishment are another. Activities tend to change from owner to owner, and even from time to time, but the condition of the site is something that integrates history, in effect, and our focus in the ECRA Program has been, and will continue to be, to make sure that the conditions at the site are accounted for. Therefore, although the existing industrial establishment may have de minimus quantities of hazardous materials, previous facilities and operations at the site may have used, and improperly disposed of, large quantities of hazardous substances or wastes, which could be in the ground.

In response to the concern, we are intending to put a section in the proposed regulations that would exempt industrial establishments with specified de minimus quantities of hazardous wastes from the ECRA process. A condition of this exemption will be that the industrial establishment either be the only facility to occupy the site, or can certify that any previous uses of the site also had de minimus quantities. So, in effect, we are covering what we consider to be the problem, which is access to polluting the site. Although this exemption will not have widespread use, it will greatly aid those industrial establishments that meet the criteria. Industrial establishments that only have de minimus quantities but cannot

meet the other criteria will most likely be considered simple cases, and will be processed through the ECRA Program in less than four months and, we hope, on an average of two months.

The financial assurance requirements of cleanup plans and Administrative Consent Orders can be costly to obtain in some situations, and we have been requested to allow industrial establishments to self-bond their financial assurances. The Department is not opposed to this approach, and we have been working with our ECRA Industrial Advisory Committee to develop a workable program that allows self-bonding to occur, but will also insure that the industrial establishment has the financial resources to meet its obligations to the Department. The regulations will contain a proposal based on the Committee's input, and will also be adopted as a policy document to allow its use prior to the actual adoption of the regulations. So, we have as another theme to the Program, piloting many of the ideas that have been brought to us as to how the Program can be improved in advance of actually putting them in the regulations, so that they can go into the regulations with some degree of testing and understanding that, in fact, they work as the proposers might have conceived they would.

A new topic to be included in the regulations will be to allow and encourage industrial establishments to begin the ECRA process before the actual trigger event. Coupled with this new approach will be added encouragement to use pre-application conferences to provide detailed guidance to the applicant on the information being required by the Department. Currently, many industrial establishments know that a sale or transfer is going to occur in the near future, but wait for the actual ECRA trigger event before beginning the process. This is time that can be used to the advantage of both the applicant and the Department, so that the processing time can be reduced after the actual trigger event occurs. I might say that this idea embodies, really, the concept of what ECRA is all about.

We are willing to take anyone into the ECRA process at any time, anyone who wants to understand what their liabilities are at their sites today, and how they can deal with them while the clock is on their side, as opposed to facing the hammer of a transaction pending ECRA action. So, we have tried to turn around the action of time and make the issue really one of using the clock to promote environmental compliance at an early date in the process.

ASSEMBLYMAN ALBOHN: Okay. Let me just interrupt you here for one quick second. One of the concerns has been that once you are through the gate, there is no going back out again. In other words, once you seek this preliminary ruling, if your sale falls through--

ASST. COMMISSIONER GASTON: Right?

ASSEMBLYMAN ALBOHN: --are you then exposed and on the line?

ASST. COMMISSIONER GASTON: Well, I think the answer to that question is that everybody is on the line, regardless of whether or not they have come in. The real choice -- the businessman's choice -- is to get started early and to get an understanding of what his liabilities are. At some point in time, if your property is subject to ECRA, and if you are thinking about selling it, you are going to have to face the music. A preferred approach to facing the music, is to facing it in a time frame where you, as the businessman, have the ability to say yes to this and no to that, and "Let's discuss it a little bit more before we enter into a hasty decision as to how and what ought to be done."

But I think the reality is that groundwater contamination is not something that the Legislature has sanctioned and, in fact, it is specifically not sanctioned. As we have done investigations, we have found dirty sites that have led, in some instances, to pollution of wells. You know, in your district, Mr. Assemblyman -- or right outside the

district -- the issue of Washington Township and Miller Chemical has been on our table for some time. So, if problems occur -- if contamination occurs -- and we trace it back to a site, then you're in. And, really, I think the opportunity with this ECRA Program is for the presidents and the executive officers of companies to get some assurance that their sites are under control, and that they don't have something out there that they might have to deal with hastily and at very large cost, in a short time frame.

ASSEMBLYMAN ALBOHN: On the other hand, maybe you are completely unaware of any problems on the site. You know, the general approach is to sort of "let sleeping dogs lie," especially if you discover all sorts of skeletons once you start digging around. Yet, what you're saying is that you can make this pre-ECRA investigation and announce your intentions and start the Program, but if you find anything, that's tough; you've got to clean it up anyway, even if your sale never goes through. Yet, if you kept quiet about the whole business until the sale went through, then you face the other side of the coin of trying to do something in a fairly expeditious manner. It's sort of a no-win situation.

ASST. COMMISSIONER GASTON: Well, the whole issue of cleaning up the land from the improper disposal of waste is a no-win situation. Really, the question is, how are you going to pick your battle? What we're saying is that the ECRA Program should be available for those who choose to pick it early. We should process their applications and assist them in getting to understand what the conditions are of their site. This will not be a regulatory requirement; it will be something that we will set up which will allow those who want to, to come into the system and to get to know their properties.

The other mechanisms are slowly, but surely catching up with many of these sites. The RCRA law applies to about 250 more cleanups around RCRA facilities that did not necessarily

deal with other forms of pollution -- the storage facilities, for example. We only used to permit them because they were tanks. Now, with the '84 amendments, the Feds are required to issue corrective action cleanup orders for the entire site of a RCRA facility, even though one little tank might be the only regulated entity. So, you know, as we move forward, the issue of groundwater contamination from industrial facilities is going to be brought into the formal system. Congress has been doing it on an exception basis. ECRA provides an opportunity to do it on an advanced schedule.

A few other topics will also be included in the regulations, some of which are in the interim regulations and will be expanded upon. The process to exempt standard industrial classificaion codes from ECRA jurisdiction, and the cleanup plan deferral process will be clarified to answer many of the questions the Department has received in these areas. A new section will be included on ECRA/RCRA coordination to specify what the ECRA Program will review if an industrial establishment is also regulated as a RCRA treatment, storage, or disposal facility. Let me just say that our goal is to be able to use other regulatory requirement compliance programs as givens in the ECRA review process. We are not going to try to have ECRA one-up the other programs in terms of levels of requirements that would be imposed. So, what we are looking to do is merge the RCRA Program requirements, and any positive conditions of compliance to go along with them, with the ECRA Program, so that that would be a given kind of module of an application that would be furnished whereby an owner could understand his liabilities based on compliance reports that the Department has furnished, and self-monitoring that he has been involved with.

In addition to the regulations, the Department has been working with the Department of the Treasury, Office of Management and Budget, to improve the efficiency of the ECRA

Program. The final OMB Report should be available in the very near future. The Report basically covers five major areas where improvements can be made. We will make the OMB Report available as soon as we have an opportunity to read it. It has now been turned over to us. The Commissioner read it over the weekend. I was not home this weekend, so I couldn't take a look at it. But, within a week, you will have the Report, and you will have an opportunity to look at what OMB said about the Program.

The ECRA Program requires applicants to complete forms which provide the information needed to begin the process. However, there is often confusion as to exactly what information needs to be submitted. This has caused serious delays in the past as letters were exchanged between the applicant and the Department. Working with OMB, we have developed a new procedure that emphasizes direct contact between the Department and the applicant to resolve any deficiencies with the initial application submittal. I might emphasize "direct contact," meaning he calls us or we call him and we discuss what the issues are. If necessary, he comes in and we discuss what the issues are, so that we don't get into tennis via the mail in terms of exchanging letters that really almost always take two weeks going in one direction, and two weeks going in the other direction.

Another outcome of the OMB review is the separate processing of major case types. We have separated complex cases, i.e. high environmental concern, from simple cases, i.e. low environmental concern. The low environmental concern category are those cases where either no or only limited sampling and/or cleanup is required and a negative declaration can be issued. We anticipate processing these cases in an average of two months, with all such cases completed within four months of initial submission. Now, that is our goal. We hope to achieve that goal over the next eight months. In other

words, by July 1, 1987, it is our goal to accomplish this. Now, I emphasize it is our goal, because we can't control this by ourselves. It is something we have to work with applicants to achieve. This means that from the date of receipt of the application to final approval should not take more than four months. The time frame can be much shorter if the applicant completes the application forms correctly and provides the Department with any requested information rapidly.

The OMB analysis indicates that improvements can be made in the internal coordination that occurs on many cases. We will be developing a task group of those units working on ECRA cases to identify and implement specific areas in which to improve efficiency. We will strive to eliminate any duplication of effort and provide for a smooth transition if staff changes on a specific case and, inevitably, that is going to happen.

A large part of the OMB Report examined the staffing level required to meet the ECRA work load. We created 10 positions for the Program in July, and now most are filled. In addition, a review of revenues for the first four months of Fiscal Year 1987 indicates that 12 additional positions can be supported by the existing fee program. The process to create and fill these positions has just been started. These staff additions will result in 87 persons working on the ECRA Program in early 1987. The OMB Report concludes that additional staff above this level is required, and we agree with that conclusion. However, to be able to expand the Program incrementally makes a lot of sense. We went from 65 to 75 in the last six months, and we would like to go -- in this next expansion -- to 87, by early 1987.

To provide the financial resources for the staff required by the ECRA Program, OMB examined the current fees charged by the regulations. Their analysis will assist the Department in working with a Subcommittee of the ECRA

Industrial Advisory Committee to develop a revised fee program to support the level of staff required to meet the ECRA work load. Based on the OMB analysis, it should be possible to maintain or reduce the fees to small businesses that have not caused any environmental problems. The revised fees will be included in the proposed regulations. One of the tough decisions, and tough issues, is, for small businesses that have caused environmental problems, the effect can be devastating. But we don't see a way around addressing the problem and having the reasonable costs of that addressing of the problem associated in the fee program.

Another change in the ECRA Program that has been initiated, is the use of Administrative Consent Orders for complex cases. These cases can often take a year or more to go through the ECRA process to a point where a cleanup plan is approved. The ACOs are being offered in these cases to allow the transactions to proceed, while guaranteeing the provisions of ECRA will be complied with in the future. This approach is particularly necessary in light of the 1986 Tax Reform Law, where we have just been stormed with notices and actions, everybody wanting to close before December 31, 1986, when the rules change. We have notified those that have been in the Program that the ACOs are available if they want to assure themselves of being able to get in and out of the ECRA Program prior to the end of the year. Let me also say, parenthetically, that we hope the storm of transactions related to the tax law will represent the peak in this ever-growing stock market of ECRA cases, and that we will get on the other side of being able to know what the annual work load -- able to forecast what the annual work load will be. As I believe the Commissioner's testimony and Dr. Trela's testimony indicated it has gone up every six-month period since the Program's inception.

The above information is presented to provide your Subcommittee with the latest direction we are developing in our regulations and in the implementation of the ECRA Program. We have been, and will continue to work with the ECRA Industrial Advisory Committee and other interested groups, including this Committee, to obtain comments on the regulations before they are formally proposed. This will help us to develop regulations that address the concerns of the regulated community, the Department -- and the public at large, I should add. We will also provide your Committee with copies of sections of those proposed regulations, if that would be helpful. Of course, we began today by giving you two sections that have been completed.

If you have further questions on the ECRA Program, we would be happy to discuss them with you. We do appreciate the time and effort that the Committee has put into assisting us in highlighting and driving toward more answers to this tremendously beneficial, but often very difficult environmental Program that the Department is overseeing.

Thank you.

ASSEMBLYMAN ALBOHN: Thank you very much, John. One thing that has come out in the testimony, too, I think, that I didn't mention before, is the fact that nobody really is opposing the concept of the ECRA Program, but they are very much concerned about its procedural problems.

You mentioned the new regulations, and went through them in some depth. Are you going to have to go through the formal public hearing and adversary and non-adversary hearings on that, and the time periods and whatnot? In other words, how long would it take-- Let's say these were ready right now for you to announce them in the "Federal Register," or however else you announce them. When do you think the public hearings would take place, and when do you think they would become effective?

ASST. COMMISSIONER GASTON: Well, the "New Jersey Register" process is about a six-month process. We are targeting to have our discussions on these regulations in the rest of this year, and to get them in the "Register," you know, right at the end, or in early '87. So, we would expect that they would be available June, July, August of '87.

ASSEMBLYMAN ALBOHN: So, in essence, a year away.

ASST. COMMISSIONER GASTON: Well, I mean, a long six months, nine months; you know, six to nine months, I think, is the--

ASSEMBLYMAN ALBOHN: Time has a habit of slipping. Were the interim regulations adopted under the same procedures?

ASST. COMMISSIONER GASTON: Yes.

ASSEMBLYMAN ALBOHN: In other words, they took that long, too?

ASST. COMMISSIONER GASTON: Well, the interim regulations went through the review process, but I am not sure whether or not they were subject to public hearing. Obviously, for final regulations, we have to propose them in the "Register," give a 30-day comment period, and hold the public hearing; then hold the record open for, you know, a reasonable period of time after the actual hearing.

ASSEMBLYMAN ALBOHN: Because you see, what I am probing for, is the possibility of adopting new regulations as new interim regulations so we can get them out front at a much earlier date, and then, you know, proceed to make them formal, permanent regulations on their normal time schedule. There seems to be so much concern with the language and the complexity and the confusion surrounding the existing regulations, if the new ones are any better, it seems a shame to operate under this cloud of the present regs if the others are there.

ASST. COMMISSIONER GASTON: Well, what we had tried to do was get the new regulations to be effective in early March,

which is when the interim regulations expire. We are not going to be able to do that, so we have moved to extend the date of the interim regulations until, I think, October -- to extend them by six months. That will be something that will appear in the "Register" in the near future. We can certainly, you know, consider that, but even to get the interim regulations in the "Register" is a few-months process. What we would like to do is use the next few weeks to let our working copies of these regulations float around, so that those who are interested can impart their views at an early point in time. Certainly we know who has shown a lot of interest in the ECRA Program -- this Committee, the ECRA Industrial Advisory Committee. There are now some environmentalists who have begun to get very seriously interested in the ECRA Program. So, we will use that informal process to enrich the responses to the degree that we can, and then formally publish them, and give everybody a second shot at formally commenting upon the regulations.

Obviously, our intention in having informal conversations is to hit as many of the problems as we can, and to get as close to the answers -- the appropriate answers -- as we can, using the time we have now.

ASSEMBLYMAN ALBOHN: I don't know how many people are going to be happy with that arrangment, but we will look at it, and perhaps bear with you on it. I suppose if we were to make any kind of legislative changes, it would take us at least as long to do that, considering that the Legislature doesn't necessarily move very rapidly either.

ASST. COMMISSIONER GASTON: We intend, you know, to do everything we can within this fiscal year to get the final regulations out. Just knowing the frustrations that go along with the formal regulatory process, under the Administrative Procedure Act the Legislature provided, can be somewhat frustrating.

ASSEMBLYMAN ALBOHN: I have just been advised by staff that under the Administrative Procedure Act, time limitations on proposed regulations can be waived under some emergency clause, provided the Governor consents. In view of the interest in this, it would seem to me that that would be an appropriate route to follow. I can't imagine the Governor being reluctant to grant some kind of an emergency procedure to that. So, that is something, perhaps, that we should all consider also.

Certainly I think this whole problem has reached an emergency nature. When they ask a Committee like this to investigate DEP, you know, it is sort of an appalling task when you first look at it. Breaking it down-- You know, this is just the first shovelful we are taking out with ECRA.

ASST. COMMISSIONER GASTON: Well, we will certainly look into that possibility. Obviously, if there is anything that can be done, we will be interested in doing it. As we have worked on pieces of the regulations, and really worked with OMB on the report they did on the ECRA Program, we have not waited until the end to begin to utilize that which has been put on the table. We have begun to use many of these techniques. In fact, the case of low environmental concern-- For example, let's see-- In September, they were averaging some 5.2 months to be processed. In October, they averaged 4.7 months to be processed. So, we are beginning to start to chip into the backlog and to utilize the improvements that have been proposed and suggested to actually accomplish this.

ASSEMBLYMAN ALBOHN: Are there any questions from members of the Committee? (no response) You know, 4.7 months--

ASST. COMMISSIONER GASTON: Is too long.

ASSEMBLYMAN ALBOHN: To us in government, it is forever. When we put on our other hats and we are in private business-- Well, I should say, when you are in private business, it is forever. When you are in government, it's routine.

ASST. COMMISSIONER GASTON: Well, I just use that, not as a spear that I can impale myself on, but as an indication that even in the chaotic times that we have been in, in the last nine months, business has responded to the fact that the tax law is out there, and they want to have transactions take place. So, there are a lot of deals that are tax driven. The amount of work has continued to increase. In response to that, we have begun to at least bite into some of the lag times that those who are out there have been most critical of, which are the situations where you don't have an environmental problem that is taking forever, or you have a very minor environmental problem that is taking forever. We feel that those cases have to be put on a track where they can get in and get out of the system relatively effectively. That is kind of the vulnerability area of the ECRA Program.

The major cases, I think everybody knows are going to take a long time. In those instances, what we have been offering are the ACOs, which are, in effect, mortgages on the answer. Money is put down and the actual solution gets developed later on, but the transaction also gets to go ahead in the future.

ASSEMBLYMAN ALBOHN: Okay. Thank you very much, John. We have a number of exceptionally qualified speakers here today, and I hope you will be able to stay to hear at least part of them. Thank you very much.

ASST. COMMISSIONER GASTON: Sure thing.

ASSEMBLYMAN ALBOHN: Going back to our original schedule, we have Mr. Steve Kelty, General Counsel for Hartz Mountain Industries, who would like to present some testimony.

S T E P H E N K E L T Y: Good morning, Mr. Chairman, Committee members. My name is Steve Kelty. I am the Vice President and General Counsel of Hartz Mountain Industries. Hartz, as some of you may be aware, is one of the larger real estate developers in New Jersey. We are currently involved in

18 municipalities in six northern New Jersey counties. We have hundreds of leases for over 25 million square feet of space in over 100 buildings. We have placed over 30 mortgages in excess of one-third of a billion dollars, and have acquired or sold two dozen buildings since the inception of ECRA.

I have reviewed the statements of the first hearing, and will not regale you with any more war stories. I think the previous statements by those well-experienced in these have adequately stated the nature of the problems.

All responsible citizens of the State of New Jersey support the efforts to ensure the cleanup of commercial sites commencing on an expedited basis. As a personal aside, I have a well on the farm where I live about 15 miles northeast of here. We have traces of chloroform in the water. It is below limit, so apparently it is not a present danger, but this well is 305 feet deep into the Raritan Aquifer. I have four children, and I am not wildly enthusiastic about my children, or myself, drinking chloroform in whatever quantities. I personally support all efforts to clean up the environment. As a result of our experience at Hartz, there are three areas where we feel there could be modifications in the existing administrative and statutory requirements to encourage a more efficient operation.

Initially, I believe a priority system should be developed to minimize the tremendous impact that delays in ECRA processing can have on commercial transactions. Some of the prioritization could be:

1) All sites where there is imminent danger to health and safety. These are what I call the "crisis sites." I believe that these are being handled on this basis now, and should continue to be so handled.

2) I think the sites where there are new jobs being created in the State should be of a very high priority, for obvious reasons.

3) I believe that a routine transfer, or routine termination of operations that will not have an effect on employment should be evaluated; and, finally,

4) The routine ongoing site cleanups where there is no present danger to anyone. If you have a routine ongoing cleanup -- and we are engaged in several at the moment -- a decision, or a response from the ECRA folks, if it is not this month, but maybe next month, is not terrible. It is not a crisis situation. On the other hand, if we are attempting to construct a major facility that will employ hundreds, if not thousands of people, and it is delayed by ECRA, this is a delay in job opportunities in the State of New Jersey.

The priority system lessens the adverse financial consequences which occur when transactions are delayed.

The second area -- this has been addressed this morning already by ECRA, and I applaud their efforts at targeting levels of cleanup by area -- is the need to utilize standards which will permit the transfer of properties, without cleanup, which are environmentally consistent with surrounding sites. As an example, we are aware of properties in northern New Jersey which have unacceptably high levels of lead or other heavy metals on the sites. However, they are consistent with -- it is unfortunate, but it is true -- what the scientists refer to as background levels. The levels of lead, arsenic, and chromium in the soil are at levels which are unacceptable from an ECRA standpoint, but which are completely consistent with an industrial area. These are located around the Newark/Elizabeth/Linden area.

To strictly comply with the ECRA standards would require a costly muck-out and a fill replacement program. This, by the way, is charged by the yard. For every yard that is removed, and every yard that is replaced, there is a dollar figure, and the material that we are able to locate to replace that which would be mucked out, is only marginally better than

that which would have to be removed. As a result, there is a good deal of property that has remained vacant and unused. I have been in the unfortunate position within Hartz of having to decline to acquire industrial properties. On a number of occasions, we have unfortunately rejected more than we have acquired. Brokers are continually bringing us properties. Our business is real estate development. Without properties to develop, we have no business, so we are constantly acquiring land. More sites have been environmentally unsound. We were offered one site for $13 million. After six weeks of analysis, I advised the President and the Chairman of the Board that we could not acquire the site safely if they gave us $13 million. It is not economically feasible.

Another recent example concerns a site in an urban area which contains major pollutants which, if ingested, could cause serious hazards. Dust can arise from the site. You can inhale it; you can get it in your mouth. Children have been known to eat it. If that site were used for residential use, it would have to be cleaned at such a level as to make it entirely prohibitive. However, to encapsulate it would be acceptable to eliminate this hazard from the atmosphere. To limit it to the soils from which it could not migrate would be much less expensive and would be acceptable. However, as an acquirer of land, you are not in a position to know what it is that will be required until such time as you get into the negotiation process with DEP.

The current regulations do not envision or provide such a balanced approach and, as such, the site remains undeveloped and polluted, which gets me to my third and final suggestion.

A system of tax credit incentives for private cleanup of sites should be undertaken. There are a number of sites in the State -- unfortunately, I have seen a large portion of them -- where the present or past owners are no long economically

viable entities, and if they are going to be cleaned up, it is going to be either by an acquirer -- a buyer, a purchaser of the site -- or by the State. The State and Federal governments have inadequate funds available for the cleanup work that is required for a large number of these sites. We have our Superfund sites -- the Love Canal sorts of things -- which everyone focuses on. I have been personally appalled at the number of sites out there, one of which I walked over before I learned that at the point at which I was walking -- this was in July -- the site had a flash point, which is the point at which it will ignite, below 100 degrees Fahrenheit. It was an uncontrolled dump site.

ECRA and DEP are aware of this site. They have been aware of it for two years, but it is not of such a high priority that anything is presently even being contemplated to do about it. It happens to be a 132-acre site. It could be commercially developed. If private industry could come in, where there are no State funds available, and where there is no owner who is economically responsible who can be forced to clean this up, and purchase the site and have the costs of the cleanup, while it is still regulated by ECRA, so it is done properly -- have the costs of the cleanup offset by tax credits for that work, the site could then be cleaned up, taken off the burden of governmental responsibility, and could provide an opportunity on that site for construction of facilities which would provide additional jobs for residents of New Jersey, and for those moving into the State of New Jersey.

I am not an expert in the area of taxes and offsetting taxes, but I believe, from studies I have seen in the past, and proposals I have seen in the past, that the income produced by the jobs and the taxes produced by the jobs would more than offset the loss of tax revenues that would be given as credits to developers, or to other elements of the private sector, because not only are developers interested in these sites, but

individual industries are interested for their own use and their own construction.

Obviously, there is a need to study the tax implications of this approach. I believe my suggestion will bear out my hypothesis. I think the cleanup of these sites and the placing of unproductive property back on the tax rolls in a productive capacity will more than offset the tax credits.

Thank you for the opportunity to address you today. I will be happy to answer any questions you might have.

ASSEMBLYMAN ALBOHN: Mr. Kelty, I think you have made some exceptionally interesting suggestions there. The tax incentive approach sounds awfully-- Well, it sounds unusual and interesting. The one problem I see with it is the question of defining, again, how clean is clean. This, of course, will depend on DEP. There are some people -- and I am sure you, yourself -- who would probably not be satisfied until there was zero detectable chloroform in their drinking water.

MR. KELTY: That's true.

ASSEMBLYMAN ALBOHN: That is a function of the progress that science makes in detectability. So, somehow or other, I think there is an educational program that has to take place also, because it could be that you could drink that three part per million or three part per billion chloroform water until you are 150 years old, and nothing would happen. On the other hand, if you have a tax credit to clean up the source of that, it might be sort of a permanent ongoing tax credit, because you would have a disappearing target there that would constantly ask you to clean up still further.

I don't mean to, you know, diminish the importance of the suggestion. I think it is an excellent one, but I can see it as having some very definite problems as to where the tax credit begins and where it ends. Perhaps it depends on what DEP can come up with in the way of definitions of pure water, or clean ground.

Do any members of the Committee have any questions for Mr. Kelty? (no response) If not, thank you very, very much, Steve. I appreciate your being here. I hope you will stay around a little bit, too. We have an exciting morning and afternoon ahead of us, I think.

Our next speaker will be a lady who is eminently qualified to speak to this group. We really should rise. This is Jerry Fitzgerald English, former Commissioner of the Department of Environmental Protection.

J E R R Y F I T Z G E R A L D E N G L I S H: Thank you, Assemblyman. You never used to say that to me. (laughter)

ASSEMBLYMAN ALBOHN: Well, you were in the other party, you see.

MS. ENGLISH: It is a pleasure to come back to a forum that-- You certainly look a lot better than you used to. Remember in the old days when you had to huddle up there in the corridors and you didn't have any place, in fact, for a public hearing to take place that reflected the responsibilities you have. Truly, even by having a Committee of this nature-- If it existed during my tenure in government, I don't recall it, beyond the fact that occasionally at budget time we would have an opportunity to discuss with one another on a programmatic basis.

So, I congratulate the Assembly for taking this opportunity, for several reasons: Number one, to dispel the idea that there is not a lobby out there interested in this issue, and that there are not eyes and ears, not only of those who are presently coming to testify before you and within New Jersey, but there are eyes and ears and observers throughout the country, because as all of your speakers have been saying to you, this is a national program. The Governor of the State of New York, last year in State of the State Address, called for ECRA, by name, to be passed in the State of New York. I suppose some of my concerns go to the effect, as always, we are

the pioneer. What are we exporting, and what example will we be showing? Will it be, in fact, what the Legislature envisioned, or will it be something about which we said, "We really didn't know what we were getting into"?

How should it be changed? How can it be improved so that, in effect, it operates in the way that I suspected you had in mind, which was that there should be an environmental component of industrial America? It should be ongoing. It should not be something that is discovered after the fact. And, P.S., just as we used to worry, Mr. Chairman, about the loss of our jobs to the Sunbelt from the Rustbelt, there will be another quiver, if you will, in the bow, to saying, "You all come down here because we ain't got no ECRA."

We all know that that will be very short thinking -- short-term thinking -- but, nonetheless, it is what you have been hearing, I suspect, throughout your deliberations, and will continue to hear. Not for a moment do I suggest that I do not come in praise of ECRA. I do have, however, some very, I think, emergent comments to make to follow on with the chair's discussion of the fact that, at least for a period of time, the Program is perceived to be an emergency stance. There are too many cases, and too few people to go to battle with, as you heard the Assistant Commissioner discuss, and that is the thrust of my comments. I think I do speak from experience in this respect. All the other times I came before the Legislature, it was for the same thing: "Please give me more people."

In this instance, my suggestions do not go to more people. They go to what kind of people. I am hopeful that at some point in your deliberations you will give the President of Civil Service an opportunity to appear before you, because every governmental manager will tell you, in the easy out, that the reason they can't get something done is because Civil Service will not permit it. I went before that distinguished

Commission many times to argue the specialness of the requirements of the kind of personnel that you are talking about, because as your earlier speaker mentioned, it is something very important that they have to make decisions about. It is the health of our citizens and in what perspective. I submit that that takes mature judgment; it takes all of the rigors of scientific exercise and rigor to determine. And, if we think it is going to come from entry level trainees, I beg to differ.

I have made suggestions, therefore, to the Committee, which I have submitted to you in writing, which really go to those of us who have worked in emergency situations, and number one is obviously more case managers right away. The corollary to that is to take advantage of helpful hiring practices. I must commend the Legislature for finally taking my advice and reforming Civil Service, along with, you know, how many centuries of people suggesting it.

I am very impressed with the possibilities of the Senior Executive Corps that you may be able to bring into government. Those persons, as I think you determined it, would be people of skill, maturity, and some background in problem solving. I would certainly hope that managers of the DEP problems in ECRA, and in other matters, would ask that those persons who they can attract first come to ECRA, because it is our showcase, in which we are operating in a very unusual environment in governmental terms.

The second thing I would suggest is to follow a pattern that government has used in the past. When we needed skilled help, when we needed quick help, and not necessarily beyond peak performance help, we have always gone to the private sector to ask for consultants to be hired on for a given task in which they are pre-qualified and have the kinds of skills of hydrology, toxicology, geology, and chemical engineering that are the backbone of this Program.

Those are things that I think many others have talked to you about -- that there should be pre-qualification of the kinds of "experts" -- and I put that in quotes -- that come to do environmental work and submit themselves to the rigor of Department review. I believe that a pre-qualification of those types of firms will not only make the product that comes before the Department of better quality, but certainly will keep people from going to the Yellow Pages and thinking that they have solved their problems.

You will be involved, obviously, in seeing to it that-- There is no question but that the Department understands what the Legislature truly means. I do not think that is the province, properly, of a court of review, which will take many years to tell you what you thought you were saying, but, in fact, if there are problems with this legislation -- and you have been hearing many of them-- That is the proper province of the Legislature. That can, in fact, be done with some more deliberateness, so that the speed with which this legislation moved in the first instance, and the problems that some imprecise and difficult language has caused everyone to have to deal with, I know you are going to address.

I will go to one more very dangerous level, and that is to suggest that this program is a lot broader than a fee structure -- to fund it. You have already realized that $400,000 wasn't going to do it, which you recall was your initial legislation, and the four people who began the Program are still alive, although barely.

ASSEMBLYMAN ALBOHN: Surprisingly, yeah.

MS. ENGLISH: We have all moved with them from a tiny headquarters that they shared over in West Trenton to the basement, and now to their new headquarters.

I am not unaware of the fact that a good bureaucrat who does not choose to get something done can always find a document incomplete. So, these are terms of art as you are

hearing them from those of us who have worked with them, and been frustrated with them in our prior lives, and continue to be frustrated with them as they presently stand. But that is a device, Mr. Chairman. It is for bean counting. It is not for substance. This is a very, very difficult Program to administer. I think the people who have taken it on-- You will remember my old definition of pioneers, the folks with the arrows in their backs. They have really been doing a very good job. I assure you I make their lives very difficult as a professional, to come in-- I have the only case. My clients are the only ones who have these problems.

But, this is the second year, if you will, of "Tax reform is coming," so the Department has been through this before. We went through this last December. We are coming onto it again. I assure you that there will be another emergency that may not be environmentally provoked, but will be business-- There will be another reason. The tax structure will change. The income tax law will start to favor something else. A new reg will come in. So, the peak that I am talking about will probably always be there. It will be there in a different form.

I make these comments respectfully to those who have the day-to-day responsibility. And, yes, they do work nights and, yes, they do answer the phone and, yes, they are there on weekends and holidays. Beyond that, one can't ask much more for them, or of them, but I do think there are other tools that, with the help of the Legislature, understanding that fees alone cannot support such a program, particularly when you have small business people involved, particularly if you are going to talk -- as our former speaker talked -- about tax incentives-- Every tax incentive is a revenue that is not coming from that source, and then they all turn to you, and say, "How fine the source." Right?

These programs are now interrelated, however, from our old bad practices of industrial waste disposal. We are trying to catch it as it is moving along. How appropriately we do it, and whether or not we put our money where we say our conscience is, I think will be the real test. Rules and regulations can move quickly. I think the Chairman's suggestion of moving these on an emergency basis will give those who want to argue about every comma a lot of (indiscernible), because they will really want to-- You know, they will want to flyspeck it to death. We haven't time for that, not to have the Program have credibility. I think that the oversight of this Committee, and I hope the subsequent appearance of the President of Civil Service -- although he may never speak to me again after this comment -- will be what really puts the Program together, because it does not operate by itself. It has to have mature people. You can't just have folks coming out of college, as well-intentioned as they may be, run a Program as sophisticated as this one is.

Meanwhile, I will continue to go back and drive them crazy, now on the fifth floor instead of in the basement, about my one case, and my only client.

Thank you for the opportunity to address you.

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

ASSEMBLYMAN WATSON: It is so nice to see you, Ms. English.

ASSEMBLYMAN ZANGARI: I was just overjoyed listening to the Commissioner. I think some of the examples that she brought out have been my desire for a long time. You know, bringing these kids out of Harvard and putting them in these types of positions, I don't think is the answer. I don't think it is the number of people you employ, but the type of people you employ. I heard in testimony by the first speaker -- Mr.

Gaston -- that they put 10 people on, and hopefully they are going to put 12 more. They put 10 people on in July, and I haven't seen significant results. I haven't had an opportunity to hear, you know, that these people had the extensive training for this most complicated issue.

So, you know, I want to sit and listen. Somewhere down the line we have to start assessing and evaluating the types of people that we are putting in. I don't think you are going to put in young children. Bringing people from the private sector, I think, is going to be the answer and will resolve some of these problems.

ASSEMBLYMAN ALBOHN: Thanks a lot, Jim. I agree. I think a lot of the comments and the suggestions, personnel-wise-- Incidentally, this is a novel area that you have suggested. We haven't had comments on this from other speakers, except, perhaps, from the Commissioner himself, who indicated that one of his big problems was that you would bring people in and train them, and then they would leave to work for some consulting firm or other.

MS. ENGLISH: Oh, but they will always come back, Mr. Chairman. They come back in this way: They come back as one of the speakers you will hear from later, in a way of people who truly do appreciate the process, and can help the process. I have had the opportunity to survive that same syndrome. What I really think happens is that people leave, but they leave with a better understanding of what the requirements and the constraints of government are, so that there is a better dialogue that is going on around, too. And, you never know when you will get lucky. They may come back as senior executives and truly have the opportunity to use both sides of their training. That is not going to change in government. There are always going to be people who will take the opportunity, we hope, to come into government to be trained, to learn, and have such a big job before them -- that great

opportunity in which they get to work on really tremendously exciting things, which in the private sector-- To use the example of the law clerk, one goes to the library; one is not given the entire Superfund case of GEMS to solve.

Perhaps the product is-- I have mixed emotions about both. I would love everyone to start in the private sector and be trained very carefully and very closely and with a great deal of personal attention, as long as it is at the highest standard. That doesn't happen. Government, nonetheless, gets wonderful people to come to it, and we hope that that continues. Meanwhile, the training process is so tough, because you have young people who do not have the opportunity with the volume of cases you are hearing about to have someone, in fact, be their mentor and to watch every word and everything they say. So, you know, it is not perfect yet. I think we probably have to work on another kind of program, which I will bring to the Committee after I have decided what it should be, about how to do this.

I do think that your reform of Civil Service at least gives you a governmental hook of how to go about doing it, and to keep attracting that quality of people that we need. But that is on a permanent basis. Don't forget what I am talking about is emergency. We do it in Superfund. We do it in the Spill Fund, so that government can then continue its process, and someone here over on the side can have that, "We're helping you out. We are the highest standard, and if we mess up, at least you have a lawsuit against us."

ASSEMBLYMAN ALBOHN: Okay. Thank you very much.

MS. ENGLISH: Thank you. I'll come back.

ASSEMBLYMAN ALBOHN: All right. We will look forward to it.

Let's take about a 10-minute break at this point. I have 18 minutes to 12. We will start again about eight minutes to 12.

(RECESS)

**AFTER RECESS:**

ASSEMBLYMAN ALBOHN: Mr. Prykanowski cannot be here. As his replacement, we have Mr. Ralph Foglia, and Mr. William Cleary, from the National Federation of Independent Businessmen.
**W I L L I A M C L E A R Y:** Thank you. Mr. Chairman, I have heard from quite a few small business owners, and I know you wanted to hear of the many problems they have been having. Ralph has agreed to come down here today to cite you the personal problems they have been having. However, I did want to highlight a number of instances of problems that many small business owners have related to me.

ECRA is a real problem. They feel that DEP is understaffed in this area, and that certainly has created a problem. Perhaps it might be the time to look to contract out some of this work, and bring in private consulting firms to assist them in their duties.

Some of the other problems I have heard relating to the staff, although they have been very cordial and helpful to many business owners-- There seems to be a problem of nobody wanting to make a decision. Everything has to go to a higher-up. Everything must be done by mail. It always seems as though the process takes quite long.

One of the disturbing comments I am hearing from many small business owners is that New York and Pennsylvania are really not that far away; that we can keep the front office here in the State of New Jersey, but the plant and equipment can be easily-- If they are in the process of purchasing or leasing a building, the borders really aren't that far. I had one woman call and say that after posting-- She wanted to purchase a building for a manufacturing plant. After posting the point -- one of three points of her loan -- paying her attorney, the accountants, and many other things, the seller was informed that they were going to invoke ECRA proceedings, and the seller withdrew the sale, causing her to lose $5000.

In fact, we are hearing from many firms that when an individual goes in to lease space and there is any kind of manufacturing where ECRA may be invoked two years, or five years down the road, the leasers are reluctant to lease to manufacturing, or even companies with the word "scientific," or anything to be construed-- From the real estate side of the industry, we are hearing problems. Just this week, I heard something that was very disturbing to me. The SBA has told its lenders that anyone coming to them for fixed asset financing, whether the building being purchased falls under ECRA or whether after it is purchased a manufacturing site would be created where ECRA might be invoked later on, that they do not want any involvement of SBA funds, or SBA loan guarantees if ECRA comes up. This, in effect, since it impacts-- Since the SBA loan guarantees normally only cover fixed asset financing and manufacturing, what they are, in effect, saying, is that they no longer want to lend or guarantee money in the State of New Jersey.

Small business owners are afraid to really come to Trenton to be heard. We certainly saw that in the construction code and fire code problems we have been having. Certainly, we congratulate you for holding these hearings. I wish I could bring more members to tell their stories. As a matter of fact, the individual who lost the $5000 is in your district, and I told her to contact you directly, because then it would be a private conversation.

ASSEMBLYMAN ALBOHN: I'll pay her back, as far as that goes. (laughter)

MR. CLEARY: Ralph is from Sussex Barrel and Drum, and he would like to take five or ten minutes of your time to explain to you what the problems were in his case.

ASSEMBLYMAN ALBOHN: Fine. Let me just make one comment. You know, you mentioned that New York and Pennsylvania are not that far away. That can be expressed in

two ways. They are not far away geographically, and they are not far behind us in ECRA. So, you know, anyone who thinks he is going to evade this, or avoid this whole situation by moving away, will probably end up getting into the front fire, instead of being in the frying pan. Here, at least, we are gradually working our way out of the administrative problems. Over there, they are just going to have them, unless they copy our regulations verbatim after John, and Lance, and the others get through with them.

I think the question revolves around the need to clean up sites at a reasonable time and to a reasonable degree. Perhaps that is what we are all aiming for. So, in any event, Ralph, excuse me -- or Mr. Foglia. Proceed, if you would, with your comments.

**R A L P H F O G L I A:** That's okay, fine. Well, Mr. Chairman, I would like to thank you for having me here. I didn't know I was going to be here until 8:30 this morning, so this might be a little bit rough. I did something real quick.

This is basically the turn of events for the last 19 months that we have been in the process of trying to purchase a former steel drum reconditioning plant, to go back into the same type of an operation. The operation that we are going into-- It's me and my two partners. We have been working for 10 years to put together a state-of-the-art type of a reconditioning plant, with incinerators, and the most modern water facilities to treat our water that no one in the United States has. So, to hold us up in this type of an operation is hard, because everybody in this business-- It is a dirty toxic waste type of a business, and the sooner we can get in it, the sooner everything will be better off.

The events of the last 19 months for Sussex Barrel and Drum are as follows: In May, 1985, we declared intention to buy New Woodbridge Barrel. ECRA was triggered. In August, 1985, we closed on New Woodbridge Barrel, contingent on passing

ECRA. In September, 1985, Accutech Environmental Services was commissioned by the Bankruptcy Court to examine the site and draw up a sampling plan. September, 1985 to June, 1986, after rejecting two previous sampling plans, the third plan was approved.

In July, 1986, my partner, George Motion (phonetic spelling), of Sussex Barrel and Drum, after going down three times, personally picked up the plan in Trenton and delivered it to Accutech in Perth Amboy. On September 3, 1986, Accutech finally does the test borings. Samples are sent to Accutech Labs in North Brunswick. We are told by Accutech that we will receive a positive or negative result in three to four weeks.

We were also told by Accutech that we could have the results back in one week if we would be willing to pay an additional $18,000 -- that's twice the amount. If we would be willing to pay the $18,000, we could have our tests back in one week. Okay? September 3 to present -- as of today, November 17, 1986 -- we have had no results. On November 10, 1986, we were told that the results were almost completed. It has been quite a long time -- 17 weeks -- from the original three to four weeks. Testing just seems to be the hardest problem.

We also had a lot of problems in the beginning, when we filed for the negative declaration. If you misspell something, or you don't dot the "i's" or cross the "t's," your name goes on the bottom of the list, and two or three months later it comes to the top. During the process -- since we have been buying steel drum reconditioning plants, a major reconditioner went out of business -- Bayonne Barrel and Drum -- and we managed, through an auction, to buy some really good equipment at a good price.

We have lost over $50,000 in equipment over the last two winters. We put tarps over them; the tarps blew off. Cast-iron parts cracked in the cold weather. We had water damage. It's really rough for three young guys trying to make

it; it just sets us way back. When you say, moving out of the State-- Yes, we are in the process of maybe buying a plant in Maryland, and shipping our drums back up here. You can buy a plant in Maryland, and Philadelphia, and Connecticut, and anywhere else at this time. They will have the problems. We plan on going in, cleaning up, and meeting the problems head-on, and just not doing the drums in the State of New Jersey.

We like New Jersey. I have lived here my whole life. I lived in Sussex County. I voted for you.

ASSEMBLYMAN ALBOHN: Not in Sussex County you didn't. If you did, it was an awfully awkward--

MR. FOGLIA: Oh, I'm sorry, the wrong person. I'm sorry. You know, we really want to stay in New Jersey. Our families are here; our roots are here. Our business says, "Go elsewhere." We just can't afford this loss. It is just entirely too much. When talking to other people, we find that ECRA is causing this all over the place. It's just a major problem.

I understand that when ECRA started, many years back -- I spoke to a person who was on the committee -- it was basically formed to keep major companies in the State of New Jersey -- duPont and Exxon. After that, it turned, and it's a good thing. They are way understaffed; they should have more people. We just don't know which way to go. We have to get into our drum plant as soon as possible.

ASSEMBLYMAN ALBOHN: I understand your problems, really, and I sympathize with them. I didn't mean to give you the impression that you couldn't move elsewhere--

MR. FOGLIA: No, I know that.

ASSEMBLYMAN ALBOHN: --or that you shouldn't move elsewhere. That is a decision that you, yourself, have to make. The whole question of timing is one that almost everyone who has testified here is most concerned about.

MR. FOGLIA: That is our biggest concern.

ASSEMBLYMAN ALBOHN: I think that is what we are most concerned about, too, really, as a Committee. There are a lot of other aspects of the whole ECRA Program which need some smoothing out; no question about it. But, I think the long and short of it is that all of those things will be aimed at, and will have to be aimed at increasing the speed with which these projects can take place.

So, if you were here earlier-- I don't know if you were here to hear Mr. Gaston's testimony at the beginning, but the Department is very much aware of this. They are moving. They have some new regulations which they have been working on. We have been urging them to-- Instead of letting them go through the normal procedure, we have been urging them to try to get them into effect on an emergency basis, so that the greater clarity that we hope will result from that, and the more explicit instructions there will be for applicants, will help in smoothing out this time schedule.

You know, as far as your analyst is concerned, the chances are his jump in price was because he was willing to put people on two or three shifts, or something like that, to accomplish your analytical work. Of course, that is something we have no control over. That is one of those, "You pay your money, and you take your chances," kinds of situations.

But, we are doing everything we can. Unfortunately, the Legislature is not the speediest moving operation in the world, but we are trying to fast-track this ECRA review as much as any committee study can be fast-tracked. We are getting good cooperation, I think, from the Department, and a lot of cooperation from a lot of outside people. So, we hope we will be able to get things speeded up. Whether it is going to be in time to help you or not, I am not sure, but maybe some other people in the same business down the road.

I appreciate your testimony. If you ever care to reduce it to writing, we would be happy to have it. Otherwise, we will simply have our secretary transcribe it from your oral presentation, and it will be made part of the record.

MR. FOGLIA: We will write something.

ASSEMBLYMAN ALBOHN: Very good.

MR. CLEARY: Mr. Chairman, thank you very much for holding these hearings. You have heard from me on two or three occasions on the regulatory burdens we face, and certainly this is an excellent case. But, also in this case, I don't think it is entirely DEP's fault. They are hamstrung by the fiscal restraints that were provided, and certainly their manpower restraints. We firmly endorse the concept of ECRA, but think that maybe the mechanism needs a little more work. We are thankful that you are taking the time to take a look at it.

ASSEMBLYMAN ALBOHN: Thanks very much, Bill.

MR. CLEARY: Thank you, Mr. Chairman.

MR. FOGLIA: Thank you very much.

ASSEMBLYMAN ALBOHN: Sure thing. Thank you, Ralph.

This is one of those problems where there is enough fault to go around, really. We don't have to apply all of it to anybody. Everybody is a little bit at fault, including society in general.

With that, our next speaker will be Mr. George Vallone, New Jersey Builders Association.

G E O R G E T. V A L L O N E: Good afternoon.

ASSEMBLYMAN ALBOHN: Good afternoon, Mr. Vallone.

MR. VALLONE: First of all, I want to thank you for your time and the interest that is being shown here today. I apologize for not being here at the first hearing, and for the distinct possibility that parts of my testimony may be redundant.

I am a developer from Hudson County. I am also a legislative committee person with the New Jersey Builders

Association. In Hudson County, most of the large, developable sites right now are older industrial sites. I am now encountering an ECRA problem on one of those sites, and I have some experiences and some suggestions for your consideration.

First of all, I want to say that developers, generally speaking, are flexible and responsive types of people. They only want to know what is expected of them, and then they want to do it because time is their enemy. Time delays can cripple developers, but particularly small developers, who do not have the resources to carry a large piece of property through the 18-month, two-year, three-year term to come into compliance with ECRA.

I broke down the suggestions into scheduling and cost areas. First, as to scheduling, the applicant under an ECRA property is under very tight deadlines. They have to get their general information submittal in within five days of a trigger event. They have to get their site evaluation submittal in within 30 days of the trigger event, which involves putting forth permits, maps, sampling plans, geotechnical reports. These get reviewed for completeness. If they are wrong, or incorrect, or incomplete, they get rejected, and the applicant goes to the bottom of the pile. I heard this mentioned earlier, but I think it is an importnt point, because what happens is, the smaller developers, who are trying to do as much of it on their own before they go out and get the consultants to come in, are penalized by losing their place in line, so to speak.

So, the first thing that occurs, once the GIS and the SES are accepted, is that a case number and a case manager are assigned. Right now, experience is that it is taking up to six weeks just to get a case number and a manager assigned. So, the first of my recommendations is that some time limit be established for putting the proper case number and case manager on to the subject property, so that the communication can begin

that is the beginning step of getting past the ECRA requirements.

Then, the next thing that occurs, once your case number and your case manager have been assigned, is, you get your site inspection. There are no regulations for how quickly your site inspection has to be done. So, the second recommendation is that we put some time limit upon the case manager to make that site inspection.

The Site Inspection Report is a report done by your case manager once your site has been physically inspected. We have heard and seen situations where the site inspector does not include your sampling plan in his report. So, my third recommendation is that the Site Inspection Reports should include a reference to your sampling plan. That would tend to get the ball rolling quicker, because he would be taking what you have done initially in the way of a sampling plan, and incorporating that into his report as to what is going to be needed ultimately.

The sampling plan then-- If it is not approved, you continue sampling the property at risk. So, it's helpful if a review of your sampling plan is included in the Site Inspection Report, so that you can at least be continuing your sampling with some guidance, and are not just out poking holes in the ground willy-nilly, which may all be wasted by the time the Site Inspection Report comes back without reference to your sampling plan.

So, that is really the fourth recommendation I am making. If the sampling plan is not approved, they tell you exactly what it is they need included in it. Right now, they can just disapprove it without giving you any facts as to what you didn't include, or what you did wrong. As a matter of course, while you are waiting for your Site Inspection Report, you may be doing sampling just to try to get ahead of the game, because right now it is going to take you four weeks minimum

just to get a drilling rig on site. It is going to take you six weeks minimum to get some results back from the lab, and that is on a very simple situation. That is not on a situation where you have any complexity at all.

So, you know, your prudent developers are going to try to get their sampling moving ahead, and they are going to end up hoping that they are hitting the right spots, and that the case manager is not going to come back and just disallow all of the holes they have drilled, in addition to telling them other places he wants them to drill.

A regulation that would be helpful would be if there were some de minimis standards for the smaller, less critical types of waste problems that could be put into a regulation in and of itself. That might keep the smaller problems from gumming up the works. The DEP staff wants to concentrate on the larger problems. If there were some standards for smaller, less critical cleanup problems, that might help to free up some staff to handle the really complex problems.

You either file for your negative declaration or your cleanup plan then, based on the Sampling Inspection Report, and if it is a negative deck, you've got 45 days -- I should say DEP has 45 days -- to get back to you. But the problem is, if on the 44th day they haven't gotten to your case yet, they have no choice but to reject you. Then you drop to the bottom of the queue again. They don't even have to tell you why you were rejected. So, if they did get a chance to review the case, but just haven't made up their minds yet, or if they haven't even gotten to the case, they are forced to just reject you willy-nilly at the 44th day. Obviously, if they had a chance to review it, but haven't made up their minds, it might be helpful if there was a procedure to give them a little bit more time, so they are not forced to just outright reject you because the 45th day is arriving tomorrow.

So, the sixth recommendation I am making, is that if a negative deck is being sought, or a cleanup plan is being sought, and the 45 days have passed, let's not put the staff in the position where they have to reject you. Perhaps a progress report which tells you where they're at in terms of being finished with the review might trigger a second 45 days, which then would allow them not to have to just throw the file out and bounce it to the bottom of the pile. Rather, it would allow them to continue and get through the case, while it is on the guy's desk.

Now, the cleanup plan, if you are not going for a negative deck-- If you are going for a cleanup plan, you've got the same problem. There is no time limit on when they have to get back to you and approve it. So, that ends up forcing you to start your cleanup and, since your plan is not approved, your work is potentially at risk, because the worst thing to have to do is sit around and wait for months and months and months. I know in our case, if there are certain things you know you are eventually going to have to do anyway, you just start them but, again, you are risking the possibility that your case manager may come in and tell you that what you have done so far was wasted. So, you are kind of stuck in a bad situation there of wanting to go forward and do something, but being worried that once you do it, you did something wrong, or you didn't do enough, or you went in the wrong place.

As you have already heard, I'm sure -- and I will make this part quickly -- it seems as though staffing is the big problem. The first point, there is not enough staff; the second point, staff is often not at the level of experience that the professionals making the submittals are. It would seem as though if you have -- and I don't know if this is a fact or not -- but if you have people right out of chemistry school reviewing these things, and they have to review things that a guy who has been in the field for 20 years is preparing,

there might be an experience gap there which would simply translate into a longer time period to get the review down properly.

As an example, if you are submitting a cleanup plan in the range of $1 million, there is an approximate $15,000 review fee. If you just took $50 an hour -- which I think is reasonable for this type of consulting -- that's 300 hours' worth of review time on a $1 million plan, which just seems, you know, exorbitantly long to be able to review a plan -- 300 man-hours of time. Bottom line: There is probably just too much work for not enough people. If we increase the size of the staff and, more importantly, the capabilities of the staff, in terms of getting experienced people in there, you could probably cut these review times down considerably.

After the cleanup plan is approved, you are okay to close on your property, or make your stock transfer, or whatever the given trigger event was that got you into the whole thing. Your cleanup plan is then checked by the Enforcement Division at DEP. There are no regs right now, although I haven't heard from any of my experts that there is a big problem with feedback from the Enforcement Division. But, you have to submit tests and samplings as you are doing your cleanup, and there is no specific response time from the Enforcement Division. So, although I haven't heard any particular horror stories, once you have gotten into the cleanup plan, it probably would be a good idea, while we are giving time constraints to the other steps prior to your cleanup plan approval, that even during your cleanup plan there be some response time for feedback from the Enforcement Division.

So, that's it for scheduling. As you have probably heard ad nauseam already, there's got to be some limits. The tight time limits that are put on the developers are fine, and we can live with them as long as we have to. But, there ought to be a set of timetables on the other side of the table, too,

so that we are operating in a closed environment, where you don't have these open-ended issues.

So, scheduling, timetables, staff -- the first half. The second part -- cost issues. The costs of sampling, the costs of analysis, and particularly the costs of time and delays are slowing down real estate activity in the State. There was an article in The Wall Street Journal recently that underscored this. Lenders are often not foreclosing on properties where there are toxic problems, because they don't want the problems to become their own. They will just let the note go into default and leave it at that, because it is less of a problem letting the mortgage default than taking on the property and taking on the ECRA problem.

Hudson County, in particular, is sensitive to this, because Hudson County is an older industrialized area. I am sure many of the other urban centers in the State are in similar situations. Newark, the Trenton area -- I'm sure they have the same problems. I am familiar with Hudson County, and I know for a fact it is making a lot of people schizophrenic up there. They want to sell their properties; they don't want to get involved with ECRA. People want to see industrial zones become mixed-use zones, with residential, commercial, and retail activities, but at the same time, they don't want to open up Pandora's box. So, it's a bit of a mixed blessing from that standpoint.

If we fine-tune the guidelines-- Presently, you have to test across-the-board for everything. We understand that by March of '87, we are expecting some new guidelines, which should cut back on the number of items that have to be tested for. We are definitely looking forward to that. We also recommend combining SIC codes with site inspections. It seems as though right now certain people who probably have a toxic problem, but their business isn't in that particular SIC code number, are getting away with something that probably they

shouldn't get away with, and it is all because we are being confined to a list of SIC classifications.

On the other side of the fence, you've got someone who is in a given SIC classification, which makes him come under ECRA, but he doesn't have an ECRA problem to speak of. I heard an example of a small printer who got caught that way. So, it seems as though we shouldn't just stick to a rigid list of SIC classifications -- business classifications -- but we ought to inject a human aspect of the site inspection, so that we can weed out some of the SIC codes that are coming under ECRA, but the site inspection results come out and say, "Even though this is in the category, this particular site doesn't have the problem." We should streamline the system for some of those guys. I suspect that in the majority of cases -- these are your smaller sites, your smaller business people -- there should be some sort of an exemption from the SIC category and, at the same time, sites which are obviously toxically related -- like these large oil fields and tank farms and things like that -- which but for the specific contents of those tanks may not be coming under that SIC list-- They should get exempted from it.

So, it is a two-edged sword. I am not asking you to make it easy for people to slip out, but, at the same time, to include some people who are slipping out who maybe shouldn't. I don't think there is anyone in the room -- and certainly no one in the Builders Association -- who is in favor of developing on toxic sites. The question is, at what cost? -- benefit versus the cost.

Disposal, right now, is a potential problem that is only beginning to rear up its head. The Meadowlands-- Right now, you are at $40 a yard, but at the rate it is filling up, it will be filled by March of '88. Edgeboro is at $60 a yard. That is also going to be filled by early '88. Pennsylvania -- currently at $100 a yard-- As you mentioned earlier, they are

coming up with their own sets of regulations. I don't know if they are going to be isolationists, you know, "We'll take care of our own toxic problems, but don't let anyone else ship their stuff here," or whether they are going to keep open some of their landfill sites for other states. Who knows?

The Federal government is currently discouraging landfills. Eventually, we are going to be required to do on-site cleanups, or ship to registered treatment facilities for incineration. EPA has portable incineration programs. Then you are running into local permitting; you are running into air pollution problems. What you are doing then is just displacing it from an in-ground to an in-the-air situation, with questionable results. But, certainly as we are considering requirements for toxic waste removal and cleanup, we have to consider where it is going to end up -- if it is going to end up in the ground somewhere, or in the air somewhere.

The last thing I want to mention is, in future and more practical applications of ECRA, besides refining the guidelines and tightening up the timetables, we think there ought to be an interest in new treatment technologies. Biodegradation, where you use bacteria to take care of these toxic wastes, has to be looked into; and soil washing, to condense and contain these toxins. This renders them more condensed, so that when you can ship them out, you are not shipping out all the dirt including the toxins. You are just shipping out the toxins themselves. So, that is soil washing.

What they call fixation treatments leave the toxins in the ground, but render them immobile. They render them not lethal any more. I am not a chemist myself, but after talking to individual experts -- one of whom, Dr. Murphy, is with us today -- these things are beginning to get some interest. I think it would behoove the Legislature to put some of their emphasis into these areas of alternative end uses -- end places for these toxins.

Finally -- and you've heard it already -- staffing up DEP will encourage development by streamlining timetables. We think that this particular area -- ECRA -- is one of the permitting processes that we are now working under and, like all other permitting processes designed with good intentions, if they are administered efficiently and quickly and evenly across-the-board, everybody can live with them, and so will we.

That's really it. I appreciate the chance to come down to talk about this. If there are any questions, I would be happy to answer them.

ASSEMBLYMAN ALBOHN: Kathy, do you have any questions?

ASSEMBLYWOMAN DONOVAN: Not really. A couple of the treatments he mentioned were interesting, but I won't get into them now. I'll save that for another time.

MR. VALLONE: All right, fine.

ASSEMBLYMAN ALBOHN: I think you make a number of good points. I would appreciate it -- if you could -- if you would put them in writing.

MR. VALLONE: I will. I will have them out to you tomorrow.

ASSEMBLYMAN ALBOHN: That would be great. For everyone here, Friday is the closing date for any testimony that anyone wants to make, whether they speak at the hearing or not. If you have anything you would like to add to the record, if we have it by Friday it will be there.

Thanks very much, Mr. Vallone.

MR. VALLONE: You're welcome.

ASSEMBLYMAN ALBOHN: Next we will have Mr. Daniel Gans, of the West Bank Construction Company, and of the Associated Builders and Contractors of Northern New Jersey.

D A N I E L G A N S: I would like to thank all of you for allowing me the opportunity to come down here to speak. What Mr. Vallone just said-- I was going to say things quite along the same line with respect to the timing and the scheduling.

That seems to be where my organization has the most difficulty right now. We think ECRA should encourage things such as at risk sampling, and work with both the contractors and developers to do such things. We also feel that there can be more regulation of site inspections and the timing of these types of things. This has just been exemplified, and I don't want to go through the same procedures that have been outlined to us already.

Another point -- and I am really just reiterating points so you will know that many of us are interested in the same areas -- is that we don't feel there are enough people in the Department, and the quality of the people who are there, who are capable of taking care of the issues-- This is slowing the process down.

Simplification and clarification of the process would really assure that builders and developers would know where they are going with these things. Instead of shying away from potential problem sites, we will know where to go with these types of things.

The other point I wanted to reiterate, too, was, where exactly is ECRA going in the future? I can start right now today with a site that is very dirty -- let's call it -- and find myself a year and a half, two years down the line with possible cleanup costs very, very different from the realities of today because of things such as the closing down of dumping sites.

ASSEMBLYMAN ALBOHN: That's a good question. It is one of those moving target kinds of questions. We are really not sure. I am not sure that DEP can answer that either, at this time. Is that the end of your--

MR. GANS: That is really the end, without reiterating a lot of things that have already been said.

ASSEMBLYMAN ALBOHN: I appreciate that, because even at the first session of this Committee we had -- I wouldn't say

duplication -- but the same points were emphasized over and over again. So, there is no point for anyone who speaks later on, as you did, to be embarrassed about repeating, because it lends emphasis, I think, to some of the points we are concerned about.

Does any member of the Committee have any questions for Mr. Gans? (no response) Thank you very much.

MR. GANS: Thank you.

ASSEMBLYMAN ALBOHN: We have sort of a rotating Committee here today. John Watson had to leave; Jimmy Zangari is still with us; and, Assemblywoman Donovan and Assemblyman Littell have joined us.

ASSEMBLYWOMAN DONOVAN: Mr. Chairman, we do apologize. We had an Environmental Quality Committee meeting, and we had to vote on a couple of important bills. That is why we were late.

ASSEMBLYMAN ALBOHN: I heard you were gnashing and screaming and rolling on the floor and things like that.

ASSEMBLYMAN LITTELL: It wasn't quite that bad.

ASSEMBLYWOMAN DONOVAN: It was lively.

ASSEMBLYMAN LITTELL: It was lively.

ASSEMBLYMAN ALBOHN: We have two more speakers. Next to the last one is Mr. Richard Katz, Vice President, Enviro-Sciences, Inc. Incidentally, Mr. Katz, I am just wondering-- I had a complaint earlier in the day that some of the speakers couldn't be heard too well; that some of the audience couldn't hear the speakers too well. It might be well, without disrupting our reporter over there-- Jim, would you take John Watson's seat, and allow the speakers to take your seat? That way they would be at least sideways to the audience, and everyone could hear them a little bit better. It's sort of late in the game to be doing that, but better late than never, I guess.

D R. R I C H A R D J. K A T Z: Thank you for the opportunity to be here. My name is Richard Katz. I am a Vice President of Enviro-Sciences, Inc., an environmental consulting firm based in Rockaway, New Jersey. Prior to taking on that position, I was the Assistant Chief for Operations of the Bureau of Industrial Site Evaluation. That is the agency within DEP charged with the implementation of the Environmental Cleanup Responsibility Act. Today, however, I appear in my capacity as a private citizen, with no direct input from, or support by either my current or former employer.

I believe my experience provides a rather unique view of the overall ECRA process and the effect it is having on the regulated community.

Having listened to the various attacks on ECRA from positions both within and without the bureaucracy, I have had extensive opportunity to attempt to condense the generic and specific matters into more limited categories, of which I believe there are only four. Those are: Dissemination of information; applicability of the statute; cleanup standards; and, the level of staffing within ECRA itself.

I would like to address these areas one at a time and present some possible solutions.

First of all, the dissemination of information. Since the advent of ECRA, DEP has relied upon attorneys, realtors, and environmental consultants to notify the regulated community of its responsibilities, and to assist companies in complying with departmental requirements. Even the most cursory investigation of this matter will, I believe, demonstrate that there has been a great deal of misinformation exchanged among all parties. In part, this is due to the technical jargon used within the Program -- such buzz phrases as initial notice, negative declaration, and request for deferral of implementation of cleanup plan -- most of which originated in the enabling legislation, have suffered routine misapplication,

and severely confused communications between DEP and companies undergoing ECRA reviews.

In an attempt to rectify this situation, numerous groups have sponsored seminars and conferences purporting to explain and define the process. Unfortunately, it has been my experience that such gatherings serve only to institutionalize misconceptions and increase the spread of less-than-accurate information. I believe that such mass gatherings fail to provide the one-on-one exchange of information necessary for precise communications.

While DEP has always offered the opportunity for a "pre-notice meeting," few applicants have availed themselves of the service, and the limited resources within BISE have precluded any serious effort on the part of the Department to encourage such actions.

To digress from my prepared text for a moment, I notice that John Gaston did mention that that is something that is going to be pushed very heavily, and I am very glad to hear that. In fact, most of what I have to say here has already been covered by Mr. Gaston, so I will go through this rather rapidly.

My recommendation to solve this problem is a multi-pronged informational program, handled under the coverage of DEP, to include a periodic -- preferably a quarterly or monthly -- bulletin, regularly scheduled explanatory sessions presented entirely by DEP personnel, and a strong emphasis on individual meetings prior to submittal of the ECRA forms. This last point is particularly important for small businessmen who are largely unfamiliar with governmental and environmental forms, and who cannot afford, to choose not to engage the services of environmental consultants or attorneys.

The second point -- on which there seems to be great confusion -- is applicability of the statute. The question, "Am I subject to ECRA?" is of paramount importance to operators of companies and the owners of industrial and commercial land.

The result has been perhaps the strangest manifestation of ECRA -- the "Letter of Nonapplicability," or LNA. While having no legal existence within the statute or regulations, this document has become one of the most prized possessions in the real estate world. Quite simply, it allows the holder to avoid the months of delays involved in an ECRA review.

Sadly, the large majority of LNA requests -- estimated earlier this year to be approaching 4000 annually -- are either unnecessary or false. The latter category results from the mistaken belief that an LNA absolves the holder from all environmental liability, while the former is the result of excessive fear of the law's sale-vacating provisions.

The applicability of ECRA is based upon the presence of an industrial establishment -- as defined by the Standard Industrial Classification Number and involvement with hazardous materials -- and the type of the transaction.

While it is, in most cases, rather simple to determine if a facility qualifies as an industrial establishment, the obvious lack of such qualification, i.e., vacant land, is frequently not accepted by mortgage lenders, title insurers, and other groups fearful of losing money, and a totally purposeless LNA is then requested. This was discussed by Mr. Gaston earlier, in terms of setting up some sort of a safe harbor provision in the regulations, stating specifically that such things as vacant land, gasoline stations, and those which are routinely queried for LNAs, be specifically exempted in the regs. I believe that should greatly reduce this particular problem.

On the other hand, the statute is extremely vague on the specific transactions covered by the law, and the biggest game in town seems to be to find a way to structure a business deal in such a way as to avoid ECRA applicability. Even in cases which are clearly subject, revised phrasing is often used in an attempt to obtain a different ruling from DEP.

Given the delays involved, it is difficult to fault those seeking legal ways to avoid lengthy ECRA reviews. However, the resources required to provide this service are basically wasted. I propose that the Department:

a) Institute automatic, significant -- in terms of $1000 to $5000 -- fines for anyone submitting an LNA request using a false SIC number, falsely claiming no hazardous materials involvement, or misrepresenting the form of transaction involved.

b) Continue its ongoing effort to significantly expand the regulations to: 1) Provide a "safe harbor" section; and 2) clarify departmental policies on the recurrent problems involved, with interpretation of the more obscure portions of the SIC Manual, such as auxiliary establishments, administrative offices, etc., as well as more esoteric rulings such as underground tank testing requirements for multi-tenanted facilities, long-term leases, and the like.

c) Formalize its developing procedure for "walk-in" -- meaning 24- to 48-hour service -- service for those situations which clearly are not subject. This process has already been partially implemented, but additional emphasis must be given to it to prevent unwarranted hardship to those caught in the middle by overly nervous lenders and/or purchasers.

The third area of major concern is cleanup standards. The question, "How clean is clean?" seems to have haunted the halls of environmental protection for ages and, in terms of the age of DEP, it has.

ECRA is at least the second Act passed by the Legislature which specifically charges DEP with development of cleanup standards.

Admittedly, this is a matter of great importance to everyone in the State, since such considerations determine ultimate cleanup costs and the eventual viability of any sale,

transfer, or even continued operation of facilities. Unfortunately, I believe that this project is beyond both the present and projected capabilities of the Department.

Given the enormous number of chemicals potentially involved, the extreme dearth of knowledge regarding their biological effects, and the almost limitless number of scenarios involving variations in soil types, soil permeability, depth to groundwater, groundwater flow, groundwater usage, etc., it is my personal belief that a unified, predictable system of cleanup standards cannot be developed at all. If I am wrong in this matter -- which I freely admit is possible -- and such a scheme can actually be developed, it will not come from the efforts of an application-oriented agency such as DEP.

Therefore, I recommend that if the Legislature truly wants to establish cleanup standards, it remove the burden of basic research from DEP, and establish a funding source earmarked solely for the purpose of defining such standards. These moneys should be overseen by the Department and used to fund projects at universities, and possibly private research institutes throughout the State, with standards ultimately promulgated by DEP.

Finally, staffing. I have left this subject for last as it is far and away the most important, and dramatically affects the Department's capability to address any and all of the preceding areas of discussion.

Since my first involvement with BISE -- which occurred on the day of its creation -- I have been appalled at the lack of staff provided to carry out what is probably the most far-reaching environmental statute in the nation to date. Numerous reasons can be cited for this lack of personnel, including underestimates of the caseload by DEP, lack of responsiveness in the Civil Service system, and the cumbersome hiring procedures. However, I believe the ultimate cause of

this problem rests with the Legislature. That body routinely passes laws which increase the work load and mission of DEP, without providing the wherewithal to accomplish the intended goals.

While the backlog in ECRA cases receives the most notice due to its disruption of real estate deals, the fact is that a lack of staff is endemic to the DEP, with virtually every unit having insufficient personnel to perform its work in a timely fashion. There have been several levies of staff from other bureaus to alleviate the overload at ECRA. While this has brought temporary relief to that Program, it has been very damaging to the programs which suffered reduction in already understaffed areas.

Several different solutions to the particular situation at BISE present themselves, ranging from once again shifting additional staff from other programs to authorization of a mass-hiring program. Certainly, I favor the latter, but to initiate such a process will require circumventing the Civil Service maze, which can result in delays of nine to 12 months between the time an agency demonstrates the need for new staff and the time that those people appear for work.

I propose that the Legislature authorize the immediate hiring of 36 new staff for BISE and its various support groups. Justification for this increase based upon a work load analysis has already been assembled by DEP. I further suggest to you that BISE and all its support groups be moved to the noncompetitive service, to enhance DEP's ability to hire qualified professionals in a timely fashion, without fear of losing them through the vagaries of the so-called merit system and its associated grossly extended "provisional, pending examination" periods engendered by the testing backlog at Civil Service.

In reviewing the foregoing, it appears to be a very strong defense of DEP. It is. I believe the Department has

done the best it could, given its limited resources, to implement a totally new concept in environmental remedial actions. Sadly, the only verdict that can be reached at this time is that it has failed.

Currently, the delay between submission of the basic paperwork and the assignment of a case manager to first begin the Department's review of the situation is six months. At that point, the real work is just beginning. This is absolutely intolerable to the regulated community.

The concept behind ECRA is to require demonstration of environmental acceptability at a time when companies are most susceptible to regulatory pressures. If these pressures become too intense, the process breaks down. I believe that time has now come.

While everyone seems to agree that ECRA is a wonderful idea, no one wants to be involved as a seller because the system can no longer deal effectively with even simple cases.

From an overall standpoint, ECRA is a rather simple Program in concept. The solution to the current problems is also rather simple. When the work load becomes too great, either increase the number of people or decrease the number of cases. DEP has made an attempt at the latter by formally exempting some 7000 potential cases through the dropping of various SIC numbers, but this has had a minimal effect at best on the backlog.

I submit that it is time for major action on the part of government. Personally, professionally, and as a citizen of New Jersey, I hope that you will choose to strengthen the ECRA process, as I believe it is currently the most effective tool available to DEP.

If you disagree, however, I have one final comment. The reason that ECRA has developed so rapidly is that virtually every group whose money has been endangered by the Act's penalties has forced companies into the Program. Should you

choose to do away with ECRA without repealing the statute, it would only be necessary to amend the Act to eliminate the voiding-of-sale provisions. Without the impetus provided by mortgage lenders, title insurers, and similar groups with money at risk, DEP would have virtually no capability to seek out violators of the Act, and the number of cases submitted for review would drop to a small fraction of its current level.

I thank you for the opportunity to speak to you today, and I will be happy to answer any questions you may have.

ASSEMBLYMAN ALBOHN: Thank you very much for some very interesting comments. It is only today that I realized that Civil Service was partly at the root of some of the problems. Former Commissioner English commented on this, and you are reemphasizing the same comments. It almost makes me feel that perhaps we should be preparing some legislation to exempt the ECRA Program from the Civil Service regulations. Now, I don't know if anything like that is feasible, or possible, or anything else, but it might be one approach we would want to consider.

Does any member of the Committee have any questions for Dr. Katz?

ASSEMBLYMAN LITTELL: Well, I just want to point out, Dr. Katz, in fairness, the problem of the backlog -- and this was pointed out to us by DEP at the first hearing -- in part is because of the tremendous volume that has come about as the Program has developed, which was not anticipated. Secondly, they pointed out that because it is a new area of environmental concern, many of the people that they trained and brought along were swept away by industry, who needed people like that, and who were willing and able to pay much higher salaries.

Now, that is a problem that we face in government all the time. I have been here for 19 years, and we have had some excellent people come and go. We struggle and work hard to pay them well, to give them good benefits, and to keep them here,

but sometimes the lore of money and benefits from the private sector is much greater than the public sector can stand. So, we have to deal with that aspect of it.

DR. KATZ: Most certainly. I am living proof. I spent 13 years with the Department, and basically burnt out in the ECRA Program. A company that I had dealt with for several years during the ECRA Program, approached me with an excellent offer, at a time when the Department was being reorganized, and I left. However, I think that is one of the functions of an agency such as DEP. Ms. English said that people should be trained by industry and then come into government. Industry doesn't have that luxury. They have a bottom line to meet, where government doesn't quite have to meet the same sort of requirements.

By using DEP in terms of a training ground, the various environmental consultants and realty firms that need that kind of environmental consultation thereby have a pool of people who know what is going on, and they can draw upon it. It is damaging to the governmental programs, but it does provide that corps of people who can then go outside and deal with government knowing what the procedures are and what the regulations are. That is a fact of life that the Department will always face.

ASSEMBLYMAN LITTELL: One thing, if I may, Mr. Chairman. I have suggested that we look into the possibility -- during periods of high demand for services -- of going to outside consultants and hiring those services to get the job done. Then, when the job is done, go back to our standard staff. That can cause some problems, obviously, because people who are organized don't like to see their work go out the door. I am Chairman of the Labor Committee, and I understand that. But we have a responsibility to the citizens to get the work done if we are going to impose the regulations in the first place.

How do you feel about that?

DR. KATZ: There are two primary problems. When ECRA first started up, two consulting firms were hired to do exactly that. The two problems that immediately rose were cost and conflict. Since environmental firms generally do pay higher than the Department and have a bottom line to meet, their routine billing is anywhere from about two and a half to four times a person's salary. That is the price that has to be faced.

The original money set forth for that project was $100,000, and the consultant firm selected to review the first sampling plan that came in wanted $50,000 for that review.

The other problem is, you would have great difficulty at this point finding a consulting firm willing to do the work, because they face a potential conflict with dealing with the regulated community. For example, if my firm were hired to do ECRA reviews for the Department and, through some miscalculation or what have you, one of the cases that we prepared came into our hands, it would leave us in a very awkward position. Additionally, if we were reviewing the work of a competitor who, for some reason, we don't like, the possibility exists that we could turn around and do them, and through that, their client a disservice.

It seems to me the only way you could really establish something along that line would be to have a captive consultant firm which, through most of the year, worked on DEP programs other than ECRA, and then were drawn into the ECRA process toward the end of the year when the routine crunch came in.

ASSEMBLYMAN LITTELL: That's good advice. Thank you.

ASSEMBLYMAN ALBOHN: Thank you very much. Are there any other questions from the Committee? (no response) Thank you very much, Dr. Katz.

DR. KATZ: Thank you.

ASSEMBLYMAN ALBOHN: Our last speaker will be Dr. Donald J. Murphy, President, Langan Environmental Services, Inc. Thank you for coming today, Dr. Murphy.

D R. D O N A L D J. M U R P H Y: I would like to thank you for affording me the opportunity to speak to the Committee today.

As the last speaker, I could make this very short and mimic the little kid in the cartoons, and say, "Me, too," and get up and go away. Rather than do that, I did prepare some notes ahead of time and I thought I would just quickly run through those notes and try to be as non-repetitious as possible.

What my notes address-- They address ECRA from a consultant's perspective today. The general view is that ECRA is a potential good. Realization of that good requires some improvement with regard to implementation.

The three areas I looked at were the areas of applicability, schedule, and cost. With regard to attitudes, the consultant's attitude is often his client's attitude. Client attitude on applicability, in the past, was something like, "Great, it doesn't apply." Today, it is more, "If ECRA applied, we would know what to do and who to talk to." The client does not think that nonapplicability means he doesn't have a problem. He realizes that he would deal with another bureau within NJDEP. However, many of the clients have come to realize that the ECRA process has gone far enough along that he can benefit from the orderliness that has developed so far.

The consultant's view -- or at least my view on applicability -- is that some of the past practices have not always led to the result intended by the legislation. The intended result, presumably, is a cleaner environment. Yet, some of the applicability determinations have been very curious. There is a case of a marine fuel terminal in Jersey City that has stored 10 million gallons of fuel oil, considered

a hazardous substance under the regulations. In that case, ECRA was determined to be nonapplicable. It was considered to be a transfer station.

There was another case in Central Jersey, where closure of an operation was considered to be not regulated under ECRA, primarily because the facility was involved in research and development. However, the research and development had to do with coal gasification/coal liquifaction in pilot scale, rather than laboratory bench scale.

The other side of that coin has been described by others. There are cases where ECRA was applicable, where the total amount of hazardous substance stored was on the order of 10 or 15 gallons a month. It might have been a photographic developing fluid business, such as newspapers, which use Xerox processes to develop their print. These have been regulated. The end result is cost in terms of time and funds to the seller, the owner. No improvement on the environment.

I think the way that this can be changed -- and certainly change has already been effected -- is by continuing to de-list establishments that are not of real concern; I think basing nonapplicability not only on standard industrial classification, but also on a site inspection to confirm use. As Mr. Vallone pointed out, this could work both ways. It could work towards a de-listing or towards an inclusion of a facility that would otherwise be determined to be under a nonapplicability code.

I think you should establish some de minimis standards with respect to the quantity of materials handled. Where all of this leads to-- It would lead to a cutting down on the BISE caseload, and would enhance the ability to address the situations that most require addressing.

With regard to the other two items -- the cost and the schedule items -- certainly the client attitude is that ECRA compliance can be very costly and can be very time consuming.

From our perspective, we work on ECRA cases from the simplest case, where we would answer a telephone call, the client would tell us his story, and we would say, "Yeah, we think ECRA doesn't apply." Then he would say, "Well, we need a letter to this effect," and we would tell him where to send his affidavit. His consulting cost would be zero. His total cost would be the filing of the review fee -- $100. That is the one extreme.

The other extreme would be an involved case, which would require legal services, drilling and test pits, chemical analyses, engineering services, and cleanup costs, and that could very well total up to a range of $5 million or more -- $6 million or more.

I think with respect to scheduling, our view and the client's view is that this is becoming a nightmare. The simplest case -- the nonapplicability-- Maybe we would like to see that disappear, but the lending organizations are forcing that. That might take as long as a couple of months. A negative declaration without sampling, maybe four months; a negative declaration after sampling and analyses, may be seven months. Sampling and analyses leading to a cleanup plan-- That depends very much on the extent of cleanup required and the anticipated costs. A simple case on the order of a $10,000 cleanup, maybe seven months, and this is getting progressively longer, up to the cleanups that are more than $1 million, maybe 24 months.

From the consultant's perspective, we see a possibility to improve this situation by doing what everyone has said, increase the size of the Bureau of Industrial Site Evaluation. Also, increase its capability, its efficiency, its decisiveness.

I think it is important to handle the complex cases first, rather than the simple ones. Today, the simpler cases can move right through, but it is the simpler cases that are

not really having much impact on the environment. It is the complicated cases that sit there -- the pollutants in the ground that take much, much longer to process.

I think it is important to impose some response time requirements, but in a very flexible way on the Bureau, much the same way before -- not as was described before, not to impose a 45-day time response that is not working in the direction it should, but a flexible time response requirement for all areas -- for the assigning of a case manager, for the review of a sampling plan, etc., etc., etc.

There is such a thing as a Threshold List used by NJDEP as an informal guide to concern or action level or cleanup. Very few contaminants are listed on that Threshold List. Further, it is an unofficial list. I think both schedule and cost would be improved somewhat by making this official, but maintaining the case-by-case nature of cleanup.

I think some minor things are very important. There are some inconsistencies between regulations within the Administrative Code, and also inconsistencies between the State regulations and their predecessor Federal regulations, with regard to waste classification. One important example is chromium waste. Under Federal regulation -- RCRA -- many of these are excluded, based on the process stream that created the waste. The very same process streams are are included in the New Jersey regs, using exactly the same language from the Federal regulations.

On the face of it, that seems to be a simple error, but it is one that could have very significant financial costs. I think finding a vehicle to discuss that kind of a problem has become somewhat difficult. That is not really a ECRA problem; it is more a waste classification problem. But, because ECRA cleanup is somewhat influenced by waste classification, it is something worth mentioning.

I think in closing, then, I would just recap that the areas of most concern to our clients, and to us as consultants, are: applicability in a minor way, and certainly schedule and costs; schedule, far and away, the most important of the three.

That is all I have to say, and I thank you for listening. I would be happy to answer any questions.

ASSEMBLYMAN ALBOHN: Thank you very much, Dr. Murphy. Are there any questions for Dr. Murphy? (no response) Thank you very, very much for coming. I think you made a number of significant points also, which we will be abstracting and digesting, and probably using.

Lo and behold, it's one o'clock on the nose. We will adjourn, unless there is someone else who wants to speak here.

ASSEMBLYMAN LITTELL: May I add one thing?

ASSEMBLYMAN ALBOHN: Mr. Littell.

ASSEMBLYMAN LITTELL: Mr. Chairman, I would respectfully request that you have the staff check with the Department -- the Division of Taxation in the Department of the Treasury, to determine if we have the ability to limit the amount of tax reduction that someone who has a contaminated property is entitled to during the process of cleanup. With the amount of environmental cleanup going on under the Program, I am concerned that we are going to face a situation where company after company is going to file tax appeals based on the reduced value to the property. Obviously, if it is contaminated, there have been many cases where tax abatement has been granted by county tax boards, and maybe some on the State level. But, I do know of some on the county level.

Municipalities could be hard hit by the loss of those ratables because of action taken by the Department of Environmental Protection through its ECRA Program, with no recourse. If you take the municipality with one large industry which happens to be the major taxpayer, and give it a 50% or 70% reduction in its assessed valuation until the property is

cleaned up and restored, and that process takes three or five years, it could cripple that municipality.

ASSEMBLYMAN ALBOHN: Well, I hear what you're saying, but it also occurs to me that there is a strong possibility -- at the municipal level -- that the zoning officers and the building inspectors and the health officers over the years have not been doing their jobs if they allowed some of these situations to occur.

I am not so sure that the money is not better off, and that is the purpose of any tax concessions as I understand it. It would not affect the property tax, but there were some other thoughts expressed here earlier that the funding for any tax concessions that did occur would go to cleanup, and not to the owners. Now, of course, you are talking about local property tax here.

ASSEMBLYMAN LITTELL: Local property taxes do not impact on the State; they impact on the municipality, the county, and the school district. If you have a municipality that has a major industry which presently pays 50% or 70% of the taxes in that municipality, and the property is determined to be contaminated under this process, and it is ordered to be cleaned up, and that cleanup takes three to five years, and they get a substantial reduction in their assessment until the cleanup is completed, that municipality faces a crippling action in their budget process. I think we ought to ask the Division of Taxation in the Department of the Treasury if there is some way we can limit the amount they can appeal for. After all, you would have to say that the contamination was a result of their actions, not the result of the municipality's. The municipalities maybe weren't as diligent as they should have been in their enforcement of local ordinances, but, nonetheless, why financially strap, or destroy, a municipality and a school district and maybe even a county?

ASSEMBLYMAN ALBOHN: Well, I think what you are asking for-- You are asking for the best of both worlds, and you can't have that. If there are limited resources available to a company, do they go for site cleanup, or do they go to pay the taxes? I think the site cleanup is perhaps the more important.

ASSEMBLYMAN LITTELL: I don't know, but I think it is an issue that someone ought to research for us.

ASSEMBLYMAN ALBOHN: We can certainly look into it. I'm sure that our staff will give some consideration to this. But, I have some feeling that you would require some kinds of changes in the property tax laws, or you would, you know, have inequitable taxation at the property tax level. Maybe this is something for the Property Tax Study Commission -- I think there is one -- to look at, too,

I don't want to let that get in the way of our primary study here. I have no objection, you know, to giving it a sideway look but, by the same token, our main objective is to speed up and smooth out the whole ECRA process.

ASSEMBLYMAN LITTELL: I understand that. I just thought it ought to be looked into.

ASSEMBLYMAN ALBOHN: Sure, sure, no problem.

Again, thank you all very, very much. We will probably not have any further public hearings on ECRA. I think the Committee will now go into seclusion and try to come up with something in the way of some amendments, and perhaps work with the Department in whatever areas they are able to produce some results in. The good news for the day, I think, is that the Department is already working on extensive revisions of the regulations. The bad news is that it may be almost a year before they become effective. We will certainly try to encourage the Department to expedite that date, and we'll see which comes out first -- their rules or our report.

So, thank you very, very much.

(HEARING CONCLUDED)

# APPENDIX

Assembly Regulatory, Efficiency and Oversight Committee

TESTIMONY OF JERRY FITZGERALD ENGLISH, ESQ.

NOVEMBER 17, 1986

I would like to speak to you from from down in the trenches, so to speak, and tell you about the effect of the Environmental Cleanup Responsibility Act (ECRA), N.J.S.A. 17:1K-6, on a vigorous environmental law practice such as my own. My profession as it relates to ECRA is to help my clients buy or sell land in compliance with New Jersey's environmental regulations. My clients have no desire to pass on or be the recipients of land laden with toxic substances or otherwise polluted in some fashion. All we ask is that the process be streamlined so that the pace of real estate transactions in New Jersey speeds up from its present crawl.

There is no law like ECRA anywhere in the country. To avoid the label of a business backwater, New Jersey has to straighten up its act so that new businesses see ECRA as good for everybody, as a sign of New Jersey's forward thinking and innovation, rather than an obstacle in the way of smooth business functioning.

The chief problem with ECRA as it now stands is delay -- delays in processing, delays in negotiation sessions, delays in decision making. It's a case of environmental gridlock, as was noted in a recent editorial of the New Jersey Law Journal. As a practicing environmental law attorney, I have to tell you that delivering the bad news on ECRA to my clients -- "You're not closing for six months or a year" -- is debilitating and demoralizing for all concerned. Like any fast-paced, modern businesspeople, when my clients spot a

deal they want to move -- now.

As a timely example, which was included in the same New Jersey Law Journal to which I referred earlier, if a lawyer files a notice with ECRA today that his client must close before the end of the year to come within the terms of the current federal income tax provisions, he will be politely told that a case manager will not be available for eighteen weeks to look at his matter. That is up from the good old days of eleven weeks, which was the norm this past summer. Even after a case manager is assigned, the process can be very time consuming. Cases that remain unfinished after eighteen months are not rare.

And the Administrative Consent Order, while innovative, is not a cure-all. It permits the transaction to close prior to processing of the ECRA application, but it entails onerous up-front financial requirements and stiff penalties for failure to meet time requirements. When I, the hapless counsel, report this to my client, it brings cries of incedulity from the corporate counsel, garners more than the usual Board of Directors' comments that New Jersey has an unacceptable busines climate, and sends the small businessman looking for a good bankruptcy practitioner.

So, enough of the complaining. I would like to applaud Lance Miller, chief of the DEP's Bureau of Industrial Site Evaluation, and his predecesor Anthony McMahon, for their efforts to expedite redrafting of the regulations, and to assign matters of low environmental concern to a fast track.

My suggestions for further improvement are:

*Increase the number of case managers right away. This is far and away the most vital proposal. We need the people to do the work.

*As a corollary to the first suggestion, take advantage of helpful hiring practices. The new civil service reform bill allows "senior executives" to be hired, permitting government to hire senior personnel without the past constraints of civil service policies. It is intended to be used to attract people from the private sector who wish to participate in public service, and bring their skills to sophisticated problem solving. We think the Administration would be well served if the first appointments were to assist the ECRA program.

Also, and this would be a quicker fix, hire help from the private sector in the same manner that has always been done by government when a program requires expertise and mature advice. A prequalified list of bidders is asked to bid and serve as the Executive's agent from a selected group of tasks. Such vendors of environmental services are used every day in the New Jersey Spill Fund program and federal Super Fund cases.

*Call for prequalification of the many technically oriented companies that do ECRA work. This will protect the public and avoid the "Yellow Pages Syndrome."

*Iron out some of the snags in the ECRA legislation. For instance, a significant question is whether ECRA's imperative applies to land adjoining the real estate in question. If

the Act applies to adjoining parcels, it should say so clearly. Parenthetically, I would add that the Act should not apply. The state should institute enforcement actions against those companies that have actually polluted the property in question, without leaving the entire burden on the company wishing to transfer the real property.

The legislature can serve a significant function in this arena, not only in its oversight capacity, but also in proposing amendments that reflect the experience of the Bureau, and by appropriating sufficient funds beyond a fee structure to insure that the Act operates properly.

My past experience as legislactive ounsel to Governor Brendan T. Byrne, as Commissioner of the Department of Environmental Protection and my ongoing work as a Commissioner of the Port Authority of New York and New Jersey have taught me that these things don't come easily. Perhaps I am even burdened in a way by my past experiences, since I know all too well the constraints upon government service -- not enough time, not enough people, not enough money. But I also remain burdened with the knowledge that a governmental program can be achieved if those factors are in place and there is a strong political will to get things done.

But the state has got to relieve the present ECRA gridlock. Let's make it a law that's envied and not ridiculed. New Jersey in this and any other environmental initiative is at center stage. How the state pulls itself out of the present administrative quagmire of ECRA will

reflect on its commitment to both environmental and business concerns.

TESTIMONY

GIVEN BY GEORGE T. VALLONE

NOVEMBER 17, 1986

ASSEMBLY REGULATORY EFFICIENCY AND OVERSIGHT COMMITTEE

First of all I want to thank you for your time in scrutinizing this important subject today. I apologize for not being here at the first hearing and for the distinct possibility that parts of may testimony may be redundant.

I am a developer in Hudson County where most large, developable properties are older industrial sites. I am now encountering an ECRA problem and have my experiences and some suggestions for your consideration. Let me say, first of all, that developers are generally a flexible and responsive group. For the most part they only want to know what to do and when they find out, they generally do it. Time can be the crippling enemy particularly for small developers. My comments are broken down on the ECRA regulations into two specific areas: Scheduling and one Cost Issues.

SCHEDULING

The first step in any ECRA procedure is to submit a General Information Submittal (GIS). This must be done within five (5) days of a trigger event. A trigger event being the sale of industrial property or sale of a commercial property in a given Standard Industrial Classification (SIC) code. The next step is the Site Evaluation Submittal (SES) which must be turned in within 30 days of a trigger event. This includes permits, maps, samples, geotechnical reports and sampling plans. This form is reviewed for completeness and if it's wrong will get rejected and your case goes is put at the bottom of the pile. My first recommendation is that since 90% of the time a simple phone call could get the missing piece of information that this be done in order to keep the applicant is gue.

It now takes approximately six (6) weeks to get a case number and a case manager assigned to your application. With this in mind my second recommendation is that assignment be made immediately. I see no reason why for six weeks should elapse. Once a case number and a case manager has been assigned the all-important dialogue between the applicant and his reviewer can begin and will ultimately lead to faster resolution of the problem. The case manager's first assignment is to make a site inspection.

Generally, within one week of his being assigned to the case, this does get done, however, it could take up to six weeks to be assigned to the case this leads to almost a two month delay before the first contact with the site is made by the DEP Inspector.

The site inspection report should include a review of the applicant's sampling plan and this is my third recommendation. An applicant will go to considerable expense and will begin to formulate his sampling plan and often times the initial inspection report makes no mention of nor does it include a review of that plan. After this step is finished the next is the actual sampling plan. If the sampling plan is not approved you begin your sampling plan completely at risk. This is the reason I mentioned before that the initial sampling plan should be included in the site inspection report. Presently, there are no time regulations on getting a sampling plan approved. It should be six months, but it often takes longer.

My fourth recommendation is that a time frame be placed on a sampling plan review. Sampling itself takes three to four weeks just to get a drilling rig on site and as little as six weeks to get the results back from the lab. . . and this is on a very simple ECRA problem. As you can see, an additional ten weeks can go by before the applicant actually gets any data back from the initial samplings. Developers are inclined to want to cut time frames down and often they are often forced into doing their sampling without having an approved sampling plan. This means they could be wasting time and money.

The fifth recommendation I have for the subcommittee today is to establish some de-minimus standards to keep smaller problems from "gumming up the works" at the DEP and to allow for a more efficient use of staff. There should be certain problems which do not get the same scrutiny as the more complex problems. The next step is to file for a negative declaration or file a cleanup plan. If you file for a negative declaration, 45 days is the required response time for the DEP to get back to you. However, if the 44th day has arrived and the DEP hasn't had time to review your case it is permitted to summarily reject the application without giving any reasons whatsoever for its rejection.

The applicant is now forced to go to the bottom of the pile again and this time with no idea whether given the right time conditions or not the same exact plan would be approved. So, my sixth recommendation to the committee today is that the review committee at DEP should be given a third option rather than to approve or reject a plan within 45 days. Certainly, if they are making substantial progress on the case and require an extension an applicant would prefer that to having his application rejected and placed at the bottom of the que again.

In a like matter, if the application is to be rejected, why can't the reasons for the rejection be placed on correspondence to the applicant. This way he can come back with the correct application the second time around instead of trying to guess at what the problem was the first time and risking another rejection. If a negative declaration is not being sought then a clean up plan is being sought. At this stage the DEP has no time limit in which to respond. This forces an applicant to begin cleanup at risk. This may result in a considerable waste of money if the DEP determines the cleanup plan should be different than what the applicant is pursuing. So, my seventh recommendation to the committee is to place a time limit on the cleanup plan approval and if disapproved the reasons why should be clearly stated.

Why does this process take so long? First of all the staff at the DEP is often not at the same level of experience as the professional making the submittal. Typically, you find people right out of college with chemical degrees reviewing work being submitted by experts and professionals who have had twenty years of training and advanced degrees in the field. As an example, a $15,000. fee is levied to review a plan of approximately $1 million for cleanup costs. An average billing rate of $50. per hour, allows for 300 hours of review time for a simple application. This is obviously way too much for a simple application. The bottom line is that there's too much work for not enough people. The eighth recommendation I put before the committee is to increase the size, capability, and experience levels of the ECRA staff.

The last step (during the cleanup) is that once the cleanup plan is approved you are ok to close on your property, and the cleanup is checked by the Enforcement Department at NJDEP. This calls for periodic checks that include testing and sampling. To date the response time is reasonable, however, there is no specific "response time" for the Enforcement Department to adhere to. My ninth recommendation is to put reasonable time limits upon which the Enforcement Department must respond to ongoing testing and sampling during the cleanup.

The rest of my comments are confined to the cost issues as well as the future direction of the ECRA regulations.

Continued. . .

COST

The cost of sampling, the cost of analysis, and particularly time as I mentioned in the scheduling area are slowing down real estate activity. In Hudson County where I develop, this is particularly acute as the area is predominantly older and industrial in nature and is currently poised to experience rapid development growth if the marketplace is allowed to operate freely. We must fine tune the ECRA guidelines now. Sites must be tested across the board for everything. I understand new guidelines are coming out by March 1987 which will cut back on the number of items tested. It is also recommended to combine SIC codes with site inspections and let the site inspection override. Currently, a black and white list of SIC classifications either puts you under ECRA or frees you from the burden of compliance. I believe there are several sites that are not in the designated SIC codes that do need toxic cleanup relief and are not getting it because of this loophole.

Also, there are sites included in the SIC category that have insignificant problems. An example is the printing company with a few gallons of toxic material stored on site. Adding some subjectivity to the process will result in finding those sites that should not be under the full burden of the regulation and will also target those who are slipping out from under it and shouldn't.

In disposal the future is questionable. The Hackensack Meadowlands Development Corporation has land-fill which costs $40. per yard but at the current rate it will be filled by March 1988. Similarly, Edgeboro which is at $60. per yard will be filled by early 1988. Pennsylvania is currently at $100. per yard. It's questionable whether or not the upcoming ECRA-like regulations in Pennsylvania will even allow for out of state dumping. The feds are currently discouraging land fills and land fills are quickly filling up. Eventually we are going to be required to do on site cleanups or ship the toxins to registered treatment facilities for incineration. The EPA has portable incinerators which could be used however, permitting air pollution will be resultant problems which must be addressed.

Finally, what is the future of ECRA? Practical applications of ECRA will include staffing up at DEP; refining of the guidelines; new treatment technologies like bio-degradation, (wherein bacteria attacks the toxins); soil washing (where the toxins are washed free from the soil so the concentrated product can be shipped in a condensed form); and fixation treatments which render the contaminants immobile and safely allow them to remain in the soils. Staffing up at DEP, encouraging development by streamlining the schedules and keeping up the good work in regulatory oversight hearings such as the one we are at here today will help to ensure the future of practical toxic free development.

GSL CONSTRUCTION

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November 13, 1986

Mr. Dan Gans
West Bank Construction
313 First St.
Hoboken, New Jersey 07030

Re: ECRA Public Hearing

Dear Dan,

Regarding our discussion at the Associated Builders and Contractors meeting, I would like to provide you with some input on my ECRA experiences.

As you know, GSL Construction and its affiliates develop, build and manage several commercial properties in Northern and central New Jersey. Obviously, we have encountered ECRA on several occasions.

The intent of the legislation is unquestionably beneficial. However, the implementation of same causes a variety of problems for buyers, sellers and users. I will list some abbreviated comments and suggestions below.

You should be aware that several of my attorneys and engineers provided input for my comments but were reluctant to testify directly due to personal time constraints (some of which are probably caused by ECRA problems) and fear of possible reprisals or lack of cooperation in the future from the ECRA staff.

Comments/Current Problems caused by Existing ECRA Procedures:

1. Delay and complexity in purchase negotiations of industrial and in some cases raw land sites has been dramatically increased or the ramification of ECRA and "unknown" clean-up costs are considered during purchase/sale negotiations. This also creates substantial additional legal costs on both sides as contract working is negotiated.

cont.

2. The time delays caused in lease negotiations, are similar to item one above due to the unknowns, apprehensions, and broad SIC code classification which impact so many users.

3. Can't get through on the phone.

4. Can't find out who has the file or status when you do.

5. Long delays in getting a person assigned to the file.

6. Phone calls are not returned frequently.

7. Closings on properties are delayed for months pending ECRA declaration, even on "clean" properties.

8. ECRA costs are even involved in movement of fills and soils to sites since movement must be delayed and soil tested prior to moving it to an industrial site to assure that no problems are being trucked in.

Suggestion:

To minimize costs to the state, consider licensing and bonding outside engineers (similar to using gas stations for motor vehicle inspections) to do tests and prepare the report with fees paid by the buyer or seller. The report and inspection costs are then transferred to the private sector, Bureaucracy is minimized or eliminated if the plan is well conceived with the state only responsible to review the report after declaration and assess the licensed investigation form for errors. Since this now makes it a "business", efficiency and speed could be gained for the buyer/seller and controlled by both price and competition. The state would still be insured that the intent of the legislation was accomplished and that, by bonding for insuring the investigating licensed forms, that they would still have recourse in the event of an error.

I am sorry my schedule does not permit my attendance at the testimony. I am hopeful that this input is beneficial and will aid in streamlining and improving the ECRA procedure. Thanks for the opportunity to you and the state government for listening.

Sincerely,

Edward E. Andrew
President

EEA/ke

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
STATEMENT TO NEW JERSEY ASSEMBLY REGULATORY EFFICIENCY
AND OVERSIGHT COMMITTEE HEARING
OCTOBER 27, 1986
TRENTON, NEW JERSEY

COMMENTARY ON THE PROBLEMS ENCOUNTERED IN
INTERPRETING AND COMPLYING WITH
ECRA REGULATIONS

I am Robert A. Geiger, Manager, Environmental Affairs, Public Service Electric and Gas Company. The Company appreciates the opportunity to review with you some of the problems encountered in interpreting and complying with ECRA regulations.

At the outset, let me stress that we endorse the objectives of ECRA but feel that changes are necessary in order to assure a more efficient implementation of the program. My remarks and specific examples will focus on the need for the Department to more effectively prioritize cases according to their potential environmental impact and to introduce a greater degree of flexibility in interpreting the intent of the Act. Changes of this nature can result in a more reasonable and efficient use of the agency's resources and can work to everyone's advantage by providing a more timely review and approval of certain real estate transactions, especially those that demonstrate little environmental impact.

1) The first example typifies a number of cases which the company has submitted which, while they have little environmental impact, experience protracted delays. We are currently selling a four acre section of excess property off a right-of-way that has never been used for operations and where the remaining property would continue to be used in the same fashion as previously by our Company, that is as an electric substation with its electrical switching

equipment and its step up and step down transformers, containing mineral oil, remaining in operation as they have been. This kind of equipment has a very low probability of failure and when it does fail, it is obvious and it requires immediate attention. In such an ECRA case where it is clear that the potential for environmental impact is low and where the history of the operations at the site is known, one would expect a fast and efficient approval. Instead, an application was submitted on August 19, 1986, found to be complete, and to date, October 23, 1986, has not yet been assigned to a case manager. This transaction has already been delayed two months by this process.

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

2) The second case illustrates the need to provide more flexibility in the regulations particularly where handling of hazardous wastes has never been involved. In this example, we were leasing a property for approximately 30 years which was across the street from one of our Electric T&D District Headquarters and which was owned by a neighboring pharmaceutical company. The property was used exclusively to park Company and employee vehicles. In order to insure the

continued availability of of the parcel as a parking lot, the company entered negotiations for its purchase. First it was suggested that there would be a need for an ECRA review of the selling pharmaceutical corporation's property which was not received favorably by them, and then it was thought perhaps an ECRA review of our T&D headquarters would be sufficient. Recognizing that both existing operations would continue unchanged, including the parking of vehicles, and that the buyer was willing to accept responsibility for the environmental conditions of the property, a status of non-applicability or simplified ECRA review should have been sufficient to satisfy the Bureau. However, to date, the Bureau has disallowed the subdivision and the opportunity to purchase the property was withdrawn by the seller. This seemed to be an inappropriate waste of Department resources and an inappropriate interpretation of the intent of the Act.

3) The next example focuses on the need for clarification of the wording "owner/operator" as to who is responsible in a Landlord/Tenant situation and the need to examine the case priority as related to the environmental impact. A specific case involved PSE&G and a large air conditioning equipment manufacturing company that owned a 125 acre site with its manufacturing facility on site. We leased a small area, approximately .4 acres, for our electrical transformer and switching equipment to service the manufacturer. The property

was sold by the manufacturer after a negative declaration was granted. However, a request for a refiling was made after it was discovered that PSE&G was a tenant on the property and operated a small substation there. After a one year review and delay an ECRA clearance was given. All this was for a case where there was no real environmental problem nor was there any change in our method of operation.

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

In summary, the Company supports the basic objectives of ECRA, along with other industrial firms in the State of New Jersey. However, there is a critical need to revise the regulations to provide more flexibility in their interpretation and to more efficiently administer the program as well. It is our hope that the above comments will contribute to that end.

LAN
LAN ASSOCIATES
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November 21, 1986

Mr. Darby Cannon
Room 370
Statehouse Annex
CN028
Trenton, NJ 08625

Subject: Presentation Relative to NJ Environmental Cleanup Responsibility Act
LAN Ref. #2.300

Dear Mr. Darby:

It is our understanding that written comments can be sent to your office for review by the Assembly Regulatory Efficiency and Oversite committee. Per this understanding, we have attached our comments relative to ECRA. These comments will hopefully have positive input to the committee's for improving the execution of the intent of the regulation to cleanup industrial sites at time of property transfer.

Very truly yours,

Guy D. Van Doren, P.E.
Vice President

Attachment:

1. Comments relative to Environmental Cleanup Responsibility Act to present to Assembly Regultory Efficiency and Oversite Committe.

GDVD:mg/usr/300/letter/0300861121ma

cc: File #2.300, w/att.

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LAN ASSOCIATES

As the Vice President of LAN Associates, I am responsible for day to day as well as overall activities relevant to environmental affairs. LAN Associates Inc., has been involved in the ECRA process since January of 19843. Our clients have included some of the top ten corporations in the U.S. as well as mom & pop establishments. We along with the regulators, owners and buyers of property have joined the frustration of dealing with a highly complex imaginative and dynamic law. It is our brief that the law is well intentioned and has a true place in the overall environmental control of NJ and other states concerned with their environment. We do believe that there are signficant improvements that can be made to the law which will insure its longivity as well as make it workable.

Briefly, out thoughts are as follows:

1. The State of NJ will develop zones of environmental concern relative to groundwater and soil quality. Groundwater issues are obviously the issues that are primarily during the cleanup activites with regard to groundwater and subsurface soil remediation. These zones followed very closely in concept to the zone relative to freshwater stream management and air quality attainment area. Based on these zones or standards for soil and groundwater relative to cleanup activities could be established.

2. An owner who can show that his site conditions fall within these standards could apply for a negative declaration.

3. An owner whose site does not meet these standards but demonstrates a cleanup has been established to meet these standards should receive a negative declaration after the documentation of cleanup has been reviewed and approved by DEP representatives.

4. An owner who is of the opinion that extenuating circumstances on his site could appeal the standard in question and thus negotiate on a scientific basis less stringent standards.

This is a very basic philosophical difference from the present regulation, and we believe it would strengthen the overall legislation. Obviously, there are problems with regard to setting standards and having geological boundaries associated with these standards. However, this is true of all segmented standards.

Mina Multiple Listing Smith Service

*One Hundred White Horse Avenue*
*Trenton, New Jersey 08610*

Joseph E. Hayes, Pres.

Telephone 888-1110

REAL ESTATE • HORSE FARMS • COMMERCIAL • APPRAISALS

November 12, 1986

New Jersey State Legislature
Assembly Regulatory Efficiency & Oversight Committee
State House Annex
CN 068
Trenton, New Jersey 08625

Re: ECRA Problems, Part II, Hearing November 17, 1986

Gentlemen:

ECRA regulation and specifically the Agency handling of the situation is by far the worst situation by any business to face.

Time lag, cost, etc. and the building of a new bureaucracy that we do not need.

Example: Robert Bushmen t/a Lewis Brothers Ceramics, 40,000 gallon in ground oil tank.

(A) ECRA: pump tanks and test with water, cost to extract $1.00 per gallon - $40,000.00

(B) ECRA: no water test refill with oil, viscosity of oil only to run test, cost to accomplish $32,000.00, .80¢ per gal.

This organization has the power to put people out of business and lacks compromise.

Lewis Brothers Answer: Turn over keys to City of Trenton, ECRA is impossible to deal with!!!

There must be a middle road solution to the problems that ECRA is creating, once you have heard all the war stories.

Yours truly,

Joseph E. Hayes
President

JEH/fl

# New Jersey Business and Industry Association

Comments on the Management of the
Environmental Cleanup Responsibility Act.
Oct. 26, 1986
By Jim Sinclair P.E.
Vice President

The New Jersey Business and Industry Association is the largest state employer association in the United States. Our member companies employ over 1 million NJ residents and we collectively share a concern for the quality of the State's environment and the health of its economy. Of particular concern to the Association is the depletion of manufacturing jobs in New Jersey and the decline of its urban industrial core.

In representing the collective view of our 11,000 member companies, we have consistently supported a rational program of private stewardship of industrial land and appropriate police powers for the State to prosecute those who wantonly pollute our environment.

The ECRA program was purportedly designed to protect unsuspecting buyers of industrial establishments from hidden environmental problems. However, the program has discouraged the reuse of industrial sites for industrial reuse. The state's concern that abandoned industrial establishments are often discovered to be the source of soil, ground water, and surface water contamination is also a justification for the radical powers given to the NJDEP by this law. ECRA attempts to force industrial establishments to clean up their facilities as a precondition to closure, sale or transfer of their operations. The Department of Environmental Protection views ECRA as "one of the most momentous environmental statutes in the country--a healthy dose of preventive medicine."

Unfortunately, we can see in retrospect that in fact ECRA is a "momentous" environmental statute and major public policy decision that deserved proper public scrutiny and input in its development. Clearly, the Legislature required a better understanding of the potential alternatives that were available to accomplish the same goals and a better understanding of the potential ramifications of the implementation of this program.

We believe that a broader process of public discussion about this program would have raised many of the problems inherent in the program. A realistic implementation plan that outlined staffing needs, work load projections, regulations and time frames would have opened the Legislature's eyes and perhaps this program would not have been signed into law. This lack of thoughtful analysis is the byproduct of a past legislative process that prided itself on passing more a than 100 bills in one day.

Even today, an active and informed discussion of the costs associated with the implementation of legislation appears to be missing in most committee hearings reviewing new environmental legislation. The Department of Environmental Protection actively lobbies for new and expanded powers such as Wetlands regulation, Toxic Catastrophe Prevention and Right to Know legislation, but it is only at the end of the process when they come to the Committee meeting with an amendment or two which requests that administrative costs of a certain amount of dollars be added to the bill. These figures always appear to come out of the air and usually are not accompanied by any documentation or indication of support from the Administration.

After the Legislature approves a bill, the Governor's office reviews it prior to the Governor signing, vetoing or conditionally vetoing it. ECRA was signed by the Governor on September 2, 1983 and became effective on December 31, 1983.

We believe that this review process is driven by political and legal issues but does not incorporate managerial and administrative concerns. When the Governor signs a bill such as ECRA he is saying," yes, his administration can effectively administer this law". The resources are available and the program will be in place and operational in the time frame mandated by the law. This should be viewed as a contractual agreement between the Governor as chief executive officer and the people of the State. This is what should happen, but it would appear that this didn't happen in the implementation of ECRA.

A new program needs personnel and resources. The Treasury Department has to establish positions and the Civil Service Department has to justify its existence. This is a time-consuming process which is designed from an overall budget control standpoint to be time consuming. However, in the case of priority projects, one word from the Governor's office or an interested Commissioner can create magic movement. There was no magic in the implementation of ECRA. It took over two years to achieve the present level of understaffing. Today, the Bureau of Industrial Site Evaluation has approximately 50 people. It probably needs 100.

Business people can't understand these time delays. One would expect that a program supported by fees would offer excellent service. You ask a question and get an answer. You submit an application and you get an approval or rejection. They are not used to waiting 6 months for a response. One company told us that the Bureau missed its own time estimates by a factor of four.

It is distressing to wait and wait for an answer from government. The delays can be attributed to problems of understaffing and lack of decision-making or other activities such as the project officer taking

several months off to write a sampling guide. One company that had been waiting for six months to get an answer called the previous Bureau Chief to find out what the problem was only to find out that he was out of state testifying before a legislative committee in a neighboring state proclaiming the virtues and effectiveness of NJ's "momentous" ECRA law!

The simple solution has now become the complex problem. Every person that buys or sells a commercial property in New Jersey must confront ECRA either directly or indirectly. The ECRA program has had a direct impact on the viability of the State's manufacturing community and in particular, the economic viability of our older urban industrial core. We are not speaking about the areas of the state where market pressures are driving the conversion of abandoned industrial land into residential and commercial reuse but in the areas of New Jersey that provide the source of our dwindling supply of manufacturing employment.

We believe that we have adopted a law that will have anti-urban and anti industrial consequences. We believe that this committee should recommend that the State conduct an objective study on recent development decisions to determine whether or not ECRA is halting industrial development. It should be our policy to save jobs in New Jersey by reusing industrial land for industrial purposes.

On a daily basis, we speak with many owners and managers of NJBIA member companies about this program. All too often, it is to confirm their disbelief that the program exists and that it will delay their planned sale, lease or purchase by months.

Most of the time, we advise companies to hire an attorney who has handled an ECRA project. ECRA is a complex and time driven system that has created a "gold mine" for consultants and attorneys. Because of the complexity of the process, the ECRA staff, which is for the most part inexperienced and untrained, prefers to work with professionals who know the system. An uninformed citizen caught alone in this process is at a disadvantage.

In real estate transactions,"time is money". ECRA is a process that takes time. It may not have been the intention of the legislature to place these constraints on the process of buying or selling business properties, but that is what happened. One major NJ based company has recently paid out $1 million as a result of participating in the ECRA program. It sold a manufacturing facility that was a "clean" site. However, delays in processing the ECRA application caused this company over $1 million in legal and consulting fees and penalties for delay in the transfer of the property. The company ultimately received a negative declaration, which means that it needlessly paid $1 million to prove that it wasn't guilty.

The time delays for issuing approvals is embedded in the structure of the enabling legislation. This is a program that has a very hard time saying yes. The staff is driven to attest to certainty in a world filled with uncertainty. The enabling legislation requires that the State certify that a property is safe. This is a great burden on any public official, especially a young profession lacking in any actual experience in real estate transactions. The nature of the regulatory process which places the burden of being absolutely right on the Department encourages the development of the existing bureaucratic structure that places decision making in the hands of one person, the Bureau Chief.

The delays that the private sector have encountered in the implementation and ongoing operation of this program should not be understated. Over two years ago, one mid sized New Jersey company bought a small company with an ECRA problem that was struggling to survive. They attempted to save the company but failed. However, two years, later they are still in the initial stages of the ECRA review process!

The enabling legislation is overreaching and needs to be drastically modified and reduced in scope. It needs to be changed to allow partial sale or conveyance of property with out causing a complete ECRA process. One of the most extreme cases that we heard of was a chemical company that had a small portion of its property condemned for a road widening. This public action would cause the entire plant to be covered by ECRA!

We have taken this opportunity to speak about the gross deficiencies of the legislation itself instead of modifications which might slightly improve the program. The Department has made sincere efforts to improve its operating efficiency and to compensate for its lack of management attention to the problems of implementation. The staff of NJDEP has been working with an Industrial Advisory committee to resolve basic problems that can be remedied within the constraints of the enabling legislation. However, we believe that this will not improve the program to an acceptable level. The most optimistic assessment for improvements in the system will still require an unacceptable time delay of four months for very simple projects that do not have any environmental problems.

We believe that the State of New Jersey should rethink this entire program. If we want to promote a policy of stewardship of our industrial land, we should build a regulatory program that is more long term in scope. We should develop an industrial zoning policy that preserves our industrial land while protecting the surrounding areas from environmental hazards.

Building a large and unproductive paper sorting bureaucracy that puts unrealistic constraints at the time of transfer is not effective method of environmental management. The Department points to the

Administrative Consent Orders(ACO's) as proof that the program works. We believe that the ACO's are a sure sign that ECRA doesnt' work and never will be able to function in an reasonable or rational manner. We believe that this program is an excellent candidate for sunset legislation.

We would be happy to provide more details or recommendations for policy action on this matter.