

Committee Meeting

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of

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

SENATE CONCURRENT RESOLUTION Nos.

28, 29, 30, 31, and 32
(Cigarette Taxes)

and

SENATE CONCURRENT RESOLUTION No. 33

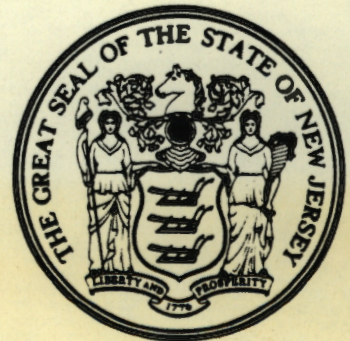
(Determines that NJPDES fee schedule is
inconsistent with legislative intent)

LOCATION: Committee Room 6
Legislative Office Building
Trenton, New Jersey

DATE: March 10, 1994
2:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator John P. Scott, Chairman
Senator Andrew R. Ciesla, Vice-Chairman
Senator John O. Bennett
Senator Nicholas J. Sacco
Senator Raymond J. Zane



ALSO PRESENT:

Mark T. Connelly
Raymond E. Cantor
Office of Legislative Services
Aides, Senate Legislative
Oversight Committee

New Jersey State Library

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New Jersey State Legislature

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

JOHN P. SCOTT
CHAIRMAN
ANDREW R. CIESLA
VICE-CHAIRMAN
JOHN G. BENNETT
HENRY P. McNAMARA
NICHOLAS J. SACCO
RAYMOND J. ZANE
RONALD L. RICE

LEGISLATIVE OFFICE BUILDING, CN-068
TRENTON, NEW JERSEY 08625-0068
(609) 292-7676

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE LEGISLATIVE OVERSIGHT
COMMITTEE

FROM: SENATOR JOHN P. SCOTT, CHAIRMAN

SUBJECT: COMMITTEE MEETING - March 10, 1994

*The public may address comments and questions to Mark Connelly or
Raymond E. Cantor, Committee Aide, or make bill status and scheduling
inquiries to Carol Hendryx, secretary, at (609) 292-7676.*

The Senate Legislative Oversight Committee will meet on Thursday,
March 10, 1994 at 2:00 PM in Committee Room 6, Legislative Office Building
Trenton, New Jersey.

The following resolutions will be considered:

- | | |
|-----------------|--|
| SCR-28
Scott | Determines that the regulations of the
Director of the Division of Taxation
providing for the distributor's discount
for certain volume purchases of
cigarette tax stamps are not consistent
with legislative intent. |
| SCR-29
Scott | Determines that the regulation of the
Director of the Division of Taxation
concerning refund claims of assessed tax
under the Cigarette Tax Act is not
consistent with legislative intent. |

Assistive listening devices available upon 24 hours prior notice
to the committee aide(s) listed above

(OVER)

Issued 03/04/94

Senate Legislative Oversight Committee

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March 10, 1994

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|-----------------|---|
| SCR-30
Scott | Determines that the regulation of the Director of the Division of Taxation concerning the threshold for fingerprinting of individuals related to retail dealer licensees under the Cigarette Tax Act is not consistent with legislative intent. |
| SCR-31
Scott | Determines that the regulation of the Director of the Division of Taxation concerning the period for filing taxpayer protests under the Cigarette Tax Act is not consistent with legislative intent. |
| SCR-32
Scott | Determines that the regulation of the Director of the Division of Taxation concerning the crime of possessing counterfeit stamped cigarettes under the Cigarette Tax Act is not consistent with legislative intent. |
| SCR-33
Scott | Determines that NJPDES fee schedule is inconsistent with legislative intent. |

(PROPOSED)

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

STATEMENT TO

Senate Concurrent Resolution, No. 28

STATE OF NEW JERSEY

DATED: March 10, 1994

This concurrent resolution embodies the finding of the Legislature that N.J.A.C.18:5-3.4 promulgated by the Director of the Division of Taxation is not consistent with legislative intent pursuant to Article V, Section IV, paragraph 6 of State Constitution.

The Legislature enacted the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), under which provision was made to collect a tax primarily from licensed distributors who purchase tax stamps or decals from the Division of Taxation and must affix them to packs of cigarettes before they are sold. The Legislature provided that distributors would be granted a discount on their purchases of tax stamps or decals as compensation for handling and affixing revenue stamps or decals to cigarette packages before delivery to wholesaler or retail dealers. Effective in 1968, the Legislature amended the method of determining the discount to a percentage of the face amount of any sales of 1,000 stamps or more. Section 401 of P.L.1948, c.65 (C.54:40A-11), states that the distributor's discount on the purchase of cigarette revenue tax stamps applies to any sale of 1,000 stamps or more which includes the purchase of exactly 1,000 stamps.

The Division of Taxation has promulgated the readoption of rules codified in chapter 5 of Title 18 of the New Jersey Administrative Code. N.J.A.C.18:5-3.4 states that the distributor's discount applies to purchases in excess of 1,000 stamps which would not include the purchase of exactly 1,000 stamps.

The concurrent resolution finds that N.J.A.C.18:5-3.4 is not consistent with legislative intent in that the requirement of N.J.A.C.18:5-3.4 that the distributor's discount applies to purchases in excess of 1,000 stamps does not include the purchase of exactly 1,000 stamps as is included in the "Cigarette Tax Act."

The Director of the Division of Taxation shall have 30 days following transmittal of this resolution to amend or withdraw the regulations or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the regulations.

SENATE CONCURRENT RESOLUTION No. 28

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 10, 1994

By Senator SCOTT

1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 Division of Taxation regulations pursuant to Article V, Section
3 IV, paragraph 6 of the Constitution of the State of New Jersey.

4
5 **BE IT RESOLVED** *by the Senate of the State of New Jersey*
6 *(the General Assembly concurring):*

7 1. Pursuant to Article V, Section IV, paragraph 6 of the
8 Constitution of the State of New Jersey, the Legislature may
9 review any rule or regulation of an administrative agency to
10 determine if the rule or regulation is consistent with the intent of
11 the Legislature.

12 2. The Legislature enacted the "Cigarette Tax Act," P.L.1948,
13 c.65 (C.54:40A-1 et seq.), under which provision was made to
14 collect a tax primarily from licensed distributors who purchase
15 tax stamps or decals from the Division of Taxation and must affix
16 them to packs of cigarettes before they are sold. The Legislature
17 provided that distributors would be granted a discount on their
18 purchases of tax stamps or decals as compensation for handling
19 and affixing revenue stamps or decals to cigarette packages
20 before delivery to wholesaler or retail dealers. Effective in 1968,
21 the Legislature amended the method of determining the discount
22 to a percentage of the face amount of any sales of 1,000 stamps
23 or more. Section 401 of P.L.1948, c.65 (C.54:40A-11), states that
24 the distributor's discount on the purchase of cigarette revenue
25 tax stamps applies to any sale of 1,000 stamps or more which
26 includes the purchase of exactly 1,000 stamps. The Division of
27 Taxation has promulgated the readoption of rules codified in
28 chapter 5 of Title 18 of the New Jersey Administrative Code.
29 N.J.A.C.18:5-3.4 states that the distributor's discount applies to
30 purchases in excess of 1,000 stamps which would not include the
31 purchase of exactly 1,000 stamps.

32 3. The Legislature finds that N.J.A.C.18:5-3.4 is not
33 consistent with legislative intent in that the requirement of
34 N.J.A.C.18:5-3.4 that the distributor's discount applies to
35 purchases in excess of 1,000 stamps does not include the purchase
36 of exactly 1,000 stamps as is included in the "Cigarette Tax Act."

37 4. The Secretary of the Senate and the Clerk of the General
38 Assembly shall transmit a duly authenticated copy of this
39 concurrent resolution to the Governor and the Director of the
40 Division of Taxation.

41 5. The Director of the Division of Taxation shall, pursuant to
42 Article V, Section IV, paragraph 6 of the Constitution of the
43 State of New Jersey, have 30 days following transmittal of this

1 resolution to amend or withdraw the regulation or the Legislature
2 may, by passage of another concurrent resolution, exercise its
3 authority under the Constitution to invalidate the regulation.
4

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6 STATEMENT
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8 This concurrent resolution embodies the finding of the
9 Legislature that N.J.A.C.18:5-3.4 promulgated by the Director of
10 the Division of Taxation is not consistent with legislative intent
11 pursuant to Article V, Section IV, paragraph 6 of State
12 Constitution.

13 The Legislature enacted the "Cigarette Tax Act," P.L.1948,
14 c.65 (C.54:40A-1 et seq.), under which provision was made to
15 collect a tax primarily from licensed distributors who purchase
16 tax stamps or decals from the Division of Taxation and must affix
17 them to packs of cigarettes before they are sold. The Legislature
18 provided that distributors would be granted a discount on their
19 purchases of tax stamps or decals as compensation for handling
20 and affixing revenue stamps or decals to cigarette packages
21 before delivery to wholesaler or retail dealers. Effective in 1968,
22 the Legislature amended the method of determining the discount
23 to a percentage of the face amount of any sales of 1,000 stamps
24 or more. Section 401 of P.L.1948, c.65 (C.54:40A-11), states that
25 the distributor's discount on the purchase of cigarette revenue
26 tax stamps applies to any sale of 1,000 stamps or more which
27 includes the purchase of exactly 1,000 stamps.

28 The Division of Taxation has promulgated the readoption of
29 rules codified in chapter 5 of Title 18 of the New Jersey
30 Administrative Code. N.J.A.C.18:5-3.4 states that the
31 distributor's discount applies to purchases in excess of 1,000
32 stamps which would not include the purchase of exactly 1,000
33 stamps.

34 The concurrent resolution finds that N.J.A.C.18:5-3.4 is not
35 consistent with legislative intent in that the requirement of
36 N.J.A.C.18:5-3.4 that the distributor's discount applies to
37 purchases in excess of 1,000 stamps does not include the purchase
38 of exactly 1,000 stamps as is included in the "Cigarette Tax Act."

39 The Director of the Division of Taxation shall have 30 days
40 following transmittal of this resolution to amend or withdraw the
41 regulations or the Legislature may, by passage of another
42 concurrent resolution, exercise its authority under the
43 Constitution to invalidate the regulations.
44

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48 Determines that the regulations of the Director of the Division of
49 Taxation providing for the distributor's discount for certain
50 volume purchases of cigarette tax stamps are not consistent with
51 legislative intent.

(PROPOSED)

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

STATEMENT TO

Senate Concurrent Resolution, No. 29

STATE OF NEW JERSEY

DATED: March 10, 1994

This concurrent resolution embodies the finding of the Legislature that N.J.A.C.18:5-4.1 promulgated by the Director of the Division of Taxation is not consistent with legislative intent pursuant to Article V, Section IV, paragraph 6 of State Constitution.

The Legislature enacted the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), under which the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. were made applicable to the administration of the tax act. R.S.54:49-14, which is part of the State Tax Uniform Procedure Law, allows a taxpayer to file a claim for a tax refund within four years after payment of any original or additional tax assessed against the taxpayer and that four year refund claim period is applicable to the Cigarette Tax Act pursuant to section 502 of P.L.1948, c.65 (C.54:40A-21).

The Division of Taxation has promulgated the readoption of rules codified in chapter 5 of Title 18 of the New Jersey Administrative Code. N.J.S.A.18:5-4.1 allows a taxpayer only two years to file a claim for a tax refund.

This concurrent resolution finds that N.J.A.C.18:5-4.1 is not consistent with legislative intent in that the two year period in which to file a claim for a tax refund after payment of a cigarette tax assessment does not incorporate the extended tax refund limitations period of four years enacted under the Taxpayer's Bill of Rights.

The Director of the Division of Taxation shall have 30 days following transmittal of this resolution to amend or withdraw the regulations or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the regulations.

SENATE CONCURRENT RESOLUTION No. 29

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 10, 1994

By Senator SCOTT

1 A CONCURRENT RESOLUTION concerning legislative review of
2 Division of Taxation regulations pursuant to Article V, Section
3 IV, paragraph 6 of the Constitution of the State of New Jersey.

4
5 BE IT RESOLVED *by the Senate of the State of New Jersey*
6 *(the General Assembly concurring):*

7 1. Pursuant to Article V, Section IV, paragraph 6 of the
8 Constitution of the State of New Jersey, the Legislature may
9 review any rule or regulation of an administrative agency to
10 determine if the rule or regulation is consistent with the intent of
11 the Legislature.

12 2. The Legislature enacted the "Cigarette Tax Act," P.L.1948,
13 c.65 (C.54:40A-1 et seq.), under which the provisions of the State
14 Tax Uniform Procedure Law, R.S.54:48-1 et seq. were made
15 applicable to the administration of the tax act. R.S.54:49-14,
16 which is part of the State Tax Uniform Procedure Law, allows a
17 taxpayer to file a claim for a tax refund within four years after
18 payment of any original or additional tax assessed against the
19 taxpayer and that four year refund claim period is applicable to
20 the Cigarette Tax Act pursuant to section 502 of P.L.1948, c.65
21 (C.54:40A-21). The Division of Taxation has promulgated the
22 readoption of rules codified in chapter 5 of Title 18 of the New
23 Jersey Administrative Code. N.J.S.A.18:5-4.1 allows a taxpayer
24 only two years to file a claim for a tax refund and is not
25 consistent with the recent amendment to R.S.54:49-14 made by
26 P.L.1992, c.175, providing for a Taxpayers' Bill of Rights which
27 extended tax refund limitations periods to four years under most
28 State taxes.

29 3. The Legislature finds that N.J.A.C.18:5-4.1 is not
30 consistent with legislative intent in that the requirement of
31 N.J.A.C.18:5-4.1 that allow a taxpayer only two years to file a
32 claim for a tax refund is not consistent with R.S.54:49-14
33 providing a tax refund limitations period of four years under the
34 "Cigarette Tax Act."

35 4. The Secretary of the Senate and the Clerk of the General
36 Assembly shall transmit a duly authenticated copy of this
37 concurrent resolution to the Governor and the Director of the
38 Division of Taxation.

39 5. The Director of the Division of Taxation shall, pursuant to
40 Article V, Section IV, paragraph 6 of the Constitution of the
41 State of New Jersey, have 30 days following transmittal of this
42 resolution to amend or withdraw the regulation or the Legislature
43 may, by passage of another concurrent resolution, exercise its
44 authority under the Constitution to invalidate the regulation.

STATEMENT

This concurrent resolution embodies the finding of the Legislature that N.J.A.C.18:5-4.1 promulgated by the Director of the Division of Taxation is not consistent with legislative intent pursuant to Article V, Section IV, paragraph 6 of State Constitution.

The Legislature enacted the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), under which the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq. were made applicable to the administration of the tax act. R.S.54:49-14, which is part of the State Tax Uniform Procedure Law, allows a taxpayer to file a claim for a tax refund within four years after payment of any original or additional tax assessed against the taxpayer and that four year refund claim period is applicable to the Cigarette Tax Act pursuant to section 502 of P.L.1948, c.65 (C.54:40A-21).

The Division of Taxation has promulgated the readoption of rules codified in chapter 5 of Title 18 of the New Jersey Administrative Code. N.J.S.A.18:5-4.1 allows a taxpayer only two years to file a claim for a tax refund.

This concurrent resolution finds that N.J.A.C.18:5-4.1 is not consistent with legislative intent in that the two year period in which to file a claim for a tax refund after payment of a cigarette tax assessment does not incorporate the extended tax refund limitations period of four years enacted under the Taxpayer's Bill of Rights.

The Director of the Division of Taxation shall have 30 days following transmittal of this resolution to amend or withdraw the regulations or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the regulations.

Determines that the regulation of the Director of the Division of Taxation concerning refund claims of assessed tax under the Cigarette Tax Act is not consistent with legislative intent.

(PROPOSED)

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

STATEMENT TO

Senate Concurrent Resolution, No. 30

STATE OF NEW JERSEY

DATED: March 10, 1994

This concurrent resolution embodies the finding of the Legislature that N.J.A.C.18:8-6.2 promulgated by the Director of the Division of Taxation is not consistent with legislative intent pursuant to Article V, Section IV, paragraph 6 of State Constitution.

The Legislature enacted the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), under which the tax is collected primarily from licensed distributors who must purchase and affix tax stamps or decals on cigarette packages they purchase directly from manufacturers. The collection of the tax is safeguarded through a system of licenses issued by the Division of Taxation to distributors, wholesalers, over-the-counter retailers and vending machine dealers. To ensure the law-abiding integrity of all licensees under the act, section 202 of P.L.1948, c.65 (C.54:40A-4), requires license applicants to submit with their applications the fingerprints of certain individuals related to their business to the Federal Bureau of Investigation and the New Jersey State Police. Section 202 of P.L.1948, c.65 (C.54:40A-4), limits the fingerprinting requirement of business-related individuals to those retail dealers operating more than nine cigarette vending machines or selling cigarettes at more than nine premises.

The Division of Taxation has promulgated the readoption of rules codified in chapter 8 of Title 18 of the New Jersey Administrative Code. N.J.A.C.18:8-6.2 establishes the regulatory threshold for fingerprinting for retail businesses operating five or more vending machines or selling at five or more premises.

This concurrent resolution finds that N.J.A.C.18:8-6.2 is not consistent with legislative intent in that the requirement of N.J.A.C.18:8-6.2 does not conform to section 202 of P.L.1948, c.65 (C.54:40A-4), which was amended in 1987 to raise the threshold from five machines or premises to more than nine machines or premises in order to impact upon fewer small retail dealers.

The Director of the Division of Taxation shall have 30 days following transmittal of this resolution to amend or withdraw the regulations or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the regulations.

SENATE CONCURRENT RESOLUTION No. 30

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 10, 1994

By Senator SCOTT

1 A *CONCURRENT RESOLUTION* concerning legislative review of
2 Division of Taxation regulations pursuant to Article V, Section
3 IV, paragraph 6 of the Constitution of the State of New Jersey.

4
5 BE IT RESOLVED *by the Senate of the State of New Jersey*
6 *(the General Assembly concurring):*

7 1. Pursuant to Article V, Section IV, paragraph 6 of the
8 Constitution of the State of New Jersey, the Legislature may
9 review any rule or regulation of an administrative agency to
10 determine if the rule or regulation is consistent with the intent of
11 the Legislature.

12 2. The Legislature enacted the "Cigarette Tax Act," P.L.1948,
13 c.65 (C.54:40A-1 et seq.), under which the tax is collected
14 primarily from licensed distributors who must purchase and affix
15 tax stamps or decals on cigarette packages they purchase directly
16 from manufacturers. The collection of the tax is safeguarded
17 through a system of licenses issued by the Division of Taxation to
18 distributors, wholesalers, over-the-counter retailers and vending
19 machine dealers. To ensure the law-abiding integrity of all
20 licensees under the act, section 202 of P.L.1948, c.65
21 (C.54:40A-4), requires license applicants to submit with their
22 applications the fingerprints of certain individuals related to
23 their business to the Federal Bureau of Investigation and the New
24 Jersey State Police. Section 202 of P.L.1948, c.65 (C.54:40A-4),
25 limits the fingerprinting requirement of business-related
26 individuals to be included with retail dealer license applications
27 to those retail dealers operating more than nine cigarette vending
28 machines or selling cigarettes at more than nine premises. The
29 Division of Taxation has promulgated the readoption of rules
30 codified in chapter 8 of Title 18 of the New Jersey
31 Administrative Code. N.J.A.C.18:8-6.2 establishes the
32 regulatory threshold for fingerprinting for retail businesses
33 operating five or more vending machines or selling at five or
34 more premises.

35 3. The Legislature finds that N.J.A.C.18:8-6.2 is not
36 consistent with legislative intent in that the requirement of
37 N.J.A.C.18:8-6.2 does not conform to section 202 of P.L.1948,
38 c.65 (C.54:40A-4), which was amended in 1987 to raise the
39 threshold from five machines or premises to more than nine
40 machines or premises in order to impact upon fewer small retail
41 dealers.

42 4. The Secretary of the Senate and the Clerk of the General
43 Assembly shall transmit a duly authenticated copy of this
44 concurrent resolution to the Governor and the Director of the
45 Division of Taxation.

1 5. The Director of the Division of Taxation shall, pursuant to
2 Article V, Section IV, paragraph 6 of the Constitution of the
3 State of New Jersey, have 30 days following transmittal of this
4 resolution to amend or withdraw the regulation or the Legislature
5 may, by passage of another concurrent resolution, exercise its
6 authority under the Constitution to invalidate the regulation.

7
8
9 STATEMENT

10
11 This concurrent resolution embodies the finding of the
12 Legislature that N.J.A.C.18:8-6.2 promulgated by the Director of
13 the Division of Taxation is not consistent with legislative intent
14 pursuant to Article V, Section IV, paragraph 6 of State
15 Constitution.

16 The Legislature enacted the "Cigarette Tax Act," P.L.1948,
17 c.65 (C.54:40A-1 et seq.), under which the tax is collected
18 primarily from licensed distributors who must purchase and affix
19 tax stamps or decals on cigarette packages they purchase directly
20 from manufacturers. The collection of the tax is safeguarded
21 through a system of licenses issued by the Division of Taxation to
22 distributors, wholesalers, over-the-counter retailers and vending
23 machine dealers. To ensure the law-abiding integrity of all
24 licensees under the act, section 202 of P.L.1948, c.65
25 (C.54:40A-4), requires license applicants to submit with their
26 applications the fingerprints of certain individuals related to
27 their business to the Federal Bureau of Investigation and the New
28 Jersey State Police. Section 202 of P.L.1948, c.65 (C.54:40A-4),
29 limits the fingerprinting requirement of business-related
30 individuals to those retail dealers operating more than nine
31 cigarette vending machines or selling cigarettes at more than
32 nine premises.

33 The Division of Taxation has promulgated the readoption of
34 rules codified in chapter 8 of Title 18 of the New Jersey
35 Administrative Code. N.J.A.C.18:8-6.2 establishes the
36 regulatory threshold for fingerprinting for retail businesses
37 operating five or more vending machines or selling at five or
38 more premises.

39 This concurrent resolution finds that N.J.A.C.18:8-6.2 is not
40 consistent with legislative intent in that the requirement of
41 N.J.A.C.18:8-6.2 does not conform to section 202 of P.L.1948,
42 c.65 (C.54:40A-4), which was amended in 1987 to raise the
43 threshold from five machines or premises to more than nine
44 machines or premises in order to impact upon fewer small retail
45 dealers.

46 The Director of the Division of Taxation shall have 30 days
47 following transmittal of this resolution to amend or withdraw the
48 regulations or the Legislature may, by passage of another
49 concurrent resolution, exercise its authority under the
50 Constitution to invalidate the regulations.

1

2

3 _____
4 Determines that the regulation of the Director of the Division of
5 Taxation concerning the threshold for fingerprinting of
6 individuals related to retail dealer licensees under the Cigarette
Tax Act is not consistent with legislative intent.

(PROPOSED)

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

STATEMENT TO

Senate Concurrent Resolution, No. 31

STATE OF NEW JERSEY

DATED: March 10, 1994

This concurrent resolution embodies the finding of the Legislature that N.J.A.C.18:5-8.10 promulgated by the Director of the Division of Taxation is not consistent with legislative intent pursuant to Article V, Section IV, paragraph 6 of State Constitution.

The Legislature enacted the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), under which the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., were made applicable to the administration of the tax act. R.S.54:49-18, which is part of the State Tax Uniform Procedure Law, allows a taxpayer 90 days after any finding or assessment by the Director of the Division of Taxation to request a hearing in protest of the finding or assessment. That 90 day protest period is applicable to the Cigarette Tax Act pursuant to section 502 of P.L.1948, c.65 (C.54:40A-21).

The Division of Taxation has promulgated the readoption of rules codified in chapter 5 of Title 18 of the New Jersey Administrative Code. N.J.A.C.18:5-8.10 limits the period within which to file a protest to 30 days of the giving of the notice of assessment or finding.

This concurrent resolution finds that N.J.A.C.18:5-8.10 is not consistent with legislative intent in that the requirement of N.J.A.C.18:5-8.10 that allow a taxpayer only 30 days to file a protest against a finding or assessment by the director is not consistent with R.S.54:49-18 providing a 90 day protest period under the "Cigarette Tax Act."

The Director of the Division of Taxation shall have 30 days following transmittal of this resolution to amend or withdraw the regulations or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the regulations.

SENATE CONCURRENT RESOLUTION No. 31

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 10, 1994

By Senator SCOTT

1 A *CONCURRENT RESOLUTION* concerning legislative review of
2 Division of Taxation regulations pursuant to Article V, Section
3 IV, paragraph 6 of the Constitution of the State of New Jersey.

4
5 BE IT RESOLVED *by the Senate of the State of New Jersey*
6 *(the General Assembly concurring):*

7 1. Pursuant to Article V, Section IV, paragraph 6 of the
8 Constitution of the State of New Jersey, the Legislature may
9 review any rule or regulation of an administrative agency to
10 determine if the rule or regulation is consistent with the intent of
11 the Legislature.

12 2. The Legislature enacted the "Cigarette Tax Act," P.L.1948,
13 c.65 (C.54:40A-1 et seq.). under which the provisions of the State
14 Tax Uniform Procedure Law, R.S.54:48-1 et seq., were made
15 applicable to the administration of the tax act. R.S.54:49-18,
16 which is part of the State Tax Uniform Procedure Law, allows a
17 taxpayer 90 days after any finding or assessment by the Director
18 of the Division of Taxation to request a hearing in protest of the
19 finding or assessment. That 90 day protest period is applicable to
20 the Cigarette Tax Act pursuant to section 502 of P.L.1948, c.65
21 (C.54:40A-21). The Division of Taxation has promulgated the
22 readoption of rules codified in chapter 5 of Title 18 of the New
23 Jersey Administrative Code. N.J.A.C.18:5-8.10 limits the period
24 within which to file a protest to 30 days of the giving of the
25 notice of assessment or finding. The rule does not conform to the
26 longer taxpayer protest period that was extended to 90 days by
27 the amendment to N.J.S.A.54:49-18 by the Taxpayers' Bill of
28 Rights enacted by P.L.1992, c.175.

29 3. The Legislature finds that N.J.A.C.18:5-8.10 is not
30 consistent with legislative intent in that the requirement of
31 N.J.A.C.18:5-8.10 that allow a taxpayer only 30 days to file a
32 protest against a finding or assessment by the director is not
33 consistent with R.S.54:49-18 providing a 90 day protest period
34 under the "Cigarette Tax Act."

35 4. The Secretary of the Senate and the Clerk of the General
36 Assembly shall transmit a duly authenticated copy of this
37 concurrent resolution to the Governor and the Director of the
38 Division of Taxation.

39 5. The Director of the Division of Taxation shall, pursuant to
40 Article V, Section IV, paragraph 6 of the Constitution of the
41 State of New Jersey, have 30 days following transmittal of this
42 resolution to amend or withdraw the regulation or the Legislature

(PROPOSED)

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

STATEMENT TO

Senate Concurrent Resolution, No. 32

with committee amendments

STATE OF NEW JERSEY

DATED: March 10, 1994

This concurrent resolution embodies the finding of the Legislature that N.J.A.C.18:5-8.10 promulgated by the Director of the Division of Taxation is not consistent with legislative intent pursuant to Article V, Section IV, paragraph 6 of State Constitution.

The Legislature enacted the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.), under which provision was made to collect a tax primarily from licensed distributors who purchase tax stamps or decals from the Division of Taxation and must affix them to packs of cigarettes before they are sold. Under section 606 of P.L.1948, c.65 (C.54:40A-29), any person who has in his possession packages of cigarettes in a quantity equal to or greater than 2,000 cigarettes to which are affixed counterfeit stamps or impressions is guilty of a crime of the third degree. Under the "New Jersey Code of Criminal Justice" a crime of the third degree is punishable by a term of imprisonment of between three to five years and a fine of up to \$7,500 or both.

The Division of Taxation has promulgated the readoption of rules codified in chapter 5 of Title 18 of the New Jersey Administrative Code. N.J.A.C.18:5-12.3 refers to the same violation as a misdemeanor subject to a penalty of not more than a \$1,000 fine, or imprisonment of not more than one year, or both.

This concurrent resolution finds that N.J.A.C.18:5-12.3 is not consistent with legislative intent in that the criminal grading and punishment for that violation under the rule does not conform to the increased grading of the violation as a third degree crime in R.S.54:40A-29 under the "Cigarette Tax Act."

The Director of the Division of Taxation shall have 30 days following transmittal of this resolution to amend or withdraw the regulations or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the regulations.

1 may, by passage of another concurrent resolution, exercise its
2 authority under the Constitution to invalidate the regulation.

3
4
5 STATEMENT

6
7 This concurrent resolution embodies the finding of the
8 Legislature that N.J.A.C.18:5-8.10 promulgated by the Director
9 of the Division of Taxation is not consistent with legislative
10 intent pursuant to Article V, Section IV, paragraph 6 of State
11 Constitution.

12 The Legislature enacted the "Cigarette Tax Act," P.L.1948,
13 c.65 (C.54:40A-1 et seq.), under which the provisions of the State
14 Tax Uniform Procedure Law, R.S.54:48-1 et seq., were made
15 applicable to the administration of the tax act. R.S.54:49-18,
16 which is part of the State Tax Uniform Procedure Law, allows a
17 taxpayer 90 days after any finding or assessment by the Director
18 of the Division of Taxation to request a hearing in protest of the
19 finding or assessment. That 90 day protest period is applicable to
20 the Cigarette Tax Act pursuant to section 502 of P.L.1948, c.65
21 (C.54:40A-21).

22 The Division of Taxation has promulgated the readoption of
23 rules codified in chapter 5 of Title 18 of the New Jersey
24 Administrative Code. N.J.A.C.18:5-8.10 limits the period within
25 which to file a protest to 30 days of the giving of the notice of
26 assessment or finding.

27 This concurrent resolution finds that N.J.A.C.18:5-8.10 is not
28 consistent with legislative intent in that the requirement of
29 N.J.A.C.18:5-8.10 that allow a taxpayer only 30 days to file a
30 protest against a finding or assessment by the director is not
31 consistent with R.S.54:49-18 providing a 90 day protest period
32 under the "Cigarette Tax Act."

33 The Director of the Division of Taxation shall have 30 days
34 following transmittal of this resolution to amend or withdraw the
35 regulations or the Legislature may, by passage of another
36 concurrent resolution, exercise its authority under the
37 Constitution to invalidate the regulations.

38
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41
42 Determines that the regulation of the Director of the Division of
43 Taxation concerning the period for filing taxpayer protests under
44 the Cigarette Tax Act is not consistent with legislative intent.

SENATE CONCURRENT RESOLUTION No. 32

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 10, 1994

By Senator SCOTT

1 A CONCURRENT RESOLUTION concerning legislative review of
2 Division of Taxation regulations pursuant to Article V, Section
3 IV, paragraph 6 of the Constitution of the State of New Jersey.

4
5 BE IT RESOLVED by the Senate of the State of New Jersey
6 (the General Assembly concurring):

7 1. Pursuant to Article V, Section IV, paragraph 6 of the
8 Constitution of the State of New Jersey, the Legislature may
9 review any rule or regulation of an administrative agency to
10 determine if the rule or regulation is consistent with the intent of
11 the Legislature.

12 2. The Legislature enacted the "Cigarette Tax Act," P.L.1948,
13 c.65 (C.54:40A-1 et seq.), under which provision was made to
14 collect a tax primarily from licensed distributors who purchase
15 tax stamps or decals from the Division of Taxation and must affix
16 them to packs of cigarettes before they are sold. Under section
17 606 of P.L.1948, c.65 (C.54:40A-29), any person who has in his
18 possession packages of cigarettes in a quantity equal to or
19 greater than 2,000 cigarettes to which are affixed counterfeit
20 stamps or impressions is guilty of a crime of the third degree.
21 Under the "New Jersey Code of Criminal Justice" a crime of the
22 third degree is punishable by a term of imprisonment of between
23 three to five years and a fine of up to \$7,500 or both. The
24 Division of Taxation has promulgated the readoption of rules
25 codified in chapter 5 of Title 18 of the New Jersey
26 Administrative Code. N.J.A.C.18:5-12.3 refers to the same
27 violation as a misdemeanor subject to a penalty of not more than
28 a \$1,000 fine, or imprisonment of not more than one year, or
29 both. The rule does not conform to the criminal grading of the
30 violation that was increased from a misdemeanor to a third
31 degree crime in R.S.54:40A-29.

32 3. The Legislature finds that N.J.A.C.18:5-12.3 is not
33 consistent with legislative intent in that the criminal grading and
34 punishment for possession of 2,000 or more counterfeit stamped
35 cigarettes is not consistent with R.S.54:40A-29 providing for a
36 greater term of imprisonment or fine or both under the
37 "Cigarette Tax Act."

38 4. The Secretary of the Senate and the Clerk of the General
39 Assembly shall transmit a duly authenticated copy of this
40 concurrent resolution to the Governor and the Director of the
41 Division of Taxation.

42 5. The Director of the Division of Taxation shall, pursuant to
43 Article V, Section IV, paragraph 6 of the Constitution of the
44 State of New Jersey, have 30 days following transmittal of

1 this resolution to amend or withdraw the regulation or the
2 Legislature may, by passage of another concurrent resolution,
3 exercise its authority under the Constitution to invalidate the
4 regulation.

5
6
7 STATEMENT

8
9 This concurrent resolution embodies the finding of the
10 Legislature that N.J.A.C.18:5-8.10 promulgated by the Director
11 of the Division of Taxation is not consistent with legislative
12 intent pursuant to Article V, Section IV, paragraph 6 of State
13 Constitution.

14 The Legislature enacted the "Cigarette Tax Act," P.L.1948,
15 c.65 (C.54:40A-1 et seq.), under which provision was made to
16 collect a tax primarily from licensed distributors who purchase
17 tax stamps or decals from the Division of Taxation and must affix
18 them to packs of cigarettes before they are sold. Under section
19 606 of P.L.1948, c.65 (C.54:40A-29), any person who has in his
20 possession packages of cigarettes in a quantity equal to or
21 greater than 2,000 cigarettes to which are affixed counterfeit
22 stamps or impressions is guilty of a crime of the third degree.
23 Under the "New Jersey Code of Criminal Justice" a crime of the
24 third degree is punishable by a term of imprisonment of between
25 three to five years and a fine of up to \$7,500 or both.

26 The Division of Taxation has promulgated the readoption of
27 rules codified in chapter 5 of Title 18 of the New Jersey
28 Administrative Code. N.J.A.C.18:5-12.3 refers to the same
29 violation as a misdemeanor subject to a penalty of not more than
30 a \$1,000 fine, or imprisonment of not more than one year, or both.

31 This concurrent resolution finds that N.J.A.C.18:5-12.3 is not
32 consistent with legislative intent in that the criminal grading and
33 punishment for that violation under the rule does not conform to
34 the increased grading of the violation as a third degree crime in
35 R.S.54:40A-29 under the "Cigarette Tax Act."

36 The Director of the Division of Taxation shall have 30 days
37 following transmittal of this resolution to amend or withdraw the
38 regulations or the Legislature may, by passage of another
39 concurrent resolution, exercise its authority under the
40 Constitution to invalidate the regulations.

41
42
43
44 Determines that the regulation of the Director of the Division of
45 Taxation concerning the crime of possessing counterfeit stamped
46 cigarettes under the Cigarette Tax Act is not consistent with
47 legislative intent.

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

STATEMENT TO

Senate Concurrent Resolution, No. 33

STATE OF NEW JERSEY

DATED: March 10, 1994

This concurrent resolution embodies the finding of the Legislature that the regulations of the Department of Environmental Protection and Energy concerning a fee schedule for NJPDES permittees and applicants, codified at N.J.A.C.7:14A-1.8, is not consistent with legislative intent pursuant to Article V, Section IV, paragraph 6 of State Constitution.

Pursuant to section 9 of P.L.1977, c.74 (C.58:10A-9), provides that the Commissioner of Environmental Protection and Energy is authorized to "establish and charge reasonable annual administrative fees." The law requires that these fees "be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits." The concurrent resolution finds that the NJPDES permit fee regulations for wastewater facilities are not reasonable given the extremely high fees imposed on many permittees and because the regulations allow for the imposition of numerous costs that are clearly beyond the permissible purposes allowed by statute.

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* BILL NO. _____ *
*
* Date of Intro. _____ *
*
* Ref. _____ *
*

* NOTE TO * Notify OLS if you require changes in this document. *
* A revised copy for introduction will be prepared on *
* the legislative computer system. *
* SPONSOR * Hand-written changes will not appear in the printed *
* bill. *

A CONCURRENT RESOLUTION concerning legislative review of Department of Environmental Protection and Energy regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.

Determines that NJPDES fee schedule is inconsistent with legislative intent.

PRIME Sponsor _____ / _____

CO-Sponsors

Same as _____ 92/93

_____ 94/95

Suggested allocation: _____

A CONCURRENT RESOLUTION concerning legislative review of Department of Environmental Protection and Energy regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.

BE IT RESOLVED by the Senate of the State of New Jersey (the General Assembly concurring):

1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Legislature may review any rule or regulation adopted by an administrative agency to determine if the rule or regulation is consistent with the intent of the Legislature as expressed in the language of the statute which the rule or regulation is intended to implement.

2. a. The Legislature enacted the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), to regulate the discharge of pollutants into the State's waters. The Legislature intended that the State program be consistent with the "Federal Water Pollution Control Act Amendments of 1972," 33 U.S.C. §1251 et seq. At the center this regulatory program was a permit system that establishes the amount of pollutants that a person may lawfully discharge into the State's waters. Thus, any person discharging pollutants into the State's waters is required to obtain a New Jersey Pollutant Discharge Elimination System (NJPDES) permit, or an equivalent permit from the federal government.

b. Section 9 of P.L.1977, c.74 (C.58:10A-9) provides that the Commissioner of Environmental Protection and Energy "shall, in accordance with a fee schedule adopted by regulation, establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits."

c. The fee structure adopted by the commissioner for NJPDES permits for wastewater facilities provides for individual permit fees based on a complicated formula reflecting the facility's potential environmental impact, the billing rate for the category of discharge, and the minimum fee for the category of discharge. Wastewater treatment plants include facilities which discharge industrial wastewater, sanitary wastewater, non-contact cooling water, decontaminated ground water, stormwater runoff or other types of treated and untreated types of wastewater to the surface or ground waters of the State. Fees for NJPDES permits related to site remediation are based on the actual cost to the department of processing, administering, and monitoring those permits.

d. The NJPDES permit fees are used to pay personnel costs for the permitting, monitoring, and enforcement of the NJPDES permit requirements. In addition to the actual personnel costs, the fees also pay for fringe benefits of these personnel, including pension, health, and insurance benefits. Additionally, routine departmental operating costs are now paid for by these fees, including office supplies, printing, copiers, library supplies, telephone services, postage, vehicle rental and maintenance, legal advertising, and travel. Other major program expenses paid in part by NJPDES permit fees include charges for professional services submitted by the Office of the Attorney General, the United States Geological Survey, the Department of Health Laboratory and the DEPE Environmental Laboratory, the Office of Administrative Law, and the Office of Telecommunications and Information Systems.

e. Because of the extensive array of program costs now being supported by NJPDES permits, and because of program inefficiencies, NJPDES permit fees for many if not most permit holders are unreasonable. There were 34 industrial discharge NJPDES permit holders alone who were assessed annual permit fees of over \$50,000 during the fiscal years 1988 to 1992. Five of these industrial discharges were assessed NJPDES permit fees in fiscal year 1992 of over \$500,000, the highest being over \$700,000. One permittee saw its permit fee rise from \$1,300 in fiscal year 1988 to \$621,000 in fiscal year 1992. Other categories of permittees, municipal and significant industrial users, also saw their permit fees rise to unreasonable levels.

3. The Legislature finds that the fee schedule for NJPDES permittees and applicants, promulgated at N.J.A.C. 7:14A-1.8, is not "reasonable" and allows for the imposition of fees for costs unrelated to the "processing, monitoring and administering the NJPDES permits" as required by section 9 of P.L.1977, c.74 (C.58:10A-9). The Legislature therefore finds that these regulations are not consistent with the intent of the Legislature as expressed in the language of the "Water Pollution Control Act," which the regulations are intended to implement.

4. The Secretary of the Senate and the Clerk of the General Assembly shall transmit a duly authenticated copy of this concurrent resolution to the Governor and the Commissioner of Environmental Protection and Energy.

5. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Commissioner of Environmental Protection and Energy shall have 30 days following transmittal of this resolution to amend or withdraw the regulations codified in N.J.A.C. 7:14A-1.8 or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the regulations codified in N.J.A.C. 7:14A-1.8, in whole or in part.

STATEMENT

This concurrent resolution embodies the finding of the Legislature that the regulations of the Department of Environmental Protection and Energy concerning a fee schedule for NJPDES permittees and applicants, codified at N.J.A.C. 7:14A-1.8, is not consistent with legislative

intent pursuant to Article V, Section IV, paragraph 6 of State Constitution.

The concurrent resolution finds that the NJPDES permit fee regulations for wastewater facilities are unreasonable given the extremely high fees imposed on many permittees and because the regulations allow for the imposition of numerous costs that are clearly beyond the permissible purposes allowed by statute.

Determines that NJPDES fee schedule is inconsistent with legislative intent.

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* * * * *

SENATOR JOHN P. SCOTT (Chairman): Let's call this Committee meeting to order. Having a quorum, we can start today's business. First, we are going to hear SCR-28, 29, 30, 31, and 32. Basically, they deal with the Division of Taxation and cigarettes. I was asked yesterday if these were going to open up the world to smoking or something. But to give you an idea of what the inconsistency is in the legislation, I will read one or two and you will get the idea.

The law states that the distributor's discount on the purchase of cigarette revenue tax stamps applies to any sale of 1000 stamps or more, which includes the purchase of exactly 1000 stamps. Another rule states that the distributor's discount applies to purchases in excess of 1000, which would not include the purchase of exactly 1000 stamps. So we have to get at that. It also applies to that 1000 stamps.

Another inconsistency is where dealers operating more than nine cigarette vending machines and five or more machines are selling at five or more premises -- regarding the fingerprinting of vendors. This one allows the taxpayer 90 days after finding or assessment to request a hearing in protest to the finding or assessment, but limits the period within which to file the protest to 30 days of the giving of a notice of assessment or finding. The rule does not conform to the longer taxpayer protest period, which was extended to 90 days by the Taxpayer Bill of Rights, enacted Public Law 1992.

Basically, these are technical amendments to get them squared away with the law as it should be.

Senator Ciesla, do you have any comments?

SENATOR CIESLA: No comments, thank you.

SENATOR SCOTT: Senator Zane?

SENATOR ZANE: I understood that-- I may be wrong on this, but I understood that the Division of Taxation was going to remedy this themselves; that we really didn't need legislation to do it. Is that accurate or not?

SENATOR SCOTT: I don't know.

SENATOR ZANE: Is somebody here from Taxation?

SENATOR SCOTT: Yes, somebody is here from the Division. They will be up to testify in a minute, so we will listen to them. If they do that in-between -- this Committee calls for a time span -- they can do that at any time. Then the legislation becomes moot. That can actually happen. But they have identified the problem--

SENATOR ZANE: Okay.

SENATOR SCOTT: --and we are here to hear the testimony. If they do so, then this legislation will just die on the vine. No problem whatsoever.

Senator Sacco?

SENATOR SACCO: I would like to hear the testimony before--

SENATOR SCOTT: Okay, fine.

Is there anybody here from Taxation? (no response) I guess there is no one here to testify on these five pieces of legislation.

What we want to do then, once we pass them it allows them that 30-day period-- Oh, I'm sorry. They have more than that. We didn't get too far, just to Committee. But at least they will be aware of the fact that it is in the process. It then, of course, has to be voted by the Senate, it has to go to the Assembly, and so on. Within that time frame -- any time within that -- they can say, "Yes, we are going to do it." Once they do it by regulation, then it's moot. Am I correct in that? (no response) Well, that is what I think.

I would like to get these five bills out.

SENATOR ZANE: Do you want a motion?

SENATOR SCOTT: Yes.

SENATOR ZANE: So moved.

SENATOR SCOTT: Second? Andy?

SENATOR CIESLA: Second.

SENATOR SCOTT: Would you call the--

MR. CANTOR (Committee Aide): Should I call separate roll calls for each of the five?

SENATOR SCOTT: I don't know. Can we do it with one shot? If we could do it on one shot, it would be a lot easier, a lot less talking.

MR. CANTOR: This will be on a motion to release the five Concurrent Resolutions -- SCR-28, SCR-29, SCR-30, SCR-31, and SCR-33 -- excuse me, SCR-32, which all deal with certain regulations of the Division of Taxation.

On the motion to release: Senator Scott?

SENATOR SCOTT: Yes.

MR. CANTOR: Senator Ciesla?

SENATOR CIESLA: Yes.

MR. CANTOR: Senator Sacco?

SENATOR SACCO: Yes.

MR. CANTOR: Senator Zane?

SENATOR ZANE: Yes.

SENATOR SCOTT: Okay. Now we will have testimony on SCR-33 regarding NJPDES' fee schedule being inconsistent with legislative intent. (Chairman consults with Committee Aide at this point relative to sequence of subjects and witnesses)

Ron Tuminski, from DEPE.

A S S T. C O M M. R O N A L D T U M I N S K I: Thank you, Mr. Chairman and members of the Committee.

I have been asked to appear before you as one of the main authors of a document which I have given you full copies of, which was put out in December of 1993 by the Department, and deals with-- It is entitled, "Budgeting for the Environment, Funding Options for DEPE."

I would like to take maybe about 10 or 12 minutes and go through, since you have not had, I don't think, the luxury of reading the detail in here-- It is not a long document, but I would like to take the opportunity to perhaps go through

here, and in a short period of time just summarize what is in the document. At your own leisure, you can take the time to look at more of the details and charts that are provided in the document.

SENATOR SCOTT: Ron, are we talking about the Executive Summary you have here?

ASSISTANT COMMISSIONER TUMINSKI: I am taking some of the Executive Summary, as well as some of the actual document. I have highlighted and annotated some notes on it, but all of the information I will be giving you in the overview is in the document, as well as in more detail.

SENATOR SCOTT: It looks like we might have a lot of people testifying. That is the only reason--

SENATOR ZANE: Mr. Chairman?

SENATOR SCOTT: Senator Zane?

SENATOR ZANE: I would just like to ask a question. Are you going to be addressing the issue as to whether or not you should be able to charge these fees on the basis of the people who come in and participate and request them versus the operating costs of your budget? Or are you going to talk about the value of the program itself?

ASSISTANT COMMISSIONER TUMINSKI: I am not addressing the value of a particular program. What I was going to summarize for you was reviewing the funding that has happened at DEPE, sort of like the significant things that have happened across the years that have gotten DEPE to the point where there is such a heavy reliance for its operating programs on nonstate sources, fees, fines, penalties, and taxes, rather than the General State Fund. Part of that was going to touch on the influences that are on those programs and continually drive up the costs of those programs, which in turn forces the Department into a situation of either reducing the scope of the program to leave the fees constant, or to increase the fee bases in order to cover the increasing mandated costs.

SENATOR ZANE: Mr. Chairman, is that really what the bill is about?

SENATOR SCOTT: No, it is not about that. That is the problem.

May I ask-- One of the things we are going to try to do on this Committee is to really focus on that particular piece of legislation. We are saying it is inconsistent with legislative intent. I'm sure you will be back another time when we approach another piece of the fee structure. At that time, we can perhaps go into that area. But today we have a piece of legislation that is very specific. What we are saying is that it is not legislative intent. If you could stick more to that, rather than giving us a background-- We will read this, I know. We will have it analyzed. People will tell us everything it says in it. We will break it down all different ways. But if you could do that, I would really appreciate it.

ASSISTANT COMMISSIONER TUMINSKI: Well, I have to admit that I wasn't-- I came prepared today to give an overview of this report in the larger context of fees. I think there are other individuals here to deal with the specific issue of the legislative intent versus what goes on within the NJPDES program.

SENATOR SCOTT: Well, could you possibly cut that 12 minutes down to a 3-minute overview?

ASSISTANT COMMISSIONER TUMINSKI: Okay. Fees in general?

SENATOR SCOTT: Such fees in general, because I don't really-- You're justifying something that -- which is wonderful, but if you could get it down to three minutes it would be a lot better for us.

ASSISTANT COMMISSIONER TUMINSKI: All right. I'll do my--

SENATOR SCOTT: Do you have somebody here who is going to testify?

ASSISTANT COMMISSIONER TUMINSKI: Yes, there are others -- John Weingart, Dennis Hart, and some of the program people will deal directly with the NJPDES fee. They are more knowledgeable about the intricacies of the program.

SENATOR SCOTT: Okay.

ASSISTANT COMMISSIONER TUMINSKI: All right, thank you, then. I will whittle this down to three minutes.

Basically, the purpose of this document was to give individuals both within the executive branch and the legislative branch, and citizens, a feel for what have been the major influencing factors that have impacted DEPE's funding over a period going back to 1970, and more closely between 1982 and 1994.

The emphasis of this document was not to argue whether what has happened through passing legislation, mandating new laws, eliminating State funding, or increasing fees was right or wrong. It was basically to say, "Here is what has happened over that time period." If there is, in fact, a movement, or a policy change to perhaps wean the Department off its heavy reliance on fines and penalties, taxes, bond funds, then here are some ways of doing it, and here is why we got to the point of where we are.

In the document itself, I provide some history of what has happened in terms of the fiscal developments. I pointed out that basically since 1982 there have been over 70 legislative initiatives -- which I list in the document -- of which 49 require the Department to start up those legislatively mandated programs and programs that were enacted into law largely through the use of nonstate revenues. There was no General Fund appropriation provided in the case of almost 50 of those 70 programs. The understanding was that dedicated funds would be set up or fees would be put into place to provide those services.

What we have also shown is that over that period since the early 1980s and carrying into the 1990s, there has been a concomitant growth in the level of personnel in the Department, from a point of about 2500 positions in 1984 to an FTE right now of 4166 positions, 3840 of which are filled. A lot of that growth can be linked to the mandated new programs that came on during that same period of time.

I go into other impacts that have impacted our budget and the need to introduce and to raise fees. We also did, at the request of Assemblyman DiGaetano during the last appropriations hearings for FY '94-- He asked some specific questions as to trying to retrace what exactly happened between Fiscal Years '91 and '94, in terms of why there was such a growth in the amount of fees over that four-year period that amounted to \$53.6 million in four years.

I have outlined in here -- and it is in the details of this document -- the terms of what made up that \$53.6 million. It included everything from new programs coming on-line, such as the Clean Water Enforcement Act, to the transferring of programs into DEPE, such as the assumption of the Solid Waste Program from the former BPU. It also talks about the need to offset the elimination of General State Fund dollars in many of our regulatory programs.

I point out that in that period -- Fiscal Year 1991 to Fiscal Year 1994 -- approximately \$21 million in General Fund moneys was eliminated in our budget in such instrumental -- in regulatory programs such as Air Pollution, Hazardous Waste, Solid Waste, Pesticides, Radiation, and that in turn to keep up even the level of services that the Department was carrying on at that time, it required them to shift those commitments over to fees and get away from the reliance on general State funding.

I outline the mix of the funding that is currently in our FY 1994 budget, the \$248 million, and again sound the cry that there is only \$41.8 million out of \$248 million that is

General Fund money. The rest of it is nonstate sources. Within the \$41.8 million, 76 percent of that money is dedicated to the natural resources programs of the Department, be they Parks and Forestry, marinas, whatever.

I also provided in here a summary of a comparison with other states which the Council of State Governments released in its November/December issue of ECOS. There are some summary numbers provided in here which give you a comparison of New Jersey versus the other states, but it has some caveats in here. We don't know whether the comparisons that the Council of State Governments did were done on the same plane as the numbers given from New Jersey. I don't know any other cases. We know in some states that the Departments of Environmental Protection may not have the same components that are in the Department of Environmental Protection and Energy in New Jersey. Some may have natural resources in a separate department. So we put that caveat in there, but I did summarize the information that was provided from that source in this document.

I think the important thing to realize in the case of the nonstate programs, whether you are talking about specifically NJPDES or not, is that today there are a lot of cost components. Once a program shifts from general State funding to a fee reliance, there are many components that that program has to cover in terms of additional costs versus a program such as Parks and Forestry, which is funded from General State Funds. This is a very important point, and this is where I probably will spend the bulk of my few minutes.

SENATOR SCOTT: Well, you have spent most of your few minutes already.

ASSISTANT COMMISSIONER TUMINSKI: Okay, all right. Well, the remainder of my few minutes.

SENATOR SCOTT: Ron, let me ask you this.

ASSISTANT COMMISSIONER TUMINSKI: Okay.

SENATOR SCOTT: You know, I understand your position. I am sure that with all these documents we can justify everything. You just made an interesting point here. It is additional costs--

ASSISTANT COMMISSIONER TUMINSKI: Right.

SENATOR SCOTT: --if you don't have State funding?

ASSISTANT COMMISSIONER TUMINSKI: Right.

SENATOR SCOTT: All right. What contributes to that?

ASSISTANT COMMISSIONER TUMINSKI: First of all, in the case of salaries, a nonstate-funded program -- I'll say it again, NJPDES-- I'll give you some examples in this case: NJPDES, air pollution. Those programs have to cover fully the costs of their salaries. Now that includes any cost-of-living increase that that program may assume in a fiscal year. So whereas, in the current year you had a cost-of-living increase that may have gone into effect of 5 percent across-the-board plus increments, a NJPDES program, an air program, a radiation program does not get any money from the General Fund to cover that increase in salaries because of a negotiated package. Whereas, a program like Parks and Forestry, which is State funded, will get from the General Fund, out of the Interdepartmental Salary Account--

SENATOR SCOTT: Ron, maybe I didn't make myself clear. Maybe I didn't understand what you said. Did you say that a program cost more if it is not funded through the State budget -- State funding -- if you had to rely on fees? Is that what you were saying?

ASSISTANT COMMISSIONER TUMINSKI: It cost more and the fees-- It doesn't cost-- In other words, all programs and all salaries will be raised by the cost of living. What I am saying is--

SENATOR SCOTT: But that is no matter where.

ASSISTANT COMMISSIONER TUMINSKI: Right.

SENATOR SCOTT: My confusion is this: If you hired me at \$50,000 a year, it is going to cost the same \$50,000, no, if you pay it out of the State Fund or if you pay it out of fees?

ASSISTANT COMMISSIONER TUMINSKI: No. The major difference is that a fee-funded program must also pay the fringe benefit costs for its employees; whereas, any State-funded program does not pay the fringe benefit costs of the employees.

SENATOR SCOTT: Wait, you have to run that by me again. I don't know something about that. You're saying a State-funded-- They don't pay the benefits?

ASSISTANT COMMISSIONER TUMINSKI: In a regular program such as Parks and Forestry -- okay? -- the appropriation for Parks and Forestry-- The Department will get a basic salary appropriation for its salaries. That may be a magnitude of \$20 million. With the cost of living that hits the Parks and Forestry budget in a given year that drives up the cost of the salaries -- okay? -- the General Fund will transfer to the Parks and Forestry account additional salary moneys to cover the cost of living for that program. So they do not have to live within the General Fund appropriation that is in the handbook at the time the Appropriation Act is enacted. There is a General Fund for interdepartmental accounts within Treasury to cover the cost of cost-of-living increases. Money is transferred out of that to Parks and Forestry to cover the costs of that program.

A program such as NJPDES has to absorb that cost-of-living increase. We're saying in Fiscal Year 1995, NJPDES will have to increase its fees by \$665,000 to cover the cost-of-living increases for the employees in that account. Now, if the tack was that the Department did not want to increase fees to cover that, then other program reductions would have to be made to cover the costs of those increases in its budget.

Similarly, the NJPDES program has to cover and reimburse the General Fund for the costs of fringe benefits for its employees; whereas, all other fringe benefits in the State are centrally budgeted.

SENATOR SCOTT: You know, I am still-- I don't know government, I guess. That's the problem.

ASSISTANT COMMISSIONER TUMINSKI: It's in here in more detail.

SENATOR SCOTT: I don't know why-- I mean, you have a pot of money there.

ASSISTANT COMMISSIONER TUMINSKI: Right.

SENATOR SCOTT: You've got \$242 (sic) million, no matter where it came from. Now, all you are doing is shuffling around the different accounts.

ASSISTANT COMMISSIONER TUMINSKI: No, my--

SENATOR SCOTT: That is what it looks like to me. You've got \$242 (sic) million-- Go ahead, Andy.

SENATOR CIESLA: I would just like to hear maybe the answer to the question, in his opinion, the fees which are charged pursuant to this particular program-- Are they reasonable as defined in the statute, in your opinion?

The second part of the question I would like to ask is: If the fees have increased since the program has been put into place, what programs have been added to the NJPDES permitting process that caused those particular increases? Have you done that calculation?

ASSISTANT COMMISSIONER TUMINSKI: In here we do mention NJPDES and the growing increases -- increasing mandates on the program on the financial side. It is cited in here in several places. What I am saying to you is that if this year's NJPDES' budget, for example, is \$15.3 million -- all right? -- that same program next year--

SENATOR SCOTT: Excuse me. How would you get that budget? In other words, going in my concern is this: You just

said another \$600-and-some thousand could be attached to the fees. So your fee schedule going in, because you are only going to get "X" number of dollars from the budget anyway -- the General Fund-- You are going in saying-- You are attacking it, "Well, here is what we need." So no matter what happens, no matter what the business world says, you are going to get that amount of money out of it. Even if there is no money left for you and me, you are going to tell me that you need it for me. Am I right? That is basically what we're saying.

In other words, my God, you've got your budget through your fees -- NJPDES fees.

ASSISTANT COMMISSIONER TUMINSKI: Right.

SENATOR SCOTT: One way or another you are going to plug that in and say, "Here is what we need, guys."

Now, last year, Bergen County Utility -- the BCUA -- we had a fee of \$548,000. Okay, fine. Now, because we are going to throw on-- We need a 20 percent increase. Now you are going to go down the list based on what people paid, whether it was DuPont, Hoffmann-LaRoche. You are going to go down going in, and say, "We need an increase of 20 percent."

Is this convoluted? Is something backwards here? I don't know. I get a little confused on this, because I'm saying, "I think we're going in" -- going in at the beginning of the year, the budget year, saying, "All right, here is how many dollars we need in fees." It has no relationship to whether or not you are going to do any more work. I think this is what the legislation says, "Reasonable fees."

Now, what is reasonable? I guess the courts are going to define that--

ASSISTANT COMMISSIONER TUMINSKI: Right.

SENATOR SCOTT: --but you are just going to increase them no matter what. I mean, you are not going to give more

service. If you charge an extra \$100,000, you are not going to send a man up there every week or something to be there as a guide.

ASSISTANT COMMISSIONER TUMINSKI: No, you are correct, Senator. My point is that if in the current year, whether it be NJPDES or air pollution, if a budget is set at -- I'm using a figure of, say, \$15.3 million -- okay, for NJPDES? If that is the budget for this year, come Fiscal Year '95, the NJPDES program, in terms of cost -- if nothing else changes, if the level of staffing stays the same, there is no additional activity in the program -- because of the way the State funding and the State budget are structured, a fee program such as NJPDES is going to have mandated increases next year -- okay? -- of better than a million dollars. It is going to have to pay the same level of employees another \$665,000 next year.

Let me just, please--

SENATOR SCOTT: All right, go ahead.

ASSISTANT COMMISSIONER TUMINSKI: I am not saying that this automatically means it is a budget increase. All I am saying to you is if you have "X" amount of employees in NJPDES, and this year that budget costs you to cover the employees, pay the fringe benefits to the General Fund -- that is required of a fee program -- pay the DAGs -- all right?--

SENATOR SCOTT: Yes.

ASSISTANT COMMISSIONER TUMINSKI: --then it is going to cost you \$15 million. Next year, that same program, because of the State-mandated negotiated increases--

SENATOR SCOTT: You are going to have the same people -- salary increases--

ASSISTANT COMMISSIONER TUMINSKI: --it will be a million dollars higher.

SENATOR SCOTT: Let me ask you one question.

ASSISTANT COMMISSIONER TUMINSKI: Okay.

SENATOR SCOTT: I understand -- maybe I'm wrong -- that when you go into a -- when a brand-new plant opens up tomorrow, you send your troops in, they take a look, and, "Here is what you have to do." It is an awful lot of work setting it up; permitting and all, and making sure there are guidelines.

Now, once you have done that, the next year you're saying, "You need another permit." But now the difference is, you're going to get the same money, or you are going to get more -- 10 percent, 15 percent, 20 percent more. You don't have to send the troops up there this year, because you did all the hard work. Am I right? (no response)

In other words, once the work is done, is there really a need to send the same number of troops up to do the same amount of work, or is it a paper deal where you say, "Company A" -- Hoffmann-LaRoche, Ciba-Geigy, or whatever it may be -- "You need to renew this permit"? Well, I understand you renew the permit, and really you could fax it to them and they would pay 88 cents for the fax. That is perhaps the cost-- Am I wrong? You get a five-year permit, and yet you pay the fee each year. That is where I have a problem.

ASSISTANT COMMISSIONER TUMINSKI: I guess my answer--

SENATOR SCOTT: Would there be any reduction of personnel, because all of a sudden-- If, for example--

Let's take a hypothetical. Let's deal in fantasyland. We are so wonderful. You guys have done such a perfect job, and everybody is wonderful. We are down to a point where it is almost-- To tell you the truth, we are in good shape compared to where we were 25, 30 years ago when we started to discover all this stuff.

Is there any point where we are going to cut back and say, "Gee, I don't think I need everybody. I don't think we need to send that many people out"?

ASSISTANT COMMISSIONER TUMINSKI: I can tell you -- and I am not the one to speak to this point in terms of a

policy, because there are other people here responsible for the program-- I can tell you that in talking to the new Commissioner and understanding what the focus is of his direction, that NJPDES and all fee programs will be given a very close look in terms of: Do they need the level of staffing that they currently have? Are there ways to increase efficiencies, achieve economies within those fee programs so as to either reduce the staffing, reduce the cost, or at the very least keep them constant, and not have automatic increases built into them year, after year, after year?

I can tell you that from a policy standpoint regarding all fee programs in the Department. That is what I have been told by the Commissioner. All right?

SENATOR SCOTT: That is encouraging.

Senator Zane?

SENATOR ZANE: When was the employee level at 2500? When was that?

ASSISTANT COMMISSIONER TUMINSKI: The employee level at 2500 was back in 1982.

SENATOR ZANE: Do you have any idea what the economy was like in 1982? Do you have any feel for that?

ASSISTANT COMMISSIONER TUMINSKI: Well, I know the early 1980s in terms of the State were good, in terms of the revenues into the State.

SENATOR ZANE: Do you have any idea what the-- The employee level today is 4100?

ASSISTANT COMMISSIONER TUMINSKI: The employee level right now is 3840 overall.

SENATOR ZANE: Okay. Do you have any feel for what the economy is in New Jersey today?

ASSISTANT COMMISSIONER TUMINSKI: Yes. It certainly is not what it was--

SENATOR ZANE: In 1982 or 1983?

ASSISTANT COMMISSIONER TUMINSKI: Right.

SENATOR ZANE: Isn't this really a governmental service that is directly related in this area -- directly related to the amount of business activity, for the most part, that business to include the housing industry, manufacturing, the chemical industry, the petrochemical industry? Isn't there really some direct correlation?

ASSISTANT COMMISSIONER TUMINSKI: There is a correlation between this program and, certainly, those industries.

SENATOR ZANE: Okay. Isn't it also true that the number of applications that DEPE is dealing with-- Don't squirm, I want an answer to this one.

ASSISTANT COMMISSIONER TUMINSKI: No, I won't. I am not sure whether I can give you an answer on these specific questions on the program.

SENATOR ZANE: Okay, fine. Okay. You are here with a 12-minute presentation, and you wrote that document, so I have some questions for you.

Isn't it also true that the number of applications that are before you today is substantially less than it was in 1982?

ASSISTANT COMMISSIONER TUMINSKI: I honestly can't comment whether it is substantially less.

SENATOR ZANE: You don't know?

ASSISTANT COMMISSIONER TUMINSKI: I don't know whether it is substantially less.

SENATOR ZANE: Well, what are the statistics you have within the booklet?

ASSISTANT COMMISSIONER TUMINSKI: The booklet--

SENATOR ZANE: Did you make any reference to the applications?

ASSISTANT COMMISSIONER TUMINSKI: No. This booklet deals in the area that I am knowledgeable on, which is the

budget of the DEPE. I am the Assistant Commissioner for Management and Budget. I am not--

SENATOR ZANE: Let me ask you something else about the permitting process and the fees.

We had a hearing back, probably, in August, September, October, whenever it was, that was held in Burlington. I don't know whether you were there or not. Were you, by any chance?

ASSISTANT COMMISSIONER TUMINSKI: No, no.

SENATOR ZANE: There were people who testified that when they were operating their plants 24 hours a day, three shifts, they were paying fees -- I am not going to remember the exact number, but there was a dramatic difference -- of maybe \$5000, or \$50,000 a year for some of their permits. Today they are now operating one shift, and sometimes not even a full week, and they are paying, like, \$300,000 and \$400,000 in fees.

Are you familiar with situations like that?

ASSISTANT COMMISSIONER TUMINSKI: I am familiar, in general, that the fees in the Department have gone up dramatically--

SENATOR ZANE: Right.

ASSISTANT COMMISSIONER TUMINSKI: --over the years.

SENATOR ZANE: We had people who testified that those kinds of fee increases are really putting them on the brink of going out of business. Are you familiar with arguments such as these made by those people?

ASSISTANT COMMISSIONER TUMINSKI: Yes, I am.

SENATOR ZANE: Okay. Isn't it also a fact that the fees that are charged by DEPE to review -- that there is a direct correlation between the number of applications you have and those fees, because your costs are fixed? Isn't that accurate?

ASSISTANT COMMISSIONER TUMINSKI: The costs of many of the programs are fixed based on--

SENATOR ZANE: Let me make it real simple: If you have 1000 applications this year with your Department and you have 50,000 applications next year with the Department, the fact of the matter is the fees would be less the year you have the 50,000 applications, wouldn't they?

ASSISTANT COMMISSIONER TUMINSKI: Yes.

SENATOR ZANE: And that is what the bitch is here. That's really what it is. Am I right?

SENATOR SCOTT: That's right, Senator.

SENATOR ZANE: Because that is what is happening that is driving people out of the State. It is hurting the industry terribly. I think that is what you should address, instead of coming in with a preamble as to all the great and wonderful things DEPE has done.

Now, I have to sit here and say to you -- and I have been here through three, four administrations now, I guess -- I don't understand why someone doesn't say, "Maybe we don't need 4100 people," or 3800 people, "when we are doing less today than we did in 1983, when business was substantially better and fees were even less."

ASSISTANT COMMISSIONER TUMINSKI: My point is, that is the very direction Commissioner Shinn has relayed to me, that that is what we will be doing in the Department across all the fee programs.

SENATOR ZANE: Then, Senator Scott, I have a question to you, if I might: I have read the resolution. Basically, as I understand the resolution, the only thing it really does, if this Committee concludes that these fees are unreasonable-- That is all we really do with it. We are not really addressing anything.

SENATOR SCOTT: Right.

SENATOR BENNETT: It's a first step, though.

SENATOR SCOTT: That's right.

SENATOR BENNETT: We have -- if I may, Mr. Chairman?
I'm sorry.

SENATOR SCOTT: Go right ahead.

SENATOR BENNETT: The first step is to determine it is unreasonable. That gives the Commissioner 30 days to come forward and address it. He can address it by either giving us a new fee schedule, saying that this one is completely out, or pick and choose some of the fee schedules -- this is good, and this is bad. If we are not satisfied with what we get, then we have the option of doing any or all of the above.

We can go from saying, "They all should be thrown out," to directing them that they have to come back with new fees. We can pick and choose as to which ones can be done. It is a two-step resolution that we would have to do. We would have to afford them the opportunity to make it consistent with the legislative intent.

SENATOR ZANE: Therefore, we, in effect-- We, in effect, could ultimately end up setting the fees.

SENATOR BENNETT: No. We can only say--

SENATOR ZANE: We can throw out their fees until they come up with fees we are happy with.

SENATOR BENNETT: Right. That is what we can do.

SENATOR SCOTT: What we are saying is to justify their fees.

SENATOR BENNETT: We can throw out their fees.

SENATOR SCOTT: Basically, just--

SENATOR BENNETT: We can pick and choose which ones are to be thrown out.

SENATOR SCOTT: Ron, thank you very much for your testimony.

ASSISTANT COMMISSIONER TUMINSKI: All right.

SENATOR SCOTT: I know we put you on the hot spot here. We changed your testimony.

SENATOR BENNETT: Mr. Chairman--

SENATOR SCOTT: Well, we have more DEPE people here.

SENATOR BENNETT: I would just like to hear the answer to Senator Ciesla's question, if I could. Maybe he said it and I missed it.

ASSISTANT COMMISSIONER TUMINSKI: All right.

SENATOR BENNETT: Do you think the fees are reasonable?

ASSISTANT COMMISSIONER TUMINSKI: All fees, or NJPDES fees?

SENATOR BENNETT: NJPDES fees.

ASSISTANT COMMISSIONER TUMINSKI: The individual fees--

SENATOR BENNETT: That's pretty simple. Come on, now. I don't--

ASSISTANT COMMISSIONER TUMINSKI: Okay. No, not all of them.

SENATOR BENNETT: Fine, okay.

And the second part of your question was?

SENATOR CIESLA: I was interested in trying to determine the additional programs that were funded by NJPDES fees as the program grew throughout the years by additional programs being included. In all honesty, you don't have to go through--

SENATOR BENNETT: Well, what I think might be helpful to this Committee is-- We don't have to belabor it, because there are other people who will testify. Those that you feel that perhaps are not reasonable-- Perhaps you could give us some of that input, and maybe we could work on it as a team to try to make this work better, rather than an adversarial thing. I think the Chairman would be happy if you could give him some of those specifics, so we could work with you. That is really what we are all trying to do here: work together to make something that may be unreasonable, work better.

ASSISTANT COMMISSIONER TUMINSKI: I think the product of the NJPDES Task Force that was headed up by former Senator Weiss pointed out a lot of problems with the NJPDES program,

and recommended some viable solutions to the NJPDES program. I don't know whether that has been shared with you. I think there may be people here who will comment on that document, or people here who were part of that Task Force.

SENATOR BENNETT: Okay.

SENATOR SCOTT: Well, thank you very much.

Would John Weingart and Dennis Hart please come up together. Then we have a Norm Miller.

A S S T. C O M M. J O H N W E I N G A R T: Good afternoon. I just want to add a couple of things to what Ron said.

I am John Weingart. I am also an Assistant Commissioner in the Department of Environmental Protection and Energy. I am responsible for the permit programs -- most of the permit programs in the Department.

I would much prefer, and I think most, if not everyone in the Department would much prefer, a very different system for funding the permit programs than the way we have now. We do not like to spend all our time, or to spend as much time as we do, figuring out how much to assess people for permits, and then figuring out our budgets and doing all that. We would all much prefer a system where we were on the budget; where through the regular appropriations process a decision would be made as to how much money you wanted to spend for clean water permits, for CAFRA permits, for whatever else. We knew July 1 how much money we had, and we could go ahead and proceed that way.

I think the tenor of the discussion that began this afternoon was making the Department -- was making it sound as if the Department is defensive and likes the system we have now. We don't. The question is: How do we change it? I hope we can work together to do that.

The Department appointed the Task Force that Ron just referred to, chaired by former Senator Larry Weiss, that also included Dave Kehler, who now works at a high level in the

Treasury Department. It also included a number of the people who will testify this afternoon. They came up with a number of recommendations that they presented to the Legislature a year ago, just as the Appropriations Committee was starting. These included that the Legislature should appropriate some percentage of the money for this program.

In terms of the question that was being asked by Senator Ciesla and Senator Bennett, the fees are very high for some of the facilities regulated under NJPDES -- a small number of the facilities. Note that we regulate well over 1000 facilities, and there are a handful that pay very high fees under this program.

The costs that the program pays, the costs that are listed in your bill in Section 2. d., are costs that one could debate how they should be paid. But if you are going to have a permit program where people need to get permits to lead to cleaner water, then it involves some of those activities. It involves having laboratories in the State to assess some of the data. It involves having attorneys who look over the rules we write; who look over some of the decisions we make; who are involved in the appeals. Those costs have to be paid. If there were an appropriation to pay for them, they would be paid that way. Since there isn't an appropriation, they have been paid out of the fees.

SENATOR SCOTT: John, let me ask you this: You mentioned the fees. Maybe I'm wrong, but did you basically say you agree with the legislation, that the fees have become unreasonable?

ASSISTANT COMMISSIONER WEINGART: Yes.

SENATOR SCOTT: Okay, that's fine; that's good.

ASSISTANT COMMISSIONER WEINGART: I would not say I agree with the legislation. I mean, I don't know if the legislation is the way to address it, but I agree that--

SENATOR SCOTT: Well, no, we would hope that after we pass this out today, you will go back, you will sit down, once you guys get together, and say, "Hey, they're right," and go through and start doing it. Then this doesn't have to go any further.

ASSISTANT COMMISSIONER WEINGART: But the Department cannot do this on its own. We don't have the-- The question is: Who should pay for having clean water -- a program that assures cleaner water in New Jersey? The way it is now, industry pays that cost entirely. The Department--

SENATOR SCOTT: Well, then we also have to define what clean water is, I think. I mean--

ASSISTANT COMMISSIONER WEINGART: Well, that is true, but that is not done through the fee assessment. That is done through the Water Pollution Control Act that the Legislature--

SENATOR SCOTT: Well, but you are maintaining that, because, from what I gather, you are requiring air to be so pure that, by God, it is almost coming out of an oxygen tank. And the water-- You are looking for a pristine condition of rivers, or pieces of water, that have not been pristine since the first Indian found it and went swimming. So why are we trying to get it beyond what we can possibly do?

ASSISTANT COMMISSIONER WEINGART: Well, I suppose the Legislature could pass a resolution saying that the water quality today is fine and it does not have to get any better. That would change the way we do permits.

SENATOR SCOTT: No, we are looking at that. We want the clean water, but, you know, there is always that extent where at one given time you can find dirty water. But what's dirty? Can we drink it? I think, from what I understand, the water I drink is not too clean. But I survived this long, and I will probably live another 30 or 40 years, you know, while I am drinking that lousy water. But if you tested it, you would probably say it was no good.

ASSISTANT COMMISSIONER WEINGART: I know there are a lot of people--

SENATOR SCOTT: But here is the problem I have when I see-- It is easy to attack this list on who pays the fees, because these are the big guys. That is why it's easy. I mean, hell, who is going to say, "GAF, Chevron, Santos, Exxon, E.I. DuPont, Baker, Hoffmann-LaRoche, these are the big guys. Nail them." Seven hundred and three thousand dollars for a permit -- a permit that went from \$30,000 in '88 to \$703,000 in '92-- What did you do so wonderful?

ASSISTANT COMMISSIONER WEINGART: Senator, could we answer that question?

D E N N I S H A R T: I can answer that question for you.

SENATOR SCOTT: Okay.

MR. HART: The NJPDES fee system is--

ASSISTANT COMMISSIONER WEINGART: Use the microphone.

MR. HART: I have one.

SENATOR SCOTT: No, no, that is not a microphone, that is for recording for posterity.

MR. HART: The NJPDES fee system is based on the levels of pollutants that are discharged by each facility. In the early '80s it was designed that way basically to force the old primary treatment plants to be upgraded. It was a good system back then. We in the Department all agree that the system is not functioning correctly right now, but for different reasons probably.

If you look at this chart right here, it reflects something that has not been stated yet. Every year when we assess fees, they are based on the output of pollutants. In 1989, the Department collected \$10 million in fees from NJPDES. Last year, we collected \$11.5 million in fees. Our fee amounts that we are generating from people have not been going up that we need another \$5 million, we need another \$10 million. What has been happening is, the pie has been staying

relatively the same, but the shifting of burdens between the dischargers is what has taken place, for a number of reasons. One of those reasons was, in hearings in 1988 and 1989 -- very much like this -- the small dischargers were at these hearings saying, "We are paying an unfair burden, where the big people aren't." If you look on this chart, for instance, or you look at PSE&G Salem, at that time they were paying \$110,000. If you go over to the last year, they paid \$6000. So it hasn't been, "Hey, we need \$500,000. Let's get it from Hoffmann-LaRoche."

SENATOR SCOTT: Let me ask you this--

MR. HART: It has been a shifting of the environmental impact among the dischargers in the fee calculations.

SENATOR SCOTT: That's interesting. You mentioned PSE&G Salem. I see they dropped down to \$40,000 in '92. What did they pay in '93? I don't have the '93 numbers here.

MR. HART: Six thousand.

SENATOR SCOTT: Six thousand. That's tremendous.

Now, you talked about Hoffmann-LaRoche, which happens to be in District 36 -- I don't know if you are aware of that -- the greatest District in the State of New Jersey. (laughter) Now, they paid \$1300 in '88. Now they are up to \$621,000. What did they do-- I happened to have gone through-- I went through their plant.

MR. HART: There are two things that have caused--

SENATOR SCOTT: Let me tell you something: I went through their plant. I could eat off the floor. These people are so concerned about that, you know, I'm waiting to have handkerchiefs over the stacks, just to make sure that nothing--

MR. HART: This is part of litigation, so I have to be careful about what I say, but Hoffmann-LaRoche had two things happen: Number one, in the burden shifting from '88, '89 with the small dischargers saying, "We're paying too much," as the formula went out over a two-year period, their fee started

going up with all the other large dischargers, because the burden was shifted.

Secondly, their fees were being miscalculated for a number of years based on where they were discharging. You know how clean the 37th District is. They were being assessed--

SENATOR SCOTT: That's the Hudson River.

MR. HART: --as if they were discharging into the Hudson River. That was a problem. When that was corrected, that caused that fee. It was not that we said, "We need another \$500,000."

SENATOR SCOTT: You got the wrong district, but that's okay.

MR. HART: I am a member of Senator Ciesla's district, so I--

SENATOR SCOTT: Well, okay, we have to have South and Central Jersey, too. These guys are okay.

I am concerned when I see-- Hoffmann-LaRoche has been there for I don't know how many years doing the same thing. They are an extremely environmentally conscious company.

MR. HART: Oh, I understand that.

SENATOR SCOTT: I wonder what in the world we're doing going over there. I mean, you don't even see a piece of paper on the streets in there. If you have been there-- It's incredible. Why are we hitting them? I have not been to a lot of the other plants, but a lot of them I know-- Why did they go up? Was it the amount of discharge? One of the other standards-- They tell me they are cleaning that water. It's better than drinking water now. The air coming out of the stacks is purer than when it goes in from the sky. I mean, what more can they do? It's cleaner than rainwater definitely, because from what I understand rainwater is poison, even though I used to drink it. A company that is really out-front should probably get an award for the work they do to keep it environmentally clean.

MR. HART: We agree with you. I mean, we agree that a company that is doing a good job, as they are, should not be paying that unfair a burden. The Fee Task Force that we were a part of, and our testimony to date, say that 7 percent of the industrial dischargers paying 90 percent of the industrial budget is not the right thing to do. The same way with the municipalities. You have to look at the totality of it. At the same time, like-- In the last couple of years, we're down. We have 20 less people working in this program than we did at the beginning of last year.

SENATOR SCOTT: How many people do you have now?

MR. HART: In which program?

SENATOR SCOTT: In the NJPDES program.

MR. HART: That's a tricky question. People on the account?

SENATOR SCOTT: We could never quite figure that one out either. I have been trying to get that--

MR. HART: That's the issue. Whenever people look at it and say, "Why does it cost \$600,000 to write a permit?"-- It's people to do permitting; people to do enforcement inspections and take enforcement actions; people to do the data management. It's the attorneys, the laboratories, all the overhead that goes along with that. That is what goes into that account.

SENATOR SCOTT: From what I gathered when we were talking before, I think Ron mentioned-- What struck me was the fact that he said he thought it would cost more with that off budget, rather than--

ASSISTANT COMMISSIONER WEINGART: May I explain, because I think there was a misunderstanding there? What he was saying was that it cost the permit program -- it cost the State of New Jersey the same amount of money. It is a question of where-- If you have a program that is on the State budget

and the salary goes up, that program does not have to meet the increased salary cost. That comes out of General Revenue.

SENATOR SCOTT: If we were to privatize a lot of this stuff, I don't know, cut back, of course, then maybe cut out-- If we could get some people in there who could do the job-- Has anyone ever reviewed that?

ASSISTANT COMMISSIONER WEINGART: Yes, we have, in two ways.

SENATOR SCOTT: One other question before you even answer that one: Do we need all the experts we have in the agency, especially when in one particular case they didn't investigate a complaint, but they sent out the fines -- trying to get a Consent Order? It had gotten up to \$127,000, and not one person had gone out to investigate that particular alleged violation. Yet, we pay for that and, you know, that is a lot of money.

MR. HART: I know that is not related to this program.

SENATOR SCOTT: But do you do the same thing?

MR. HART: No, no, we don't do the same thing. As a matter of fact, we inspect every facility two times a year. But one of the things you said, "Get some people in there who can do the job"-- At the same time, we have cut back 20 people in the last three years, and we have doubled the output each year in the amount of permit action we're doing.

ASSISTANT COMMISSIONER WEINGART: Let me just answer your question about privatizing. We have two ongoing experiments in that regard now. In the Air Permitting Program, we have had a contractor issuing some of the permits for the last several years. Our experience to date is that the quality of the work is fine; the cost is not cheaper than having State workers do it. It has had some benefits to have a sort of competitiveness between the people under contract and the State workers, but it isn't saving money, at least the way we have been doing it. Maybe there are different ways of doing it.

We are trying the same thing with the NJPDES program. We issued a contract recently to have a contractor review and issue 100 NJPDES permits. We don't know yet what the results of that will be.

I think the questions behind some of your questions, Senator, are: Do we run the program right? Do we need to do all the things we do, or could we do it with less? That is something we are trying to examine. We have had several rule proposals, discussion documents, and public hearings, and we have a major set of rules being prepared, to come out in the spring, that will talk about running the program fairly differently from the way it is being run now. But it is a very complex program in terms of the activities they are doing, the Federal requirements they are under. It is not something where -- at least in any way I know -- you can just say, "You don't need to do that. You don't need those 20 people over there."

SENATOR SCOTT: Senator Zane?

SENATOR ZANE: The application -- just by way of example -- that Senator Scott is talking about that cost, rounding off, \$600,000 for Hoffmann-LaRoche, how many similar type applications were done during that year when they were assessed that fee of \$600,000?

MR. HART: It is not an application fee. That is just their percentage cost of the program.

SENATOR ZANE: I understand, okay.

MR. HART: Much like your own property taxes, which that represents.

SENATOR ZANE: Well, let me ask you this then: How many people share in the cost of that program?

MR. HART: In the cost of that program?

SENATOR ZANE: That's right.

MR. HART: There are slightly over 200 people on that account.

ASSISTANT COMMISSIONER WEINGART: Do you mean how many people, or how many industries pay into the account?

SENATOR ZANE: How many industries is what I am talking about.

ASSISTANT COMMISSIONER WEINGART: How many regular--

MR. HART: How many people were regulated?

SENATOR ZANE: Yes.

MR. HART: Fourteen hundred.

SENATOR ZANE: Fourteen hundred.

MR. HART: That counts industries and municipalities.

SENATOR SCOTT: What is the total budget? Excuse me.

SENATOR ZANE: So what you are really saying-- Let me ask you this: Is that down from the number of people who were previously in this program?

MR. HART: Yes, it is.

SENATOR ZANE: What was the height of this program -- the number of people in it, if you know?

MR. HART: I don't know the exact-- The height of the program since I have been involved was probably about 1900, or 1800, or thereabouts.

SENATOR ZANE: How long have you been around? How far back does that go?

MR. HART: To the middle of '91.

SENATOR ZANE: Okay. So in '91, forgetting the increases, benefits, salaries, etc., etc., if we could put it all on the basis, let's say, of '93 dollars-- Doing exactly what cost \$600,000, or their share, for '93, in 1991 would have cost them considerably less, because if there were 1900 people sharing -- 1900 industries, or entities sharing in the cost--

MR. HART: With the fee schedule at the same-- I mean, the fee schedule has been changing every year of how the formula is developed. If it was the same fee schedule we had right now, all those dischargers that went away were small ones, except for a couple of large municipalities. The fee

would probably not be that much different, because most people pay only \$500 a year. Seventy percent of the people pay less than \$1000 a year for their fee.

ASSISTANT COMMISSIONER WEINGART: One of the things that has changed, too, as there are fewer facilities regulated-- There is still a large number of facilities regulated. There is still a large number of issues to be addressed. But one of the things that has happened is having more staff per permit, if you will, or more staff per industry; whereas, as Dennis indicated, we are issuing more permits. We are getting permits out faster. They are still not fast by any stretch of the imagination, but the fact that we went from issuing 200 permits two years ago, 400 permits the following year, and 800 permits the year after that, I think, is significant progress.

One of the things that made that possible was having enough people to do that. If we had had fewer people, it would have taken more time. If we had more people, it might have taken less time. But there are some trade-offs there. If the program staff gets smaller, there are those actions, too.

Similarly, we have seven people -- or nine people, I guess -- who are actively rewriting the entire set of regulations for this program, which is a massive set of documents if you look at it. Those are people who are being paid by the permit program. That, I think, is the kind of issue that gets at the resolution you have. Those people are rewriting the regulations. They are not working on anybody's specific permit. But when the day is done, the permit program for everybody is going to run a whole lot better because of their work.

Now, should they be being paid by permit fees or should they be being paid by General Revenue? I don't know the answer to that, but since we don't have General Revenue, we are paying them by permit fees.

SENATOR ZANE: Is there not a direct correlation between the cost somebody is paying in 1991 versus the cost in 1993 by the fact that there aren't as many people, let's say, within the program, or getting permits, or that industry is down, or whatever in this State, and, therefore, the cost is greater?

ASSISTANT COMMISSIONER WEINGART: Yes.

MR. HART: Yes.

SENATOR ZANE: Yes. All right, fine. Those fees that you adjusted that you talked about when I asked you this question before-- The fees that you adjusted were adjusted, you're saying, based upon the pollutants. Is that what you said?

MR. HART: Based upon the pollutants and then the relative percentage of pollutants being discharged compared to everyone else in the State.

SENATOR ZANE: Okay. Now, Hoffmann-LaRoche paid \$600,000. I just heard you say -- and maybe you were just being gracious -- in response to someone's comments, that environmentally they are, I guess, doing a good job; they are clean, etc. Where the hell would they be if they were dirty?

SENATOR CIESLA: In South Carolina.

MR. HART: There is a 10 percent cap, so they wouldn't be any higher than they are right now.

SENATOR ZANE: This is a company that is operating clean. This is their portion of it.

MR. HART: If the cap were removed off the fees, they would be substantially higher. Because there is a cap, much like some of the other--

SENATOR SCOTT: Is there a cap on spending?

MR. HART: Let me just answer one other thing that is part of my problems. I have cut down 20 positions off the last year. This year I had to pick up an \$800,000 increase because of the negotiated salaries; next year I have to pick up

\$650,000. That is something that is totally beyond my control. In the meantime, we are still cutting back.

SENATOR CIESLA: If I may, Mr. Chairman, I just want to ask--

SENATOR SCOTT: Yes, go ahead.

SENATOR CIESLA: I know you don't have the answer to this now, but perhaps in future reports that you provide to us-- One of the interesting anomalies to me is-- I think you said that 70 percent of the people in the program who are regulated pay less than \$1000. Therefore, the burden is clearly on the larger regulated industries that are here. Yet, the increases that have occurred in the fees -- the assessed fees in particular industries from 1988 through 1992 are astronomical -- astronomical. So if it is not a significant loss in the base that you can charge to that has caused these rates to increase -- or these fees to increase, then obviously it is due to other programs that are being funded from the revenues that are generated by these fees.

What I would like to know is if we can quantify where those revenues are going from '88 through '91 and '92, and then get the opinion of the Commissioner, or some other authority in the Department, as to whether or not that is reasonable in accordance with what was envisioned by the Legislature when the program was first determined.

ASSISTANT COMMISSIONER WEINGART: Senator, if this is a debating game, that is one way to do this. I mean, these are real problems. If you look at the-- There are two reports here.

SENATOR CIESLA: By no stretch of the imagination is this a debating game. What this is, is an effort to keep industry in the State of New Jersey, as opposed to chasing it out.

ASSISTANT COMMISSIONER WEINGART: Okay. If you look at the two reports-- The report that Ron Tuminski mentioned

gives you some of the information you just asked for. We can pull that out and highlight it for you. What has happened is that costs that used to be paid directly by the State budget, like the Attorney General's Office, like rent for the buildings, like laboratories, no longer receive a State appropriation. So the State administration has the choice of doing away with those services, cutting back on those services, or paying for them under fees. What we have done are the latter two things. We have cut back on them, so we have not been filling vacancies in many areas of the Department, and we have had to raise fees.

We do not like that. That is why we invented, or created this Task Force last year. They prepared recommendations that by and large I think we in the Department -- and I am pretty sure Commissioner Shinn -- would support wholeheartedly. That was a Task Force composed almost entirely of industry representatives. Maybe we should stop taking so much time so you can hear from some of them, since I know they are here.

SENATOR CIESLA: John, my request to the Chair was, I would like to know what those elements were.

ASSISTANT COMMISSIONER WEINGART: Okay. I mean, I think they are many of the items you list in the bill -- that are listed in the resolution.

MR. HART: And, Senator, every year in this process, we put together an annual fee report that gives a detailed budget of where every penny goes. This is done before we do it. It also gives everyone's individual fee. Now, we put it in the "Register," and we hold a public hearing every year. We can provide every one for the last number of years, if you would like to see them, which show where all the costs go, from rent, to OAL charges, to laboratory charges, to all those things.

SENATOR SCOTT: Does anyone else have questions? (no response)

ASSISTANT COMMISSIONER WEINGART: Senator, let me just say one thing: We find this frustrating, and you clearly find this frustrating.

SENATOR SCOTT: This is your closing statement.

ASSISTANT COMMISSIONER WEINGART: Yes, it is. We all find this frustrating. We in the Department find this frustrating, and we would like to work with you to figure out a better way to do it.

SENATOR SCOTT: Well, that is encouraging. I think we will be looking for that cooperation. If it works out properly after this resolution leaves this Committee today, tomorrow morning you can say it is a done deal to somebody over there, and we can just put this in the hopper somewhere.

All right. Thank you very much for your testimony.

I think we will hear from someone who had a particular problem with DEPE fees. I want to get this fellow on, because we heard in the newspapers-- It doesn't necessarily pertain to NJPDES fees, but I would like to give him a couple of minutes to say something about how devastating this can be.

Michael Strizki. Michael, I think, is up to \$100,000 in fines for a driveway at his house -- in fees --

M I C H A E L S T R I Z K I: And it is still not over.

SENATOR SCOTT: --and it is not over yet. So, Mike, if you would take about three minutes, I would appreciate it. We would like to at least hear about that.

MR. STRIZKI: I thank everyone for having me. I am just a regular citizen. I am by no means an Assistant Commissioner or anything like that. I work in Regulatory Affairs. I am an engineer with the Department of Transportation.

My American dream has turned into my American nightmare, because of 135 feet of driveway. DEPE seems to

think that micromanaging the environment where no pollution is present is the norm. All I wish to do is live on this property. I do not wish to be extorted from it.

DEPE has taken the position that if you disturb one square inch of wetlands the impact is nationwide, at least so the lady who came out to issue me this permit. The fees that I have spent thus far exceed over \$100,000 in the last four-year battle. My total building costs, excluding DEPE fees, came to \$1250 for the permits. DEPE, just the permit fees, were over \$5000. It required enormous amounts of engineering work and legal work, because their rules were so complicated, over such a tiny piece of driveway. We're talking about 2700 square feet.

All this resulted in needless prosecution over nothing at all. I have a solid waste file here, 89 pages. I used recycled concrete in my driveway. Let me just read you the last page of this report. This file, by the way, is closed out.

"Based upon my inspection, there was no evidence to support the original complaint." I was issued a \$50,000 fine, and they forced me to dig up my driveway in several spots. They made three investigations. They fined me for having wood chips for cleaning up along my driveway.

If the Department would not waste so much time on a home owner for absolutely no pollution whatsoever, they may have money to fund all these other things. They can't micromanage the environment. They have to use common sense. It is pretty evident that little or no common sense was executed in dealing with me. All I wish to do is live on this property. I don't wish to be extorted out of it.

My mistake was alerting them to the truth, which made them bear down on me even harder. It took a lot of fortitude and guts to come this far. I know working in my job with the Department of Transportation, DEPE has been a big hindrance there in trying to get any projects resolved. If we want to do an experimental project with glass-phalt or anything else, the

experimental fees are \$38,000, even in, you know, waste cleanup for recycling stuff.

DEPE has fined DOT hundreds of thousands of dollars for operating illegal storage facilities, because we stored sweepers -- street-sweeper sweepings in the maintenance yards. The Department does not choose to work with us. They choose to work against us.

I feel that the way the agency collects its fines and fees is not right. What they have done is-- You have given a police Department the power of God. They can go out and take anything they want. They don't have to be right, they are bigger than you are. This has been an unbelievable experience for someone who is an environmentalist himself.

SENATOR SCOTT: Well, we appreciate it, Mike. Of course, your story was brought out by The Ledger's story today. A few people have been advising me of it. We certainly hope that someone is looking into that for you, and will perhaps get it resolved. I am glad we could afford you the opportunity to speak today. This, I think, is the epitome of what can happen. It happened to a home owner, so when Hoffmann-LaRoche or the big guys get hit, unfortunately, they have to dig in. They can, but ultimately--

MR. STRIZKI: The thing is, there is no pollution here.

SENATOR SCOTT: --it results in the loss of jobs or companies just going out of business.

MR. STRIZKI: Well, I'll tell you one thing. I am a home owner who wants to get out of this State. All the businesses are gone, and all that is left are the home owners -- to tap into their pockets.

SENATOR SCOTT: Well, bear with us a little bit, Mike. We may make changes in the next couple of years, hopefully. You heard DEPE agree with us today on this resolution, so it seems very encouraging.

MR. STRIZKI: Okay.

SENATOR SCOTT: Thank you very much, Mike.

MR. STRIZKI: Thank you. Thanks, everybody.

SENATOR SCOTT: Are there any questions? (no response)

Hal Bozarth, do you want to start off?

H A L B O Z A R T H: Mr. Chairman, yes. Originally, I had a panel of folks and I was going to ask all of them to come up at once. However, it seems that we do not have enough seats.

What I would like to do is pass out testimony, so that I don't have to read it and waste your time. In the back of each, Senators, are some charts. I would direct your attention to those charts.

Chart No. 1: I guess I could say parenthetically that even the big guys, who I have shown in the picture up here, seem to be suffering from various attacks on the fee programs. The fellow over here with his hat on is the DEPE, saying, "It is not our fault. It is somebody else's fault."

Well, in reality, gentlemen, it is somebody's fault, and we are going to go to South Carolina, or North Carolina, or Michigan, or wherever it is. But let me talk-- I can try to at least stick to the resolution.

Figure No. 1: June '92-June '93. Number of NJPDES permits, number of permits backlogged. In '93, DEPE figures, as best we can get, were 1700 permit fees, down -- Senator Zane, your point exactly -- from only one year before, and look at the backlog increase.

Figure No. 2: The NJPDES program. The top line, millions of dollars, fees billed. In 1988, about \$10 million; in 1992, close to \$20 million. That is a 119 percent increase in fees from '88 to '92. If you look at employment in the NJPDES program, again, we are not sure where they all are. I am glad to hear that they do not know either. You can see that there is a 50 percent increase in employment over those same four years in that program.

The last chart--

SENATOR ZANE: Hal, what specifically were the people -- how many, roughly?

MR. BOZARTH: I am not sure. All we know is that there were 100-and-some odd. Maybe it is--

SENATOR ZANE: What were there? What are you saying now?

MR. BOZARTH: A 50 percent increase from '88 to '92.

SENATOR ZANE: Yes, I know, but can you translate that into numbers?

MR. BOZARTH: Again, we are working on pretty poor data.

SENATOR ZANE: Oh, I'm sorry. You're saying roughly a little less than 100 people to now approximately 200?

MR. BOZARTH: Yes.

SENATOR ZANE: Okay.

MR. BOZARTH: They are your figures, from your report that you talked about to the Committee. But let me go on. I didn't try to interrupt you. (speaking to unidentified person in audience)

If you look at the amount of discharges from the people I represent in New Jersey -- water discharges -- from 1987 to 1991, you can see a dramatic decrease.

I think what we are seeing here is something simple. The number of people paying has gotten smaller; the cost of the program has gotten larger; the fees have gotten larger; and the permit backlog has gotten larger. Clearly, there is something wrong. Not in the legislative intent, as I read it.

Let me have Dr. Al Pagano from DuPont first. Again, a big guy. His fee is relatively small, I guess, for big guys -- \$750,000 a year for each of three years of NJPDES permit. That is \$3.2 million in fees for one permit, for one facility.

Dr. Pagano. Let me pass your papers up.

A L F R E D H. P A G A N O, Ph.D.: Senator Scott, members of the Committee: My name is Alfred Pagano. I am the

Environmental Manager at the DuPont Chambers Works in Salem County. I am here representing the Chemical Industry Council. I am a member of the NJPDES Fee Task Force that you heard about, as well as some of our other colleagues. I appreciate this opportunity to testify, because there are obvious problems within the fee program that are causing everybody a great deal of concern.

It appears that the problems with the present fee structure require that the entire approach be revisited and reviewed. You have heard some of the testimony earlier that some of that is at least starting to be done, but there is a long way to go.

In Section 9 of P.L. 1977, with which you are very familiar, we talk about what is required under the Water Pollution Control Act, that the Department is "authorized to establish and charge reasonable annual administrative fees which shall be based upon and shall not exceed the estimated cost of processing, monitoring, and administering the NJPDES permits." There is no evidence that these administrative costs for a given permit are related to the quantity of materials discharged.

We are now paying fees which have increased significantly from year to year based strictly on a change in the formula, which some of the folks testified to earlier. This formula, the way it has been constituted, basically penalizes the larger dischargers and permit holders who have many parameters in their permit. So these large dischargers, such as DuPont, with very sophisticated permits and very extensive monitoring requirements, pay a disproportionately high share of the permit system costs. The result is that some facilities, as you have heard, are now paying inordinately high fees, where others are paying fees that are unreasonably low, because the minimum fees have been kept at a level for a period of years and have not been increased.

The total NJPDES fees have increased dramatically over the years, as you have seen in these charts. For instance, the portion of the NJPDES surface water budget funded by fees from Fiscal Year '88 to '92, went from approximately \$7 million to \$15 million, roughly the same thing that Mr. Bozarth has shown, an increase of about 119 percent in four years. Over that same period of time, our DuPont industrial surface water fee increased by more than 1300 percent. In 1988, we were paying \$52,000; we are now paying -- most recently in '92 -- \$750,000, annually.

In Fiscal Year 1988, there were 755 industrial permittees; 52 of these paid 50 percent of the total budget. Whereas, in 1992, only six -- which was less than 1 percent -- of the 918 industrial permittees paid 50 percent of the surface water budget.

As mentioned by the people from the Department, nearly two-thirds, or 70 percent, of the industrial fee payers of the 918 industrial water payers were paying less than \$1000, which is something less than 4/10 of a percent of the overall budget. Clearly, there is some inequity here.

The Department has adopted a consistent policy of including every cost arguably associated with the NJPDES program into the NJPDES budget. They then passed it on to the regulated community through the NJPDES fees. However, it was the opinion of the NJPDES Fee Task Force that the DEPE, in greatly expanding the types of charges allocated to the NJPDES program, inflated the program to a point of being an unfair burden on the regulated community.

Some examples of the costs that the NJPDES fee program holds which primarily benefit the general public and are not solely required because of the existence of regulated discharge include: ambient monitoring of surface and groundwater; technical and legal expense of rule development; various

science and technical research programs; internal employee training; and other things.

Clearly, these programs benefit the public at large and would likely exist in the absence of a State-run NJPDES program. The Task Force could find no justification for costs such as these being included in a 100 percent fee-funded budget.

The surface water program will cover its operating costs by charging permit holders a minimum fee plus, in some cases, environmental impact fees. Minimum fees should cover the costs of those tasks directly associated with issuing a permit, such as inspection, data management, and the processing of the permit.

I would like to say at this time that we talk about the costs that this incurs. If we have one discharger who has a discharge of 100,000 gallons and another who has one of 10 million gallons, the cost of sending someone to each of those sites twice a year to take a sample is about the same. You have to take a sample twice a year as required by law. When you take those samples, admittedly one sample may be more complex than another and might require a little more analytical costs. But these costs are going to run, for a given sample, somewhere in the neighborhood between \$1200 and \$5000, depending on how complex it is.

Finally, if I have a very complex permit, I am going to have a much larger report that must have data management included. It might take 40 man-hours, or 50 man-hours to do this particular thing; whereas, a smaller, less complex permit holder may require less time from the Department.

We asked the Department when we were meeting with the Task Force to try to determine what the minimum of these administrative costs might realistically be. They were able to come up with a cost. They said it would cost about \$3000 to \$5000. This was the minimum fee. Now, if the Department is 100 percent low at this point, then I would expect to pay maybe

\$10,000 and, as Mr. Bozarth said, the activity listed above does not appear to justify three-quarters of a million dollars annually, or roughly \$3.5 million over a five-year period for the life of the permit.

The formula that is currently used by the Department results in fees so totally removed from the cost of administering each permit that they fail to meet the reasonable standard of the statute. In the last several years, we have-- I heard some comment about the cleanliness of what is going on, what we are doing to the receiving waters, and what we are putting into the receiving waters. Over the last several years, the DuPont Chambers Works has spent over \$50 million to put extra tertiary treatment into its wastewater treatment plant. It is probably one of the most sophisticated in the world. In spite of our very complex permit that requires us to take more than 4000 analyses a year, we are still maintaining a 99.9 percent compliance record with our permit limits. To your question, Senator, the water going out is pretty darn clean. Yet, we are still paying in excess of over \$700,000 a year.

Now, the Chambers Works has been in operation for over 77 years as a valuable member of a New Jersey southern community. We have provided taxes and good jobs for generations of Salem Countians, but our Works Manager faces a dilemma. He continually strives to attract new business and maintain the Chambers Works as a viable place of employment in the community. However, at the same time, he finds it difficult to convince corporate management to invest dollars to grow in New Jersey, because New Jersey is not viewed as business friendly, which includes the high fees charged by the Department.

Fees charged by the Department are among the highest, if not the highest, in the country. These excessive fees are a clear disincentive to business or industry trying to locate or stay in New Jersey, because high fees directly impact

competitiveness. The members from the Department have included some charts on some information of comparable states and surrounding states. I have included some in my package, too. The thing that you look at, regardless of how the various departments are constructed, and because their programs may, in fact, be different-- The point is, no matter how you look at it, the fees in New Jersey are still the highest. That really is where the problem arises.

Admittedly, I am sure the departments in Delaware, New York, or New Jersey can show differences, but I would point out to you -- in one of the attached documents -- that we have a sister plant in Delaware. It is across the river from the Chambers Works. We both discharge into Zone 5 of the Delaware River. The plant in Delaware is approximately one-third the size and discharge of the Chambers Works, yet their annual fee is \$22,000. Ours is \$750,000. Our Niagara plant in New York, in the Buffalo area, has a plant of about the same capacity as ours. They run about 35 million gallons a day. Ours is about 40 million gallons a day. Their annual fee is \$80,000. We are roughly 10 times that.

A lot of the information that I discussed is in the NJPDES Fee Task Force "Report of Findings," which was dated March of '93. I have attached a copy to these comments, and hope you will look at it.

I thank you, sir, for your attention.

SENATOR SCOTT: Thank you.

Does anyone have any questions? Senator Sacco?

SENATOR SACCO: Basically, it seems the funding mechanism that is in place is similar to bounty hunting. You can fund, and then the more violations, or the more licensing fees, or other fees, the more you can employ, and the more you can build. I think the intent was to, say, spare the taxpayer and put the burden on businesses. However, what was created

here was an agency that has gone out of control, and is now self-funded. It's to the detriment of the entire State.

SENATOR SCOTT: Thank you.

DR. PAGANO: Thank you, sir.

MR. BOZARTH: Mr. Chairman, Jack Alexander, from Hoffmann-LaRoche, can talk specifically about where we think the fees have exceeded the statutory authority originally granted.

SENATOR SCOTT: Very good. Jack?

J A C K A L E X A N D E R: Thank you, Mr. Chairman and members of the Committee. I am representing Hoffmann-LaRoche here. I am also a member of the Task Force, where I learned probably more about the NJPDES fee program than I ever wanted to know.

We are here to speak in favor of SCR-33. I think the primary issue raised by the resolution is whether the Department has complied with the law -- the intent of the law. Just briefly, I will summarize -- actually state what the law says, which is: "The Commissioner shall establish and charge reasonable annual fees, which shall be based upon, and not exceed the estimated cost of processing, monitoring, and administering NJPDES permits." I think the key words there are "reasonable fees," and they must relate to, or be based upon the costs of processing, monitoring, and administering permits.

I think you have heard a lot of testimony here today. I can probably say about half of what I was going to say, because everyone else has stated it very eloquently; that a lot of the charges that are within the NJPDES program that do get charged out in permits, are not related to the processing, monitoring, or administering of permits. In fact, the NJPDES Fee Task Force concluded basically that anywhere between 25 percent and 50 percent of the program costs of, again, \$15 million, really dealt with items other than strictly speaking processing, monitoring, or administering permit fees.

I think you can see that the regulated community is paying between 25 percent and 50 percent more than they really should be paying in toto in terms of the entire program costs.

Additionally, the permit holders are paying many, many costs, just general costs of running the government, such as: rent, heat, employee training, salaries, and things like that, which we do not really feel is appropriate. Again, does that go to the question of reasonable, and is that really a cost of processing, monitoring, and administering the permits? We do not think so.

Additionally, the NJPDES Fee Task Force concluded that approximately 50 percent of the pollution going into the State's waterways came from sources other than permitted sources. These are the so-called nonpoint sources. So again you have the regulated community paying for the pollution -- supposedly to clean up the pollution in the State's waterways, but we are paying for a program that covers not only what the permitted facilities put out into the waterways, but also what runs into the rivers from streets, people's lawns, and things like that.

I think that really gets to the point of reasonableness. We would argue that the fees are not reasonable.

Finally, the formula, which you just heard Dr. Pagano speak eloquently about, is incredibly convoluted. It really has nothing to do with the cost of processing, monitoring, and administering the permits. It is really-- I think Dennis Hart described it as somewhat like property tax. You just have to pay your share, and grin and bear it. Unfortunately so. Again, I think that really goes to the element of reasonableness, and I think would support the resolution on the table today.

I thought it was interesting that the Department pretty much conceded that at least part of the program fees are

unreasonable. I would certainly agree with that. I would note that the NJPDES Fee Task Force has been working very closely with the Department over about -- almost a two-year period now. At various times, we thought we came up with some resolutions, some compromise positions which the NJPDES staff people seemed to agree with. Dennis Hart and his staff did a very, very good job. But sometime after the meetings where we thought we had agreement -- between there and the time it got up to the Commissioner's desk -- somehow our coalition, or our compromise had fallen apart.

I think from what I have just heard recently, thirdhand, I must confess, Commissioner Shinn has put the brakes on a proposal which would raise the minimum fees, and frankly, I am not sure what our bills will reflect. The bills have to go out, I guess, in a month or two. I am not sure what we are going to get in the mail, but I suspect we will probably get another bill for roughly \$650,000, which we paid last year. Again, I don't think that is reasonable.

We would encourage this Committee to pass out this resolution, as well as the Senate passing the resolution completely. Really, I think it would be a good inspiration to the Department to prod them to take some action. I have heard several Commissioners speak at committee hearings like this over the last couple of years. They have all admitted that the program needed work. They have all pledged to do something about it. Now it is two years down the road, and another \$1.2 million out of Roche's pocket, and really nothing has happened. So I think this resolution would be an interesting way to, you know, get the Department moving.

I can just give a couple of examples of maybe other legislative solutions. Maybe that is beyond the scope of the resolution, but--

SENATOR SCOTT: Well, yes. We just want to stick on this one. I will be glad to entertain a letter from you, and we can pursue those avenues at another time.

MR. ALEXANDER: Okay. Just two other points: I just happened to get in the mail recently our-- I think in Texas it is not called NJPDES; it is just a PDES permit fee. But we got our permit bill for a Texas facility. We have just now completed a beta-carotene manufacturing plant, not nearly as big as our Belvidere plant, but still a pretty good-sized facility. The bill was \$2925, which is in marked contrast to the \$650,000 we are paying here.

SENATOR SCOTT: Yes, but rents are higher here.

MR. ALEXANDER: Well, that's for sure.

Finally, Mr. Chairman, I do have some technical amendment language which I talked to Tom Neff about. I have now finally typed it up and I can give it to you folks for your consideration.

Thank you for your time.

SENATOR SCOTT: Good. Thank you very much.

MR. BOZARTH: Mr. Chairman, next we will have Angelo Morresi, who is part of our panel. He is an environmental attorney dealing with these issues, with a long understanding of the NJPDES problems.

A N G E L O C. M O R R E S I, E S Q., P. E.: I also have a statement which I will not read, except for the last page. I might dabble in that a little bit.

Mr. Chairman and members of the Committee, thank you for having me here to testify.

I like to think of myself as an advocate for New Jersey businesses. I would like to say some things that maybe don't have to be said, but: I am for clean water, and I think my family is for clean water. We have to say that, because we have to get it out of the way. I just want to make sure it is clear that we are all for the important things of life, and clean water is one of them.

I would also like to see my family grow and continue to stay here in New Jersey. But the fact remains that this

will be very difficult without some good jobs, which continually leave the State. It is up to you, gentlemen, with your courage today, to move forward and get us into the 21st century.

I have known several of you over the past couple of years. I have come to know you. I have looked at some of your work. It has been positive; it is very concise. It is well-thought-out. When you look at the meaning of -- or the legislative intent of the words, "processing, monitoring, and administering NJPDES permits," regardless of all the ins and outs, discussions, court decisions, and arguments to the contrary, processing, monitoring, and administering NJPDES permits means just that. I think that is what you meant it to mean. I don't think you envisioned anything other, and yet I don't think the Legislature would have thought that back-charging some OLS charges and planning for studies were in that administration. So let's put that on the table and make sure that it was not here to fund a wish list of projects.

There is some discussion on mandates. It is important to mention mandates, but it seems to me that if the Governor and the Legislature believed that those mandated programs were important, or very, very important, they would have funded those programs, instead of taking money out of those programs over the past few years. The intent of the NJPDES fees was never to fund those programs.

The other thing we have to look at is, when there is a mandate, are we doing what is mandated, or are we doing three times what is mandated? That is very important. That goes to the heart of the cost issue.

The second issue I would like to talk about is let's face the facts. I think you have heard some testimony today, but it is important to reiterate that. The fact is, over the past 25 years, New Jersey manufacturers have developed

effective and sophisticated environmental programs which are second to none. I mean, that is a basic fact of life.

It is also known that they have been pouring that money into environmental programs on one end, and it is going out on the other end in terms of fees. The fact is, today's world is also an entirely different world than it was 25 years ago. Today, we have a global economy, and the competition is not necessarily with your next-door neighbor. The competition is with your plant in South Carolina, your plant in Mexico, or your plant in Geneva.

I have been a Vice President and I have been involved in many decisions. I have sat in attendance when these decisions were made. I tell you that the decisions are based on long-term commitments; they are based on a sense of community; they are based on economics; and they are based on what makes sense. It does not make any sense to finance to continue this system as it currently exists. If a fee is \$700,000 in one state and it is \$40,000 in another state, you know where the decisions are going to go. It's just basic.

If we want to become competitive again with other states, we are going to have to look at how our programs are run and how they are financed. If this means getting down to a reasonable fee, not \$700,000 to \$5000, which will go back up to \$700,000 in a couple of years-- It means \$700,000 down to \$50,000, where it should be.

Now, where does the problem lie? I think there are two points to be made here. One is: How far do we go, and are we going too far in terms of getting clean water? I have pointed this out many times before, but I will point it out again. There have been studies done on the OSHA program in New Jersey. In the OSHA program in New Jersey, worker safety is considered second in our nation. That is with a program that is administered by the Federal government. So this supports and reinforces the premise that duplication of Federal

regulations and/or more stringent regulations does not necessarily mean a better program. Efficiency is not necessarily gained with the New Jersey administration of a program.

Many have suggested that New Jersey will not suffer if the NJPDES program is turned back to the Federal government. Now I know that is an off-the-wall statement maybe, but the fact remains that you should take a look at some things.

If you look at the NJPDES Task Force study, you will see where sometimes we have gone awry, why we have gone beyond the intent of what the legislators said, and why we have these higher costs. As the EPA promulgated new rules, the NJDEPE often rushed to pass their own version of the rules before the final Federal promulgation. Many states will not deviate from Federal rules unless they have conclusive evidence that there is a need to do so, and then they will phase in additional requirements over a period of time.

New Jersey's approach has resulted in excessive requirements that can be extremely costly and do not necessarily afford additional environmental benefit. That has to be factored into these fees.

One final thought. I will leave you with the fact that New Jersey's businesses are a small portion of the national pool of businesses. They have been supporting the development of major programs that have not been tested elsewhere. They can no longer be the test animals for every whim that sounds good on paper. Let us be quite clear: When a program does not work out, lives are at stake and people are hurt.

Thank you for your time.

SENATOR SCOTT: Thank you very much, Angelo.

MR. BOZARTH: Mr. Chairman, finally, and to sum up, Hank Van Handle, from Bayway Refining, who is our last speaker.

H A N K V A N H A N D L E: Good afternoon. I promise I will be brief.

I am Director of Environmental Affairs at Bayway Refining Company, which is a subsidiary of Tasco. We purchased the refinery from Exxon on April 8 of last year. The views I am going to sum up not only represent the views of the Chemical Industry Council, but also the New Jersey State Chamber of Commerce.

I am also a member of the NJPDES Fee Task Force, which was formed in August of '92 by then Commissioner Scott Weiner. It was chaired by former State Senator Larry Weiss. The mission of the Task Force was to aid the Department in assessing the NJPDES budget and the fee structure.

We are in support, obviously, of SCR-33. It is consistent with the conclusions and recommendations of the Fee Task Force, and it obviously identifies an obvious inconsistency between the Water Pollution Control Act and the current fee structures, as codified in 7:14A-1.8.

As Messrs. Morresi and Alexander, Dr. Pagano, and Mr. Bozarth have expressed, there are a number of inequities associated with current NJPDES program funding.

Firstly, minimum fees do not cover the costs of administering permits. Current minimum fees are \$500. DEPE analyses showed that the direct annual cost of administering permits varies from \$1200 for general industrial permits, to \$2500 for minor permits, to \$5000 for major industrial permits, to a maximum of \$13,000 for what is known as "delegated publicly owned treatment works." Those are the largest sewerage facilities, just as you were talking about. Direct costs to administer that permit are around \$13,000, not \$500,000 as you are paying.

For the very small permits, a significant portion of this annual cost comes from implementing the mandatory inspection and testing provisions of the Clean Water

Enforcement Act. Dennis Hart, from DEPE, testified to that, and that is, in fact, the truth. So one thing we have to look at is, we either must raise minimum fees to cover the actual administrative costs or, preferably, I would hope that the Legislature would revisit the provisions of the Clean Water Enforcement Act that caused these high administrative costs for very minor permits, like a dry cleaner.

Secondly, as has been explained, there is an extreme concentration of permit fees with a few industrial users. Let me try to bring this into focus. Fifty-four percent of the industrial NJPDES fee budget is paid by 1 percent of the permit fees. In Fiscal Year '92, six facilities out of a total of over 900 paid 50 percent of the fees -- six out of 900. These six permittees all paid fees of over \$450,000; again, while over 600 of the permittees out of the 900 -- over two-thirds -- paid \$1000 or less. This is a relatively recent phenomenon. Again, that was explained. In Fiscal Year '88, 52 permittees out of a pool of 755 paid 50 percent of the budget. So we have gone from 10 percent paying half of the budget to 1 percent.

Now, you know, we have heard that the permit fees are based on how much pollution people put out, or how much time and effort it is for a permit. It is ludicrous to imagine that six permittees could occupy 50 percent of the activities of the industrial permitting group of the Department, or generate 50 percent of the pollution. As Dr. Pagano stated, any size facility with a more complex permit pays higher fees.

When we look at various fee formulas which were based on measures of pollution that were common to all permits, what happened was we saw that many of the people who are paying low amounts now, had their fees raised. The problem was that within the constraints, the NJPDES Fee Task Force-- When all we are doing is looking at a formula to fund a given budget, it is a zero-sum game.

SENATOR SCOTT: Hank, if I may interrupt-- I am reading along with you. This is good testimony, but in the interest of time, though, could you go to the conclusions?

MR. VAN HANDLE: Absolutely.

SENATOR SCOTT: I would appreciate it.

MR. VAN HANDLE: No problem.

Conclusions: There is a clear inconsistency between the current annual fee structure and legislative intent. Current minimum fees are too small to cover the costs of administering permits, due mainly to the inspection and sampling costs mandated by Clean Water Enforcement. We have to look at that legislation.

There is a drastic inequity in that six industrial permittees pay over half of the budget. These extremely onerous fees are a clear disincentive for business or industry to relocate or even remain in New Jersey.

Approximately 50 percent of the programs currently funded out of NJPDES benefit the general public, and should not be funded by fees.

The second largest source -- and this is a very important point -- of NJPDES funding is penalties. This source is projected by Assistant Commissioner Tuminski to be shrinking significantly, which, if you do not reduce the size of the program, is going to force the fees to be further increased, unless other funding mechanisms are established. The answer-- The only obvious way out of a zero-sum game is to shrink the NJPDES program through elimination of nonessential programs, while streamlining the regulatory process so we can get more output with fewer resources.

I have tried to be brief. Are there any questions?

SENATOR SCOTT: No. That was very good. I want to thank you. You made some good points in your statement; you really did. We will take a look at this. We have a lot of work to do on this Committee. Some of us will probably have

you down here again to look at another resolution, as we get through some of the problems.

It was very good. Thank you very much. I appreciate your testimony.

There are a couple more people who would like to testify. Let me call Bruce Siminoff. Unfortunately, Mr. Siminoff, as we get toward the end we ask people to be brief and to the point.

B R U C E S I M I N O F F: Senator, thank you for allowing me to testify. I promise you I will be extremely brief.

My name is Bruce Siminoff. I am Chairman of the State Issues Committee of the Commerce and Industry Association, which is a broad-based business organization.

First, let me make a general statement. I will get right to it, and I will not take up too much of your time. Generally, our Association is very concerned with the high fees and penalties in the State of New Jersey, including NJPDES fees. We feel it has chased out business, and makes it very difficult for us as a business Association to attract people here. Worse, it lets horror stories float right through the United States and makes us, in our minds, probably the least competitive State to attract business in the Union. That is a general statement.

Specifically, we are concerned about the NJPDES permits and about your efforts. We agree with you in the sense that we do not feel they are reasonable, number one. Number two, we believe they go further than just the chemical industry or the pharmaceutical industry. We see them also threatening home owners. I will give you one quick example:

In my hometown, we have a mobile home park which is called Sherwood. It is on Route 24. They had a leaking septic system last year. There are 34 mobile homes there. They were quoted by DEPE, according to the owner, a \$100,000 fee to repair -- as a permit to repair the septic systems. Now, that

goes far beyond anybody in this room's testimony for one reason. In New Jersey, if you lose your mobile home -- and these sites rent for \$288 a month-- If you lose your mobile home, there is no place else to go. There are no new mobile home parks being built; they are zoned out. So a person, in essence, being thrown out of the State by virtue of a high fee, can maybe go to Texas if they are DuPont or Hoffmann-LaRoche, but as a home owner you have to leave the State; you're homeless.

We view that as part of this that hasn't come out yet; as one reason why these fees are very unreasonable, in that they affect home owners.

I have a suggestion, and then I will leave you: I ran a business with more than 500 employees. I retired a few years ago to do other things. I can tell you that what I heard here from Commissioner Weingart and other people was basically that we have a budget. We can't change it. We can only do this. I can tell you that I have heard that all of my life in my business career. I have never seen a business, I have never seen an organization where the budget could not be cut 10 percent; never seen one. It can be done. IBM just found out; Fleet Financial found out; AT&T found out; everybody found out. In this world you have to do it.

My suggestion is that DEPE be asked by the Legislature and by the executive branch to cut their budget by 10 percent. That's \$24 million. Take \$10 million of it and put it against NJPDES, and you will cut the program by two-thirds and reduce the fees by two-thirds. Let the other \$14 million go against the \$100 million in fees that are left, and that will cut those down to reasonable levels.

That is only a start. An organization has to realize that they have to restructure and reduce like everybody else in this State and in this country. In that way, you can save the business that is here.

Thank you, Senator. I am finished.

SENATOR SCOTT: Thank you very much. I appreciate that.

Jim Sinclair.

JAMES SINCLAIR: Thank you, Senator. I, too, will be brief.

I am happy to be here again supporting a very good bill. This is an excellent bill. Clearly, it does not go far enough. There is more to do in this. Five years ago, sitting in another conference room upstairs in the other building, when the activists groups brought in a wheelbarrow full of petitions demanding clean water enforcement which, in fact, was only really asking for taking the cap off the legal fees on citizen suits-- In that Clean Water Enforcement Act that ultimately got passed by the Legislature, you see part of the problem, perhaps the biggest part of this problem here.

Clearly, the big guys are paying too much. Clearly, we are uncompetitive. Clearly, we have the highest fees in the nation. Clearly, that hurts us competitively. We need to do something about it.

But on the small people-- I just want to spend a little bit of time talking about the little guys here. Should we be bumping those fees up dramatically? No. Does the Department have enough resources to do what they are mandated to do? No. The Clean Water Enforcement Act requires unnecessary mandatory inspections, just like they have the mandatory penalties and the mandatory fee system. That is the problem. The problem is not the agency; it is with the Legislature and the guidance that gave them that.

We could dramatically cut back the program so that, in fact, the fees would be right for the little guys. If somehow we are wrong in this process, if somehow we need to do something different, why don't we privatize the system? Why don't we, instead of having the State send somebody from

Trenton up to Sussex County to do an inspection -- one inspection a day -- why can't a professional engineer go up and do that, do the same inspection, at a lot cheaper cost, a lot less overhead, and paying a lot less?

I think there are opportunities in the NJPDES system to really do something right. I was in the Department of Environmental Protection when this bill first came over. I worked with the Legislature on this. I saw the process evolve. It never, in my mind -- looking at it as a regulator -- never did it look like the system we have now. This is not what was envisioned originally.

There have been a lot of changes, though, Senator. We have to look at the legislative input along the way, and there are some real mistakes there. It is time to correct those mistakes.

Thank you very much, sir.

SENATOR SCOTT: Thank you very much.

Ellen Gobinski.

E L L E N G O B I N S K I: Thank you, Mr. Chairman.

I represent the Association of Environmental Authorities, who are the public permittees. My membership is 141 member authorities across the State -- water, wastewater, and solid waste authorities. Of that group, 100 or better have NJPDES permits and are impacted by the permit fees.

I, too, was a member of the NJPDES Fee Task Force. One of the reasons I was anxious to be part of that Task Force was because of the Association's historic relationship with the fee process.

Today, I would like to share with you a court case that the Association was successful in--

SENATOR SCOTT: Does this have to do with this legislation?

MS. GOBINSKI: Yes, it does.

SENATOR SCOTT: Oh, I think I saw-- I'll bet I saw it. Did you fax something to my office?

MS. GOBINSKI: No, I don't believe so. Perhaps one of my members from Rahway Valley may have done that.

SENATOR SCOTT: Yes, I think someone did.

MS. GOBINSKI: Someone else sent that to you?

SENATOR SCOTT: Yes, I think someone did.

MS. GOBINSKI: Okay. If you look at what is called "24" on this -- obviously, I did not give you the whole thing in the interest of brevity -- you will see that the AEA filed a suit with 17 public members who were part of this. The court ruled in our favor, indicating that the Department had stepped beyond its boundaries in adding its expenses into the NJPDES fee program which were not within the legislative intent of the law.

Mr. Hertzberg, who was the representative for us -- our counsel at that time -- indicates the citation. He must have done the research on the history of the bill. He concludes that obviously the Legislature intended that both permit holders and the State fund the NJPDES program. Thus, if DEPE had followed the legislative intent, the Oversight Committee might appropriately have suggested an amendment. He was basing the case on the fact that the Senate Environment Committee and the Assembly Environment Committee both had oversight responsibility. The Department was supposed to justify the fees and explain the process to each of those Committees. In this case, they had not done that.

Now, that may not be the issue of this moment, but the legislative intent portion of it is, and the fact that he indicates here -- and the court held with him-- The reason we won on that point was because the court felt the Department had exceeded legislative intent in the computation of those fees.

In essence, since that time, and as a result of this, we took this information to the Legislature. At that time,

Senator John Lynch was the Senate President. He and Larry Weiss asked for an audit of the Department's programs, which was just completed. They did a '91-'92 audit. The report was handed to the NJPDES Fee Task Force on March 1, 1993.

What we had suggested as a result of the court case, and what the court held was a good idea too, was a program audit to find out, not just what the program is about, but who in the Department is doing what. How many people are engaged in what portions of the activities? The State Auditor did not go into that. When he did the audit, he just checked the numbers and made sure that the debits and revenue and everything added up across-the-board backwards and sideways, like a good accountant would do, but he did not get involved in the system itself. You can see in the NJPDES Task Force that that was one of the suggestions for a possible way to rearrange things, how to reform things -- to look at a program audit. That has been on the books and suggested for a long time.

This year, you can really look at the NJPDES fees for the public permittee, at this point, as essentially a clean water tax, because, in essence, what has to happen is, it becomes part of the operating budget of a POTW. It actually gets prorated into the user rates. As a result of that, it is a hidden tax for us. That is one of the reasons why we also were in agreement with the idea that the public -- the General Treasury should put some funding into the Department's expenses, because, in essence, it is an unfair tax. It is only levied on those people who are connected to a publicly owned treatment works. Those on septage and those who are not connected to a system like that get away with not having to pay this portion of the NJPDES fees. So it is really a tax, if we look at it in that perspective, that is disproportionate. So, in fact, the idea of having a General Treasury appropriation to cover some of the Department's expenses would make that more equitable, and would handle that in a more equitable manner.

We agree with the resolution you have here. The Association also agrees with the Task Force recommendations. As an exhibit that has been added onto the Task Force report is AEA's petition for rule making to reform a portion of the NJPDES program dealing with technical issues and administrative issues. We have been working with the Department and asking them to consider ways of doing standard operating procedures for certain limits within municipal permits that are common across the State to all the permittees. It was our conclusion that to take some of the suggestions we had on that technical level would make the permitting process for the public sector go more quickly, would reduce costs to the Department, and would reduce costs to the municipalities.

Right now, in addition to the fee you are looking at in here, the taxpayers of this State are involved in paying a lot of litigation costs, because of the fact that unsubstantiated permit limits put the authorities at risk for fines and penalties. The Clean Water Enforcement Act tells us that we have to negotiate every one of our limits at the time of renewal of a permit. So we go into extensive discussion on that at that time. The litigations are numerous. As a result of that, the Department has had great difficulty putting out municipal permits, and those that have been put out -- the majority of them are appealed. We are now in the litigation process as a result of the way things are stacked up with this. So that is another cost, and it is one that the public is bearing as well.

Any recourse we have to take a look at the way the program is going as you go into a discussion of how to reduce the overall budget for that purpose would also be helpful to the public permittees in structuring that kind of a situation to eliminate consultant fees and legal fees, which are a huge part of what we do today.

SENATOR SCOTT: Thank you very much.

MS. GOBINSKI: Thank you. Thanks for the opportunity to testify.

SENATOR SCOTT: My pleasure.

Senator, do you have a few minutes? We have two new people who want to testify.

SENATOR SACCO: Fine.

SENATOR SCOTT: Drew Kodjak and Tim Dillingham, New Jersey PIRG and the Sierra Club. Would you like to come up together? (witnesses comply) Gentlemen, you came in a little late. We will extend you the courtesy, but if you could please keep it brief on the particular issue--

DREW A. KODJAK, ESQ.: Sure. Thank you, Senator.

My name is Drew Kodjak. I am an environmental attorney for the New Jersey Public Interest Research Group.

I was somewhat part of the NJPDES Task Force that has been talked about here with Hank, Ellen, and the members. I thought that Task Force did a good job in trying to get to the bottom of the problems that confront the NJPDES program. I think there are lots of areas of agreement between the environmental community and the regulated public, and I would like to mention those before I go on.

There is a need, I think, to reduce the cost of permit fees. I think we were all in agreement that the best way to go ahead and do that was to provide some actual general tax revenues, because the general public of New Jersey does benefit, by and large, from cleaner water, and it is, perhaps, an unfair burden for only the regulated public to pay for the full cost of their permit fees.

I would also like to mention that there were two main arguments that the regulated community made during that Task Force. The first was that the \$500 that was the minimum for permit fees was too low, because it cost more than \$500 for the DEPE to issue, just administratively, a permit. By and large, that problem has -- in fact, in the new proposal -- been taken

care of, so that the 5 percent that was paid for by the smallest NJPDES fee holders is now increased to 25 percent of the share. That is more equitable.

The second issue that was raised was that you have a small group of very large companies with very large discharges that are paying a great deal of the fees. That is unfortunate. However, from an environmental perspective, the way the fees are calculated is based on their environmental impact. If you are discharging a lot of pollutants, a lot of volume into a high-grade stream, you should be paying more than somebody who is not discharging a lot. That's enough on that.

I hope that this Committee will actually entertain some of the suggestions made by the Committee, in that we look for other revenues beyond the NJPDES fee payers to subsidize some of the costs. I think that would be a very, very constructive thing which you would find a lot of common ground and common support for in both the environmental community and the regulated community.

SENATOR SCOTT: Thank you very much.

T I M O T H Y D I L L I N G H A M: Thank you, Mr. Chairman and Senator Sacco.

I guess I would like to make that point just a little bit more strongly. The one thing that I wanted to get on the record that I have not heard in this discussion this afternoon, is the Legislature stepping up and taking responsibility for creating the situation, in part. I would recommend that you read this booklet that was given to you by the Department, because it is a very clear discussion as to how the accounting methodologies and how the budgetary policies and decisions of the Legislature have created this situation.

In order to have the program to protect the waters, in this case of the State, and to protect the public's interest in the environment, we have to pay for the programs. Now, there may be a lot of discussion and some fine-tuning can be done.

Changes can be accomplished to make the program more efficient. But the issue remains that there is a program that has to be funded.

The Legislature has gone on a course over the last several years of removing General Funds from the budget of the DEPE, and the DEPE has been placed in the position of having to find some way to make up that money. They have to pay the rent. They have to pay for the lawyers. They can pay it through General Funds or they can pay it through the fees. Now, if you disagree that the large industrial companies in the State should be paying that fee, then the direction should be, "Give them the money to pay for it out of other sources."

I think the one outcome of this that is unacceptable is, as some of the last speakers talked about, shrinking the program and streamlining the program, and removing the onus of the Clean Water Enforcement Act. I think to the extent that those undermine the protection that is afforded the public and the environment in this State, that that is absolutely the wrong course for this Legislature to take.

SENATOR SCOTT: Thank you very much. I appreciate it.

Senator Sacco, do you have any questions? (reply from Senator Sacco indiscernible)

Okay. Thank you, gentlemen.

Senator Sacco, if you would like to make a statement, go right ahead.

SENATOR SACCO: Fine. I thank everyone for testifying, whichever their position.

I would like to relate that if the people in my community had a choice, since they were forced to build a plant at a cost of over \$40 million -- that is about a million dollars a person -- and since they have to pay user fees quarterly, I think their choice would be that there be no DEPE, especially in light of the fines they have been given in their attempt to do this. It is almost incomprehensible that a

township could bond over \$40 million, stick this fee in people's faces, and then when they are not acting fast enough -- if the plant isn't doing its job the way it is supposed to be done, reaching levels that are out of control because of the old sewer lines where we have to treat the rainwater with the sewage-- We can't reach the right level because of that extra water. It is just one problem after another.

I sit here, and I realize that I do not blame the DEPE exactly, because I believe that somewhere, over time, the legislators, leaders, made decisions that, "This sounds good. We are going to save the world." Now we have put into place bureaucrats who believe, "The higher the fines, the higher the fees, the more you can sap the life out of a community, the more businesses you can drive out of the State, the more we save the world." We are destroying ourselves.

I am happy to be part of this Committee at this moment, because with this bill I hope we will be able to go a lot further in the future.

SENATOR SCOTT: Thank you, Senator. Well, we have a lot of work ahead of us. There is no doubt about that.

Right now, I would like to entertain a motion to get this bill out.

SENATOR SACCO: I make a motion.

SENATOR SCOTT: Senator Sacco, I will second it.

MR. CANTOR: On the motion to release Senate Concurrent Resolution No. 33: Senator Scott?

SENATOR SCOTT: Yes.

MR. CANTOR: Senator Sacco?

SENATOR SACCO: Yes.

MR. CANTOR: Senators Ciesla, Bennett, and Zane have already given their affirmative votes.

(MEETING CONCLUDED)

APPENDIX

**HAL BOZARTH
EXECUTIVE DIRECTOR
CIC/NJ**

**TESTIMONY ON SCR-33
SPONSORED BY SENATOR SCOTT**

**TESTIMONY BEFORE
THE SENATE LEGISLATIVE
OVERSIGHT COMMITTEE
MARCH 10, 1994**

PROBLEMS WITH PERMIT FEES

- o **REGULATORY FEES PLACE A BURDEN ON THE STATE'S MANUFACTURING SECTOR.**
 - **THIS PUTS NEW JERSEY INDUSTRY AT A COMPETITIVE DISADVANTAGE TO COMPANIES IN OTHER STATES.**

- o **REGULATORY FEES INCREASED GREATLY :**
 - **ANNUAL FEES AND FINES COLLECTED FROM INDUSTRY HAVE RISEN FROM \$12 MILLION IN 1982**
 - **TO \$112 MILLION IN 1992.**

- o **FILING FEES FAR OUTWEIGH NJDEPE'S COSTS FOR SERVICES AND OVERHEAD.**
 - **THE DEPARTMENT MAY BE USING PERMIT FEES TO BALANCE ITS BUDGET.**

- o **PERMIT BACKLOGS ARE THE NORM AT THE DEPE.**
 - **AS OF DECEMBER, 1992:**
 - **THERE WAS A BACKLOG OF 219 AIR PERMITS**
 - **AND A BACKLOG OF 42 HAZARDOUS WASTE PERMITS.**

PROBLEMS WITH PERMIT FEES- NJPDES (CONT.)

o NJDEPE BUDGETED TO RECEIVE \$7 MILLION IN NJPDES FEES IN 1988.

- IN 1992, THIS ROSE TO \$15.3 MILLION

- THIS WAS A 119% INCREASE IN 4 YEARS.

o THE 1992 NJPDES BUDGET INCLUDED CLOSE TO 31% OF THE FEES GOING TO "INDIRECT CHARGES"

- AND 30% FOR "FRINGE BENEFITS."

- THIS WAS EQUAL TO \$5.5 MILLION NOT DIRECTLY RELATED TO PROGRAM.

o THE NJPDES FEE STRUCTURE IS A COMPLEX FORMULA DESIGNED TO GENERATE A PREDETERMINED AMOUNT OF MONEY FOR THE DEPARTMENT.

o THE "POLLUTER PAYS" CONCEPT SHOULD RESULT IN REDUCED PERMIT FEES FOR REDUCED EMISSIONS.

- ONE MEMBER COMPANY REDUCED THEIR WATER DISCHARGES BY 1/2, YET THEIR PERMIT FEES INCREASED 55%.

PROBLEMS WITH PERMIT FEES - NJPDES

o COMMISSIONER WEINER ORGANIZED THE NJPDES TASK FORCE.

- THIS GROUP HAS DEVELOPED RECOMMENDATIONS TO REFORM THE NJPDES PROGRAM.

- WE'RE STARTING TO SEE SOME POSITIVE CHANGES

- MORE NEEDS TO BE DONE

o NJPDES WATER FEES HAVE INCREASED AT RATES OF MORE THAN 1,000% IN 2 YEARS FOR CERTAIN COMPANIES.

- 7 COMPANIES PAID 54% OF THE TOTAL NJPDES BUDGET, WITH FEES RANGING AS HIGH AS \$750,000 PER YEAR FOR A 5 YEAR PERMIT.

o THE NJPDES WATER PROGRAM CHARGES \$14 MILLION PER YEAR, EMPLOYS 177 PEOPLE, YET ONLY PROCESSED 87 PERMITS IN 1992.

- THERE WAS A 660 PERMIT BACKLOG AS OF JUNE 1992 (THE LATEST RECORDS). IT COULD TAKE AS MUCH AS 20 YEARS TO ELIMINATE THE BACKLOG.

PROBLEMS WITH PERMIT FEES- OTHER

- o THE CLEAN WATER ENFORCEMENT REGULATIONS IMPOSE MANDATORY FINES AND PENALTIES ON COMPANIES FOR EVEN MINOR VIOLATIONS.
- THE STATUTE DOES NOT ALLOW THE DEPARTMENT THE DISCRETION TO FORGOE PENALTIES OR NEGOTIATE WITH COMPANIES.

NJDEPE IMPACT ON INDUSTRY

- NJDEPE CONTINUES TO EXCEED ITS AUTHORITY
- EMBELLES LEGISLATIVE LANGUAGE TO SUITS ITS PURPOSES.
- DEPARTMENT DEVELOPS OVERLY CONSERVATIVE REGULATORY LANGUAGE FROM ENVIRONMENTAL LEGISLATION (LAWS).
- REGULATIONS ARE NOT ALWAYS SCIENTIFICALLY BASED, ECONOMICALLY PRACTICAL, OR FEASIBLE.

CIC/NJ RECOMMENDATIONS:

1) ENACT A SYSTEM IN WHICH INDUSTRY PAYS ONLY FOR "REASONABLE ADMINISTRATIVE FEES" INCURRED BY THE DEPARTMENT.

- ENSURE THAT FEES ARE ASSESSED FAIRLY, EQUITABLY AND PREDICTABLY.**
- BASE ON THE COST OF PROCESSING PERMITS AND SOME COMMON MEASURE OF ENVIRONMENTAL IMPACT.**

2) OPTIMIZE EFFECTIVENESS AND PRODUCTIVITY OF THE NJPDES (AND OTHER) NJDEPE PROGRAMS.

- MAKE IT LESS COSTLY AND MORE PRODUCTIVE IN ISSUING PERMITS AND PERMIT MODIFICATIONS IN A TIMELY MANNER**

**ECONOMIC CONTRIBUTIONS OF THE CHEMICAL
PROCESS INDUSTRY IN NEW JERSEY:**

- o THE CPI EMPLOYS 110,200 PEOPLE IN 1992-
1 OUT OF EVERY 5 MANUFACTURING JOBS.**
- o THE CPI HAD A \$6.6 BILLION PAYROLL IN
1992- THE THIRD HIGHEST IN THE STATE.
(BEHIND HEALTH SERVICES & WHOLESALE TRADE)**
- o CPI WORKERS EARN AN AVERAGE SALARY
OF \$47,500 IN 1992.**
- o THE CPI PRODUCED \$24.6 BILLION IN
SHIPMENTS IN 1992- THE NATION'S 2ND HIGHEST.**
- o THE CPI PRODUCES \$2.7 BILLION IN EXPORTS
IN 1992- THE STATE'S HIGHEST EXPORTS**
- o THE CPI GENERATED 163,700 JOBS IN
OTHER INDUSTRIES IN 1992.**

**ECONOMIC CONTRIBUTIONS OF THE CHEMICAL
PROCESS INDUSTRY IN NEW JERSEY:**

- o THE CPI CONTRIBUTED AN ESTIMATED \$1.1
BILLION IN TOTAL COMBINED TAXES
TO THE STATE-**

\$145 MILLION IN PROPERTY TAX

\$66.1 MILLION IN CORPORATE BUSINESS TAXES

\$756 MILLION IN SALES TAXES

\$150 MILLION IN EMPLOYEE'S INCOME TAXES

**\$125 MILLION IN DOWNSTREAM INDUSTRY
WORKER INCOME TAXES**

CPI JOB LOSSES:

THE NEW JERSEY CPI LOST 6,000 JOBS IN 1992.

RESULT:

- o **LOSS OF \$285 MILLION IN YEARLY PAYROLL**
- o **\$9.8 MILLION LOST IN YEARLY INCOME TAXES**

THE NEW JERSEY MANUFACTURING SECTOR LOST 31,000 JOBS IN 1992.

THE CPI LOST 18,000 JOBS FROM 1980- 1992.

RESULT:

- o **LOSS OF \$855 MILLION IN EARNINGS**
- o **\$27.2 MILLION LOSS IN YEARLY INCOME TAXES**

THE MANUFACTURING SECTOR LOST 253,700 JOBS FROM 1980- 1992.

6 CPI FACILITIES CLOSED IN 1992

74 MANUFACTURING FACILITIES CLOSED IN 1992

120 CPI FACILITIES CLOSED FROM 1984- 1992

929 MANUFACTURING PLANTSS CLOSED FROM 1984- 1992.

CIC/NJ EMISSIONS REDUCTION REPORT:

CIC/NJ MEMBER COMPANIES REDUCED RELEASES AND TRANSFERS BY 47% FROM 1987-1991.

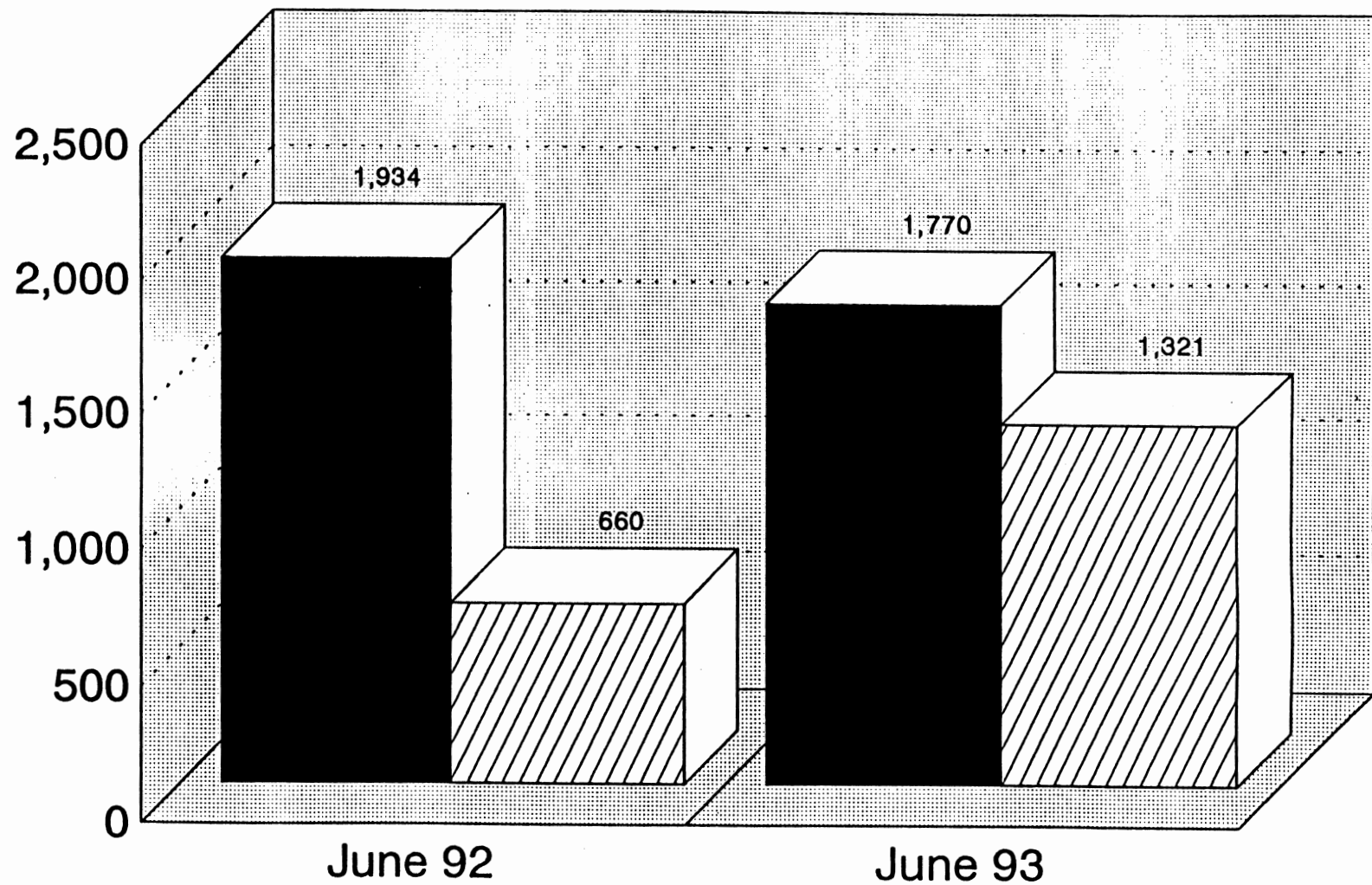
CHEMICAL PROCESS INDUSTRY PRODUCTION INCREASED 17% FROM 1987-1991.

EMISSIONS REDUCTIONS/INCREASES BY MEDIA:

- AIR RELEASES DECREASED BY 47%**
- RELEASES TO SURFACE WATER REDUCED 71%**
- OFFSITE TRANSFERS DECREASED BY 47%**
- DISCHARGES TO POTW'S DECREASED BY 28%**
- ONSITE LANDFILL RELEASES INCREASED BY 66%**

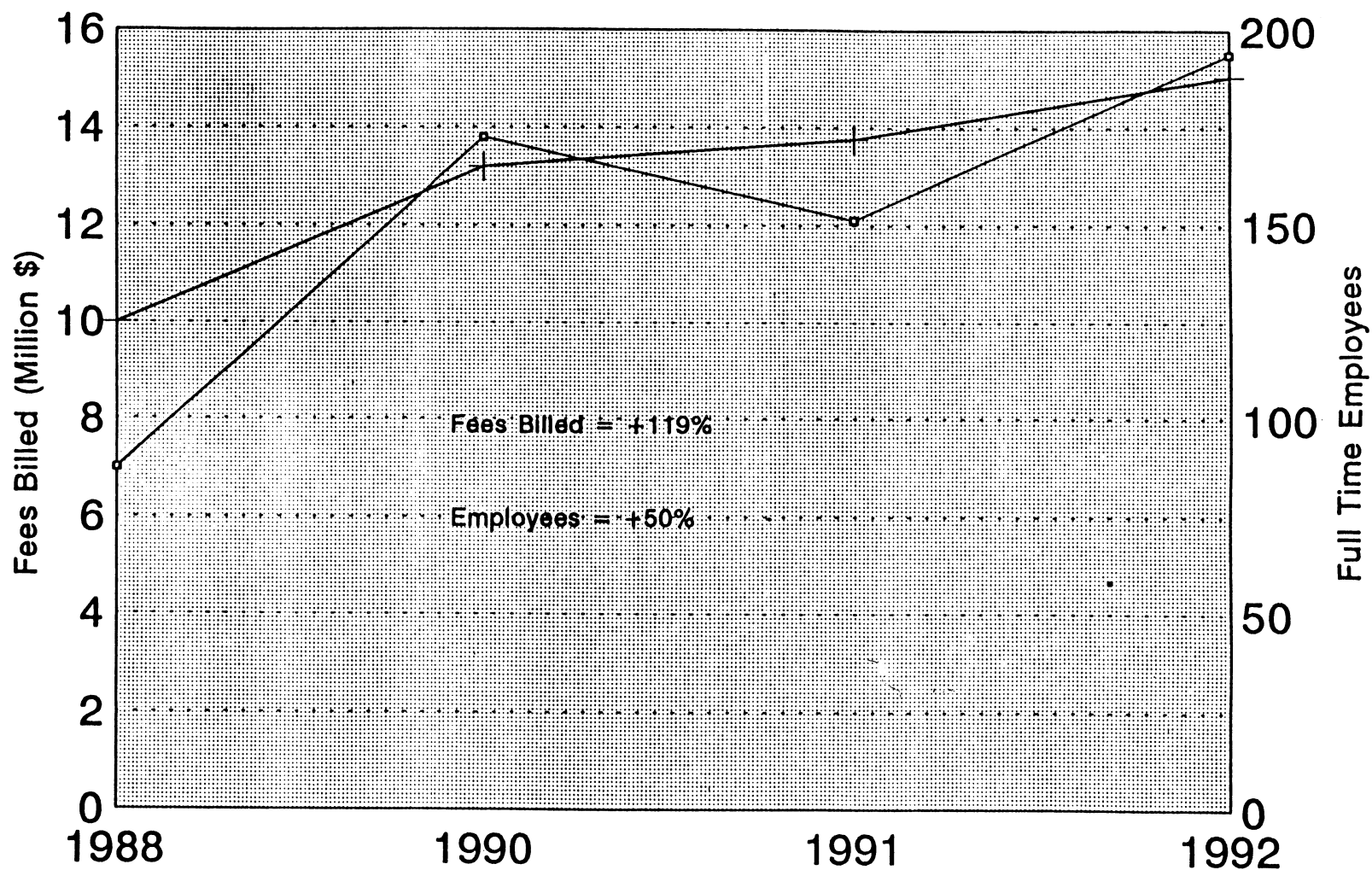
(Figure 1)

NJPDES PROGRAM PERMITS & BACKLOGS



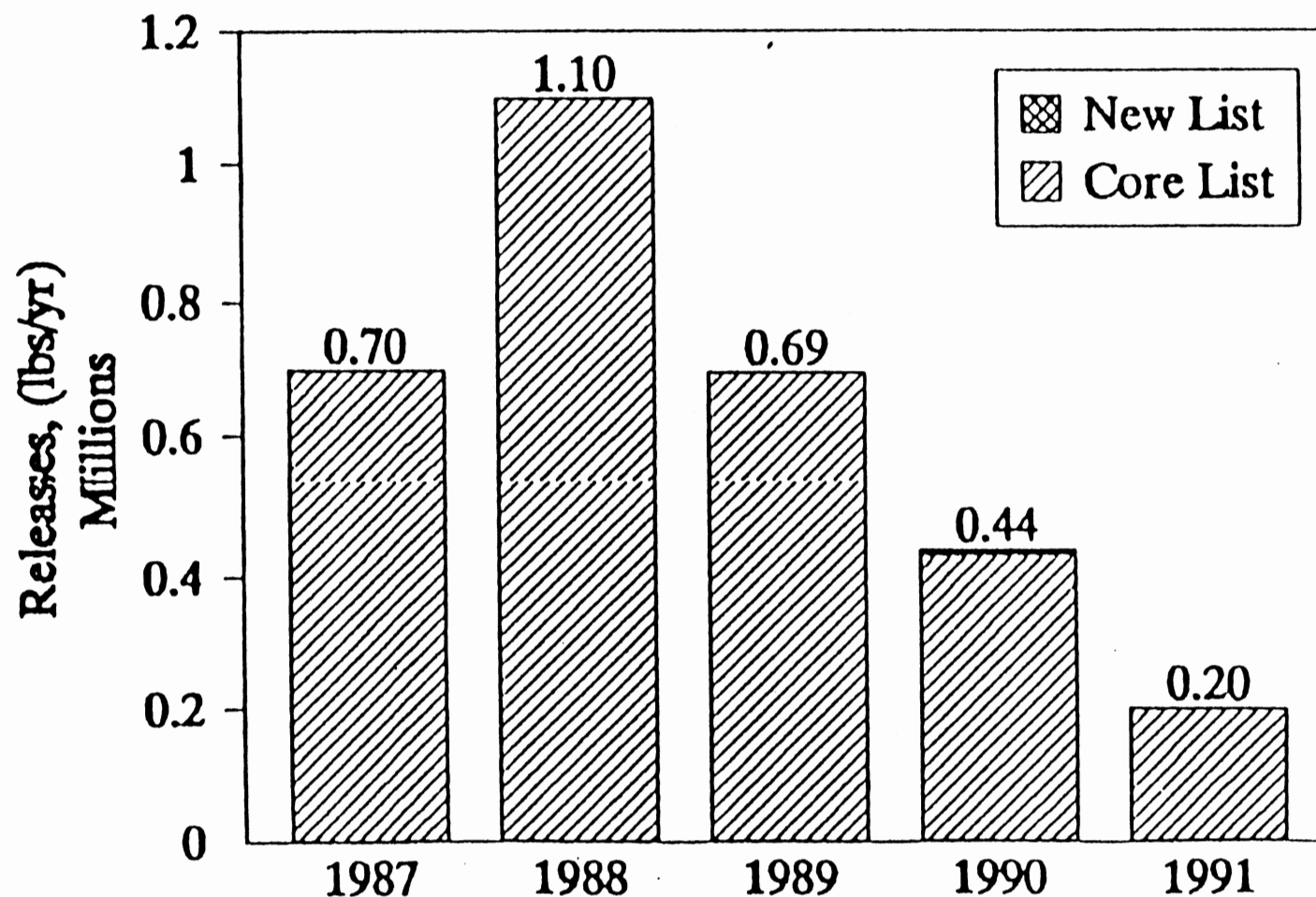
■ Permits ▨ Backlog

FIGURE (2)
NJPDDES FEES BILLED AND WORKFORCE TRENDS



—□— Fees Billed (Millions) —+— Full-Time Employees

**Figure 10. Total Water Releases by
CIC/NJ Member Facilities, 1987-1991**



SENATE LEGISLATIVE OVERSIGHT COMMITTEE 3/10/94

Senator Scott, members of the Oversight Committee, my name is Alfred Pagano and I am the environmental manager at the DuPont Chambers Works in Salem County. I appreciate this opportunity to testify concerning certain fees charged by the Department of Environmental Protection and Energy, specifically those fees charged under the NJPDES program as described in Senate Concurrent Resolution No. 33.

I wish to state up front that I'm not here to "bash" the DEPE, in fact, the Department has initiated some reforms and dialogs with the regulated community that will help address some of our concerns. Nevertheless, the fact remains that problems with the present NJPDES fee structure require that the entire approach be revisited and reviewed to provide more equity in the distribution of fees.

Section 9 of P.L. 1977, of the NJ Water Pollution Control Act, provides that the Department is authorized to "establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits." There is no evidence that these administrative costs for any given permit is related to the quantity of material discharged.

The Department's Annual Fee Report and Assessment of Fees Document indicates in the fiscal year 1992 wastewater facilities budget proposal section that "work plans for eligible work, defined as processing, monitoring and administering is fee funded." The NJPDES budget has changed greatly over the past years and permittees are paying for "measured environmental impacts" based on size (flow) and not for pollutant concentration. We are now paying fees which have increased significantly from year to year based strictly on a change in formula which penalizes holders of permits with many parameters, so that large dischargers with very sophisticated permits and extensive monitoring requirements pay a disproportionately high share of the permit system costs. The net result is that some facilities are now paying inordinately high fees, whereas others are paying fees which are unreasonably low.

Total NJPDES fees have increased dramatically. For instance, the portion of the NJPDES surface water budget funded by fees went from \$7 million in FY 1988 to \$15.3 million in FY 1992, an increase of 119% in only four years. Over the same period, our industrial surface water fee increased by more than 1300% from \$52M in FY 1988 to over \$750M in FY 1992!

In FY 1988, 52 of the 755 industrial permittees paid 50% of the total industrial surface water budget, whereas by FY 1992 only 6 (less than 1%) of the 918 industrial permittees paid 50% of the surface water budget.

In contrast, for FY 1992, 626 of the 918 industrial water permit holders paid less than \$1,000 each, which is less than 0.4% of the overall budget.

The Department has adopted a consistent policy of including every cost arguably associated with the NJPDES program in the NJPDES budget, which is then passed on to the regulated community through NJPDES fees.

However, it is the opinion of the NJPDES Fees Task Force that the NJDEPE, in greatly expanding the types of charges allocated to the NJPDES program, has inflated the program to the point of being an unfair burden on the regulated community. While the shift from general State funding to fee-based funding obviously assists the State in arriving at a balanced budget, it does not take account of the fact that the population in general greatly benefits from the NJPDES program and those services associated with it and that the general public is at least partly responsible for pollution problems in the surface water and groundwater in the State of New Jersey and should therefore share in funding the protection of the State's waters.

Examples of costs included in the NJPDES fee program which primarily benefit the general public and are not required solely because of the existence of regulated discharges include:

- General departmental overhead and some data management;
- Required legislative reporting from DEPE;

- Ambient monitoring of surface and ground waters;
- Technical and legal expense of rule development (such as the recent surface water and groundwater standards);
- Review of Federal and State laws, rules and policies; and
- Various science and technical research programs.
- Internal employee training

Clearly, these programs benefit the public at large and would likely exist even in the absence of a State-run NJPDES program. The Task Force can find no justification for costs such as these being included in a 100% fee-funded budget.

The surface water program will cover its operating costs by charging permit holders a minimum fee plus, in some cases, environmental impact fees. Minimum fees should cover the costs of those tasks directly associated with issuing a permit, inspection activities, and data management of reports. These activities should include individual permit "application review, development of appropriate permit limits and monitoring requirements, site inspections, permit coordination, issuing a draft permit for public comment, preparing the Department's response to comments, issuing the permit and permit oversight".

The Department estimates that these activities may realistically cost between \$3,000 - \$5,000 dollars. If the Department is 100% low in its estimate for a complex permit, I would expect to pay \$10M dollars. The activity listed above certainly does not appear to justify 3/4 million dollars annually or \$3.5MM dollars for the 5-year life of the permit for processing, monitoring and administration.

Fees should not be based entirely on toxicity or pollutant loadings, since there are too many statistical inconsistencies and practical inequities with the kind of formula approach currently being used. The formula currently used by the Department results in fees so totally removed from the cost of administering each permit that they fail to meet the reasonable standard in the statute.

We have put over \$50MM dollars in upgrades to provide tertiary treatment at the DuPont Chambers Works Waste Water Treatment plant over the past several years. In spite of the fact that we must make over 4M analytical parametric measurements per year, we have maintained a level of compliance equal to or greater than 99.9%. Yet we still pay an annual fee of over \$700M dollars.

Chambers Works has been in operation for over 77 years as a valuable member of the southern New Jersey community, providing taxes and good

jobs for generations of Salem Countians. But our Works Manager faces a dilemma. He continually strives to attract new business and maintain Chambers Works as a viable place of employment in the community. But at the same time he finds it difficult to convince corporate management to invest dollars to grow new business at Chambers Works because New Jersey is not viewed as business friendly which includes the high fees charged by DEPE.

Fees charged by DEPE are among the highest, if not the highest, in the country. These excessive fees are a clear disincentive to business or industry trying to locate or stay in New Jersey because high fees directly impact competitiveness. A summary comparison of fees charged by New Jersey and some other neighboring states is shown in Appendix 1 for surface water discharge permits.

NJPDES program costs should be more fairly apportioned among permittees, and between permittees and the general public, who both impact on and benefit from efforts to improve water quality. Fees should reflect only legitimate costs associated with the permit program.

Much of this information is presented in the NJPDES Fee Task Force Report of Findings dated 3/29/93, a copy of which is attached for your information.

Thank you.

APPENDIX 1

GENERAL WATER PROGRAM FEE INFORMATION

Data Excerpted from "A Summary of States Water Quality Permit Programs" Report

Written by: Washington State Department of Ecology 8/92

1. A comparison of costs etc. for water activities in New Jersey and the surrounding states of Delaware, Pennsylvania and New York.

	<u>NJ</u>	<u>PA</u>	<u>NY</u>	<u>DE</u>
Annual Program Costs (excluding program overhead) for Combined NPDES and State Program (MM dollars)	16.6	4.3	12	0.650
Program Overhead (%)	26-35	16-25	NA	NA
% Program Costs recovered by:				
Federal Funding	0	35	50	18
State General Fund	0	65	50	31
Fees	100	0	0	50
NPDES Staff (Number)	230	91	156	14
NPDES/Other State Water Permits (Number)	476/1882	4553/NA	1300/7200	92/NA
NPDES/Other State Water Permit Backlog (%)	31/51	38/NA	20/NA	12/NA

2. Fee comparison from several states (from May 1993 study, Washington State Department of Ecology).

A comparison of the fees that would be charged in several states* for a fictitious pulp mill with chlorine bleach are shown with table below.

State and Fee Charged in M Dollars
(% of Program Costs Recovered Through Fees)

<u>WA</u> (<u>87%</u>)	<u>AL</u> (<u>7%</u>)	<u>KY</u> (<u>50%</u>)	<u>LA</u> (<u>65%</u>)	<u>MD</u> (<u>36%</u>)	<u>MN</u> (<u>50%</u>)	<u>OH</u> (<u>33%</u>)	<u>NJ</u> (<u>100%</u>)
87.1	3.6	3.2	60.2	5.0	26.4	60.0	153

*Data for DE, NY and PA were not available in this report.

3. Some fee examples for specific current DuPont NPDES surface water permits in M dollars based on funding percentage data from the report.

	<u>NJ</u>	<u>PA</u>	<u>NY</u>	<u>DE</u>
Annual NPDES "Fee" paid out	750	N/A	40 ⁽²⁾	11.3 ⁽⁴⁾
Normalized Permit Fees (calculated as if 100% of program costs recovered through fees)	750 ⁽¹⁾	N/A	80 ⁽³⁾	22.6 ⁽⁵⁾

- (1) For CW with one major and several minor outfalls totally about 40 MM gal/day discharge
- (2) For Niagara with 35 MM gal/day discharge
- (3) Paid by Niagara with state general fund; permits covered by 50% SGF/50% federal funds = total permit cost
- (4) For one major and several minor outfalls
- (5) For Edgemoor with 14 MM+ gal/day discharge to zone five of the Delaware River directly across from Chambers Works

The overall conclusion can be made that NJ is at a competitive disadvantage to many other states because of the high fees.

015978

NJPDES FACILITIES WHO PAID OVER \$50,000 FY88 - FY92

NJPDES FACILITY NAME	88	89	90	91	92
00019 GAF	\$29,848.90	\$37,170.96	\$40,860.41	\$62,026.89	\$57,678.88
00221 CHEVRON	\$16,732.20	\$54,052.24	\$20,002.01	\$82,026.61	\$42,196.39
00647 PSE&G HUDSON	\$20,228.63	\$37,030.90	\$245,106.13	\$17,515.49	\$20,177.99
00876 HERCULES	\$8,681.64	\$51,669.68	\$38,998.17	\$19,887.25	\$23,139.41
00949 CASCHEM	\$2,752.10	\$5,732.24	\$3,359.21	\$15,550.17	\$74,264.71
01155 SANDOZ	\$12,241.82	\$9,215.47	\$87,808.25	\$12,642.60	\$3,719.75
01171 ENGELHARD CORP.	\$50,475.64	\$0.00	\$0.00	\$0.00	\$500.00
01511 EXXON USA	\$30,804.72	\$56,737.35	\$70,095.79	\$304,522.33	\$703,527.70
02089 EXXON USA	\$10,639.99	\$29,146.95	\$183,249.96	\$33,368.79	\$6,585.59
02640 E. I. DU PONT	\$26,205.87	\$63,690.31	\$37,214.79	\$35,304.11	\$33,552.96
02755 JCP&L	\$2,717.14	\$3,307.07	\$10,683.25	\$87,177.96	\$10,549.85
04120 CIBA GEIGY	\$20,665.85	\$39,237.15	\$53,754.21	\$73,155.62	\$10,466.57
04006 JT BAKER CHEM.	\$5,009.50	\$8,199.49	\$12,311.47	\$24,121.10	\$103,703.12
04219 E. I. DU PONT	\$26,104.39	\$67,435.19	\$66,077.36	\$100,345.83	\$97,795.10
04448 JAMES RIVER PAPER	\$7,882.07	\$17,588.35	\$26,499.10	\$47,598.54	\$56,699.89
04456 RIEGAL PAPER	\$11,935.27	\$2,467.51	\$32,823.86	\$249,610.62	\$577,872.11
04669 GEORGIA PACIFIC	\$12,696.42	\$24,668.78	\$507.34	\$33,281.90	\$76,323.09
04901 OXFORD TEXTILE	\$13,460.73	\$26,232.99	\$30,273.70	\$103,043.67	\$156,680.67
04952 HOFFMAN LA-ROUCHE	\$1,297.12	\$14,236.33	\$27,937.07	\$205,909.22	\$621,824.37
04995 PSE&G MERCER	\$28,788.60	\$57,968.79	\$84,861.51	\$12,849.96	\$12,960.55
05029 MOBIL OIL	\$11,790.04	\$35,416.88	\$45,630.96	\$163,028.45	\$321,327.77
05045 MONSANTO	\$19,750.92	\$35,881.83	\$70,325.51	\$309,030.16	\$456,896.37
05100 E. I. DE PONT	\$52,335.10	\$119,084.05	\$249,068.75	\$555,143.80	\$752,980.70
05134 HERCULES	\$7,568.48	\$19,455.67	\$28,293.70	\$59,824.53	\$42,696.81
05240 ROLLINS ENVIRO	\$6,478.71	\$19,955.92	\$18,409.96	\$33,193.73	\$72,302.52
05401 COSTAL EAGLE POINT	\$30,262.43	\$61,077.21	\$118,295.61	\$193,662.39	\$684,853.91
05509 SYBRON	\$5,986.29	\$11,856.24	\$14,705.83	\$39,775.25	\$88,271.27
05622 PSE&G SALEM	\$110,782.72	\$76,518.74	\$39,885.69	\$28,474.66	\$40,263.17
05411 PSE&G HOPE CREEK	\$31,999.24	\$83,281.74	\$124,566.71	\$66,463.97	\$112,200.83
05747 TRENTON WATER	\$12,031.44	\$16,485.25	\$25,138.13	\$41,003.52	\$108,295.64
03901 PERTH AMBOY WATER	\$0.00	\$29,588.91	\$40,522.23	\$77,679.19	\$44,359.64
01373 HACKENSACK WATER	\$0.00	\$31,291.06	\$33,302.59	\$33,937.11	\$61,153.93
03198 MARSULEX	\$9,166.27	\$41,563.33	\$67,212.19	\$3,155.66	\$501.47
04921 SEAVIEW OIL	\$0.00	\$0.00	\$19,823.17	\$15,268.81	\$64,570.12

Amended by R.1992 d.434, effective November 2, 1992.

Sec: 24 N.J.R. 2352(a), 24 N.J.R. 4088(a).

Amended as part of the Department's Statewide Stormwater Permitting Program and in response to the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) Except as provided in (i) and (j) below, the general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1. Except as provided by (k) below, the Department shall collect an annual fee for the billing year July 1 to June 30 from all persons that are issued a NJPDES permit or authorization to discharge under a NJPDES general permit, or submit a NJPDES permit application or request for authorization.

2. The Department shall not assess any fee to public schools or religious or charitable institutions.

3. All NJPDES permittees/applicants that are issued a draft or final NJPDES permit, or that are issued an authorization to discharge under a final NJPDES general permit, shall submit payment within 30 days of assessment of the fee by the Department.

i. Upon receipt of a completed application or request for authorization, the Department shall assess the minimum fee as set forth in (h) below.

ii. Upon issuance of the final permit or of an authorization to discharge under a final NJPDES general permit, the annual fee shall be calculated and pro-rated for the period of the fee year remaining. The minimum fee already paid shall then be subtracted from the pro-rated assessment. In no case, however, will such payment of a pro-rated fee result in a fee that is less than the minimum fee for the category of discharge. The permittee may request a fee recalculation as provided at (a)6 below, once the first required monitoring report has been completed.

4. Payment of all fees shall be made by check or money order, payable to "Treasurer, State of New Jersey" and submitted to:

New Jersey Department of Environmental Protection
Bureau of Revenue
CN 402
Trenton, New Jersey 08625

5. If the permittee/applicant fails to submit payment to the Department within 30 days of assessment of the fee, the Department may, in its discretion, take one or more of the following actions:

i. Return the NJPDES permit application or request for authorization to the applicant;

ii. Deny issuance of a final permit or authorization under a final general permit;

iii. Terminate a final permit (including termination of a permittee's authorization to discharge under a general permit); and/or

iv. Assess penalties pursuant to N.J.S.A. 58:10A-10 and N.J.A.C. 7:14-8.

6. If the permittee objects to the assessment, the Department shall recalculate a permit fee upon receipt of a request from the permittee in writing within 30 days of assessment of the fee. The Department will not recalculate a fee where the permittee has failed to submit information in compliance with its NJPDES permit.

i. A permittee may only contest a fee imposed pursuant to (k) below based on the following:

(1) The Department has no factual basis to sustain the charges assessed in the fee;

(2) The activities for which the fee was imposed did not occur;

(3) The charges are false or duplicative; or

(4) The charges were not properly incurred because they were not associated with the Department's oversight or remediation of the case.

ii. A permittee may not contest a fee imposed pursuant to (k) below if the challenge is based on the following:

(1) An employee's hourly salary rate;

(2) The Department's salary additive rate, indirect rate, or fringe benefit rate; or

(3) Management decisions of the Department, including decisions regarding who to assign to a case, how to oversee the case or how to allocate resources for case review.

iii. A permittee objecting to a fee imposed pursuant to (k) below shall include the following in a request for a fee review:

(1) A copy of the bill;

(2) Payment of all uncontested charges, if not previously paid;

(3) A list of the specific fee charges contested;

(4) The factual questions at issue in each of the contested charges;

(5) The name, mailing address and telephone number of the person making the request;

(6) Information supporting the request or other written documents relied upon to support the request.

7. The Department, in calculating Environmental Impact, shall use information reported by the permittee on Discharge Monitoring Reports (DMRs) and/or Monitoring Report Forms (MRFs) for the 12 month period for which data is available on the Department's computer. The

selected 12 month monitoring period will be documented in the Annual NJPDES Fee Schedule Report. Where this information is not available, the Department shall use permit limitations, information submitted in permit applications, technical reports prepared by the Department or submitted by the permittee, or other permits issued by the Department.

8. Except as provided by (k) below, the Department, upon the termination of a NJPDES permit, or revocation of a NJPDES/SIU permit in accordance with N.J.A.C. 7:14A-10.5(g) shall upon written request of the permittee prorate the fee for the number of days that the facility was in operation or was discharging under a valid NJPDES/SIU permit during the billing year and return to the permittee the amount that is in excess of the minimum annual fee for the specific category of discharge.

9. Except as provided by (k) below, the annual fee for all discharges is calculated by applying the formula: $\text{Fee} = (\text{Environmental Impact} \times \text{Rate}) + \text{Minimum Fee}$, where:

i. Environmental Impact is the Department's assessment of potential risk of discharge to the environment as derived under (c) through (g) below.

ii. Rate is the dollar cost for each weighted unit of Environmental Impact. Rate is calculated as follows:

$$\text{Rate} = (\text{Budget} - \text{Sum of Minimum Fees}) / \text{Total Environmental Impact}$$

(1) Budget is the total budget for the category of Discharge.

(2) The Sum of Minimum Fees is the total amount of minimum fees to be paid by all dischargers in the category of discharge. The minimum fee is a base cost added to the calculated individual fee. The minimum fees are set forth in (h) below.

(3) Total Environmental Impact is the sum of environmental impact for all dischargers in the category.

10. The Department shall use the total pollutant load as calculated in (c)1i below for surface water discharges, the quantity discharged as calculated in (d)1ii below for permittees subject to (d)1 below, or the total weighted concentration as calculated in (d)2ii below for permittees subject to (d)2 below to calculate environmental impact. The maximum fee to be assessed for any category of discharge shall be 10 percent of the budget for the category of discharge.

11. If a factual dispute involving a fee imposed pursuant to (k) below cannot be resolved informally, a permittee may request an adjudicatory hearing on the matter pursuant to N.J.A.C. 7:14A-8.9.

(b) The Department shall prepare an Annual NJPDES Fee Schedule Report and provide for a public hearing on the Report.

1. The Annual NJPDES Fee Schedule Report shall include the following:

i. A detailed financial statement of the actual administrative cost of the NJPDES program by account title;

ii. A detailed financial statement of the actual revenue collected, including any surplus which can be credited or any deficit to be assessed in determining the fee schedule.

iii. A detailed financial statement of the anticipated cost of the NJPDES program, including:

(1) A breakdown of the program by account title;

(2) An estimate of the amount of fees that will be collected;

and

(3) The current year's fee schedule.

iv. A report of the NJPDES program activities, including:

(1) A list of permits issued;

(2) A list of facilities inspected;

(3) A list of administrative orders and administrative consent orders issued by the Department (by type of order and discharge involved); and

(4) A summary of variance request activities under section 316 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

2. The Department shall provide for a hearing on the Annual NJPDES Fee Schedule Report. The Department shall provide public notice of the hearing at least 30 days prior to the date of the hearing:

i. In the New Jersey Register and one newspaper of general circulation; and

ii. By mailing a copy of the Report to each NJPDES applicant/permittee.

(c) Except as provided in (i) and (j) below, the annual fee for discharges to surface water is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Surface Water is derived by applying the formula: Environmental Impact = (Total Pollutant Load + Heat Load) × (Bioassay Factor + Stream Factor), where:

i. Total Pollutant Load is the sum of all limited pollutants (in kilograms per day) multiplied by their associated risk factors as listed in Table I.

(1) Net loadings will be used if a net limit has been established in the NJPDES permit. If a permittee reports a pollutant load less than zero, a zero will be used to calculate the Total Pollutant Load.

(2) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from

the Total Pollutant Load, if reported as non-detectable in all samples for the monitoring period. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected at least once in the monitoring period, the Department shall calculate the Total Pollutant Load using one-half the reported minimum detection limit for pollutant concentrations.

ii. Heat Load is the average mBTU's (million British Thermal Units) per hour of the effluent discharged. Where heat load is not reported in mBTU's per hour, the Department shall estimate the heat load using the calculated difference between the influent and effluent temperature multiplied by the amount (in million gallons per day) of effluent discharged. The Department shall use an average influent temperature of 5.57 degrees centigrade during the period November to April and 18.87 degrees centigrade during the period May to October.

iii. Bioassay Factor is the effluent limit in the permit divided by the percent effluent resulting in the 96 Hour LC_{50} . Where the effluent limit set forth in the permit is less stringent than the Wastewater Discharge Requirements (N.J.A.C. 7:9-5.1 et seq.), an effluent limit of 50 shall apply. Where the effluent limit set forth in the permit requires No Measurable Acute Toxicity (N.M.A.T.), an effluent limit of 100 shall apply, except:

(1) Where Bioassay testing is not required by the permit, a Bioassay Factor of 1 will be used; or

(2) Where the permit specifies a limit of N.M.A.T. and the mortality is less than or equal to the control mortality, the Department will use a Bioassay Factor of 0.5.

iv. Stream factor is the sum of the reported Water Quality Index (listed in the New Jersey Water Quality Inventory Report, prepared by the Division of Water Resources and available from the Department) divided by 100, the reported Water Use Index (listed in the New Jersey Water Quality Inventory Report) divided by 50, and the Designated Use Index (derived from the New Jersey Water Quality Inventory Report) assigned by the Department as follows:

Designated Use	Uses met in the Stream Segment
1.00	Segment does not meet designated uses.
0.75	Sometimes meets one use, or a small portion of the watershed meets designated uses.
0.50	Segment meets one designated use.
0.25	A small portion of the watershed does not meet or seasonally does not meet all designated uses.
0.00	All designated uses are met in the watershed.

Note: Designated uses are established by N.J.A.C. 7:9-4. The Department shall use the most recent edition of New Jersey Water Quality Inventory Report.

2. The Department shall assess an additional fee to NJPDES permittees who request a variance under Section 316 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.). The annual fee shall be assessed on the basis of the administrative cost that is incurred by the Department and the cost of the technical review performed by a consultant hired by the Department.

(d) Except as provided by (k) below, the annual fee for discharges to ground water, except for residuals and landfills covered in (e) and (f) below, is based upon the level of monitoring and/or remedial activity required by the Department at the permitted site. Permittees not required to conduct detection monitoring shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees required by the Department to conduct ground water monitoring, which is defined as monitoring performed by the permittee to determine whether current or past discharges have resulted in environmental impact, shall use the Environmental Impact in d(1) below in the annual fee formula. Permittees which are required by the Department, in a NJPDES permit, administrative order, administrative consent order, directive letter, or other form of notice, to conduct compliance monitoring in accordance with N.J.A.C. 7:14A-6.15, source removal, and/or ground water remediation, shall use the Environmental Impact in d(2) below in the annual fee formula.

1. The Environmental Impact of a Discharge to Ground Water for permittees not required to conduct ground water monitoring or permittees required to conduct detection monitoring is derived by applying the formula: Environmental Impact = (Risk × Quantity × Ground Water Rating Factor) where:

i. Risk is the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each type of waste stored, treated or discharged. The rating numbers are assigned as follows:

Rating	Risk
1	Non-contact cooling water, treated ground water, filter backwash, sanitary wastewater with at least secondary treatment.
2	Other treated and untreated sanitary wastewater, food processing waste, stormwater runoff including runoff from non-hazardous waste storage areas, sanitary sludge.
5	Non-hazardous industrial process waste.
15	Metal plating waste, hazardous industrial process waste, landfill leachate, or ground water, wastewater, stormwater runoff or sludge containing hazardous constituents.

ii. Quantity is the average daily volume in millions of gallons discharged by the permittee for the monitoring period selected by the Department in (a)7 above.

iii. Ground Water Rating Factor is the sum of the Ground Water Monitoring Status Factor, the Aquifer Factor, Ground Water Use Factor and Permeability Rating divided by 10 where:

(1) Ground Water Monitoring Status Factor is the rating number, assigned to the facility based on the level of monitoring and/or remediation required at the facility, as set forth in the NJPDES permit, administrative order, administrative consent order or directive letter in accordance with N.J.A.C. 7:14A-6.15, as follows:

Rating	Status
1	Permittee is not required to conduct ground water monitoring under the NJPDES permit.
2	Permittee is conducting post-closure or post remediation monitoring.
2	Permittee is required to conduct detection monitoring.
5	Ground water remediation and/or hydraulic source control is being performed at the site.
5	Alternative concentration limits have been established.
10	Compliance monitoring is required as ground water contamination has been identified in detection monitoring phase and/or ground water remediation is required.

(2) Aquifer Factor is the rating number, based on ground water yield potential, assigned to each aquifer formation listed in Table II. Where a facility is located on an unlisted aquifer, the Department will determine the aquifer factor. Where the facility is located on more than one aquifer the highest rating number will be assigned.

(3) Ground Water Use is the rating number assigned to the municipality where the permitted facility is located based on the percentage of the municipality that relies on public or private wells for drinking water and the volume of ground water withdrawn in million gallons per day (MGD). The Department, in the Annual NJPDES Fee Schedule Report, prepared pursuant to (b) above, shall set forth the individual ratings assigned to each municipality. Where a municipality's percent use and volume result in different ratings, the highest Ground Water Use rating number derived below shall apply. Ground Water Use rating numbers are assigned as follows:

Rating	Ground Water Use	Percent Use	Volume in MGD
5	A	>50%	>3
3	B	10%-50%	.1-3
1	C	<10%	<.1

(4) Permeability Factor is the rating number, based on hydraulic conductivity in centimeters per second, of the geological forma-

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tion immediately beneath the regulated unit or if present, the facility liner material for the facilities in detection monitoring. For all other facilities, the permeability factor is based on the hydraulic conductivity of the geological material contaminated. Facilities assigned a Ground Water Monitoring Status factor of 10, that have demonstrated control of the plume of ground water contamination shall be assigned a permeability factor of 10. Where permeability is not provided to the Department by the permittee, the Department shall assume a permeability factor of 10^{-2} . The rating numbers are assigned as follows:

Rating	Permeability
10	$<10^{-7}$
11	10^{-6}
12	10^{-5}
14	10^{-4}
18	10^{-3}
20	10^{-2}
22	$>10^{-2}$

2. The Environmental Impact for a Discharge to Ground Water for permittees required to conduct compliance monitoring, source removal, and/or ground water remediation is derived by applying the formula: Environmental Impact = (Area \times Total Weighted Concentration \times Ground Water Rating Factor) where:

i. Area is:

- (1) The total acres of the permitted site; or
- (2) Where the permittee has delineated the plume, in accordance with the requirements of the NJPDES permit, the total area in acres affected by the plume based on a surface projection.

ii. Total Weighted Concentration is the sum of all pollutant concentrations limited in the NJPDES permit and converted to milligrams per liter (mg/l) multiplied by their associated risk as listed in Table I. The highest average pollutant concentration detected in any well during the monitoring period selected by the Department in (a)7 above shall be used unless the permittee has delineated the extent of plume as required by their NJPDES permit. Where plume has been delineated, the Department shall use the average pollutant concentration for all wells for the monitoring period selected by the Department in (a)7 above.

(1) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant Concentration, if reported as non-detectable in all samples for the monitoring period. To calculate the average concentration for a delineated plume, the Department will use zeros for these pollutant concentrations if not detected in a well. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic

compounds, pesticides, and PCB's detected once, the Department shall calculate the Total Weighted Concentration using one-half the reported minimum detection limit for pollutant concentrations.

iii. Ground Water Rating Factor is the number derived in (d)1iii above.

(e) The annual fee for residuals is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of residuals is derived by applying the formula: Environmental Impact = Pathogen Reduction \times (Nitrogen + Total Metals Load), where:

i. Pathogen Reduction is 1 where the residual satisfies the requirements for "Processes to Significantly Reduce Pathogens" set forth at 40 CFR 257 or 0.8 where the residual satisfies the requirements for "Processes to Further Reduce Pathogens" set forth at 40 CFR 257.

ii. Nitrogen is the annual amount of nitrogen (in pounds) generated or land applied to the site.

iii. Total Metals Load is the total metal equivalent in pounds generated or land applied, derived from the average concentration of cadmium, copper, nickel, lead and zinc multiplied by the relative toxicity value of that metal (Cadmium 10.0, Copper 0.4, Nickel 1.0, Lead 1.0, and Zinc 0.2).

(f) Except as provided by (k) below, the annual fee for discharges to ground water from sanitary landfills and sites containing wrecked or discarded equipment is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge to Ground Water from sanitary landfills and sites containing wrecked or discarded equipment is derived by applying the formula: Environmental Impact = (W1 + W2) \times (Closure Status Factor + Ground Water Rating Factor) where:

i. W1 is the total number of acres filled as of January 1, 1985 multiplied by the sum of the rating numbers, based on the degree of hazard, assigned by the Department to each waste type (as set forth in N.J.A.C. 7:26-2.13) permitted for disposal before January 1, 1985. The rating numbers are assigned as follows:

Rating	Waste Type
1	Types 13, 23
2	Types 10, 12, 27, 72, 73, 74
4	Types 18, 25
8	Types 26, 70 and wrecked or discarded equipment
16	Types 17, 28, 76, 77.

ii. W2 is the total cumulative amount of each waste type received (in cubic yards) since January 1, 1985 divided by 4,840 (the square yards in an acre) and multiplied by the rating number assigned to each waste type as set forth in (f)1i above.

iii. Closure Status Factor is the rating number, based on the operating status of the landfill, assigned by the Department to each facility. The rating numbers are assigned as follows:

Rating	Closure Status
1.0	Operating landfill and sites containing wrecked or discarded equipment.
0.5	Landfill terminated after January 1, 1982 without a Department approved closure plan.
0.2	Landfill terminated prior to January 1, 1982.
0.1	Landfill terminated and properly closed in accordance with a Department approved closure plan.

iv. Ground Water Rating Factor is the number derived under (d)1iii above.

(g) The annual fee for discharges by a significant indirect user to a domestic treatment works is calculated by using the following Environmental Impact in the annual fee formula:

1. The Environmental Impact of a Discharge by a significant indirect user (SIU) to a domestic treatment works (DTW) is derived by applying the formula: Environmental Impact = (Total Pollutant Load)

i. Total Pollutant Load is the sum of all limited pollutants (in kilograms per day) multiplied by their associated risk factors as listed in Table I.

(1) Volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides and PCB's will be deleted from the Total Pollutant Load, if reported as non-detectable in all samples for the monitoring period. For all other pollutants, and volatile organic compounds, acid extractable compounds, base-neutral organic compounds, pesticides, and PCB's detected once, the Department shall calculate the Total Pollutant Load using one-half the reported minimum detection limit for pollutant concentrations. The Department shall use one-half the reported detection limit for pollutant concentrations reported as non-detectable to calculate the Total Pollutant Load.

(h) Except as provided by (k) below, minimum fees are as follows:

1. The minimum fee for Discharge to Surface Water permits shall be \$500.00, except that:

i. The minimum fee for hazardous waste facilities regulated by N.J.A.C. 7:26 and for the Industrial Waste Management Facilities regulated by N.J.A.C. 7:14A-4 shall be \$10,000.

ii. The fee for NJPDES Permit No. NJ0088323 (N.J.A.C. 7:14A-3, Appendix B) is specified in (j) below.

2. The minimum fee for Discharge to Ground Water (DGW) permits, except for residuals and landfills covered in (h)3 and 4 below, shall be assessed as follows:

i. Facilities assigned a Ground Water Monitoring Status Factor of 1 or 2 under (d)1iii(1) above shall be assessed a minimum fee of \$500.00;

ii. Facilities assigned a Ground Water Monitoring Status Factor of 5 under (d)1iii(1) above shall be assessed a minimum fee of \$1,500;

iii. Facilities assigned a Ground Water Monitoring Status Factor of 10 under (d)1iii(1) above shall be assessed a minimum fee of \$5,000;

iv. Facilities who have obtained a ground water discharge permit-by-rule pursuant to N.J.A.C. 7:14A-5.5(a) shall be assessed a minimum fee of \$250.00; and

v. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit, facilities with a DGW/IWMF permit-by-rule and facilities with a NJPDES ground water permit for a Resource Conservation Recovery Act (RCRA) unit assigned a Ground Water Monitoring Status of 1 or 2 shall be assessed a minimum fee of \$10,000;

vi. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit and facilities with a DGW/IWMF permit-by-rule and facilities with a NJPDES ground water permit for a RCRA unit assigned a Ground Water Monitoring Status of 5 shall be assessed a minimum fee of \$20,000; and

vii. Hazardous Waste Facilities regulated by N.J.A.C. 7:26, Industrial Waste Management Facilities (IWMF) regulated by N.J.A.C. 7:14A-4, facilities that have been issued a NJPDES DGW/IWMF permit and facilities with a DGW/IWMF permit-by-rule and facilities with a NJPDES Ground Water permit for a RCRA unit assigned a Ground Water Monitoring Status of 10 shall be assessed a minimum fee of \$40,000.

3. The minimum fee for a Residuals permit shall be assessed as follows:

i. The minimum fee for domestic sludge shall be \$500.00;

ii. The minimum fee for non-hazardous industrial sludge shall be \$1,000.00; and

iii. The minimum fee for hazardous industrial sludge shall be \$5,000.00.

4. The minimum fee for sanitary landfills shall be assessed as follows:

i. Landfills that are operating or terminated after January 1, 1982 without an approved closure plan shall be assessed a minimum fee of \$2,500.00;

ii. Terminated Landfills properly closed with a Department approved closure plan, or closed prior to January 1, 1982 shall be assessed a minimum fee of \$500.00.

5. The minimum fee for a transfer station shall be \$500.00 and the annual fee for a transfer station shall be \$500.00.

6. The minimum fee for a permit to discharge to a Domestic Treatment Works shall be \$500.00, except that the minimum fee for a permit issued pursuant to N.J.A.C. 7:14A-4 shall be \$10,000.

7. The minimum fee for an emergency permit issued pursuant to N.J.A.C. 7:14A-2.2 shall be determined based on (h)1 and 2 above but in no case will it be less than \$1,000.00.

8. The minimum fee for land based soil treatment operation shall be \$1,500 except for a RCRA unit which shall be subject to the minimum fee of \$20,000.

(i) For NJPDES Permit No. NJ0088315 (N.J.A.C. 7:14A-3, Appendix A, incorporated herein by reference), the annual fee collected under (a) above shall be the minimum fee of \$500.00 set forth in (h)1 above. A request for authorization under that permit shall not be complete unless this fee is included in that request, or unless this permit has been reissued and this fee has already been paid for the billing year in which the RFA is submitted.

(j) For NJPDES Permit No. NJ0088323 (N.J.A.C. 7:14A-3, Appendix B, incorporated herein by reference), there is no annual or minimum fee. Instead, a fee of \$200.00 shall be paid by check or money order, payable to "Treasurer, State of New Jersey," and submitted to the soil conservation district along with each request for authorization submitted under that permit. The soil conservation district shall forward all such checks and money orders to the State Soil Conservation Committee in the Department of Agriculture, which shall cause such checks and money orders to be deposited to the credit of the State. The soil conservation district shall not certify any request for authorization that is not accompanied by this fee.

(k) The fee for discharges to ground water required for conducting remediation, as defined by N.J.A.C. 7:26E, of contaminated sites is calculated by using the following formula:

1. $\text{Fee} = A + B$, where:

$A = (\text{Number of coded hours} \times \text{Hourly Salary Rate}) \times \text{Salary Additive Rate} \times \text{Fringe Benefit Rate} \times \text{Indirect Cost Rate}.$

$B = \text{any contractual costs or sampling costs of the Department directly attributable to a specific permittee}.$

i. Number of coded hours represents the sum of hours each employee has coded to the site-specific project activity code (PAC) for the case. Actual hours for all staff members including without limitation managers, geologists, technical coordinators, samplers, inspectors, supervisors, section chiefs, using the specific PAC, will be included in the formula calculations.

ii. The hourly salary rate is each employee's annual salary divided by the number of working hours in a year.

iii. The NJDEPE salary additive rate represents the prorated percentage of charges attributable to employees' reimbursable "down time." This time includes vacation time, administrative leave, sick leave, holiday time, and other approved "absent with pay" allowances. The calculation for the salary additive is the sum of the reimbursable leave salary divided by the net Department regular salary for a given fiscal year. The direct salary charges (number of coded hours \times hourly salary rate) are multiplied by the calculated percentage and the result is added to the direct salaries to determine the total reimbursable salary costs for a particular case.

iv. The fringe benefit represents the Department's charges for the following benefits: pension, health benefits including prescription drug and dental care program, workers compensation, temporary disability insurance, unused sick leave and FICA. The fringe benefit rate is developed by the Department of the Treasury's Office of Management and Budget (OMB). OMB negotiates the rate with the United States Department of Health and Human Services on an annual basis. The rate is used by all state agencies for estimating and computing actual charges for fringe benefit costs related to Federal, dedicated and non-State funded programs.

v. The indirect cost rate represents the rate which has been developed for the recovery of indirect costs in the Site Remediation Program. This indirect rate is developed by the Department on an annual basis in accordance with the New Jersey Department of Treasury OMB Circular Letter 86-17 and the Federal OMB Circular A-87, "Cost Principles for State and Local Governments." Indirect costs are defined as those costs which are incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved.

(1) The components of the indirect cost rate include operating and overhead expenses that cannot be coded as direct salary charges for a particular case, such as the salary and non-salary costs incurred by the Division of Publicly Funded Site Remediation and the Division of Responsible Party Site Remediation. In addition, the indirect rate includes

the Site Remediation Program's proportionate share of the costs associated with the Offices of the Commissioner, Assistant Commissioner for Site Remediation, Division Directors and Assistant Directors, the Division of Financial Management and General Services and the Division of Personnel.

(2) The indirect rate includes operating costs such as office and data processing equipment, and telephones as well as building rent and the Department's share of statewide costs as determined by the Department of Treasury in the Statewide Cost Allocation Plan. The Statewide Cost Allocation Plan pertains to central services costs which are approved on a fixed basis and included as part of the costs of the State Department during a given fiscal year ending June 30. The total of these indirect costs is divided by the total direct costs of the Site Remediation Program to determine the indirect cost rate.

vi. Sampling costs and contractor expenses represent non-salary direct, site specific costs. These costs are billed directly as an add on to the formula.

2. The Department shall develop on an annual basis and publish notice of the salary additive rate, fringe benefit rate and the indirect cost rate for the fiscal year in the New Jersey Register. These rates are developed on an annual basis after the close of the fiscal year.

3. The Department will charge fixed and non-refundable fees for the following categories of activities:

i. The fee for an emergency permit is \$700.00 and is due and payable upon issuance.

ii. The fee for a permit application is \$350.00 and is due and payable with the application.

4. The Department will bill permittees at regular intervals throughout the life of the permit based on the formula in (k)1 above. The permittee shall submit the fee to the Department within 30 calendar days after receipt from the Department of a summary of the Department's oversight costs for the period being charged. The Department shall include the following information in the summary: description of work performed, staff member(s) performing work, number of hours worked by the staff member(s) and staff members' hourly salary rate.

TABLE I
RISK CATEGORIES

Risk Factor 10 ⁰	10 ¹	10 ²	10 ³	10 ⁴	10 ⁵
SURFACE WATER					
TDS	TSS	Tin	Styrene	Arsenic	Lead
Chloride	Phosphorus	Aluminum	Nickel	Beryllium	Mercury
Sulfate	Phthalic Acid	Antimony	Copper	Asbestos	Cadmium
Fluoride	Sulfide	Barium	Silver	Acid fraction compounds	Chromium-hex
Iron	Molybdenum	Chromium-trivalent	Cobalt	Base-Neutral	Pesticides
	Bismuth	Oil & Grease	Ammonia	Compounds	PCB
	Manganese	Surfactants	Cyanide	Volatile Organics	PBB
	Zinc	N(nitrite, nitrate Kjeldhal, diss. & Total)	Selenium		
		Oxidizable Matter			
		Petroleum Hydrocarbons			
GROUND WATER					
TSS	TDS	Iron	Silver	Lead	Mercury
Aluminum	Chloride	Manganese	Fluoride	Arsenic	Cadmium
Phosphorus	Sodium	Chromium-trivalent	Barium	Beryllium	Chromium-hex
	Antimony	Zinc	Nitrate	Pesticides	Petroleum
	Bismuth	Copper	Phenol	Acid fraction compounds	hydrocarbons
	Sulfate	Ammonia	Cobalt	Base-Neutrals	Total Volatile
		Oil & Grease	Selenium		Organics
		Surfactants	Nickel		(including
		Oxidizable Matter			TTHM)
		TOC			

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INDIRECT DISCHARGERS

BOD	TDS	1, 1-Dichloroethylene	Nickel	Beryllium	Carbon
TSS	Iron	Copper	Silver	1,1,1-Trichloroethane	Tetrachloride
COD	Antimony	Zinc	Asbestos	Lead	Mercury
	Bismuth	Chromium-Trivalent	Cobalt	Arsenic	Cadmium
	Tin	Barium	Selenium	Bis (2-ethylhexyl) phthalate	Chromium, hex &
	Manganese	Cyanide	Benzene	Dichlorodifluoromethane	Total
	Inorganic Sulfur	Dimethyl phthalate	1,2-Dichloroethane	Trichlorofluoromethane	Pesticides
	Compounds	Surfactants	Chloroform	Total Toxic Organics**	PCBs
		Oil & Grease	Ethylbenzene	Volatile Organics*	Dioxin
		Petroleum Hydrocarbons	Naphthalene	TVOS as in N.J.A.C.	
		Total Toxic Metals**	1,2,4-Trichlorobenzene	7:27-17.3**	
		Nitrogen Compounds/ Ammonia	Vinyl Chloride	Chlorobenzene	
		Phenols	Base Neutral	Toluene	
			Compounds*	1,2-Trans-Dichloroethylene	
			Acid Extractables	Trichloroethylene	
			Compounds*		
			1,1,2,2-Tetrachloroethane		
			Bromoethane		
			1,2-Dichloropropane		
			1,1-Dichloroethane		
			1,1,2-Trichloroethane		
			Dichlorobenzene		
			Di-n-butyl phthalate		
			Anthracene		
			Tetrachloroethylene		
			Pentachlorophenol		
			Butyl Benzyl Phthalate		
			Di-n-octyl Phthalate		

* Limited
** Not Itemized

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TABLE II
FORMATION RATINGS

System	Formation	Potential	Points
Quaternary			
Pleistocene	Glacial drift		
	Mercer, Middlesex	Poor	2
	Other counties	Mod. to Very Good	10
	Cape May	Moderate to Good	8
	Pennsauken	Mod. to Minor	6
	Bridgeton	Mod. to Minor	6
Tertiary			
Pleistocene	Beacon Hill	Poor	2
Pleistocene	Cohansey	Very Good	10
Miocene	Kirkwood	Good to Mod.	8
Eocene	Piney Point	Minor	4
	Shark River	None	1
	Manasquan	Poor	2
Paleocene	Vincentown	Poor to Good	8
	Hornerstown	None to Poor	2
Cretaceous			
	Tinton	None to Poor	2
	Red Bank	Poor to Minor	4
	Navesink	None to Poor	2
	Mt. Laurel	Moderate	6
	Wenonah	Minor	4
	Marshalltown	None to Poor	2
	Englishtown	Good to Mod.	8
	Woodbury	None	1
	Merchantville	None	1
	Raritan-Magothy	Very Good	10
Triassic			
	Watchung	Minor	4
	Diabase	Minor	4
	Brunswick	Minor to Good	8
	Lokatong	Poor	2
	Stockton	Mod. to Good	8
	Border Conglomerates	Minor	4
Devonian			
	Skunnemunk	Poor	2
	Bellvale	Poor to Minor	4
	Cornwall/Pequanac	Poor	2
	Kanouse	Poor	2
	Marcellus	Poor	2
	Onondaga	Moderate	6
	Schoharie	Minor	4
	Esopus	Poor	2
	Oriskany (includes Glenarie and Port Ewen)	Minor	4

Silurian	Becraft (Minisink)	Poor	2
	New Scotland	Minor	4
	Kalkberg (Stormville)	Minor	4
	Coeymans	Minor	4
Silurian	Manlius	Minor	4
	Rondout	Minor	4
	Decker	Minor	4
	Bossardville	Minor	4
	Poxono Island	Minor	4
	High Falls	Minor	4
	Longwood	Minor	4
	Shawangunk and Green Pond	Poor	2
Ordovician	Jacksonburg	Minor	4
	Ontelaunee	Minor	4
	Epier	Minor	4
	Rickenback	Moderate	6
Cambrian	Allentown Upper	Minor	4
	Lower	Mod. to Very Good	10
	Leithsville	Very Good	10
	Hardyston	Poor	2
Precambrian	Franklin	Minor to Mod.	6
	Crystalline Rocks	Minor to Mod.	6

Amended by R.1982 d.495, effective January 17, 1983.

See: 14 N.J.R. 684(a), 15 N.J.R. 85(a).

Testing replaced.

Amended by R.1985 d.315, effective June 17, 1985.

See: 17 N.J.R. 13(a), 17 N.J.R. 1551(b).

Section substantially amended.

Administrative Correction: Formulas corrected.

See: 17 N.J.R. 1882(a).

New Rule, R.1987 d.281, effective July 6, 1987.

See: 19 N.J.R. 706(a), 19 N.J.R. 1191(a).

Repealed old rule "Fee schedule for NJPDES permittees."

Amended by R.1989 d.339, effective July 3, 1989.

See: 21 N.J.R. 707(a), 21 N.J.R. 1883(a).

At (a)4, "Bureau of Collection and licensing" changed to "Bureau of Revenue"; at (d)1i, filter backwash added as #1 rated pollutant; at (g)1i, glass added as #1 rated industrial category.

Amended by R.1990 d.197, effective April 2, 1990.

See: 21 N.J.R. 3590(a), 22 N.J.R. 1124(a).

Fee schedule calculations clarified and specified further.

Notice of Public Hearing for 1990-91 Annual Fee Report and Fee Schedule.

See 22 N.J.R. 3882(d).

Public Notice: Adoption of New Jersey Pollutant Discharge Elimination System (NJPDES) Annual Fee Report and Fee Schedule.