

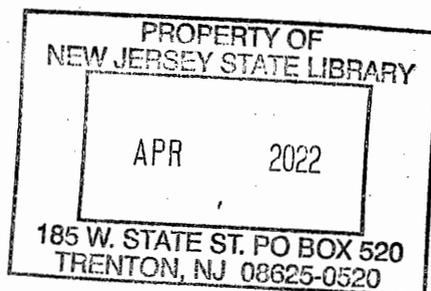
# The Department of Environmental Protection's Proposed Settlement of the Wetlands Violation by A.R. DeMarco Enterprises, Inc.



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A Fact Finding Report to the Attorney General  
by  
The Office of Inspector General

## APPENDIX II



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4. Peter Page, Director of Communications, DEP
5. Ray Cantor, Assistant Commissioner, Land Use Management
6. Leroy Cattaneo, Director, Office of State Plan Coordination
7. Robert A. Tudor, Deputy Commissioner, DEP
8. Christine Piatek, DAG, Environmental Enforcement Section, Division of Law
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APP-II

**Statement of John Higgins**

**Case Name: A.R. DeMarco Enterprises, Inc.**

**Case No. 00-0031-IG**

**Date: September 27, 2000**

**Time: Approximately 9:25 A.M.**

**Place: The Department of Environmental Protection in Trenton, New Jersey**

**Legend: WM: Civil Investigator William McGough**  
**SS: Civil Investigator Shawn Stewart from the Inspector General's Office**  
**of the State of New Jersey**  
**JH: John Higgins from the Department of Environmental Protection**

WM: John just for voice identification if you would just identify yourself please.

JH: My name is John Higgins I work for the Department of Environmental Protection.

WM: Thank you. And Shawn just for voice identification, if you would identify yourself please.

SS: My name is Shawn Stewart I work for the Inspector General's Office.

WM: Now John we've been interviewing you for about a ½ hour or so going over some of the particulars of your involvement in the DeMarco incident. Is that correct?

JH: Yes.

WM: And what I have advised you is that I would like to memorialize some of these facts on tape at this particular time. Is that correct?

JH: Yes sir.

WM: You are obviously aware that we are tape recording this. There is a tape recorder sitting on the table correct?

JH: Yes.

WM: You have no problem with us memorializing this on tape?

JH: No I have no problem at all.

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WM: And as I explained to you earlier Shawn and I are simply here to gather facts regarding the procedures that were followed in the DeMarco's case. Correct?

JH: Yes.

WM: And what we have discussed previously is your involvement in the DeMarco case, how you got involved and what procedure you really did along the way.

JH: Correct

WM: Just for some identification purposes John your last name is Higgins?

JH: That's correct.

WM: And currently your position with DEP is Coastal Zone Specialist I?

JH: Yes.

WM: I believe you said you've been with DEP since March of 1962.

JH: Yes Sir.

WM: And your typical duties particular at this particular time with DEP are doing follow-ups on ordered restorations. You in other words you go in and that make sure orders are being followed to restore wetlands.

JH: Yes. Actually, actually develop in some cases plans for the restoration. For the property owner.

WM: Your date of birth John?

JH: [Redacted]

WM: And your social security number?

JH: [Redacted]

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WM: And a phone number where you can be reached during the day John?

JH: Ah, area code (732) 255-0787.

WM: Okay, the specific reference to the DeMarco case you told me earlier that some time January 2<sup>nd</sup> or 3<sup>rd</sup> of calendar year "98" um, you were in the Pomona field office when you were, ah met with a EPA Official with reference to some photographs is that accurate?

JH: Yes.

WM: Why don't you give me a quick background of the individual that you met and what transpired there.

JH: The individual came into our office his name is Jack Adouel. I don't know how...I have to look for the spelling. He indicated that he was from EPA and Criminal Justice or Federal Criminal Justice something like that. He put three photographs down and asked us, asked me if I knew what they were. And I asked him to provide just a little bit more information so I could identify what he was looking at. After going through topographic maps and some soil surveys that we had I was able to indicate them that knowledge of each of those sites. One was hum, a Blueberry you pick field on Rt.72. Ultimately, we found out it was owed by a Professor Garlin. We looked our second site was looked at was a photo which we all determined it to be the Garfield DeMarco Bogs on Rt. 563, South of Chatsworth and the third site grew to be part of the Moore property, known as Buttercup Bogs, off of Rt. 206 or East of Rt. 206.

WM: Now your understanding of this um, these EPA photographs was that they had been

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looking for or trying to document if there was expansion into wetlands by these farmers.

Is that correct?

JH: Yes that is correct.

WM: And these particular three photographs were brought to your attention as an expert in that area to see if you could in fact confirm that there was expansion?

JH: That's correct. I indicated that to the investigator that at that point I had no knowledge of anything going on at the site. Because there was nothing to draw us into under our set of laws and regulations. However, I would look at them and give them as much information as we could possibly find. We have may have had something in our backlog, I would look. We did do just that. We put together a series of maps and soil surveys and NWI maps. Ownership and a assessment of an initial ground, I won't say investigation ...I won't say investigation but a ground look at the site from the side of the road. And what we felt may or may not have been going on. That gave us time to go further into looking at each site and make further comparisons, based on our ability to capture other knowledge, other photographs. In the case of the Moore Property we have captured some GIS material from our Trenton Bureau; which suggested that they were doing work internal of the Bog which would be normal farming practices and the exempt under Fresh Water Wetlands Protection Act.

WM: So ultimately the Moore Property was found and did not have any violations?

JH: I'm not sure if they ....they may have sited that. Somebody may have just said that, that's a violation. This is my view of it, it fit that definition of being exempt.

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WM: The Gartland you indicated earlier was there may have been a violation, but it was approximately a quarter of an acre of land that was involved.

JH: Yea, what we felt was about a quarter of acre maximum half of a forested wetland area removed to re due the blueberry, cranberries whatever he was going to do at that point. But it would not have been a significant violation. Ah..

WM: Now when you, when you, after first meeting with EPA in these three photographs you indicated that you went out and made every effort to ID the properties by driving and going to the municipalities and going to look at tax records and all. As a result of that you generated some type of a report for EPA. Is that correct?

JH: Yea, I generated a report actually to our higher ups through the chain of command and only to EPA. In fact at one point I was asked to return a call to EPA in New York, (God what was the name of that) my Montgomery am I right, I want to say Montgomery I may be wrong.

WM: With reference to his photograph?

JH: Yea, I told him, told him what I found and what I was still working on.

WM: Now from some of your off site I'll call it, driving by the road inspections of the DeMarco property you indicated earlier that you felt that there was some potential for some violations there.

JH: Yes that is correct.

WM: And that was also part of the report that was generated including more of the Gartland Property and DeMarco?

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JH: Yes.

WM: That report would have been generated to here in Trenton to the main office.

JH: Yea, it would have come up to the chain of command, to my supervisor and to the Bureau Chief to the Administrator. All at the same time.

WM: Now at some point you indicated that ah Leroy you refer to him as. Had read your report and advise you to go back to the property?

JH: Yes. There was a serious violation.

WM: Would you identify Leroy for the record?

JH: Leroy Cattaneo was the administrator for our unit.

WM: Okay. Now when he said to go back and do some further research ah you said he indicated to you but don't go on the property.

JH: That's correct.

WM: And we discussed that in detail and your impression was not that was he was trying to hinder your abilities, but he was trying to keep this investigation sort of low keyed until you can make a determination of what was going on.

JH: That's correct.

WM: At some point you developed further information by looking at the DeMarco property and you became concern that there was a violation there. Is that accurate?

JH: Yes that is accurate, but the information that was on sight indicated to me that I felt that there was a violation and I also felt there was an area non violation. But I did not go further to make the determination of doing the parameter method then. I simply said this

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is what I feel it is.

WM: Now at some point you met with ah Pat Slava who is Supervisor at DeMarco farm and also with Frank Pendula(spelling) consultant for the farm. Is that correct?

JH: He's a consultant for Garfield DeMarco, he may have other properties I don't know.

WM: Describe to me those involvements with Slava and Pendula.

JH: We a on sight meeting out on the bog, very nice meeting very calm, we looked at certain areas and I suggested that, that could be part of the violation that other area may not be, may be an Upland. Frank Pendula was going to submit a report to me detailing what his findings were as a consultant. And in fact in did do that, I disagree with Frank on the soil analysis portion of it. I had information that the hydrate list for with New Jersey included the soils that were on sight as being hydrate. I said I thought you better go back and check that again. Vegetation analysis that he did ultimately became the same as we did. We didn't on the small area that we looked at we didn't find any endangered species, federally or state. But that is only one little small area.

WM: Now at some point in the Spring time to enhance this on sight visit we decided to do what I refer to as a fly over.

JH: Correct.

WM: Um utilizing State Police helicopter you flew over that property?

JH: Yes. We utilized New Jersey State Police helicopter out on Mercer field.

WM: Now again, your supervisor Leroy had given you specific instructions about this photographic flyover did he not?

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JH: Yes he has given instructions to both our self and the State Police by not to fly directly over the sight, but to circle around the sight.

WM: And your impression of that directive was again your words to me earlier was not to try to deter your abilities but not to alert the DeMarco farm people what we were doing.

JH: That' s correct.

WM: And as of that flyover you were able to develop some confirmation that there was some infringement in the wetlands. Is that correct?

JH: Yes that is true.

WM: Once you, once you done that part of your job function hum, what further involvement did you have at that point?

JH: I was involved in a team effort ground inspection which included people from Pinelands. It included other people from our bureau Bob Pacione. It included a soil scientists and several people from the departments GPS Global Piloting System Unit. So they were there to locate our position on whatever we survey. But we were there a whole day and I think it was April 11, of 1999. We took soil, we actually did the three parameter approach required by the law. We did soil analysis at several points, we probably did a total of I say a dozen borings. Most of (I/A) one of them, most of them were wetlands. One was not wetlands. We did an vegetive analysis of the site which just count the vegetation. Dominants we had incurred a lot of wetland vegetation while we were in the wetlands. That was all documented photographed by the department up in Trenton and a very massive report was written over a year and a half.

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WM: And part of your responsibilities would have been to generate a report of your specific activities which would have ultimately become of that big report you'll talking about.

JH: Yea, all I did was take a copy, copy of my field notes of the soil bores and the vegetive cover that we encountered at the area we were working in. Um, that was the only piece of paper that I submitted to the overall report.

WM: And after that what is your involvement in that case?

JH: I have no further involvement.

WM: Any consultative discussions with anybody here about what should be done or what shouldn't be done or any of that.

JH: We had one team meeting that was the only one after that I attended. It was over to review the largest photograph I ever seen in this place. Pieced together with all of the information on it. Through the GIS and GPS and amazing that much information we can put on it.

WM: Besides reviewing the photograph and documented certain things there is no specific discussions about how we were going to proceed or how what we were going to do?

JH: No. No not at that point at all.

WM: Now, that ends your direct or indirect involvement in the DeMarco incident, from what you told me earlier there was no discussions about what can or can be done or should or shouldn't be done with anybody here or anybody else for that matter.

JH: That's correct. My involvement with blueberries, cranberries ended at that last team meeting. And then have another one and I ..I handled the cases in the Pinelands, I don't

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handle the blueberry, cranberry.

WM: Now we also discussed your knowledge of the outcome of this. And you said your knowledge is simply from what you read in the newspaper. Is that accurate?

JH: That's correct.

WM: And taking a little liberty here to say what you read in the newspaper is in fact accurate. Hum what was your from thirty some years here with DEP, what was your reaction to what the settlement was reported to be in the newspaper?

JH: I felt that the settlement was just and fair based on my experience in this department. I knew it would be controversial because of the controversy from EPA and Official Wildlife Service over the general permit issue in general. Um, I think the decision to do what they did was correct. It was not slated. I didn't see it being slated.

WM: Now we did discuss before about the GP23 Regulations. During the time you were looking at the DeMarco property this particular expansion was not available to those people. Is that correct?

JH: Yea. The initial GP23 was being developed and it was purportedly to come out I think the Spring of "98." However, it was reversed and it never appeared, they had to rework the whole thing.

WM: Okay. So if one were going to encroach on wetlands and wanted to follow what was available at that time. The procedure would be an individual permit application.

JH: Yes because the activity was the nature was never been covered by a GP. Or general permit, there is a list of them they don't cover this type of activity.

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WM: And in general again, going back to that time if I had to apply for a general permit based on your experience what kind of time frame am I looking at before I could hope to get approval if I did at all?

JH: I would think you go at least one to two years. With all of the documentations support you would have to get put together the various surveying applications have to be applied. Whether they be photographic or whatever. Ah, support information from many, many other groups to support their case. And just a general review of within the department and seems to take a long time with that type of activity.

WM: And just based on your experience and ball park, do you have an idea of what that might cost me over that two year period of time?

JH: I've seen cost to applicants ranging from \$100,000 to approximately \$200,000. Depending on the size of the property activity. I'm not even talking about casinos, I'm just talking about land use. Casino's are much higher. Much longer.

WM: Mr. Higgins is there anything with reference to this with your involvement in the DeMarco case that we haven't covered here that you would care to add before we terminate this interview?

JH: I'm not sure I think I covered everything.

WM: At anytime during your involvement in this, did you feel you were being um swayed from your normal regular activities?

JH: No I never felt that, I felt that we were going from an individual investigator to a team investigation. Yes. Never being swayed from anything.

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WM: Okay.

JH: I may have missed some point along the line because the time frame we're in, but I don't think so.

WM: Shawn do you have anything you would like to add at this point?

SS: No I don't.

WM: If there is nothing further the time is approximately 9:49 a.m. All those present at the beginning at this statement are still present at this time.

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**October 17, 2000**

**Legend: JK: DAG/Deputy Inspector General John Kennedy**  
**LL: DAG Louise Lester**  
**RS: Robert Shinn, Commissioner, DEP**

JK: October 17<sup>th</sup>, 2000. I'm Deputy Attorney General John Kennedy uh, here with Commissioner Robert Shinn of the Department of Environmental Protection and Deputy Attorney General Louise Lester. Um, Commissioner Shinn first of all as I've explained to you we'd like to talk to you about the, the um alleged wetlands violation on the A. R. DeMarco Enterprises property um and the proposed settlement of that violation and I've asked you if it's okay if I tape record the interview so that we have an accurate record of our conversation and uh is that okay with you if I tape record?

RS: That's fine, okay.

JK: Um, Commissioner I'd, I'd just like to ask you to start at the beginning as best you can um, and start with what was the first um information you received, what was the first awareness you had of the alleged wetlands violation.

RS: Um, it was uh, I believe a phone call from Jean Fox of Region 2. She's a Region 2 Administrator um, advising me that they had identified uh, some wetlands violations in the Pinelands and um so I um, basically got her in touch with uh, Lee Cattaneo who was at that time uh, in the Land Use Department and his responsibility was enforcement and uh, so between those two agencies they started to work through these violations that were apparently from aerial photography and I've never seen it but uh, I assume that uh, they would, originally they identified uh, four or five violations or potential violations and uh,

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I think one was the Burlington property and I quite frankly don't remember the other couple, DeMarco was the larger one and there was another grower I think it was uh, um, a small grower that's uh, ah, I can't remember the name I'll probably think of it by the time the interview but as it evolved um, these I guess were either de minimis violations as I understand it they work through a process with uh, uh, uh, White Bogs violation of some, something Enforcement worked out with them, some sort of remedial type uh, resolution the issue and I don't know any specifics of that as well. Um, when it got down to the DeMarco uh violation that that was the one that uh, everybody felt needed to be pursued, our enforcement and EPA. Um, I basically at that point uh, I talked to Mike Hogan about uh him taking over that uh responsibility because I recused myself and he advised me that he was recusing himself so um, I moved that responsibility to uh, Mark Smith to sort of track the issue til we can get it you know completed, settled and move on with it. Um, and at that point since um, Mike was uh sort of out of the loop, somewhere between when Mike told me he was recused and me appointing Mark to follow through I asked Lee Cattaneo to be responsible since about that time I think Lee moved from uh, Land Use Enforcement to the State Planning Commission so there's nothing worst than having somebody that knows the earlier part of the process being moved out. I asked him if he would keep that issue so that he could follow through and we'd have all the original contacts and he would know it from, from day one position and uh, as far as I know, he, he, uh, stayed with it until it got to a point it was sort of a (I/A). Um, and um near as I can tell when the, you know I don't have, I haven't been able to pin down the date that I

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actually recused myself but I think it was the third or fourth week of June of '98 somewhere around that time frame. Uh, I knew Garfield personally uh, and uh, you know I was uh, on the original Pinelands Commission uh, I was the uh, eighth vote on the, for the plan on August the 8<sup>th</sup> of 1980. I'm a roll call vote in the county college and a memorable occasion uh so I've really had an involvement in the Pinelands uh, Commission process until I went into the legislature in 1985 and obviously it's a conflict so I had to resign from the Commission, then from the organizational time frames of the Federal Act of 1978 National Parks and Recreation Act and then the following year the Pinelands Protection Act, I was Burlington County's representative on the Commission and uh really spent a lot of time working uh, through the issues and uh, talking to people about the Pinelands and the plan and uh, getting a lot of input from all the sectors relative to the Plan and its impact and so on, and so I'm familiar with the CMP, it's the Comprehensive Management Plan (I/A). Uh, so uh, but my real reason for recusing myself, it's not the familiarity with the Plan that drove me to do it but it is my uh, long time relationship with uh, Garfield that uh, really led me to do that, I thought that was uh, you know, not you know the conflict in itself was certainly the appearance of a conflict and uh, appearance is 99 percent of the battle in this business so I just wanted to remove myself and uh, sometime thereafter I found Mike recused himself and I, you know I gave the responsibility to Lee Cattaneo uh, I asked Mark to sort of shepherd it so that we would keep this moving and get it resolved because the longer these things hang out there, the more uh, various agencies seem to uh, and the environmental groups try to

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make issues out of it for whatever reason and uh, I just wanted to get it through the process in a pragmatic way and get it to resolution and uh, so uh, lets see, what's the next thing that I recall happening.

JK: Let me just, maybe I can guide you along. . .

RS: Yeah, if you got some. . .

JK: If I ask some questions that I, I'll just take you back um, to your conversation with Jean Fox and maybe we'll just go step by step.

RS: Mmm hum.

JK: You talked to Jean Fox from EPA Region 2. Um, she identified potential violations, um, you told us that you put her in touch with Lee Cattaneo.

RS: Either her or her staff I forget which but uh. . .

JK: Okay, okay.

RS: I told her that uh, uh, he was handling it, the enforcement area and uh, that, that's who would be handling the case.

JK: Did you know at that time that one of the properties was the DeMarco property?

RS: I understand he was one of the five.

JK: Okay.

RS: Yeah.

JK: And I'm sorry other than you telling her or her staff who to contact did you do anything else about it at that time?

RS: Just telling Lee basically what communication I had with Jean Fox and you know just put

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him in touch with, I probably with her staff.

JK: Mmm hmm.

RS: Whoever she directed to handle it on her end so that's uh, sort of it at that point.

JK: Okay. What was um, what was the next contact you had with this matter?

RS: Um, the next thing I remember is uh, and I don't remember what time frame we're in but probably a couple months after maybe two or three months after the initial NOV's were issued um, I got a letter from Cliff Day that sort of alleged all sorts of other information that he had that uh, I haven't seen you know.

JK: You haven't seen the information, is that what you mean?

RS: Yeah, the, whatever information he had documenting his allegations uh, I hadn't seen and this had been going on and I knew he knew it had been going on and it, it strictly aggravated me that you know he withheld information because we're sort of partners in this process uh, in things like the uh, HMDC (I/A) Program. We're trying to work together with EPA, Army Corp, Fish and Wildlife, (I/A) um, to get through this process uh, as a, as a team and certainly if we have anything with Fish and Wildlife uh, we sort of work as partners and to get a controversial issue and have them sort of expose something to the press that we don't have information on and then chastise us for not doing X Y or Z is a little tough for me to digest, I really uh, and I've sent in a fairly sharp response as I recall uh, and uh, lets see time frame wise. . .

JK: Well, Commissioner let me, let me show you, let me show you a letter um, dated August 3<sup>rd</sup>, 1999 signed by Clifford Day, Fish and Wildlife um, and I'll ask you to look at that, is,

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is that the letter you were just talking about?

RS: No, I, I uh, I saw a press clip um, and I was looking at a press clip. I don't recall, I don't recall this letter um, but it was laid out in a press clip and it was uh, very inflammatory the way the uh, reporter wrote it. Um, it was probably before this um, and I don't know whether I have that anywhere or not I doubt it uh, but it was in my clips. So we could probably recreate it that uh, (I/A) I don't recall seeing this at all.

JK: Okay and that letter that I'm showing you is actually addressed to EPA, it's, it's not addressed to the Department.

RS: Okay. Okay, did we ever receive this letter do you know?

JK: I believe EPA faxed it to Ray Cantor.

RS: Okay, this has the potential violations in it or is this all DeMarco?

JK: That list of potential violations um, that uh, Fish and Wildlife was identifying to EPA.

RS: The Jersey Devil was that other violation, that name I couldn't think of earlier it was Jersey Devil Cranberries as I recall. Okay, yeah, I, I haven't seen that letter.

JK: Okay, so I, I wanted to ask you if that was the letter but, but you had seen a press clip that. . .

RS: Yeah.

JK: Described the Fish and Wildlife letter.

RS: Yeah, it was quoting Cliff Day and his allegations against the Department for not you know being expansive enough with uh, our uh, our Notice of Violations so uh, that might be the letter that uh, is that the letter, oh that's the letter uh, in response to my letter I

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guess.

JK: I think so from the way it starts that's in your looking at a (Beep)

RS: Excuse me.

JK: I'll turn the tape off here.

RS: Yes.

JK: Okay um, okay we were talking about the letters.

RS: Well this is his letter back to me. I wrote him a letter.

JK: Right, which I don't have. . .

RS: Okay.

JK: So I can't show it to you because we. . .

RS: Okay.

JK: We, we haven't gotten a copy of it so but this is what we got from Lee Cattaneo. . .

RS: Okay.

JK: So that's why I can show you that but I don't have your letter.

RS: This was his letter in response to me. Yeah I wrote him a pretty caustic letter uh, which I'm sure I have in my file, if you would like to have that.

LL: Yes please.

RS: Uh, I'll get a copy of it for you.

JK: Sure I'd appreciate that, thank you.

RS: Um, lets see okay, this is where he's, okay I put a note lets discuss (I/A). Yeah and the point that I had relative to Fish and Wildlife was um, selective enforcement issue, you

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know he was raising a whole bunch of issues that we didn't have in our records. He raised some issues that we didn't have from EPA and uh, I know one of the issues because at that point we were just focusing on, on DeMarco and my concern about the whole Cliff Day issue was selective enforcement. De, DeMarco could be in a position to say wait a minute you're enforcing against me and how about all these other violations that, here's Cliff Day saying you know you got all these violations and uh, I'm the only one that's getting enforced against so basically that's, that's why I wrote this note to Ray about the selective enforcement issue and if we had our self covered uh, I recall ever talking to him about it but um, let me see if I can find that other memo.

JK: Okay.

RS: It might give me an idea of what (I/A).

JK: Alright and I'll stop this again.

RS: (I/A)

LL: Thank you.

JK: Okay, I appreciate that.

RS: Um, so um, where were we?

JK: You were, you were looking, you were pointing to your note um,

RS: Oh yeah.

JK: In the September 17<sup>th</sup> letter to Ray.

RS: Yeah, I, all basically all my correspondence is prepared by uh, someone in the Department which the activities you know I try to make sure they prepare letters for me

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so if they got any nuances that I'm not aware of they're built into the letter so uh, when I get these letters back and forth I usually write if it's something that uh, that I need to talk to a management team member about I'll write lets discuss or FYI or uh, some cryptic note on the, that's, that's not too many more words than this but basically the, the issue I wanted to talk to him about was making sure that we're not open to a selective enforcement challenge. It wasn't about the DeMarco case or how he was handling it, it was, but I don't recall ever talking to he or uh, or Lee about it. I think the letter's pretty much, uh if we can find that letter uh, hopefully that will answer the uh, the issue because I think we were talking about uh, the NOV's that, that we were pursuing versus the list that he had I would think there's some additional acreage that he was pointing out that we weren't pursuing but it was EPA's pursuit that we picked up and pursued basically using their data and Fish and Wildlife was sort of jumping on our back and saying wait a minute you didn't even look at this. Well you know we're using data that's EPA data and we're sort of acting on their behalf and uh, as a 404 delegated agency and uh, so hopefully that'll come out in that other memo but the concern I had was uh the selective enforcement issue but I think working through the, the Fish and Wildlife list and the EPA list, I assume staff addressed that so but I don't recall ever having that conversation with Ray. Um, in some of these conversations, it would be in a management team meeting uh, somebody will say you wanted to talk to me about this issue and. . .

JK: Mm hum.

RS: Three or four words and it's over.

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LL: Thank you (I/A).

RS: I think that's the letter we're talking about, okay.

LL: And was that written by uh Mr. Cattaneo?

RS: Yeah I think it was somebody in uh, in uh, lets see it could have been written by uh, probably somebody either Lee Cattaneo or somebody in Ray's shop probably prepared that memo.

JK: Okay and, and this is, your giving us a copy of an August 19<sup>th</sup>, '99 letter uh to Clifford Day signed by you.

RS: Mm hum. Yup. That's correct.

JK: Okay. All right.

RS: And that I think it lays out my concerns uh, rather caustically I admit because I remember my uh, I was really distressed over receiving that at that time because instead of sharing information as a partner in this process, they did it through the media and sort of made us look like we're derelict in our duties and we were acting on the information that we had from EPA so uh, that was sort of what led to this note on this memo and um. . .

JK: And these letters from Fish and Wildlife were the newspaper article um, did they concern the, the general permit 23 proposal or, or was this all about. . .

RS: This was all enforcement.

JK: Just. . .

RS: It was all enforcement related as I recall. This, this whole issue was uh, I'm not sure, it's not mentioned in there but, but as I recall it was relative to uh wetlands violations that

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they perceived happened from their data. It wasn't covered by the EPA data that we were working on and the actual data I haven't really seen at all so uh but Lee Cattaneo and uh, uh, Land Use Enforcement is probably directly familiar with that and can probably show it to you.

JK: Okay. We, we've talked to Lee, we'll probably have to go back and talk to him for some follow-up stuff but we, uh, we can do that. Um. . .

RS: Can I see that memo just a minute.

JK: Yeah absolutely.

RS: Just to refresh my memory.

JK: Sure.

RS: Okay, there only four acres difference I guess than uh, of the 72 acres of potential violations that they have identified, there are only four that weren't in our, our um, already under action by us and the, if you read the newspaper article it would look like we missed half of the violations when it was really is, you know a small amount, I don't know whether the small amount ever were part of the process or not but I assumed that staff worked through that.

JK: Mm hum. Okay. Um, so you've taken us through uh, a phone call from Jean Fox um, putting EPA in touch with Lee Cattaneo's group.

RS: Mm hum.

JK: Um, you're seeing the newspaper article about the uh. . .

RS: Mm hum.

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JK: Fish and Wildlife letter.

RS: Yeah.

JK: You've given us a copy of your August 19<sup>th</sup> letter that I guess resulted from that um, and next you said you, you have this note to Ray Cantor lets discuss because of concern about a selective enforcement argument. What was the next communication or involvement that you had with this DeMarco uh, wetlands matter?

RS: Uh, just uh, follow-up with uh, uh Mark Smith as to is, is it progressing, you know what, are we getting close to the final resolution of this and uh, just where it is in the process, that's and he'd give me you know a generic rendition of well its in dispute resolution that's in, Federal process it was in and of course it's um, it's uh, that was over a year and a half ago I guess from when this really initiated so it filled up a long, long process um, and Mark left and uh, um, about lets see about four months ago roughly uh, Gary Sondermeyer has taken Mark's place and uh, so uh, he's now sort of my designated person to get up to speed and you know make sure the process continues to be deliberated and hopefully get to the end of it at some point.

JK: Okay. Did you have um, did you have any discussions with any of your, your staff about what course of action to take on this uh, alleged wetlands violation?

RS: No. As far as I know they were, they were in the process of issuing NOV's to uh, at least DeMarco and possibly Jersey Devil, Darlington and one other person that uh, and subsequently uh, by inquiry I heard that uh, most of the other uh, alleged violations were being worked out in some fashion and I don't know how, uh, that uh, DeMarco was going

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to be the one that they were pursuing and that's as much as I know about the NOV part of this.

JK: Okay. What about the um, the settlement negotiations, did you have any, any discussions with any member of your staff about them?

RS: Not really just as to the status of the, the activity every month or every other month I would ask Mark about, what part of the, where are we in this process, is it moving forward and so on and so forth but uh, and he would, his response would be it's in dispute resolution, it's you know tentative settlements on the table, it's you know whatever the status was of it generically. Uh, and other than what I read in the newspaper that's uh, that's about my information source.

JK: Mm hum. Um, other than getting a status on it, did you, did you give anyone any instructions or direction?

RS: No, um, nope.

JK: Any indication of how you wanted the matter to be resolved?

RS: No, I'm, you know it's, it's uh, you know just from a perception standpoint it's, it's a no winner for, for me from uh, uh, public perception standpoint so uh, I recused myself pretty early on and just kept away from it.

JK: Um, I want to show you one other memo that we got from I, I think from Lee Cattaneo I couldn't be sure, we've talked to a number of people. Um, it's a memo from Lee Cattaneo through Ray Cantor addressed to you um, dated April 27<sup>th</sup>, '99 and uh, it's concerning this, the DeMarco wetlands violation.

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RS: Mmm hum.

JK: I'll, I'll show that to you, ask you to look at it and I just, once you've had a chance I'm just gonna ask you if you remember ever receiving that.

RS: I don't at this point but let me read it. (Period of silence while reading memo.) I don't really remember seeing it um, and that could be uh, due to somebody intercepting it like Mike Hogan or Mark and uh, here's their notes on it, cause, you know, probably read the memo I usually mark, if I read it I mark a check mark up in the corner on my memos that I read it and uh, Debbie doesn't get a memo with a check mark it goes back in my folder and I keep seeing it forever until I put a check mark on it for a note.

LL: (Laughing).

RS: Uh, she's very proficient at that so I would guess that somebody inter, intercepted this memo uh, on its way to me uh. . .

JK: Okay.

RS: My guess would probably be Mark or Mike uh because I recused myself that would be my guess.

JK: Okay.

RS: I don't recall seeing that.

JK: Um, I'd, I'd ask you about any conversations you had with people in-house in, on your staff about this. Have you ever had any conversations or interaction with people outside the Department. . .

RS: No.

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JK: About the wetlands violation?

RS: No, I don't discuss it.

JK: Have you ever had any conversations or communications with Garfield DeMarco about it?

RS: No.

JK: With any attorney or representative of his?

RS: No.

JK: Nope, okay. I'm, I'm sorry it's just that you're shaking your head no. . .

RS: No I forgot (I/A)

JK: But I just wanted you to say it so the tape could pick it up not that I'm doing anything other than that. Um, any representative of A. R. DeMarco Enterprises?

RS: No.

JK: Did you have any communications with uh, with Glenn Paulson or any other one?

RS: I've had communications with Glenn but not about DeMarco.

JK: Not about this. . .

RS: Right.

JK: Wetlands thing okay. How about Pat Turpey, have you ever had any dealing with him on this?

RS: No. I don't remember ever talking to Pat Turpey, this or any other issue.

JK: Um, you mentioned uh, that you recused yourself eventually. Could you tell us how did that come about?

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RS: Well uh, um, by virtue of, of my long time relationship with uh, Garfield and uh, when the um, phone call came from Jean Fox and we started to go through the process of it, identifying what the violations were uh, one of the earlier reactions I had were when we adopted, see I didn't think that this was ultimately gonna be a violation quite frankly uh, because when we adopted the uh, Comprehensive Management Plan there was an area called the preservation area and then there was an area we delineated a special agri and uh, this is where cranberry agricultural and blueberry agricultural took place and in the CMP that we adopted on August the 8<sup>th</sup> of 1980, uh, in exchange for the loss of beneficial use of property rights, cranberry growers could expand their acreage um, and this line I believe was drawn on the historic boundary of where cranberry agricultural existed and current cranberry agricultural was a third of what it was historically so that was worked out with the CMP when we adopted the preservation area as far as loss of beneficial use of property rights versus the ability to expand agricultural operations up to the limits of the specialized agri boundary and I think that had something to do with the historic, where cranberries were grown historically. There's a lot of bogs that uh, were abandoned and you'd never know they were bogs uh, five years later because vegetation grows up and unless you knew they were there, you can't find them. Um, so when I first heard about the violation I thought well they're not recognizing the CMP and how it controls agricultural so I thought ultimately this would all, so but when I saw that you know this was really gonna be a violation I thought uh, I gotta recuse myself and that probably took uh two or three weeks um, to get to that determination. I, I quite frankly still don't totally

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understand except I know when uh, Darlington had uh, had uh, attempted to expand his bogs, in the whites bog area which was State owned property um, he uh, was guided by the Executive Director of the Pinelands Commission at that time, um attempted to get a permit through um, Department of Interior of Army Corp or some process that took about nine years um, with all kinds of complications and that was uh, that was the start of do I need a permit or don't I need a permit, there was never any argument in my mind before that happened and that sort of what drove the, the uh, issue of a general permit uh, for or the cranberry rule so that growers could expand their acreage under the original concept of the CMP in some reasonable manner without these long years of delay. Um, of course as it evolved, we, we're gonna own more cranberry farms then we're gonna issue permits on because of the, the fall off in the market, the market uh, just went, it totally collapsed and uh, so we've actually acquired uh, at least one farm that I know of and have applications for other farms in our Green Acres Program so uh, I don't know whether anyone will really use the cranberry rule in the five year period as ironic as that may seem after all this trauma and commotion over the cranberry rule uh, it's you know that, that whole industry is uh, is market based and uh, cranberries went from fifty, sixty dollars a barrel down to eight and change and uh, it takes more than that to grow 'em so cranberry growers are in, in, and it's ironic because they're in a contract with Ocean Spray so their production is, even though they're losing money on it they can't sell it to anyone else because they're in a coop with Ocean Spray Cranberry Company who is struggling at this point in time for their own survival in the marketplace. It's uh, a lot of complexities in

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uh, that whole Pinelands area but uh, you know that's sort of uh, a genesis of the cranberry rule and the disposition of it is uh, played out.

JK: So let me see if I understand, under the CMP in that special agricultural district. . .

RS: Mmm hum.

JK: Um, or at least as orig, originally envisioned in the CMP, cranberry growers would be able to expand their bogs.

RS: Mm hum, if, if they were in the special agricultural area.

JK: Ah huh.

RS: Which is if you look at the Comprehensive Management Plan as it was adopted of course there's been modifications of it along the way but uh, as it was originally adopted you'll find that this was the mechanism to um, both uh, and the Federal law had a lot of language in it uh, to preserve and enhance and uh, um, not only the Pinelands and the (I/A) but the cultural in the Pinelands, which is an agricultural economy uh, talked about the agricultural pretty extensively and uh, the need to preserve agricultural so the cultural in the Pinelands and the agricultural is sort of the economy or the big economy in the Pinelands where intermingle um, and uh, so we spent a lot of time in the, in that aspect of the CMP and that's reflected in, this is, this and the, and the Pinelands Development credits uh, were the tradeoff if you will on the CMP which agricultural is never happy with uh, but for the loss of beneficial use of property rights the ability to expand agricultural was sort of a quid pro quo if you will, at that point in time and uh, I don't know the details of everything that's ensued over the last 20 years but uh, obviously

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there's some modification of that somewhere along the line which I didn't even pursue that so.

JK: And was it, as far as you understand, the original intent that they could expand within that special agricultural district without getting uh, Freshwater Wetlands permit.

RS: (I/A) that's correct.

JK: Okay and then. . .

RS: That was signed off by the Secretary of Interior, the, the Pinelands process which uh, the old Executive Director, Terry Moore, will tell you that the Pinelands CMP carries the weight of Federal law because of the adoption by the State and the sign off of the Secretary of Interior. The Governor has ten days to veto the minutes so it carries the weight of State law and the Secretary of Interior has the same veto power so it carries the weight of Federal law and uh, so uh, to my knowledge that, that was never formally modified by the Commission uh, but this Darlington permit application certainly threw the future of agricultural in the Pinelands in to sort of question because of that. I think what complicated it further Darlington was expanding his bog on State owned property so that threw another wrinkle into it for other farmers more in the core of the Pinelands were expanding on their own property so but it set some standard for, for a permit that sort of carried some weight by someone doing it or I get someone else to do it so all wrapped up in that is, is uh, this whole issue but I, I honestly thought that as we investigated these rules and compared it with the CMP that these violations would ultimately be resolved but ultimately that didn't happen so when I found out that that wasn't happening I just

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sort of stepped away from it.

JK: Okay. And, and how did you find out that wasn't happening?

RS: Well I had talked to Mike about it uh, as I recall he had a conversation with the Attorney General's Office on the issue and uh, um, I think he ultimately told me that uh, they had a different view and uh, at that point I said okay, gonna reinvent the wheel I'm out of here you know.

JK: Then, so in your mind then you, you decided that you had to recuse yourself?

RS: Exactly.

JK: Um, do, do you know how far along the DeMarco matter was when you decided to recuse yourself?

RS: It was in the early, very early stages. I know we, we, I gave it to uh, to Lee and uh I think I called him uh, somewhere along this line and just reaffirmed to him that uh, it might have been after he sent me the letter, maybe that's, was that signed by Lee that letter that I said I didn't see?

JK: Um. . .

RS: Some reason I called him uh, during the course of this process and uh. . .

JK: This uh, dated April 27<sup>th</sup> '99 memo.

RS: (I/A) That could have been close.

JK: Okay which. . .

RS: Yeah, that could have been close. I remember calling him at home once he wasn't uh, I forget where he was, he wasn't available right away but he called me back.

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JK: Mm hum.

RS: Um, and uh, and I told him that, that I was recused and then maybe it was this letter that triggered that call I don't remember the time frame but uh, it could have been. He, he may remember.

JK: Okay. So tell me what was your reason, your reasoning, why did you recuse yourself?

RS: It was just uh, the situation where I was too close to the parties that were being issued an NOV you know just. . .

JK: To Garfield DeMarco?

RS: I could do the best job of uh, giving the heaviest fine that ever was given and I'd be doing somebody a favor so I just didn't want to, it was a no winner for me and uh, I didn't want uh, any appearance of conflict in this issue ah, I'm known in the Pinelands, I know a lot of people in the Pinelands, I represented a district uh, uh, as a freeholder historically uh, I was on the Pinelands Commission um, so it was just uh, when these kind of violations came up um, I just was too close to the situation uh, uh to be, I didn't want to be part of any of it. I knew Tom Darlington uh, I knew the uh, principals in Jersey Devil Cranberry uh, you know just uh, and I've got, you know I was the eight vote on the Pinelands Comprehensive Management Plan in favor of it and that was a very controversial vote so uh, probably the most memorable vote of my whole career uh, so I got a lot of strong feelings about Pinelands and uh, people in agricultural and all that business and I had to get away from it basically.

JK: And Garfield DeMarco in particular, how do you know him?

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RS: Uh, it's a little bit of a long story but when I first got into government uh, it was at the township committee level uh, and that was a pretty casual introduction I uh, I had a front end loader uh, and uh, when it snowed hard I cleaned the driveway and the Mayor lived across the street and I always went over and cleaned his driveway just cause I had a front end loader and his driveway was snowed in so uh, he was looking for township committee candidate and uh, walked across the street and asked me if I wanted to run for township committee. I said what do they do you know, it was one of those things and ultimately I did and won and uh, I served as township committee under the Mayor for almost nine years or I did for nine years and uh. . .

JK: I'm sorry what town was this?

RS: Uh Hainesport.

JK: Hainesport.

RS: Yeah a little town between Mt. Holly and Mt. Laurel. . .

JK: Mm hum.

RS: 3,000 people, growing too much now uh, but uh, it stayed pretty much static for about 20 years or so until they ran sewer down and all hell breaks loose then. Um, but the same similar situation happened in the freeholder business, there was a Steering Committee at that time in Burlington County and there were 21 members of the Steering Committee and the members that show up vote and there were two candidates, uh the Mayor of Mt. Holly was Joe Weber at that time and a fellow by the name of Bill Shields from uh, Mt. Laurel and they had a tie vote and uh, and they voted a couple of times and still ended up

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with a tie vote and someone mentioned my name that I had no knowledge of it and uh, the majority of people supported me and uh, an Enquirer reporter wrote an article about it it was in the next morning's paper and my wife picked it up. She got mad at me for, I said it's a misprint I don't know anything about it and uh, she said well you better get it straightened out so I uh, in the, in the same time frame when I uh, making a couple phone calls, Garfield called me who I didn't know at that time. I knew of him but I didn't know him personally, he said well you better get your resume over, you're selected to be a Freeholder candidate. And I said well we got to talk a little bit about what they do, cause you know, I, I knew for we got different services from the county but I didn't know what that all accomplished and from the time frame and I had my own business at that time and uh, so it was by virtue of the Steering Committee and Garfield was County Chairman at that time. So when I became a Freeholder um, uh, and I was there for until uh 1985 from 1977 so uh, almost nine years, I seem to do everything nine years you know. ...

LL: (Laughing)

RS: Nine years in the Legislature, Freeholder, Township Committee then Mayor uh, and I'm on my, almost seventh year here so uh, history might be a pretty good predictor. Uh, so that relationship between uh, you know I ran in the, that campaign that year I ran in two additional campaigns uh, probably a couple of primaries as Freeholder that are challenged in primaries so uh, I worked closely with Garfield through those campaigns and uh, uh, so I had a relationship there uh, my business uh, uh Material Handling Systems and Highway Tractor uh, we sold some equipment to cranberry growers not a lot but some uh,

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so there was a business relationship as well. We did steel fabrication and uh, hydraulic, (End of Side A of Tape) (Side B starts here) Massey Ferguson uh, representative and a Comoda tractor representative uh, so farmers that had those tractors historically came to us to get parts for them we were basically the only local source so uh, the fact that we did business uh, farmers in region was uh, just a given maybe not new equipment but certainly parts or hoses or O rings or packing for cylinders and those kind of uh, miscellaneous parts so I uh, Garfield uh, was a customer of uh, when I had my own business uh, and we had a relationship from a Freeholder standpoint so. . .

JK: Mm hum.

RS: Um and he's the County Chairman that uh, notified me that I was uh, the winner of some sort of stand off on uh, on who was to be selected for the Freeholder candidate so uh, given all that clearly there is. . .

LL: (Laughter)

RS: I had a conflict.

JK: Okay. So once you decided uh that you had to recuse yourself because of all that, what did you do?

RS: I talked to Mike um and told him that uh I was recusing myself and I wanted him to sort of handle this case on my behalf and uh, for the Department and uh, he said well I can't do that I feel that I need to recuse myself as well and uh, so uh shortly after that I asked Lee to, to take charge of that case and uh handle it and uh shortly after that I, I don't remember the exact time frame but ask Mark just to keep track of where it's going and

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make sure it progresses.

JK: Mm hum.

RS: So that's pretty much. . . .

LL: Why did uh, Mr. Hogan have to recuse himself? Did he let you know?

RS: Well I believe that he thought that he had worked with me for so long that the perception would be that I was recusing myself but he was representing me in this case doing whatever I wanted done so he thought that he would be conflict about because of that.

Uh, and I think that's probably a pretty good evaluation in retrospect.

LL: Mm hum.

RS: Um. . .

JK: Did you talk to Mr. Hogan about that or, or. . .

RS: Just recently.

JK: Or are you. . .

RS: I asked him. . .

JK: Okay.

LL: Okay.

RS: I didn't ask questions at the time because I knew he knew Garfield but it was sort of more casual. . .

JK: Mm hum.

LL: Right.

RS: Then, then a personal relationship and uh, I asked Mike he said, I asked him you know in

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fact we were talking about the status of the inquiry and what not and uh, I asked him why he uh, recused himself and he said uh well I just thought the perception would be that, that I was acting on your behalf anyway, I'm your counsel and um you know I, I know Garfield on top of that so I, I felt that uh I should step aside as well. In retrospect I, I think that was a good decision.

JK: So you had, so you asked Lee Cattaneo to take charge of it and you asked uh Mark Smith. He was your Chief of Staff at that time you said?

RS: Mm hum.

JK: You asked him to just stay?

RS: Make sure the process continued. Make sure it moved along, that it didn't get hung up somewhere and two years later we're sitting here with this whole thing in some sort of litigation which uh, I thought the longer it went um, you know the beginning and end of these things just if you can move it to that uh, you know hopefully get it resolved with all the parties and uh, get beyond the issue cause it, it's difficult being a Commissioner and having a section of the Department you really don't want to communicate with uh, and you find yourself doing that you sort of you know Ray Cantor shop, I don't talk to a lot mostly through Bob Tudor or Gary uh just because of this, this issue is ongoing.

JK: That's interesting, tell me, tell me about that. Once you recused yourself on really on this matter, I mean you recused yourself really just from involvement in this matter, but how did that affect your, your dealings with uh, with the Land Use element?

RS: Well I, I just found myself being uncomfortable you know if I had Ray in my office he

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may feel some implied influence talking about something else you know and I didn't want to, I didn't want to be there so I found myself just sort of trying to work through Bob Tudor or, or Gary Sondermeyer relative to those issues that, that Ray's involved with. There's a lot of controversy in Land Uses you know.

JK: Mm hum.

RS: Uh, it goes on and on. Uh, from (I/A) to Cape May to uh, all kinds of issues uh, on waterfront development and how buildings are positioned along the coast and it goes on and on. So I, I just wanted to try to not appear to be any influence on, on that section's decision making process. I think I carried that out fairly well, (I/A) I made every effort to do that.

LL: This is a real quick question, um Jean Fox was that contact from Jean Fox by telephone or by letter?

RS: As I recall it was by telephone.

LL: And do you recall approximately when?

RS: (Sigh) Well it was probably in June at some point, I don't recall. . .

LL: Okay.

RS: The specific date and I looked for some notes I might. . .

LL: Uh huh.

RS: Have had and I couldn't find anything. I had trouble finding out exactly when I recused myself as well which I thought would be easy because Mike always makes notes of that sort of thing and uh, he didn't really make any notes either I found out so uh, but I'm

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pretty sure it was uh, third or fourth week in June of '98 is when I actually did it. Do, did he know pretty much when he recused himself or he was unsure as well?

JK: I don't think he did. I think. . .

RS: Because when I, it had to be close to the same time because when I made the decision I wanted to get out I sort of walked through Mark's office to get to Mike and he was in Mark's office and uh, I said I'm recusing myself from DeMarco and I want you to handle it and he said well I don't feel I can, I'm, I'm recused as well so uh, it was right around the same time I think that uh, I don't know whether he decided after I did or on the spur of the moment but it was that kind of meeting and I guess uh, neither one of us really documented it and uh, but it's pretty close to that time frame.

JK: When you recuse yourself in a specific matter does someone else become the Acting Commissioner for that matter?

RS: That's sort of what I tried to delegate to uh, well I tried to give Lee initially that responsibility to handle that matter in total and later I just had Mark just shepherd it so that it would keep moving you know. . .

JK: Mm hum.

RS: And if it wasn't moving, if there was things that are highly charged people that are handling the program feel like they need to go to somebody to get some kind of decision or have a discussion then I thought Mark should be that person because uh, um, you know he knows that staff well and uh, he knows my situation, he knows Mike's recused and uh, that was sort of my next logical step.

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LL: And other than telling Mr. Hogan and Lee Cattaneo of your recusal did you tell anyone else?

RS: Well Mark um, I told the front office um, I know John Kollar uh, and at some point I don't remember when I, I had some conversation with uh, with Eileen and uh, and I know Mike Turpy knew, I know now whether I told him or, or John told him we had some conversation where I said I was recused on, on that issue and uh, so I knew the front office was well aware of my position.

LL: When you say front office you mean the Governor's office?

RS: Yeah the three chiefs.

LL: Yeah, I thought so.

RS: Yeah, yeah

LL: Okay.

RS: And their deputies uh which would at that time was Bob Fabricant and uh, uh, John Kollar has Deputy to Mike Turpey and uh,

LL: Right.

RS: But Eileen I, I told directly.

JK: Is that Eileen. . .

RS: McGinnis, Policy and Planning.

JK: Why did you tell the Governor's office?

RS: Well it was a, any issues that are uh, that have a lot of media exposure uh, you know they get questions from the press and so I wanted to make it clear to them that they didn't do

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the normal referrals to me that you know I'd recused myself and I'd like them to work through Mark and so it, I don't get prodded with what are you going to do about this, what are you going to do about that or you know uh, uh I think it uh worked to this point anyway.

JK: Did you have any conversations with the anyone in the Governor's office about the, the substance of this violation?

RS: I don't recall. Uh, probably not uh because initially I thought it was going to resolve itself. I didn't think it was going to be a big issue and when I found out it was uh, I recused myself, told everybody there that I had done that and after that I, I didn't discuss it with anyone in the front office because of my recusal so uh, now Mark would probably have but I'm not sure about that either. You know he's sort of a contact uh as Chief of Staff and since he was handling this if there were questions about it he would probably have.

JK: So your, your contact with the Governor's staff was to inform them that you were recused?

RS: Exactly.

JK: And anything else beyond that?

RS: Not that I recall. Uh, and if there was any uh attempted discussion my response would have been that I've recused myself and you'll have to talk to Mark I mean if there was a discussion that's how I handled it because uh, I just didn't discuss it after that.

JK: Okay and . . .

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RS: One off my list.

JK: Okay. So after you recused yourself you, you didn't have any conversations um, about the wetlands matter, the settlement, first of all with anyone from the Governor's office, is that right?

RS: Mm hum.

JK: Uh, anyone from outside the Department in particular anyone representing DeMarco or his company?

RS: Nope.

JK: Did anyone, anyone attempt to contact you about this uh, the settlement of the wetlands matter?

RS: No I think uh everyone was aware of my recusal. I think it was in the paper for earlier on. Um, because some reporters called me and uh, uh, you know I, I forget what reporter was, it seems to me it was the Atlantic City Press, uh someone that covers Pinelands issues and uh, and I told them that uh I was recused on the case and Lee Cattaneo was handling it and uh that's as much as I was going to say about it.

JK: Mm hum. Did Mr. DeMarco try to, to talk to you about it at all?

RS: No. Nope.

JK: Anyone, anyone representing him or his company?

RS: No. No.

JK: Can I ask you um about the Pinelands Commission, I'm sorry. . .

RS: That's all right.

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JK: If I knocked you there. Um, and I'm, I'm asking this because of um, the sale of Pinelands credits on this particular property. As Commissioner of DEP, do you have a seat on the Pinelands Commission?

RS: No. No, um, the Commission is um, appointments are governed by the National Parks and Recreation Act and it's seven, by each of the seven south jersey counties, seven appointments by the Governor and one from the Secretary of Interior. It was uh, the Federal attempt to balance the interest relative to the local and the State and the Federal, you know the Federal. . .

JK: Mm hum.

RS: Being the tie breaker vote is the concept so um, we, we fund uh, we work closely with the Commission on acquisition like Green Acres is, does acquisition for the Pinelands Commission. Uh, when I was a member I chaired the acquisition subcommittee and made uh probably enough recommendations on acquisition to uh, uh last a few years but we did it, we had a very aggressive acquisition program early on. We had uh 502 money um from the Federal government that we used uh pretty extensively and uh, so uh getting property purchased, easements placed and using uh PDC's was the original theory on, we, we've protected it but it's only protected by the plan and the members of the Pinelands Commission and over time you need to acquire the most critical areas in the Pinelands for their own protection either by easement or acquisition and uh, you know where there's an active economic uh, activity like uh, farming or um, where it's probably the predominate activity there uh, if that could sustain itself so you really didn't have to do too much

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except acquire easements ultimately to keep it in that general use and uh, so that's obviously been about 20 years ago and uh, you're still in that process.

JK: Does, does the Department have any um, any like representative to the Pinelands Commission?

RS: It's . . .

JK: Let me, let me tell you what, what I'm trying to get at, at at some point the Pineland Commission issued a, a letter of interpretation I guess it's called to DeMarco saying how many credits he gets from certain land. Would the DEP have any role in the Commission issuing a letter of interpretation to . . .

RS: No that's uh, they have a process for that uh, they have an application form the person fills out that is asking for a, a determination on credits and uh, I think it's Bill Harrison's shop who was uh, uh that processes those and I think they made a special effort to gear up to be able to respond rather quickly uh, when funding became available because it was never any, well there was some funding for the PDC Bank but uh, it wasn't funded any significant amount until the last couple of years and the credits moved very gradually because of the uh, uh the price structure of the credit and when the uh, uh credit got revalued uh through the front office uh efforts with uh, uh that was probably a couple of years ago I guess and then we actions by Gormley with designating specific funding for the Pinelands and it was overall twenty million dollars it sort of brought some new dynamics to the PDC market both in available funding and to the upgrading of the um, value of the PDC itself more into the mainstream of the marketplace so uh but we don't

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you know we're not involved in that process at all.

JK: Okay.

RS: Um. . .

JK: And what, what about the PDC Bank, do you have a . . .

RS: I think I have a seat on it and I think someone represents me on it but I don't know who it is offhand. I probably should.

JK: Okay.

RS: Uh, uh I think a fellow by the name of Jack Ross um, operates the bank for uh, Treasury is it con. . .

JK: I think it is Treasury. I think it is.

RS: It's, it's Treasury. It used to be in Treasury and I don't know whether it got moved to Consumer Affairs but it I think it's still in Treasury, I think I'm thinking of the State Planning Commission it got moved from Treasury to Community Affairs but I think the PDC Bank is still in Treasury and it would probably be somebody like Dennis Davidson, he represents me on the uh, uh State Agricultural Development Board.

JK: Mm hum.

RS: And he may represent me on the PDC Bank I'm not sure but there is a seat there for uh, State agencies and I think I'm one of them.

JK: Okay. Did you have any role in uh, purchasing Garfield DeMarco's PDC's?

RS: (I/A) read in the newspaper article.

JK: Okay and did you have any, any input or any conversations with any, with your

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representative or anyone on the bank about it?

RS: No. (Laughing) I don't even know who my representative is quite frankly that's really embarrassing.

JK: Do you have any questions Louise (I/A)? Commissioner is there anything that you would like to say other, in addition to what we've talked about?

RS: I can't think of anything. Um, I think that's pretty much my involvement.

JK: Okay. Well thank you very much for your time I appreciate it.

LL: Thank you Commissioner.

RS: Okay, thank you.

**END OF STATEMENT OF ROBERT SHINN**

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**Legend:**      **JK:    DAG John Kennedy**  
                  **LL:    DAG Louise Lester**  
                  **MH:    Michael Hogan, Counsel to Commissioner Shinn**

JK:    Mr. Hogan, I 'd like to talk to you about the wetlands settlement that was negotiated between your Department and A. R. DeMarco Enterprises, Inc. and I 've asked your permission to tape record our interview. Do I have your permission to tape record this?

MH:    Certainly.

JK:    Sir, I'd like to go chronologically if we can and I'd ask you to go back and tell us what was the, your first contact with the wetlands or alleged wetlands filling in the A.R. DeMarco property.

MH:    I can't give you an exact date, but it was probably, well, several years ago, it was probably about I want to say '96, I don't have a feel for earlier on, um, that a potential violation was brought to my attention.

JK:    Okay. In getting away from trying to remember exact dates, but maybe could you tell us how you first became aware of it?

MH:    Um, Lee Cataneo, who was at that time, he was I think he was Director of Enforcement, he worked for (inaudible) at the time. He came into my office and he wanted to chat with me about a Pinelands matter and I, Pinelands matters sort of drifted towards me often because I was on the Pinelands Commission for nine years so people figure Hogan knows about the Pinelands and he familiarly chatted he wanted to bring to my attention, apparently there were several violations that, alleged violations that they, apparently someone was looking at - EPA, I'm not sure of the dynamics between EPA and the

Enforcement at that point, but they were looking at, there was no determination as to whether there were violations or not, they were looking at them and actually I think I probably asked the question, ya know, well why me 'cause and not the Assistant Commissioner. Well, ya know, we know you're in, have a lot of interest in the Pinelands, just, you work for the Commission and we'll let you know. I said fine. It wasn't really a lengthy conversation 'cause, ya know, we talked about it, um, they still had to make some sort of determination as to what they were going to do. I said well fine, do your duty don't be shy about it do what's right. That was the first time. That didn't really last more than 10 or 15 minutes.

JK: Was Mr. Cantaneo looking for something either,

MH: (inaudible) Oh, yes. Was he looking for something?

JK: Yea, I mean why did he come to you?

MH: I think he just, um, wanted to keep the Commissioner always posted there's no reason why, um, we had at the same time concurrently I guess with that I suppose we had a development, a general permit and so I was involved in helping to develop the permit. There was the general permit there were two (inaudible) first term we had a general permit 'cause that's the point where we were drilling. This may even have been in that time, I'm not sure, I just can't fix the time frame, but I was involved in that maybe you're gonna have to ask him, maybe, because I was involved in, I had an interest in these violations that they were violations. But I honestly didn't and pretty much said well, ya know, thanks a lot but do what you have to do.

JK: So you didn't have an interest in these particular violations. Is that what you found out?

MH: Ya know, obviously they were out there, but I never got involved in other violations so, ya know, but people will tell you my door's always open and people come in and talk to me about everything, ya know. So that was the first time, um and I think he was going to, they were going to go and do their review and I think he came in a second time which was sometime in the future, it wasn't like next week or anything like that. This time he brought in some maps, photographs of maps that showed, I think there were three or four potential violators out there. They had some fence(?) and did some homework and had plotted them out on maps and so forth and we talked a little bit further about it. But again there was no, I think they were just trying to work through it. And that's (inaudible).

JK: Do you recall if you gave him any direction or any.

MH: No, the only direction I know I would have given him and I know I didn't recall it at the first, I might have probably said the same, do what you have to do, um, get your homework done because, ya know, these people if they don't think their going to violate you their gonna, ya know, probably defend themselves, but other than that I don't know.

JK: When you said to me do his homework, were you, why did you tell me that? Was there a specific reason?

MH: No, I mean other than the fact that you don't want to accuse people of violating the law unless you do your homework. I'm a lawyer, that's the lawyer in me. Say get it right the first time.

JK: Were you aware right from the beginning that this was from the first meeting that you

had? Were you aware that one of potential violations was on the A. R. DeMarco property?

MH: Yea, there were four, there were three or four names of potential violators that was one of them.

JK: Did that, did you do anything because it was A. R. DeMarco property?

MH: What was I suppose, do anything, I don't, I mean like something? I don't know what you mean by doing anything. Did I tell them not to do it? No, of course not. If anything I said do your, do your homework, do what's right, with all of them. We were talking, we weren't talking, we didn't fixate, obviously that one was the largest one in terms of acreage, but there are others too and we were going to look at them and I don't know whether one, I think one was going to be de minimis and that kind of stuff, but no decisions of either of those meetings had been made and, ya know, I've more or less, I've never gotten involved in enforcement actions before I wasn't particularly interested, ya know, in this one cause it's not, I didn't want to, ya know, that's enforcement is to be there and I think he was just trying to keep me informed which is fine - I don't have a problem with that. His wife works for the Pinelands Commission so I think that he sensitive to the Pinelands Commission, it's a big area, it's very controversial and I think he was sensitive to that.

JK: Okay.

MH: And obviously DeMarco is a controversial guy and that kind of thing. I think he was cognizant of that, but as far as I was concerned it made no difference. Whatever (inaudible).

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JK: So, is there anything else about this second meeting? You've gotten us up to the second meeting, you told them to do their homework.

MH: Right, and that's all I can recollect anyway for now. It's in my memory, but I.

JK: What's the next thing that you remember?

MH: Um, quite a bit of time went buy 'til about June of '98 and at that time the first rule was well, it was history and we were working on the second rule and the second attempt to get the rule (inaudible) was really being developed mostly through Ray Cantor's office. I obviously followed it because I had an interest in seeing that, it's a rule, a rule we wanted to get done just like any other rule we want to get done. But I didn't have his, I wasn't involved in the day-to-day development as much as I was in the first rule. Except towards the end of the rule, when we had to get it, we had to get it approved through EPA and I was much more involved working with EPA and with Jeanne Fox's Deputy and Jeanne. To make sure we could satisfy what they wanted to, but the key in that rule is to (inaudible) to be make sure that we weren't creating an adverse impact on the wetlands or it had to be minimal adverse impact and so ultimately that, we came to an accommodation with EPA as to that rule by making the necessary changes and then they signed off on it, so that was my involvement there, but and the other was in May or June of '98 I think was when I got an e-mail from Ray saying they were ready to file notice of violation and I think they exercised their discretion not to go after the others. Because I think one of them the fellow he had a permit he had gotten an individual permit, so that's what I mean they, EPA had listed this, one of these, three or four as a violator, and found out that they

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weren't a violator they actually had a permit. But in any event, um he attached it says in the e-mail, he attached the NOV but I immediately e-mailed him back and said, ya know, I'm not the guy to talk to. Ray, you should talk to Ray and Ray if he needs to talk to the Commissioner or whatever he should do that. I wasn't involved in the matter by then I had sort of made up my mind once it got down to focusing on any of them I felt that it would be inappropriate for the Commissioner's Office to get involved in a violation because if it were to go to a hearing the Commission has to hear a rule on the violation, so because so in other words, it goes to, if they cite them and if they can't agree it goes to OAL and then the OAL rules then it comes to the Commissioner's Office. And we're pretty clear about not involving ourselves in an issue once it gets to that point because chances are the Commissioner's suppose to stand apart so he can be effective in the event that he would have to rule on any violation. So, anyway I sent him back and that was in 1998 and it was right about that time that the Commissioner told me that he had recused himself and that he told me,

LL: September maybe

MH: Um, I couldn't tell you when, but this, those e-mails were in June of '98.

LL: Okay

MH: Thought I knew that, but it was right about that time, I, Commissioner told me that he'd recused himself and told Lee that he should handle it and, in fact, at that time we were going through a reorganization, Lee, I don't know, it was shortly thereafter, Lee left the Enforcement Section and went into another section, but he and what I understood was that

he kept the case to see it through, but from that, as far as I'm concerned from that point in '98 I had no further involvement with it and about a day before I guess they were going to release it to the press they did something, Gary Sondermeyer, he's Leo's Chief of Staff, walked in and he started, he said you know we are about ready to do this and I said I'm not involved in that and he said you know you're right and so to this day I've never read it (inaudible).

JK: Let me just see if I, or ask you to explain a little more. Is it, there comes a point where you tell Lee the Commissioner's Office doesn't want to get involved because of the possibility, you e-mailed them.

MH: I didn't say that, I said that I wasn't involved in the matter, I would recommend you talk to Ray who, since he was really heading up the rule piece at that point and by that point we hadn't really gotten to, we were keeping him informed on the rule development, but things were moving right along. I didn't really jump in on the rule until we got closer to the time we wanted to file it and we had to get EPA's sign off on it. So, I just recommended that he talk to Ray. Yea, to Ray Cantor. And I didn't get any further response back and (inaudible).

JK: What I was trying to get clear in my own mind was whether you didn't have anymore involvement after that e-mail or was it after the Commissioner recused himself. You know, like which.

MH: Well, I can't recall exactly when he recused himself. In my mind I want to think it was about that time, okay, and, um, so I don't know how to answer that, I mean. I also, I recall

the Commissioner telling me that he recused himself clearly, and that he told Lee Cantaneo. It has something to do I think in other dealings that I've had where I bumped into Lee, he, ya know, he affirmed that to me about, that it occurred not about anybody checking up on him, but we worked together in lots of things. You know, the Commissioner recused himself on the NOV issue not on the rule. There's certainly no need for him to (inaudible) the rule.

JK: Did you also recuse yourself in any way?

MH: Well, I don't think that I needed to recuse myself. I had, ya know, I know Garfield DeMarco, but I haven't spoken to him in ten years, since I was, well with one exception, I was at a, when we rolled out the first rule we had a rolling out of the rule itself down in at Reba Moore's farm in Chatsworth. They had all kinds of people there. Dick Sullivan was there, former Commissioner, the Pinelands Commissioner was there and farmers were there and he was there and I shook his hand (inaudible) I had so it's fair to say I haven't had, I, I uh, left the county, but not (inaudible) I hadn't spoken to him since 1991 or earlier. So I don't have, ya know, I not a farmer, ya know, I never, so, but what I felt was that I was looking from a different level I didn't want to get involved in it because of the violation. The violation could go to the OAL. The OAL could end up coming up here and it would be inappropriate for me to get involved in any violation. So, and I think that afterwards, after he did recuse himself I may have even mentioned to him it was probably better because that way people wouldn't make the same allegations against me. I mean I'm from Burlington County, ya know, you could, the environmental groups they talk

(inaudible) they can point their finger at anybody, so, I wanted to try to keep a clean slate so I did.

JK: In general terms if violations go to OAL and then come here, what's your role as counsel in those wetlands violations.

MH: The Attorney General advises the Commissioner, but my role is is that after the record is gathered, ya know, you have the record and we have to have the exceptions and you have to the advice from the AG's Office separate advice and uh we put that together in a binder and we provide that to the Commissioner and if there are any kind of policy issues that if you legally related I provide them with some guidance on that. I help, he's not a lawyer so I help sort of translate, ya know, the legal aspects of it for him. We meet regularly, ya know, we try to meet once a month. As the case is sometimes we don't have a lot of cases or other times we more (inaudible).

JK: Okay. You mentioned some, a couple of meetings and some e-mails with Lee Cantaneo. Other than Lee, did you have any discussions with anyone else in your department about this wetlands matter?

MH: No, not in any, any uh. No, I may have said something to the Mark Smith group acknowledging that, because when he recuses himself then Mark is the person who would hear the case so to speak. So I'm thinking in terms of not settlements, I'm thinking in terms of just, if there's a fight this is gonna come up through the, up through the OAL process and then Mark would hear that.

JK: And he was in what position?

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MH: Mark was Chief of Staff and so, 'cause we done, this has happened before it's not the first time. Just to confirm with him that he know's he gonna be the guy in the event any of these cases come up. But nothing in substance so far.

JK: How about.

MH: Cause I really didn't know the substance to be honest with you. Other than this matter.

JK: How about with anybody outside of your department? Did you discuss the wetlands matter with them?

MH: Um, no, no I wouldn't, not, no.

JK: Did you have any contact with Garfield DeMarco or any representative?

MH: Well, no, I mean, uh, he, I don't know, he has lots of lawyers so we and his lawyers come and go into the department in terms of other projects so I may have talked to people who have represented him or a representative, but I never had any discussion with anybody who said I'm his lawyer can we talk about this or anything like that.

JK: And I'm asking you just about this specific matter.

MH: Yea, no, no I know that. No, nobody has called me and said um, what you would normally think can we talk about this, not at all.

JK: Let's go back over a couple of things that you mentioned.

MH: Sure.

JK: Um, go back to a couple, over a couple of things, you mentioned that you know Garfield DeMarco.

MH: Right.

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JK: Can you tell me how you know him?

MH: Well, I was the County Counsel for Burlington County for a number of years. He was the chairman of the republican party at that time, at the time I.

JK: Okay, and when were you in the county counsel's office?

MH: Well, I started as an Assistant Solicitor in 1977, a long time ago, and I was there, I was Assistant for about nine years, then I became County Counsel for about nine years, eight or nine years.

JK: Up until the early '90s?

MH: I think my last term ran out in the end of 1991. I think it was '91, they're three year terms, so, '91/ '92 (inaudible), right about then.

JK: And did you come to the department from there?

MH: Not immediately, um, I'm gonna have to take this call.

JK: Sure, I'm gonna stop the tape. Okay, Mr. Hogan's back in the room so I turned the recorder back on. We were talking about your time as County Counsel.

MH: Right, right.

JK: And your last term expired in '91/'92.

MH: I think it was like December 31<sup>st</sup> of '91, I may be mistaking, it might be '92, but it's right there.

JK: And who employed or who hired the County Counsel?

MH: The Board of Chosen Freeholders for Burlington County.

JK: Was Garfield DeMarco on the Board of Freeholders?

MH: He was the party chair.

JK: Okay, and then you said before that other than maybe meeting him at this role out of the first rule, you hadn't spoken to him.

MH: I hadn't spoken to him or see him. Probably haven't seen him probably even before that. Didn't have any cause to see him (inaudible). I haven't spoken to him that's for sure.

JK: You also said before, I think that sometime he's a controversial figure. What do you mean by that?

MH: His name is in the newspaper for various projects with him as chairman, the Bridge Commission down there or at least he was at one point, I don't know, that's.

JK: Well, what do you mean controversial?

MH: Well, one time the Bridge Commission wanted to build a new bridge in Burlington City and it was a big hub bub.

JK: You talked about this already. At some point in time, the Commissioner had decided to recuse himself. And could you tell me again just what were the, well, first of all did you discuss that decision with him?

MH: Well, I think he had, I think he had, he had already made up mind because I was going to suggest that he do that, but he beat me to the pass at this stage and he said no, he had done it. In fact, I think he had already called Leo Cantaneo. He actually, I think the Commissioner actually probably called me, initiated the call to tell me that he had done that and I said well, that's good because I was gonna advise you to do the same thing. His normal inclination would be to have me get involved in it, but I couldn't have done that.

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JK: What do you mean, getting involved in what?

MH: Well, I sort of, ya know, wer're, he can't do things. He's the Chief of Staff all right, he's got to refuse to do things, but that never came to pass because (inaudible).

JK: Did he talk to you about what his reasons were for recusing himself?

MH: No, not specifically. I think it was, he didn't have to, I think we both understood that, ya know, his position - it's a powerful position. He was more active, he was an active political person. He 's an elected officer, official for many years so he had more of a contact with DeMarco. So, I just, I don't recall him saying this is why I'm doing it (inaudible), you had to, I mean, he knows the man and (inaudible). SOMEONE ENTERS THE ROOM AND TELLS MR. HOGAN HE HAS A TELEPHONE CALL. I have to take this call.

JK: Okay, I'll stop the recorder.

MH: I apologize.

JK: So, I'll start the recorder again. You were telling us that the Commissioner didn't really get into discussing his reasons that you understood.

MH: No. Yea, I mean we had been through this once before not too long ago in Burlington County, something with (inaudible) one of their, there was an application over at Host Benefits from one of the towns, and, 'cause that comes through the department and he recused himself from that 'cause he was a freeholder in Burlington County. So, you know I've known this guy for 25 years so I can (inaudible).

JK: Okay. And you, yourself, you did not officially recuse yourself.

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MH: No, other than, I made it clear on the next opportunity I had with, I think that was sort of when I would see, when I saw Lee that time and I really wasn't, didn't want to get involved in this and I re-enforced that with something or I or anyone else or whenever the subject came up, ya know. In fact, it just came up about, just not too long after everything came out. I had a meeting with Larry Stanley and he started to talk about it. I said, Larry, and he didn't know, no problems so we stopped.

JK: Okay. On recusals in general, I want to ask you about it. Is there a procedure for? First of all, what kinds of cases or situations would lead the Commissioner to recuse himself?

MH: No, I think it's, no I think it's common sense, we don't have any official rules or, I mean obviously there's codes, there's a Code of Ethics and that kind of thing that's out there, but could certainly come into play with the facts, um, but no he, there isn't any when you go to (inaudible) do ABC and D, ya know, and then this goes to this and that person. It happens so infrequently. We operate pretty informally, I mean the people who were involved in it were made well aware of it. There's, to my knowledge there's was only one person involved in it and that was Lee Cattaneo and he was the guy who was doing it, I don't (I/A) know who he works with.

JK: Okay. Do you see any, anything that would be gained by having a more formal procedure for, I'll break it into two parts. First is, what kind of situations would lead to a recusal and then the second part would be what do you do when you recuse yourself?

MH: Well, I think on the first part, I mean, you can't, it's very hard to come up with a rule that meets every circumstance, ya know, I mean I think the Codes of Ethics pretty much set the

guidelines, but then there are these times where some one out of a, ya know, how do you (inaudible) the rule if you're a friend of somebody? Well, it kind of friend are you you know what I mean. A friend goes from A to Z, you know, depending on what you think a friend is. It's hard to do, so, I think this falls in this category, one of those categories, it's a judgement call really, I mean, I can't get into anyone's head and say how well do you know somebody. I know myself, but I can't do that and so it's always good to have guidance. I don't know how you would right it in this case. I think that's, I don't think it's because you know somebody that can conflicts you out or something automatically. If you know them well enough, ya know, I think certainly, it depends on what you do. And guidance is helpful. As to the second part, as to whether it's a procedures, well I suppose that could, all recusals shall be in writing or something like that. There's certainly no harm in that, but the nature of this was such that there was one person who was responsible for the enforcement and that person knew and I don't know what good it does to broadcast it around. I mean I think people realize very quickly that he was (inaudible). If you had a policy thing where recusals will be in writing and broadcast over the e-mail, I don't, it may be too much. It's the people who, it's either the people in the program that have influence on that program, no, it was, it certainly wouldn't hurt, ya know. In this case, I don't know that, I think that all of the people who needed to know knew. And what I read in the newspapers (inaudible) the environmentalist, you know. It was made clear (inaudible) that he recused himself. I know any article I ever read always ended the Commissioner recused himself, somebody knew, so it must have worked, ya know, so.

It's always good to have guidance, I'm a believer in that. And it's been so infrequent that it's (inaudible).

JK: I asked you before about the role of the counsel. I mean a typical just in violations, you know this is violations in general. Um, could you just describe what's the role of the Commissioner in an enforcement action? If you want to specify a wetlands enforcement action that's, that's fine.

MH: Well, in a, you know in a routine enforcement he probably would have no role until it reached his desk through the OAL process. It's not to say that he can't have a role. There you have an issue, that will, it involves policy issues that are unclear and then his role is probably greater because people need to have a clear road/path as to what the policy is.

JK: So he could get involved in.

MH: As it relates to a policy not in terms of a specific person up or down but it relates to how it affects the policy or what the policy should be.

JK: Okay. Who would, what person or position would have decision making authority on whether to issue an NOV, whether to enter a settlement, a consent settlement?

MH: Um, it all depends I think. Often the Attorney General's Office takes the position when they are involved in a case. They have the authority to settle it between you and me (inaudible) the Commissioner. Most of the time they don't do that, most of the time they do it, they work with the department, so there will be some consensus when you have a very good relationship with the department we had that problem, but the Assistant Commissioner he signed and authorize settlements and now that we have a Deputy the

Deputy certainly can do that. If the case is going to be settled where there's a ton of money involved, you know, even the Commissioner, often the Commissioner is going to acknowledge the settlement and that's pretty flexible.

LL: I'd like to, so who's decision is it to issue an NOV? Who makes that decision?

MH: The NOV is issued by the Enforcement Section. That decision would come, NOVs are issued daily here.

LL: Okay.

MH: There are hundreds if not thousands of NOVs over a year, you know, that are issued through the Enforcement Section and then over in land use they also. When Lee, I think when Lee was with the Enforcement Division they had enforcement over land use violations such as the (inaudible). When we reorganized the land use enforcement went over to land use and land use had their own enforcement and still does, I believe, but they decide to issue (I/A).

JK: Do you recall about when that reorganization was?

MH: No, but it's a matter, it's easy to find out with we had so many, every time somebody leaves. I don't want to guess, we can look through the Administrative Orders to find that out. Sometime a lot of, several years ago.

JK: Louise, is there anything else you want to ask?

LL: I have a question regarding the "recusal" and I use the term very loosely. Is it, I'm trying to understand that you didn't formally recuse yourself because you found no reason to do that. Is that correct?

MH: No, right. There wasn't a, I could see no conflict, you know, I, the typical things that you have I didn't have. I hadn't talk to the guy for ten years so I didn't feel like I was, you know, with someone with a friend, a close friend, um, you know that type of a thing I am using that term recusal I did only because I wanted to be sure that if in the event it came up here that at this level you wouldn't have to be, find other people to do things so, I didn't want that.

LL: So if it had gone to litigation and gone through the administrative law process.

MH: It would probably come right on up here and then he would have recused himself from that, but then at some point either, he would either have assign it to his Chief of Staff of myself. I think most likely the Chief of Staff, but then any role I would play, you know, I would probably play down.

JK: Play down, meaning what?

MH: Well, if I was going to do, I mean, wer're speculating here, right?

JK: Yes.

LL: I understand.

MH: But, if I was gonna, if there was a need for me to be involved, which I hadn't, if I had gotten in the middle of this thing in the beginning, you know, I couldn't have gotten in the end and that's what I'm paid to do at the end process, not at the beginning.

LL: Got ya.

MH: And there's a tendency too that if, you know, if, typically when you're dealing with a program anything you say, and this isn't (inaudible). But anything you say tell them your

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from the Commissioner's Office. This must mean what they want us to do.

LL: Right.

MH: And that's why I made it very clear to Lee in the beginning, look you have to do what's right, follow through (inaudible) and eventually they did, they made a decision apparently a number of these were knocked out and they went after the one they want and that was their decision.

LL: That's all I have.

JK: Is there anything else that you would like to say?

MH: No, I think nothing, that's fine.

JK: Okay, well, thank you very much.

LL: We appreciate your time.

MH: Well, that's great, your welcome.

**END OF STATEMENT OF MICHAEL HOGAN**

**Statement of Peter Page**

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**October 5, 2000**

**Legend: WM: Civil Investigator William McGough**  
**SS: Civil Investigator Shawn Stewart**  
**WS: Civil Investigator Walter Stafford**  
**PP: Peter Page**

WM: The date is October 5<sup>th</sup>, the year 2000, the time is approximately 9:50 a.m. The place is the Department of Environmental Protection in Trenton, New Jersey. Present is myself Investigator William McGough, Investigator Shawn Stewart, Investigator Walter Stafford and Peter Page from the Department of Environmental Protection. Peter for voice identification if you would just identify yourself please.

PP: I am Peter Page.

WM: Shawn.

SS: Shawn Stewart.

WM: And Walter.

WS: Wally Stafford.

WM: Peter, your last name is common spelling Page, correct?

PP: As in book, yes.

WM: And your title here with the Department of Environmental Protection?

PP: I am the Director of Communications.

WM: And you have been so for how long?

PP: Three years nearly.

WM: I believe we discussed that you start date was around January of '98. Is that correct?

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PP: Yes.

WM: Your date of birth?

PP: [Redacted]

WM: And your social security number?

PP: [Redacted]

WM: Just as some background, Mr. Page, your prior experience you were a reporter with the Trenton Times for a period of time?

PP: I was a reporter for the Trenton Times for nine years. The last four of those years coincided with the first Whitman administration I covered environmental matters.

WM: For approximately 40 minutes or so the four of us have been sitting here discussing the, your involvement and/or knowledge of the DeMarco case. Is that correct?

PP: Correct.

WM: And what I explained to you was that we would go over the areas where you had some knowledge or involvement, develop a little bit of a time line and then we would memorialize it on tape. Is that correct?

PP: Correct.

WM: And it's obvious to you the tape recorder is sitting on the table and you have no problem with us recording this, correct?

PP: No, I do not.

WM: What is your first recollection of your involvement or knowledge of the existence of the

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DeMarco case?

PP: It started two or more years ago, uh, the context of it being that the US Fish and Wildlife Service, um in comments on a pending rule that would create a general permit program for the expansion of cranberry bogs, said that there had been, I believe, seven illegal bog expansions totaling 76 acres if I remember correctly and no enforcement action had been taken in any of those cases. In looking in, in checking that out which I did in response to press inquiries I found that two of seven alleged violations constituted almost all of the acres involved. Of those two, one of them was a permitted expansion and the other one was the DeMarco property which, which it turned out there's already enforcement action underway. He'd been issued a notice of violation many months earlier, so I took it upon myself to release that notice of violation as part of our response to the allegations or the criticism of rule.

WM: As a result of that, there were some comments being made either directly or through the press by some environmental groups about the way this situation would or could be handled. Is that accurate?

PP: There was, um, ongoing innuendo by some individuals involved in recognizing environmental groups, Commissioner Shinn because of his, a business he once owned, an equipment leasing business, which he, I take it, as a matter of course he had dealings with the cranberry growers just because of the type of business he was in, and because of Shinn being a republican from Burlington County that he was, um, he was favorable

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towards the cranberry growers to the point that that he wasn't really minding the store with his duties as the Commissioner of the Department. I personally, because I know Commissioner very well, I found that infuriating 'cause he's, he practically invented preservation of the Pinelands and has certainly does as much as any single individual to preserve open space in the Pinelands. So I took, I personally conducted a very aggressive rebuttal campaign to these allegations and the cornerstone to that really was is that we had an enforcement action against DeMarco, but it was just, it preposterous to allege that Bob Shinn was showing favoritism towards the cranberry growers in general and this one who's, ya know, sort of the premiere of the largest of them and the most influential, one of the most influential republicans in the State and certainly the most influential republican in Burlington County that if these guys were getting a sweet deal because they were connected it just, you couldn't say that credibly because he was, ya know, being, that he was prosecuted, I use that term loosely, ya know, it was a civil action.

WM: So, as a result of some of this environmental group commentary and also the scrutiny of the Fish and Wildlife, you decided to release the notice of violation to the press so they could see that there was, in fact, an ongoing litigation.

PP: Right.

WM: Was all the information that you released at that time accurate, to the best of your knowledge?

PP: Yes.

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WM: From the time that you released the original NOV a period of time transpires until there is a proposed settlement actually drawn up. Is that accurate?

PP: Yes.

WM: And at some point in time did you make that settlement known to the press?

PP: Yes.

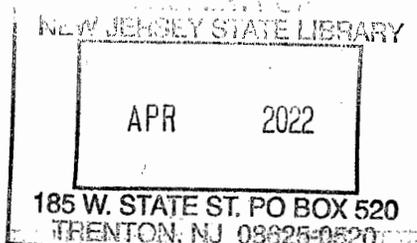
WM: Was all that information entirely accurate?

PP: Um, all the facts were accurate, the interpretation of it, i.e., that it was, ya know, the largest single penalty anybody ever paid for a wetlands' violation that was, um that was interpretive, ya know, I think just by the nature of the fact that the department accepted land and not cash or as the previous settlements had all been for cash that right there called into question, ya know, um.

WM: Was there any internal discussions or problems because of that interpreted statement that you released to the press?

PP: No, and I'll say that I personally didn't challenge it at all, ya know, I welcomed it. It was exactly the message that I wanted to take public.

WM: And we discussed previously as I think you just mentioned that when we got to the end and there is a, there's a possibility of a settlement on the table you really wanted to get that information out there and let the general public know and those the people that have been scrutinizing this about what you purported to be the size of this settlement and how it was being handled.



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PP: Yea, we all felt, we all felt really good about the settlement. We felt that it was, um, that it was fair, that it, ya know, we obtained really a full square mile of permanently preserved open space in the ecologically, ya know, in an area of the Pinelands it's, ya know, I mean that's unique to New Jersey, that's really, our duty to stewardship isn't greater anywhere than it is in the Pinelands that doesn't exist anywhere else, that's uniquely here. So yea we felt that it was, that it was a very, very good settlement.

WM: As the Director of Communications, although it is your responsibility to conduct a press commentary and press releases, you have to be getting your information from somewhere. Who's your contact with the DeMarco case to gather information for a potential press release?

PP: Primarily Lee Cataneo and Ray Canter.

WM: Well, at some point after the press release the issue of PDCs, Pineland Development Credits, were raised.)

PP: Right.

WM: Um, as a little bit of background, the development credits that were assigned to that land were in essence sold by Mr. DeMarco for which he received cash.

PP: Correct.

WM: When purporting the settlement, were they, was everything known about them by you and were the Pinelands Development Credits actually an issue to you or to your department?

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PP: No, I was, ya know, I didn't know that DeMarco had sold the Pineland Development Credits. I never asked anybody because I just, it had never entered in the conversation and I didn't, I didn't think to ask.

WM: Now, we talked previous that you had looked at the settlements and the deed restrictions and the things that were going to be applied and you thought you had a pretty good working knowledge of the whole thing.

PP: Oh, yea, let's, yea that was my ending I thought I knew it all.

WM: But the issue of the Pinelands Development Credits just, just never came up at a conversation internally or, ya know, for the press release commentary

PP: Lee Cataneo, in a way, brought it to my attention, but he didn't bring it to my attention in a way that was simple enough for me to grasp what the implications of it were. I know Lee wasn't withholding information from me in any kind of deliberate way for a purpose. I just didn't understand the implications of what he was telling me and I didn't follow up with questions so it really would have made the tone of the press release different.

WM: There's one particular call we discussed earlier from the Atlantic City Press I think it was about these.

PP: I believe it was, I believe it was Kirk Moore at the Atlantic City Press.

WM: And what was the, that discussion?

PP: He called, the night that, when we put out that press release I was here pretty late taking calls on it and he called and said that he had information that DeMarco had sold the PDCs

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on that land sometime very recently, ya know, within a few weeks at most. From that day a few weeks within that day. And that he received a large sum of money, I believe it was \$600,000 and that was the first, that was the first I heard of that.

WM: How was that conversation relayed back internally and what was the reaction to that?

PP: Boy, um, ya know, I think I got a hold of Lee, it's kind of hard to remember when all this happened. I think it was a holiday weekend. I can't remember if it was fourth of July weekend or Memorial Day, I can't remember, but I remember that Lee was going somewhere and I had to get him on the car phone so I talked to Lee about it. I can't remember specifically talking to Ray about it, but certainly I, I'm sure I did, I mean I had to of. I had to because I didn't know anything at all of what was going on and I was reaching out for these folks.

WM: And what was their commentary to you that the Atlantic City Press is accurate and those things were sold or was it a surprise to them also?

PP: Well, I know Lee knew about it, I can't really remember about Ray. Um, I seem to recall that I dealt with Lee more in that particular time. Like I, I seem to recall that it was a holiday or a holiday was coming up so a lot of people were gone. It's like, ya know, you finished up this big deal, got this thing out the door and people were taking off. I was still here, um, which is just sort of the way it goes, it's just the nature of what my job is. Lee definitely knew about it and that's where like, I think, I believe Lee sincerely thought that he'd already brought that to my attention because he'd shown me that if DeMarco

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had the land and sold the PDCs on it he could still engage in certain very disruptive activities. Basically he could farmland, he could log it off, he could farm it intensively, um, I don't know, he could mine on it, I would think he could mine on it, he could build agricultural housing which, um, which was clear to me that after I explored this a little bit with the Pinelands Commission, I realized that agricultural housing is pretty broadly defined and at least in one sense he could actually develop that land pretty intensively, um, because the definition of agricultural housing was so loose. So the upshot being is that we said okay even though DeMarco had sold the PDCs and gotten the money that he'd got for that he could still use that land in a way that would be incompatible with our goal which was to make it essentially indistinguishable from the park and have it exist primarily for its habitat values.

WM: And I think we discussed that ultimately that goal that you just discussed, uh, DEP believes that ultimately their goal was reached with those land restrictions.

PP: Yea, I mean, the, DeMarco had to be penalized for not getting a permit for the bog expansion, okay, um, at the same time, ya know, we have goal mandated by the Governor for acquiring a million acres of land in ten years and the way things are in New Jersey you don't just, there's not a single million acre parcel to buy out there, so you're buying it in little bite size chunks and so if this is a very substantial, um, in the years I've been here I think we had a two thousand acre addition to a park and that was the biggest single land acquisition I can recall so this was very big and very substantial and it's in an area that's

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ecologically unique, unique value, it's in the center of the preservation area of the Pinelands.

WM: There was also some discussion internally that you were privy to about the uncertainty if this case was litigated in court about who would win.

PP: Yea, ya know, my understanding of that is, that the farmers, the cranberry farmers honestly believe that they don't need permits to expand their bogs on their own land within the agriculturally zoned area and so, among, ya know, I've explained this to people it's sort of, it's like a constitutional argument. We have regulations in place that say that you got to have a permit to convert wetland to bog. Their contention is that the Pinelands Preservation Act is sort of like the Constitution and under that they say that that's specifies that they've got a legal right to expand their land so it's really questionable, um, ya know, whether they even need a permit at all, so that, that was, that's a big issue and so, ya know, DeMarco was a guy, I mean I don't know him personally, but his reputation is he's pretty stubborn and his land is his land and clearly he didn't want to bother with getting, ya know, permit to do that expansion that he did and when he commenced that expansion that's before we had a general permit program. Okay, so we would have had to apply for an individual permit which he would have never got it or it would have taken so long it would have been like never. Ya know, one guy got one and it took nine years so functionally, the situation you have with the farmers is they honestly believe they got the legal right to expand as they see fit. In a very

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functional sense they're precluded from doing anything. Now the other, and to illustrate that point is that Fish and Wildlife Service purported seven violations, five of those were guys digging ditches. Digging a ditch to move water from one bog to another, so here you got the farmers who think that they're free to do on their land what they've got to do to grow cranberries and on the other hand you got a legal structure that precludes them basically from turning dirt. So, yea, it was a real open question, ya know, who would win a law suit.

WM: At some point after the release of the proposed settlement, you also got a call from, to the best of your recollection, from the Star Ledger about the words donate.

PP: Yea.

WM: What was the jest of that conversation?

PP: Well, it wasn't really so much about the word donate as the concept of can DeMarco portray this as a donation so that he could get some benefit on his federal income taxes.

WM: Well, what's the response of DEP to that?

PP: You got to call a tax lawyer, I don't know.

WM: How about internally?

PP: Same thing, don't, ya know, I don't know.

WM: Was there already discussion about how that language or the appearance of that language entered into the settlement?

PP: No, I don't, I don't specifically recall that, I mean, so I'm saying no, ya know, donate as

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we were saying earlier to me, donate is like if I give money to United Way or something, it's a charitable contribution, um, on the other hand, ya know, DeMarco is giving title either in fee simple or for development rights of his land to the State for no compensation as a settlement, I don't know. So, I mean in some really broad sense of what the term donate means, the State is getting something of value without purchasing it.

WM: And internally it really wasn't at least to the best of your knowledge an issue of whether or not this could or couldn't be a tax right-off for him - that really wasn't an issue.

PP: No, I think a lot of this stems from, it's political in that the environmental groups, ya know, there's about three or four specific individuals who want the department to be more punitive. They want this guy to get flogged, alright, and the view within the department is is that he didn't commit a great crime what he did was he needed a permit, ya know, our, the official line within the department is if you would have applied for a permit you probable would have got a permit, so we don't even refer to it as an illegal activity. Maybe sometimes loosely I'll use that term, ya know, but strictly speaking it's not an illegal activity it's an unpermitted activity, so if you had said please he could have done it, if he didn't say please and so now he's in trouble. The environmentalists really want to see the guy burn to the stake. That's it, so is it a donation that you get off easy, I don't know.

WM: At some point during this entire process this investigation and settlement, Commissioner Shinn decided to remove himself by recusing himself.

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PP: Yes.

WM: How were you made aware of that?

PP: I think it was indirectly in the first place which happens a lot around here, um, Bob Shin has many fine qualities, but he's not the most communicative person in the world. I don't remember why I heard about it in the first place, uh, but I confirmed it with him.

Somebody or other told me, it was, he didn't make a big announcement at all like there was some ceremony, he just, I think he just told, I think he probably just told Ray and Lee that he was staying out of this and he didn't want to know what was going on.

WM: Did you ever see a memo.

PP: No, no I tried to find one.

WM: What was your conversation with the Commissioner when you wanted to confirm this?

PP: I don't know, I think I bumped into him when I was going to get a cup of coffee and I saw him and I said I understand you've recused yourself from this and he said yes, so we didn't have a big talk. I mean, ya know, the reasons for recusing himself were just, ya know, so obvious that, I mean, there was no need to discuss them.

WM: And what are those obvious reasons?

PP: Bob Shinn had been excoriated by the environmentalists for literally years, um, as saying that he was guiding this general permit rule in a way that was unbalanced and overly generous to the, to the growers. And that was happening so in, ya know, Shinn is from Burlington County, profoundly from Burlington County, his family's lived there 300

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years without exaggeration, um, ya know, he had a business, Material Hill Handling Systems I think it was called, where he leased heavy equipment. Ya know, front-end loaders, backhoes, stuff like that, forklifts, exactly the sort of stuff that among other people these cranberry growers would need once in a while, but probably would not need to own, um, so he certainly had business dealings with all of them and he's been in politics out of Burlington County forever and DeMarco has been, ya know, big wheel in Burlington County republican circles forever. So, clearly he's got business and political relationships going back with DeMarco probably twenty years or more.

WM: Once it was determined internally that Commissioner Shinn had recused himself from this, did you ever get called from him or call him to update him or him requesting any information?

PP: Not a single time, not a single time.

WM: Are you aware of anybody else that was in communication with him?

PP: No.

WM: There at some point in time was some environmental, US Environmental Protection Agency oversight or commentary on the potential settlement. You are aware of that?

PP: Yes.

WM: Did you ever have any direct dealings with EPA or their concerns or comments?

PP: No.

WM: Now, just as some background, you've been here almost three years?

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PP: Yes.

WM: And you have a background in reporting on environmental issues?

PP: Yes.

WM: The internal workings of the Department of Environment Protection/Green Acres specific functions that we perform, were you ever given any in-house training relevant to the specifics of what goes on inside this DEP world?

PP: No.

WM: So as cases develop and as press releases are needed, it's really incumbent upon you to individually case-by-case go and make sure that you have an understanding of what a notice of violation is, what this settlement is?

PP: Yes, I mean while I haven't had any formalized training, I have, ya know, unlimited access to the people that run the programs so it's, I have a tutorial anytime I need one.

WM: Okay.

WS: Just one question.

PP: Sure.

WS: You have said that previously that (this is Wally Stafford) you've said previously that in this particular case you had taken responsibility for issuing to the press the information regarding the NOV.

PP: Yes.

WS: Is that something that's been, uh, since you've been here, have you, in fact, on other

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occasions released information regarding an issue, released an NOV information to the press?

PP: Yes, yes I have.

WS: And so in this case it wasn't anything, you have done this in the past as a regular course of business. Is that right?

PP: Yes.

WS: Okay.

PP: I'm very, um, while I've been the Director here the department has been a lot more open about public records. I don't make people go through a lot of hoops to get them.

WM: Anything else Walt? Shawn do you have anything?

SS: No.

WM: Pete, do you have anything that you'd like to add before we terminate this?

PP: Well, yea I'd like to make an editorial comment, yea. I think that this is all, um, ya know, unfolding in a very complex political environment, um, including EPA, ya know, which is I think politicized this because my understanding was, is that and again this is just from talking to Ray that EPA had no problems with this settlement until, until it actually became public in the Pinelands Development Credit issue came into contention and that the, ya know, really the heat that the administration takes from the environmentalists is driving a lot of us, that the case is not being seen, it's not being seen without that lens of political criticism. So, I really feel that Ray and Lee did a fine job and that they were

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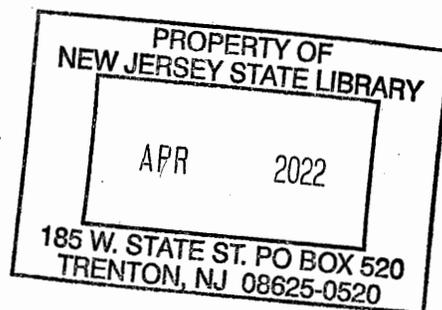
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always very forthcoming with me for information. The failure for me to know about the Pinelands Development Credit, the sale of that and how that affect the perception of this, that was just, that was a communications breakdown and it was not a deliberate effort by anybody to try to hide it, so I really want that to be made clear.

WM: Anything else?

PP: No.

WM: The time is approximately 10:20 a.m. - there's nothing further we'll terminate the statement at this time.



**Statement of Raymond Cantor**

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**Legend: WM: Civil Investigator William McGough**  
**SS: Civil Investigator Shawn Stewart**  
**WS: Investigator Walter (Wally) Stafford**  
**RC: Raymond E. Cantor, Assistant Commissioner, DEP**

WM: The date is October 5<sup>th</sup>, the year 2000. The time is approximately 11:30 a.m. Place is the Department of Environmental Protection in Trenton, New Jersey. Present is myself Investigator William McGough, Investigator Shawn Stewart, Investigator Walter Stafford and Raymond E. Cantor. For voice identification Raymond if you'd just identify yourself please?

RC: My name is Raymond Cantor.

WM: Shawn.

SS: Shawn Stewart.

WS: Wally Stafford.

WM: Ray your current title with the Department of Environmental Protection is?

RC: I am the Assistant Commissioner for Land Use Management and Compliance.

WM: And how long have you been employed with DEP?

RC: Since March of 1998.

WM: And your current title is the title that you came here as and you've held that ever since correct?

RC: Correct.

WM: Your date of birth sir?

RC: [Redacted]

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WM: And your social security number?

RC: [Redacted]

WM: When you first arrived at DEP in uh, March of 1998 what was the, your assignment or generally what was going on here that you were responsible for at that time?

RC: Relating to uh, the cranberry issue or just overall?

WM: Overall.

RC: Overall um, I run the Land Use programs which deal with waterfront development, (I/A) wetlands, extreme encroachment as well as the enforcement component for those programs and I also deal with the Safe Drinking Water Act and Water Allocation.

WM: And you mentioned uh, previously when we were talking that uh, you're an attorney is that correct?

RC: That's correct.

WM: Were you specifically or one of your duties working on the general permit legislation that was uh, we were attempting to get passed.

RC: That was one of my primary duties um, that is when I first got here.

WM: And I understand that part of that process was uh, getting language that not only would uh, uh, satisfy us but also the Environmental Protection Agency, correct?

RC: In, in, in any general permit that we adopt you need EPA's you know approval for that so um, we had a prior uh, proposal which was not signed off by EPA and was allowed to lapse. I was negotiating with EPA to try to get their approval.

WM: Okay. At some point in time you were made aware of the fact that there is a, an ongoing

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inquiry or investigation involving Mr. DeMarco and his property. Is that correct?

RC: That's correct.

WM: And how would you have been made aware of that?

RC: Um, several months after I arrived here I was informed by Lee Cattaneo that there had been uh, an overflight I believe by EPA, maybe it was Fish and Wildlife Service uh, which had found uh, that there were some possible violations of uh, the wetland laws by cranberry bog expansions within the Pinelands.

WM: And what would have been your um, your involvement if any at that particular time?

RC: At that time I told Lee to continue the investigation to find out for certain uh or relative certainty, whether or not we thought there was a violation.

WM: And as we discussed previously at some point he reports back to you and, and gives you an indication that this is um, going to be somewhat complex and, and, and he tells you the significance of this case. Is that correct?

RC: Um, that's, that's correct at least he told me the complexity of the case again being in an area which is dis, disturbed and the complexity of having to make an enforcement case based on what we believed use to be there before that area was disturbed and in so doing he asked if he could uh, uh, use Rick, excuse me, Rick Brown who was a supervisor in my Land Use program who was probably our best expert on wetland delineation and had familiarity with uh, Pineland soils and plants.

WM: Now at some point it comes to the realization that um, this investigation is involving an activity which you are also working on legislation to permit in some regards. Is that

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correct?

RC: Regulations not legislation.

WM: Right.

RC: Yes.

WM: So we have, we, we have some sort of a conflict here where we're working on a regulation violation and a, and a regulation to permit that same activity.

RC: Correct and yes, yes.

WM: Did, you wanted to add something?

RC: No I was going to add that the fact that a violation occurred at this point in time before we had the opportunity to negotiate and to propose and adopt a regulation you know in our minds because it's, it's a jeopardy as far as our, our credibility was concerned in, in adopting that regulation.

WM: Now as this investigation is progressing um, are you reporting up the chain at some point as opposed to down the chain, Lee is your subordinate and he's, your allowing him or delegating your authority to him to run this investigation are you reporting up the chain?

RC: Yeah, I'm, I'm allowing Lee yes to run the investigation pretty much as he sees fit but I am also reporting at this point in time to Judy Jengo, who is my Deputy Commissioner and Commissioner Shinn.

WM: Specifically with Commissioner Shinn when you, when you have apprised him of the potential for violations here you and he as we discussed previously had some type of a disagreement originally. Is that correct?

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RC: That's correct.

WM: And what was the nature of that disagreement?

RC: I, I believe the Commissioner believed at least as he articulated to me that he thought that the Comprehensive Management Plan for the Pinelands legally superceded the Freshwater Wetlands Protection Act and therefore because cranberry growing into wetlands was a permitted use under the Comprehensive Management Plan and therefore it could not be a violation of a wetlands law as well.

WM: And, and we've discussed this earlier and, the Pinelands um, Comprehensive Management Plan where this land is located in essence says that what he was doing is a non-regulated function?

RC: Right that's correct and also as, as been explained to me by him and others who were familiar with, with the um adoption at that point in time um, allowing cranberry growing to be a permitted use in the Pineland was an essential component of the ultimate compromise of that plan.

WM: But then when we overlay if you will the DEP/EPA regulations they seem to contradict one another. Is that fair?

RC: That, that's fair even though if the CMP does not regulate Pine uh, uh, cranberry growing in wetlands it's, it's in direct conflict to the requirement to need a permit you know from us and from EPA in order to do so or actually from the Army Corp.

WM: So Commissioner Shinn's position was just that, that if you look at the, the Management Plan for the Pinelands that, that there was not a violation here. What was your position?

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RC: My position was that the, based on you know, my legal opinion based on my conversations with uh, various attorneys general and our enforcement staff and I may even have talked to uh, Pinelands staff at that point in time, was about the Commissioner's legal opinion was not correct that the 404 program under the Clean Water Act Federal Law and our Freshwater Wetlands Protection Act specifically um, require that you need permits in order to do any activities in wetlands even cranberry growing.

WM: Now at this particular point in time when you and the Commissioner are having a difference of opinion, was there any resolution to the differences or did you just at that point agree to disagree?

RC: I think at that point uh, we agreed to disagree but you know the investigation at this point uh, was still continuing so, we, we, we were not at a decision point at that process.

WM: Now at some point in time as this investigation continues and more information is developed and NOV, a Notice of Violation is issued. Is that correct?

RC: That's correct.

WM: Now am I correct in assuming that, that would not have been issued without the consent of the Commissioner?

RC: That is correct.

WM: So what. . .

RC: Not, not at this point in time because he was still involved um, in this case.

WM: Right. So what would have, what transpired that, that caused him to allow him to do

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that? Did you ask permission to do it or how did you get communication that it was okay to do it?

RC: I don't remember if any particular event happened at, at that point in time or if there were any conversations I, I just know at some point in time that he said it was, it was okay to uh, issue the NOV.

WM: Now we will discuss at some point um, the fact that the Commissioner recused himself from this investigation but this is in fact prior to that?

RC: That's correct.

WM: Now as the D, DEP um, gets its authority through EPA, was EPA aware of this investigation and how it was progressing?

RC: As we were in negotiating the cranberry general permit with EPA we also talked um, at first you know generally about this enforcement action and other potential uh, violations uh, of cranberry growers in, in the Pinelands and later on we had specific and detailed conversations about this with EPA.

WM: If the Environmental Protection Agency ultimately did not agree with the way you handled the DeMarco case, they could um, do what we refer to as over file, correct?

RC: That, that is correct.

WM: They, they could in fact take. . .

RC: Take over the course of action from us.

WM: Right. Is that something that we can use as a tool in negotiating with DeMarco and DEP?

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RC: Yes and that's something that we actually did use and I specifically told you know Tony Drollas, their attorney, in several cases that if you don't cooperate with us, if you don't give us something that we think is appropriate, you know EPA is always behind us you know and uh, if they don't think it's appropriate then, then they're gonna over file us.

WM: And, and, and now your dealing with a whole another agency on completely different terms?

RC: Completely different terms and any advantage that you know they may think they may have at a State level you know they would definitely lose on, on a federal level. I think Tony appreciated that.

WM: Aside from the commentary that you obviously had with the Commissioner about his, his your original disagreement about whether there was a violation, as this investigation progresses how much direct communication are you having with the Commissioner?

RC: On this particular topic probably very little um, there may have been a, a memo or two that, that went up to him early on about this uh, but we did not have you know very many conversations about this topic.

WM: How did you learn that the Commissioner had recused himself from this investigation?

RC: I believe I received a phone call from Lee Cattaneo who told me that you know the Commissioner had called him and said that he and Mike Hogan had recused themselves.

WM: And Mike Hogan is who?

RC: Mike Hogan is the Counselor to the Commissioner.

WM: Can you put a time frame generally on when you learned that?

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RC: I'm not sure I know it was shortly uh, after a number of articles appeared in the Press criticizing the Department and the Commissioner in particular for having interest with cranberry growers and with DeMarco, it may have been right after we, we initially proposed our uh, cranberry general permit or around when we had the first public hearings.

WM: And that would have been in calendar year '99?

RC: I am fairly certain that, that's when it was.

WM: Did you ever have any direct communication with the Commissioner about the recusement?

RC: No.

WM: Never?

RC: Never.

WM: When Lee told you that he had recused himself, he being the Commissioner, there was never any conversation about this case with the Commissioner either directly or indirectly through a third party?

RC: Not to my knowledge, never directly to me and I, I'm not aware of any third party conversations.

WM: Okay. The negotiation if you will to try to come up with a settlement reference the Notice of Violation is continuing. The investigation is continuing as well as the negotiation and Lee Cattaneo is basically with your authority conducting most of that. Is that correct?

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RC: That, that's correct and just for clarification at some point in time Lee leaves the Enforcement Unit and goes and heads up our State Plan Coordination um, um, Program working under Judy Jengo but because this has been such a high profile case that he's been involved, I allow him to take this case with him and this is the only enforcement case which he continued to work on. And, of course, then Pete Lynch who is now a head of the Enforcement Unit works with Lee on this case as well.

WM: Okay. What are you hearing from Mr. Cattaneo about the negotiations themselves, uh, what's on the table, what's not on the table and how we're going to try to settle this case?

RC: Um, early on in the process I'm told that uh, DeMarco is denying all liability. He denied that he filled in wetlands, he denied that the law applied to him, he's taking a very strident you know view of this. As time goes on as our case builds more, as negotiations continue um, at some point um, you know they, uh soften their position and begin to negotiate a settlement with us.

WM: Okay. Um, does Lee have the, the authority at this point to just begin negotiations without some starting point from you? I need at least this or get at least that.

RC: Um, I, I think Lee knew what you know the constraints we were working under, Lee was involved when we went to EPA and negotiated you know with them, where I'm not sure if he was suppose to be there or if he wasn't suppose to be there at both meetings he was at least one and I let him know everything that happened afterwards. So Lee, Lee knew what I was looking for, he also knew what the perimeters of what EPA thought was essential so within those perimeters you know he was negotiating.

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WM: So there was a point in time in keeping EPA apprised of how this investigation was going that they interjected what they thought a penalty should be or, or at least what their desires were?

RC: Correct. There, there were a number of issues on the table we actually went to them I think at some point and said here's what we're thinking and, and, and why we're thinking this and, and we basically agreed that a \$600,000 penalty would be appropriate but we should be able to compromise it by half if they settled. We agreed that environmental component could be a substantial part of this um, even though they can do that, un, un, under their regulations where we disagree with EPA um, is whether or not uh, DeMarco should be able to come in for a GP versus an IP.

WM: Okay. So we're talking about an individual permit which may, maybe protracted in time as opposed to the general permit with, the, the regulation was in the works but it wasn't approved yet.

RC: Right, and, and assuming DeMarco went beyond the fact that it was protracted it was also uncertain. The general permit is that you show certain facts to be the case you're guaranteed to get your permit and, and an individual permit we've only issued one before for, for a cranberry grower, it took three years and you know it's, it's a very uncertain process.

WM: The \$600,000 dollar figure that you discussed with EPA was developed through the use of the penalty matrixes?

RC: Correct. In part. Yes the \$600,000 figure was, was based solely on the penalty matrix.

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WM: Now at some point during the negotiations direct or indirectly with DeMarco and his attorney, land becomes part of the negotiation. Um, specifically land that Green Acres which is part of DEP had been trying to purchase at some prior time from DeMarco. Is that correct?

RC: That's correct.

WM: Do you have any personal knowledge of whether we, meaning the DEP, suggested that DeMarco should consider that because we wanted it previously or if DeMarco put that on the table knowing that DEP had inquired about it?

RC: I, I do not know uh, I don't have any direct facts as to whether or not who went first on that particular land. I, all I could offer was that Lee was working under my direction that I would rather have you know land donation, environmental improvement as opposed to monetary compensation but as far as that particular land and who offered that land first I have no direct knowledge of that.

WM: Now we discussed previously your position on a "dollar penalty" versus a, a land donation and your rationale there was that the money can disappear into the general fund.

RC: The money would disappear into the general fund.

WM: And so the, the land donation language is something that we actually purported, we meaning DEP, purported figuring that that's a better settlement then a penalty/cash which disappears?

RC: Correct you know initially I had asked Lee to negotiate for a penalty which consisted primarily of the land donation or, or land conservation but I was holding out that there

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should be um, some monetary component of this as well um, toward the end we were looking at um, \$50,000 dollars but I told them to keep compromise down to \$25,000 dollars if that's what it took to get the deal done all within the context of being around \$300,000 dollars. Uh, at the very end uh, DeMarco came back and said uh, what happens if I give you 25 more acres? Um, I asked Lee if he thought that land was valuable as the land Green Acres was, he said yes, I said uh, make the deal.

WM: In looking at this entire investigative process and the settlement process, this is what my terminology, a rather protracted and, and long investigation? Is that fair?

RC: Yes.

WM: Any of that time that passed, was some of that time done deliberately to allow the general permit regulation process to catch up to or get more in line with the settlement process of the DeMarco case?

RC: Um, I'm not sure if it was done deliberately but, but we did know and we were cognizant of the fact that uh, these two tracts were working in, pretty much you know parallel and we did not try to push one uh, the settlement to be ahead of the general permit, in, in, in fact I think we consciously um, were hopeful that we could do general permits for us before the settlement came about and, and, and, that either conscious or, or either deliberate or at least conscious understanding may have delayed the process maybe a month or two.

WM: And if part of our settlement is going to be that you must apply for a general permit, in your mind if, if we wait until the general permit regulations are passed it will obviously

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coincide a lot better?

RC: Cor, Correct and it was also my understanding or my belief that if we had, had insisted that Mr. DeMarco obtain an individual permit that the negotiations may have broken down and then we would, we would have been into litigation as opposed to settlement.

WM: Now even at this particular time the Environmental Protection Agency is a, is adamantly against this general permit idea versus individual permit idea.

RC: They, they were opposed to it, I'm not sure you know how adamant they were, I'm not sure you know if push came to shove you know what they would do or not but that was part of my eventual uh, strategy in, in allowing the general permit to come about. I didn't think that EPA would over file us based on that difference of opinion.

WM: In the negotiations, it becomes evident to you as we discussed previously that the individual permit which may be, which is much more protracted in time may not even be passed, could be as you, your words a deal breaker.

RC: In, in DeMarco's mind I believe it was a deal breaker. Um, and just to clarify, yes it could be more protracted in time but it's, it's very possible given what we've done in the past and the fact that we now became aware of EPA guidelines that cranberry growing is water dependent, it may not have been as long a period as it had taken in the past.

WM: Okay. But in the negotiations within DEP and in, in the, the uh, strategies if you will, forcing DeMarco to apply for an I P, an individual permit, may have been a deal breaker, in, in, in your mind here?

RC: It, it, it was my belief that it would have been a deal breaker.

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WM: But in the same vein, although EPA retains the right to take jurisdiction away or over file you did not really believe that the, that they felt strong enough against the GP to over file?

RC: It was my belief based on all our conversations with EPA that substantially we were achieving everything that we hoped to achieve and that they would not over file us based just on a process versus a substance issue.

WM: So when it came down to the final language whether it's going to be GP or IP you really took um, a calculated risk, somewhat very calculated that I'm not gonna ask, ask EPA to sign off on the GP I'm just gonna do it.

RC: Right. Yes, uh, at, at some point in time we decided this was again a strategic uh, maneuver to take, that we were no longer, we're in a sense stopping our negotiations with EPA and we were gonna tell them here's what we're doing and, and then go ahead and do it and then explain it to them why we did it. And, and obviously you know that they weren't very happy with that decision.

WM: And, and I think as we discussed earlier um, if we ask them to put the GP in as opposed to the IP they'll probably say no but if we do it anyway, they won't over file.

RC: Yes, I think someone once told me it's easier to apologize then, then to ask for permission.

WM: And so that was pretty much the philosophy?

RC: That was, that was my strategy.

WM: Okay. We have Mr. DeMarco and his representatives originally when the Notice of

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Violation goes out and this, this investigation is ongoing, take a posturing I've done absolutely nothing wrong, I'm fighting this tooth and nail.

RC: Correct.

WM: We now have him in a position where he's willing to negotiate some type of a settlement, is that correct?

RC: Correct.

WM: So there has been some progress made from the position of DEP anyway?

RC: Oh sub, substantially yes.

WM: And as we discussed. . .

RC: And, and by the way he's willing to negotiate a settlement in the context of, of us telling him that we need the penalty in the range of \$300,000 dollars. We had a meeting at, at some point early on where we said here are the perimeters of where we think we need to settle and, and they continued to, to negotiate with us. We had some concerns initially that they would just walk away.

WM: We, we use a formula that the penalty matrix to come up with a ballpark figure for penalty which was \$600,000 and it stands by, by common practice that if we're gonna negotiate a settlement we can make that penalty come down into the half, \$300,000 range.

RC: Right. I was told, right, uh, the penalty I think we, we worked up was about \$594,000 and I was told it's common practice if someone settles a case with us that we would take 50% of that. Correct.

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WM: How were you able or how did you attempt to justify that, that the, that what's contained in the settlement is actually equivalent to \$300,000 or thereabouts?

RC: Lee had had earlier negotiations, not negotiations but discussions with our Green Acres staff talking about the valuation of the land. Um, and early on we thought that you know um, 75 acres plus the \$591 it was worth in the neighborhood actually I think \$600,000 dollars. However, right before we went ahead with this the Green Acres staff, Carrie Wallace said the Commissioner called me with her staff in the room and told me that he thought that the valuation was closer to \$300,000 so I rely entirely on Green Acres, Green Acres um, expert opinion on valuation.

WM: Ultimately, with you working with Lee and the attorneys and a, a final um, language is developed who ultimately had to say okay?

RC: Ultimately before we agreed to go, sign off with DeMarco, Gary Sondermeyer, Chief of Staff.

WM: And why would it not have gone any higher than Gary?

RC: Because the Commissioner had recused himself so Gary had to make all the final decisions on, on that topic.

WM: And that was your understanding of who's in charge of this and who's ultimately gonna make the decision?

RC: Absolutely.

WM: Towards the, August of this year 2000, there appears to be some urgency to get this situation done. What was, what was the urgency?

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RC: Uh, there were probably three things happening at that point in time. One I think um, we were either accepting or, or about to accept you know applications for our general permit for, for cranberries. The DeMarco situation had been dragging on for an extremely long period of time I was getting impatient you know uh, with how long it was taking plus we were hearing uh, rumors or rumblings from EPA staff you know coming to me in indirect lines asking about what's happening with DeMarco why haven't we taken action, and with the possibility that if they saw that we were not acting then they may over file us. Actually if wouldn't even be over filing at that point it would be just taking an action.

WM: If the EPA comes in at some point and says we're over filing the DEP is out of it?

RC: That's, that's my understanding.

WM: So legally. . .

RC: I'm, I'm not sure if that's legally correct. I'm, I'm not sure if we still have jurisdiction but we would in a sense back off and allow them to handle it.

WM: And we would lose the possibility of benefitting from the settlement? The possibility of benefit?

RC: The EPA over filing? Yes.

WM: Yes.

RC: Yes, plus you know I don't like the situation where another agency has to think they have to come in to allow us to, to enforce our laws. I think we should be able to do that ourselves without outside interference.

WM: Once we've established that there is in fact a violation, at least depending on how you

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interpret the laws, why not just say you must apply for an individual permit, you must put the ground back the way it was and you owe us \$300,000 dollars in fines. Why not take that posture?

RC: Well the individual permit versus putting the ground back the way it was are, are really you know two separate components, either you put it back to where it was or you come in for the individual permit. Um, so, so really your talking about why not an individual permit and, and, and, and a penalty um, one I didn't think that Mr. DeMarco would agree to an individual permit so I thought that was a, a deal breaker. As far as the dollar amount of the penalty, it was my belief, it still is my belief, that I would rather have environmental benefits accruing from that type of sanction then I would having the money go into the general fund um, where I believe it would just you know be, be gone into the Department and the environmental would have no benefit. So to the extent that I can in this and other situations, I would rather see land donation, land preservation of any type of environmental benefit which would serve the same uh, deterrent, the same type of sanction but benefit the environment as opposed to just money you know disappearing into a 21 billion dollar budget.

WM: And what. . .

RC: Don't tell Treasury that I said that.

WM: And what your looking at from your employment and from your mission statement and your goal is what's in the Department's/State of New Jersey's best interest?

RC: Correct, and also recognizing that at this point in time that the Governor has a goal of

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preserving a million acres and land preservation is a high priority for the Department, the land preservation in the Pinelands is especially a high priority.

WM: What was the public's perception of all of this in your, in your view, in your opinion?

RC: Um, with, with the enforcement uh, situation uh, I, I think uh, fairly negative um, the environmental community as a whole um, had always disagreed with us doing a cranberry general permit to begin with. Uh, they were very suspicious of De, Mr. DeMarco's connections you know with the administration and you know they were um, very stridently opposed to this settlement. What, what did not help us in, in the situation was the fact that um, Mr. DeMarco had sold the PDC's on the 591 acres uh, probably just several months before we had, went ahead and did this or you know probably not even several months just you know right before.

WM: And we talked before you had no prior knowledge that that was about to happen or if it did happen?

RC: We had knowledge that he was severing his PDC's from his land, we had no knowledge that he was, had, had actually sold it, whether he was selling it to the State.

WM: Okay.

RC: Although it didn't affect again the valuation of the land.

WM: As a language issue, there is language that you discussed here in negotiations about donation, there is language in the settlement that in consideration for a dollar that he will then transfer certain properties, uh, why that language as opposed to something like um, in satisfaction of this penalty?

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RC: I did not negotiate you know that language um. . . and

WM: Who did?

RC: I, I assume Lee did maybe Pete did I'm not sure who actually worked out that language um, I, I didn't question the language, I didn't give it that much thought I assume you know based on your questions and what other people are telling me that there may be some tax implications um, which I will now you know look into but I wasn't aware of that, it, it didn't ring any bells with me when I first read that language.

WM: Was that ever an issue that was brought to your attention or to anyone's attention that there, the other side is willing to do this if we make it a donation and not a penalty?

RC: I was not aware of that issue. Yeah, I'm sure I read the language but again no one brought it specifically to my attention.

WM: You mentioned earlier that as a result of uh, not just questioning from me but from others about this language that you have taken some steps to look at whether or not this would allow him to "write this off as a donation," is that correct?

RC: Yeah, we received some phone calls, I tried to make some initial inquiries to the find, this was after the ACO was already issued um, if I had, if we had anyone who would give us you know a, a quick answer on this, uh, that did not happen and I'm about to call our you know, um, Attorney General's Office and see if they could use their resources to find uh, experts in order to comment on this. And of course again to the extent that uh, we missed something uh, we do have a common period which we just extend it by the way for 30 more days, I'm not sure if you were aware of that. And after the common period we still

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have 15 days to um, alter the ACO if, if we think appropriate. With, with DeMarco's agreement obviously or else it falls apart.

WM: Right. We had discussed earlier some um, concerns the EPA and Fish and Wildlife Service over the general permits and impacts that they may have.

RC: Two, two separate concerns, EPA's and, and Fish and Wildlife. Fish and Wildlife was and remains adamantly opposed to the general permit. EPA had initial concerns but eventually you know agreed to the general permit.

WM: I have a letter here it's date stamped um, September 24<sup>th</sup>, it's printed stamp, uh, printed in, in the normal course of the letter dated September 17<sup>th</sup>, 1999, it's addressed to Mr. Shinn uh and it says this is in reply to your letter of August 19<sup>th</sup>, 1999 and it goes on to talk about um, the permit regulations etc., etc.

RC: So this is dated what date, uh this is dated '99, okay sorry.

WM: Yeah, September of 1999. In the corner um, Ray Cantor lets discuss, do you recognize that signature?

RC: It appears to be the Commissioner's.

WM: Do you recall this letter and discussing this with the Commissioner? Take, take some time to uh, familiarize yourself with the document.

RC: Without going um, into heavy detail of this letter I do remember um, correspondence of U. S. Fish and Wildlife Service at this time alleging that we had not taken any action against various um, growers in the Pinelands. I believe that um, it let, I'm not sure, I don't remember a specific conversation with the Commissioner I believe I may have

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talked to Mark Smith about this. I believe Lee prepared a letter um, to them and we may have sent a copy to EPA as well saying you know I think there were like three or four violations, or actually alleged, alleged violations, J. J. White included, I think we said J. J. White uh, was um, may have been in violation but he came in and got a permit so that was no longer a violation uh, we said one of the violators DeMarco we're taking you know action with, we already issued the NOV and I think there were a couple of other guys at this point in time we did not issue NOV's on, we were continue to investigate.

WM: And who would have put that letter together?

RC: I think Lee may have it's possible that I may have, if you need me to I can check my files.

WM: Okay, what about this, this uh notation in the margin here Ray Cantor let's discuss with and with Commissioner Shinn's signature.

RC: That means he asking to discuss this, I don't have a, um, um an affirmative knowledge as to whether or not I even discussed it with him personally. I, I, I know I discussed this issue with Judy, uh, I think at this point in time I think she was still here and I know I, I discussed it, I know I discussed this issue with someone in upper chain of command. I'm not sure exactly with who.

WM: Could it have been the Commissioner?

RC: It, It, It's possible. It could have but it wasn't, the question is whether or not it was a DeMarco conversation, if, if I did it, may have talked to him it wouldn't have been by name it would have been in overall context of, of what we're doing but I don't have a memory of talk, I know I have no memory of talking to him at all about DeMarco at any

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point in time whether or not I talked to him generally about this letter and generally what we're doing, it's possible but I have no direct um, memory of that.

WM: This letter is date stamped received and dated when it was initially uh, written. . .

RC: Mmm hum.

WM: After the Commissioner has recused himself.

RC: Okay.

WM: Why would he be sending you a memo in the margin to see me to discuss this?

RC: I assume it's in relationship to. . .

WM: Okay.

RC: You'd, you'd have to ask him you know why he did that. I assume it's in relationship to the overall issue of violations of cranberry growers in the Pinelands and what we're doing and, and you know assume you, um, your allegations uh, it would not have been, I'm not sure, would not have been DeMarco specific. And if, if it, Again I don't know what his intent was, if I did talk to him, the, the word DeMarco was never been brought up.

WM: Just quoting a couple of lines from the letter Dear Mr. Shinn this is in reply to your letter of August 19<sup>th</sup>. Are you suggesting that that letter of August 19<sup>th</sup> was not written by Mr. Shinn?

RC: No, no, no, not at all. Again, there, there were several corres, there were several letters that went back from U.S. Fish and Wildlife Service regarding their allegation that we weren't enforcing the law. I know we, we responded at one point at least to one of the letters saying that here's what we're doing uh, and we mentioned again I know J. J.

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White, other potential violations etc.

WM: So this could be referring to a letter that Mr. Shinn did not write?

RC: I, I don't know about that letter. Again, I would rather look at my files to see you know if there was a letter of August 19<sup>th</sup>.

WM: Okay.

RC: I, if you, if he sent out anything without me preparing it for him you know I don't know about that.

WM: Okay.

RC: But it's not unusual for um, him to ask for a response, we would give a response send it up to him and then he would send it out.

WM: If you had a conversation with, with Mr. Shinn reference this letter as there is a request in the margin, you're telling me that you would not have discussed DeMarco with him?

RC: Absolutely not, huh huh. I have absolute, firm knowledge that I did not mention the term DeMarco with him since he recused himself.

WM: Shawn do you have anything?

SS: No questions.

RC: Sure?

WS: I just wanted to clarify something that was asked of you before with respect to the final language, the final wording and, was it um, uh, that DeMarco was agreeing to donate or transfer?

RC: I had no involvement with, with the negotiation of that language and in truth I paid no

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attention to it you know when I read it, it didn't um, mean anything to me, I, I didn't put any significance to, to the language that was used.

WS: Okay.

RC: I was more concerned about the dollar value and coming up with a GP then I was about you know the actual language of what was you know negotiated.

WM: Am I correct in assuming that there are what I'll refer to some boiler plate language documents that we can use when we're putting settlements together?

RC: I believe you know there are some but then again I haven't personally negotiated you know this but I'm assuming that who write the programs would. I know when Lee was looking at the conservation easement he looked to see what Green Acres has as far as their boiler plate when, when they you know do that so I assume that there are so but again he presents the document to me, I'm more interested in general policy, I'm assuming everything else falls in line and is done the way it's normally done. I pay no attention to it.

WM: As an attorney would you take the responsibility for ultimate review or is it sent over to uh, a DAG?

RC: I was not acting as an attorney in this capacity. As a matter of fact um, you know I, you know officially had retired from practicing law at this point in time. I rely entirely on staff below me and on the DAG's to make legal determinations.

WM: And they. . . .

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RC: So, so numerous other context, I'm no longer reviewing things as an attorney unless something really you know lights up for me. I'm just looking at it from a policy perspective.

WM: Shawn, anything further?

WM: Do you have anything you care to add to this before we terminate this?

RC: No I'm not sure if you needed any documents or anything from my files but other than that that's fine.

WM: If there's nothing further, the time is approximately 12:15 p.m. and we'll terminate this statement at this time.

**END OF STATEMENT OF RAYMOND CANTOR**

**Statement of Ray Cantor**

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**Legend: JK: DAG John Kennedy, Deputy Inspector General**  
**LL: DAG Louise Lester**  
**SS: Civil Investigator Shawn Stewart**  
**RC: Ray Cantor**

JK: Uhh I was just saying as in going through the interviews that were done and the materials there were just some questions that came up and I wanted to ask you some questions not really in any particular order but umm one thing we saw in in the one of the files we got is a memo from Lee Cattaneo through you to Commissioner Shinn

RC: Uhhh

JK: Ummm dated April 27<sup>th</sup> 99 and the copy and it's a status update on the A.R. DeMarco

RC: April 27<sup>th</sup> of 99

JK: Yes, and the copy that we have

RC: Can I see that.

JK: Absolutely I'm gonna show it to you I just want to tell you that the copy we got we got out of Pete Lynch's file it's only signed by Lee Cattaneo

RC: Yep

JK: Umm and I just wanted to ask you, first of all take your time to look at it and get familiar with it

RC: I will, I'm Im checking umm I had my files put into chronological order hopefully ummm it's all here go ahead you can talk as I'm

JK: My my question is gonna be do you recall the memo and do you know whether you sent it up to the Commissioner or not?

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RC: Ummm okay (silence) I have no specific memories of of this particular memo it doesn't mean it wasn't sent up although again the dates seem to be after I assumed a recusal date.

JK: Yes, that's right

RC: Ummm I can tell you I have a specific memory that anything after that date I had no further contact or would not send anything up to the Commissioner so I would doubt that it had been ummm I can tell you again I'm going through my stuff right now everything that I sign is and eventually passed up we keep a file on so you can talk to my secretary you can open up my files you can probably go through it by date to see if anything like this had happened. I have serious doubts that I would have sent this up to the commissioner after that point in time. But again, I'm still looking. You can ask further questions as I'm going through it.

JK: Okay alright and maybe after we're done we can, we'll go by and follow-up with the secretary.

RC: Okay.

JK: If that's alright with you.

RC: Not a problem.

JK: Okay the next area that I wanted to ask you about concerns possible tax consequences on and settlement agreements to the responding party umm does the department have any standard language that it puts in the administrative consent orders to address tax consequences or or does it have any does it consider them in its penalty settlements.

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RC: After all this happened uhhh you have to realize maybe a little bit of background. When I came here there was a bifurcation of part of the enforcement program umm at that point Marlen Dooley who is Assistant Commissioner for enforcement kept I believe the solid waste ya know the hazardous waste and and the water side was supply discharge and that I assume is quote the department that's one part of this. I took over the land use portions umm I have not consulted with her or we have not in sense work as a team where we had a uniform policy I have been told subsequent to ya know the DeMarco issuance that they do have a policy I believe in dealing with tax issues umm I did not question the people below me when they sent me an ACO with certain language in there. I did not specifically ask them about the tax issues or question them about that. I assumed whatever they sent me up was in accordance to how they had always been doing things ya know in Marlen's group. I never asked if there is anything different here from what how you normally do that so umm I think there is a policy umm whether or not that policy was followed in this particular case I believe possibly not umm from my understanding at this point in time at least according, talking to Marlen recently of how they used to do things or how you do things over in the water side of the program.

JK: Okay umm.

RC: Hopefully that was an answer for you.

JK: (laughing) I'm trying to think if I got all that.

RC: I I think the other side in enforcement program does have a policy whether or not it was

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followed here ya know I'm not particular sure but its not necessarily it not necessarily I don't have directions that I have to do everything that they do in the way that they do things I think there is also a separate mediation enforcement program here I'm not sure how they do things and I think parks and forestry also has ya know enforcement program of their own I'm not sure how they do things but to the extent that, and now aware of the tax issue it's it's an issue I wish I was more cognizant before we went into this whole thing. Okay.

JK: Alright and now now that its brought to the front burner umm what what's the department gonna do or.

RC: Ummmm.

JK: I'm not asking for final answer cause there may not be one yet, but.

RC: Uhhh uhhh Well I answer you this way umm based on the Attorney General's advice and I'm sure you got a copy of I've got the woman's name that who did that ummm legal opinion on tax consequences.

JK: Yes I think we did see that.

RC: Based on that I would have drafted the ACO differently in order to ensure that uhh Mr. DeMarco can not deduct uhh this off his federal income taxes umm and if I was making recommendation which I assume I will to Gary Sondermeyer at some point in time would be to amend the ACO to deal with that.

JK: I I want to ask you about the whole idea of taking of settling an enforcement action by

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taking in ummm one case title to some land and and conservation easement to the others.

Has the land use program done anything like that or similar to that in other cases besides the DeMarco one.

RC: My understanding is well we never had a case this large ya know in the program at least not one that ummm come to conclusion while I maybe the early cranberry case and maybe on an EPA lead I believe meeting JJ White there was no penalty on that one.

Ummm I a personally aware of several cases where we've gotten litigation and those types of in lieu payments as opposed to monetary penalty before I think we've done that with a golf course that I was involved with ummm there was one I think with the Hudson and Essex County jail where I think rather than impose a penalty we allowed them to set aside other wetlands and preserved those entirely. So at least in those two instances I am aware of that but again I only see penalties or involved with penalties over a certain dollar amount I think the threshold may be \$10,0000 umm Pete could probably tell you better as, as to what the threshold is and or if there is some political nature to uhh the settlement, I may get involved. I'm aware of the uhh at least those two I'm not sure about any others in the past.

JK: Are there are there any guidelines or or guidance to the department employees on either what cases might be appropriate for taking a land settlement versus cash or any other ya know criteria on how to go about doing it what types of things to look for.

RC: Not to my knowledge. Not to my knowledge at least not on the land side ummm at least

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ya know Pete I don't think there's anything in our regulations and Pete and umm Lee have not brought a policy guidance to my attention. Uhhh I don't believe that the other side of the program I don't think the water, you know, that side does that I know that EPA has a prohibition against doing it. Uhh in this particular instance as I've told ya know told the previous investigators umm I have a bias toward environmental improvements land preservation than toward uhh collecting monetary penalties so as long as the over all ummm goals of the enforcement action are complied with that being deterrence that being sanction I will still buy that then have environmental improvement as opposed to ya know money going into the general fund which again you never see. Having the flexibility that I thought I had I think I had umm in this particular instance after consulting with EPA I determined that this was an appropriate action I ran that proposal by my superiors and everyone agreed to it.

JK: And in this your case your superior would have been Gary Sondermeyer.

RC: Well. Ultimately ya when I first started with this case my superior was Judy Jengo then and Bob Shinn, Bob Shinn recused himself so then it went to Judy Jengo solely. Umm Judy then leaves so it becomes Kerri Ratcliffe and Mark Smith as new Chief of staff. Uhh Kerri and Mark leave and it becomes Bob Tudor and ultimately Gary Sondermeyer who signed off on the final form. But I think everyone in that whole chain throughout the beginning pretty much maybe Judy didn't know we were solely at at land but she knew we were looking primarily at at land donation umm and everyone had no problems at at

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all with that throughout the whole process. I also believe in and you could and I'm not sure you can ask Bob Tudor this as well that at some point when the final memo came up heres what we're gonna do, do we have your approval he may have reached out to Marlen and to Cathy Tormey to ask ya know what to you guys think about this I believe he got you know umm Okay I don't have this necessarily in writing or at least not formally that they said well this may not be something that we normally do but we think this is appropriate.

JK: Okay so you think that he he did that Bob Tudor did reach out first.

RC: I think he reached to them umm at least in an informal matter.

JK: Mmmuu.

RC: Again you may want to ask him if you haven't already.

JK: Okay.

RC: Actually I thought I had something in here but I if I find that I'll show you, go ahead, I thought I had these files in order and you still can't find anything when you want to find it I I'm still listening as I keep looking so go ahead.

JK: From looking at at some of the umm the internal e-mails that we got it seems like before the ACO was actually signed there was discussion with the press office umm about how this announcements gonna be made.

RC: That was probably all me, okay.

JK: And it seemed it seemed to me that there was some either agreement or consensus that

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the announcement was gonna talk about the environmental benefits of the settlement rather than portraying it as a settlement worth a dollar amount .

RC: Umm.

JK: Is that, go ahead.

RC: There, there, there were probably a couple different levels of e-mails and those concerns. I think that policy pronouncement may have been or or indication or umm philosophy may have been primary shared between Green Acres and Lee Cattaneo. It's possible I I know Is saw that mentioned to me after we already did the press release it went out and questions started coming back in and Green Acres said try not to focus on ya know the number try to focus on the environmental value and I said I agree thats what we should be focusing on. That came after the dollar amount went in. I will tell you my memory and my conversations with the press office Peter Page, I think I dealt with specifically on this we were always looking to umm to uhh to mention the dollar amount we were always we were looking to sell this as alright I choose the term sell we were looking to umm pronounce this to the public as being the largest penalty in terms of monetary value that the publics ever done on land use side so even though I know Green Acres may have had conversations prior to this in telling Lee don't do this its possible Lee may have told me that but I was never going in that direction I was always going, working with the press in in using a dollar figure.

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JK: Okay. How I don't know umm and were trying to schedule a follow-up with Lee Cattaneo as well but I'll ask you.

RC: I, I will just show you this by the way.

JK: Okay.

RC: It goes back to a prior conversation this I believe is a fairly late.

UM: July 14.

RC: No it's a different date. Umm I think this goes up in the final memos it comes back I like this settlement what are your thoughts this Gary going to Bob. Bob says I discussed this with some Gary and Marlen oh to me, Gary and Marlen before I actually read attached they were concerned that we were getting no pending no penalty money now that I have read proposal I see linkage between penalty amount and acreage see my something something whatever, but the bottom line is again that they ultimate, their had concerns but they ultimately I guess umm didn't stop anyway they ultimately approved.

JK: Mm.

RC: I'm sorry to have interrupted your last question.

JK: No that's okay umm oh we were talking about the press release and the dollar figure.

RC: Mmuhhh.

JK: Uhh for the settlement and I was telling that we were trying to sit down with Lee Cattaneo he may be the person to ask this but I'll ask you anyway umm when you were

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either talking to Peter Page or even in your own mind coming up with a dollar value for the settlement.

RC: Mmuhh.

JK: What were you basing that on?

RC: Solely on what Lee and through Green Acres were telling me what the value was you will see early memos were Lee tells me he talked to Green Acres and the value was \$594 or \$600,000 w-w-w- whatever the number was that he said it was ummm and I was obviously ya know really pleased with that since that was twice the amount that we had ever hoped we would get through a settlement. A day or two before the the we were going to make the announcement either that or a day or two before we actually went the thing with DeMarco I got a call from Cari Wild uhh she was a room with some Green Acres folks who said umm the 594 is wrong uhh I started panicking well what is right and they said we think you know it's close to \$300,000 I said well that's fine, that's really all I need, I'm disappointed but ya know that's really all I needed so thats where I got the long conversation but what happened there and values and how we ultimately come up with the value but umm it it was based on my reliance on what the Green Acres people were telling me. Which are, by the way I still believed that they under value based on ya know recent knowledge and and other transactions. They can speak for themselves.

JK: Do you know if umm you're your talking about memo's from may have Lee Cattaneo do

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you know umm when in this process he had contacted Green Acres to get uhh uhh a sense of value of of the property.

RC: Specifically when no but if you went through the memo's you would be able to find again it if if you'd really give me time I can go through all of these things I could probably do it in. . . .

RC: An hour or so I'd find which memo was the first one to talk about a, a dollar calculation.

JK: Okay.

RC: Again as as land was mentioned in various points of time umm and as the settlement began to take form at some point umm ya know a dollar figure ya know was transmitted over to me.

JK: Okay I think that it something we need to nail down and if, if Louise and Shawn don't have that already I will ask you to take the time.

RC: If you come back with after this to my office you both look through the memos and see if this was ever sent and then I can go through everything that I have umm and then we can do a back calculation and figure out some of the dates for you.

JK: Alright. Okay.

LL: That's great.

JK: Okay.

RC: By the way ya know I will again you guys have never asked for all my memos I assume you probably have all of them because you have everything that Lee and Pete had I doubt

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I have anything that they don't have.

JK: Okay.

RC: Im just ya know I haven't not given you anything if I have it, it's because you haven't asked yet.

JK: Okay well we doing have everything from Lee and from Pete so when we go back we can ya know so if there's any additional stuff well take that to. Why not.

RC: Okay.

JK: Ummm oh the effective date of the GP23 umm I want to make sure I understand this the rule was published in its final form in October of '99.

RC: I'm gonna take your word on that, (I/A).

JK: Okay and then what I understand is it didn't.

RC: Two things had to happen.

JK: Okay go ahead why don't you just explain what they are.

RC: My understanding is that the MOA had to be signed between us, Pinelands Commission, and the Pinelands Credit Bank and a certification had to be submitted that \$25,000 was put into a separate fund for (IA) mitigation. Maureen McGantage (sp) who is on my staff uhh had the responsibility in working out the MOA language and working with our financial people to make sure the money was put in to that separate account. Once that was done then a notice in the register had to take place which said these contingencies have taken effect uhh therefore the rules in effect and now your time period to submit all

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ya know is now in play.

JK: Okay and that's why the press release would have said the GP23 became available in April of 2000 that's where.

RC: Right as opposed to the adoption of the regulation that's correct.

JK: Okay Louise do you have any other questions?

LL No, no thank you.

JK: Shawn?

SS: No I don't have any other questions.

JK: Mr. Cantor is there anything else that you want uhh add?

RC: No not at all other than the fact that we can go back to the office and look, search out whatever documents you want.

JK: Okay.

LL: Thank you.

JK: Thank you.

**END OF RAY CANTOR STATEMENT**

**Statement of Leroy Cattaneo**

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**September 28, 2000**

**Legend:      WM: Civil Investigator William McGough**  
**SS: Civil Investigator Shawn Stewart**  
**LL: DAG Louise Lester**  
**LC: Leroy (Lee) Cattaneo**

WM: The date is September 28<sup>th</sup>, the year 2000, the time is approximately 10:16 a.m. The place is the Department of Environmental Protection in Trenton, New Jersey. Present is myself Investigator William McGough, Investigator Shawn Stewart and attorney Louise Lester from the Inspector General's Office and Leroy T. Cattaneo. For voice identification, Shawn if you would identify yourself please.

SS: Shawn Stewart.

WM: Louise if you would identify yourself please.

LL: Louise Lester.

WM: And Leroy for voice identification if you would identify yourself please.

LC: Lee Cattaneo.

WM: Mr. Cattaneo your current position with the Department of Environmental Protection?

LC: Currently I'm Director, Office of State Plan Coordination.

WM: And how long have you been with DEP?

LC: I've been with them approximately since 1973. I was out for about a year and a half in that time.

WM: And how long have you been in this current position?

LC: About a year and a half.

WM: Your date of birth sir?

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LC: [Redacted]

WM: And your social security number?

LC: [Redacted].

WM: Thank you.

LC: And I register my objections to using my social security number for identification.

WM: So noted. For the record, uh, for the last hour and a half or so uh, the four of us have been discussing uh, your knowledge and involvement and direction of the uh, investigation if you will and proposed settlement in the DeMarco case. Is that accurate?

LC: Yes.

WM: And as we discussed that we try to put together a time line and uh, develop some accurate recollections of what went on and when it went on and why and those, those were the questions we were discussing. Is that accurate?

LC: Yes.

WM: And what we have determined at this point is there uh, has been presented material that we would like to memorialize on tape and uh, we have all agreed to go back over the information and allow you to memorialize on this tape recorder the specifics of what you did and when and why it occurred. Is that accurate?

LC: Right.

WM: And it's obvious to you uh, that this is being recorded, the tape recorder is sitting on top of the table. Is that accurate?

LC: Yup.

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WM: Thank you. In the uh, general time frame of August of 1998 um, one of the DEP investigators, Mr. Higgins, was originally contacted directly by representatives of the Department of Environmental Protection, or excuse me, the Federal Environmental. . .

LC: Protection Agency.

WM: Protection Agency, uh, with reference to some possibility of some violations within the Pineland area. Is that correct?

LC: That's correct.

WM: And one of those areas that they presented for a possible violation was the DeMarco property, is that correct?

LC: That's correct.

WM: And as a result of that contact by EPA um, there was eventually an investigation conducted um, originally by Mr. Higgins then others within your organization to determine if there was a violation and to what extent. Correct?

LC: That's correct.

WM: To the best of your recollection, when do you become involved in with knowledge of this investigation and your eventual coordination of it?

LC: Well I was aware of it basically from the start uh, as in after the fact because uh, when I, I had found out that through uh, other persons that we had been contacted by EPA with this violation and when that came to my attention I had talked to Pete Lynch who was the supervisor, uh er, the Bureau Chief at that time as to why we weren't notified. I mean that was something that I should have been notified about and he should have been

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notified about uh, from day one with that type of contact because uh, specifically the investigator that was looking at it from EPA was, is on the criminal side and we're required, uh, you know our Standard Operating Procedure with the, that you're taking part in that type of investigation, you contact the Attorney General's Office and we were notified so there was a mistake on the part of the initial inspector by not notifying us.

WM: Okay. But eventually the, the investigation progresses and there's an involvement where you're now taking coordination and control of that.

LC: Eventually yes but not initially other than my initial displeasure with how it started out. Um, I did not become that involved with it until such time as the case developed a little higher profile.

WM: And, and how did that occur?

LC: Uh, that occurred mainly in, through newspaper reports and the fact that the uh, U. S. Fish and Wildlife Service was involved with it.

WM: And I think we discussed this before that um, procedurally this may appear to be, this case and the way it was handled and by whom it was handled, may appear to be uh, somewhat of an aberration but the reality of it is because of the involvement of other outside agencies and the profile and some newspaper articles there was a need generally within this organization to make sure that this was done right by the book and right by the numbers in every instance. Is that correct?

LC: Yes and, and that's why it was assigned to the particular inspector, it was our most probably experienced inspector that we have with matters of this sort, he had previously

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uh, participated in court cases, uh, he had, he had testified in court in both the State and Federal level uh, he was a former uh, inspector for the uh, Corp of Engineers and this case in itself is based upon compliance with Federal law more than because of, of it's location in the Pinelands we only regulate to the extent that uh, the Federal law applies. We do not regulate to the extent that the State Freshwater Wetlands Act applies in other portions of the State.

WM: We had some discussion previously as this investigation is progressing and you, you're, are beginning to assemble a team of people that will, will look into all aspects of this. There are some, what I will, my word, delays being incurred because of some inherent conflicts and jurisdiction and law and what's going to apply and we had quite a discussion about that and I'd like you to explain that in some detail if you could.

LC: Sure. When uh, let, let's, let's, let's go back a little bit and say the property itself is fenced in posted with no trespassing signs, the area where the work was undertaken is not that visible from the road you know, you might be able to determine it but it wouldn't be visible driving by today, unless you knew there was a violation there and you really went and looked. The uh, we knew that we were only, only gonna have a limited opportunity to go on site with them, that's why the team was assembled and we decided that we really had to know what we were regulating before we went in there and tried to document what the violation is. Uh, the Freshwater Wetlands Protection Act statewide with the exception of the Pinelands regulates activity such as cutting vegetation, removal of soil and filling which was, were the three major activities that were undertaken here in order

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to create uh, cranberry bogs within a wooded area. However, in the Pinelands we only regulate to the extent that the Federal government regulates and at that point in time the Federal government regulated the, only the discharged, uh, what they call dredge to fill material. So you could actually go in and cut down all the trees and remove the soil as long as you didn't spill any back in basically. That would be for anyone. There was, uh, another question at the Federal level as to what is, would be agricultural activities and what are not, the actual construction of these cranberry bogs is a regulated activity in and of itself, that's applied very differently in the regions, the Federal regions across the State. We had had experience before with them applying the regulations differently uh, in a, a case uh, called Mt. Bethel Humus. I didn't explain this before I just happened to think about it. Was, and, and this was a case again that was split between Region 2 which is the New York region for EPA which services all of New Jersey and the Corp of Engineers which is based on not State lines but drainage basins, water basins and they're in Region 3 which is out of Philadelphia so the New York corp and the Philly corp are different in, in what they, they enforce. And in the Mt. Bethel Humus case we had EPA Region 2 telling us that the removal of humus from the wetland was a regulated activity and we had the Philadelphia Corp on a, an adjacent farm telling that farmer that it wasn't a regulated activity so there was a concern as to what exactly are agricultural activities, whether non-agricultural activities and what the Federal decree that we would regulate that for our purposes because we could only regulate to the degree that the Federal government did. Complicating this matter is on the State side, the Federal, uh,

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Freshwater Wetlands Protection Act saying that we regulate to the extent that the Federal government does and another State law which established the Pinelands region itself said that all State activities must be consistent with the Pinelands Comprehensive Management Plan. The Pinelands Comprehensive Management Plan is both a Federal and State document. Pinelands is Federal and State and the, the commission even has a Federal member on it so we have this other document called the C & P that specifies that agricultural is not regulated at all so you can do just about anything you want in the Pinelands as long as it's agricultural and it's not regulated except for agricultural house, that's, that's the only thing under agricultural that they have to need approval for, is the housing aspect of it. And so the position that DeMarco had initially indicated to us is that what he did was not regulated due to the fact that the C & P exempts agricultural activities, Pinelands said DeMarco is not regulated by them at all and the fact that says any State action must be consistent, any State agency action must be consistent with the C & P. We can't do anything that is inconsistent with that so their position was that our regulating them was inconsistent with the C & P, we had no authority to do it so there was this protractive discussion with our attorneys and, and DAG's on it as to whether or not we were going to have any jurisdiction in this particular case. Also knowing that we, this was going to be a high profile case that was undoubtedly at that time we thought would litigated that we wanted to make sure that everything we did was admissible in court so we had to make sure we followed all procedures for access to the site. We wanted to make sure that everybody that went out on the site was capable of being

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qualified in court as an expert witness so we only got uh, people that had been qualified prior to that. We even had our key I S person that was out there was from another program because we wanted to make sure that the person using the uh, locational device, so when we went out and did these locations was qualified to, to testify in court so that's why we had a team approach for this. Normally we don't do that and, and your quite correct when you're saying that it took us a long time to put together a team and that was something that we normally do not do. The purpose of that being, this is not a normal case. This is a case that was very high profile, that was brought to our attention by EPA, that was the subject of uh, correspondence from U. S. Fish and Wildlife Service that was sent to the newspapers before it was even sent to us. That it was a high profile case and it was handled that way.

WM: I think some of the wording that you used before sort of sums that up that you described this investigation as very slow and deliberate and cautious to the point of making sure you followed all the rules and regulations appropriately.

LC: That's correct.

WM: At some point, after you conducted some of your testing, done some overflights, have some maps and charts to show, DeMarco through his attorney has been shown some maps of some wetlands and there seems to be at that time a little movement on his part away from we're not regulated to maybe we may have done something wrong here. Is that fair?

LC: Uh, maybe we have done something that's regulated, I, I don't think they ever took the

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position that they did something wrong. I mean even to the end they're saying we didn't do anything wrong, we will in order to placate the State we will do these other things so there was never an admission of wrong.

WM: So it was an issue of regulated versus unregulated?

LC: That's correct. Not an issue of right and wrong.

WM: You were very actively involved in the negotiations and decision making processes when we decide that uh, if we can settle this we obviously won't have to go to a litigation thing so there is, there is a beginning of a, uh, of some discussions about trying to settle the case. How did they begin to evolve?

LC: And, what uh, what, I think we had talked about was that normally we, we need to kick start those type of discussions with, with the uh, the person that, that has conducted the activity. However, in this case the DeMarcos represented by a former DAG that was well aware of our settlement positions that we normally try to settle a case if at all possible due to litigation risk and cost and everything else and at that point they said if we're going to, we will consider applying for a permit and again, one thing that changed was the fact that the State now was going ahead with the general permit for the cranberry, where they felt that the activity that, that they did and I, I can't tell you that it is but it seems to be consistent with what would be required under a general permit, however, with more acreage, it would require uh, a three year period for the general permit but it would not require an individual permit that would have been normally required without having the general permit available. The individual permit is more difficult to obtain because the

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general permit starts out with the assumption that the cranberry operation is water dependent and has to be done in an, in an area where there's water. Uh, while we may say that you need water for it that's obvious. The general permit not having been, the general permit has already made that out to the public and your applying to use that underneath that determination. In an individual permit you would have to go back and prove that the cranberry operation is water dependent and go through that whole testing so they were reluctant to do that.

WM: That individual permit is as you described very time consuming and also can be very costly for me to support my position when I'm trying to get that individual permit.

LC: Yes, it, it, it would require uh, you know studies and everything to do to show that the cranberry operation is a water dependent use. So it's actually going to be a two step process, you'd have to prove that it was a water dependent use and then what you were doing there would have to meet the other environmental concerns.

WM: But at the time that we can, we can best estimate that DeMarco increased the size of his farm into this 22 acre area. The only thing that would have been available to him assuming it was a regulated activity, would have been the individual permit.

LC: That's correct. The general permit was not available.

WM: But current time as we approach the time to settle the issues the activity that would have been governed strictly by an individual permit two, three years ago is now covered by a general permit which in and of itself may be much easier to obtain.

LC: It was, we had proposed a general permit so it would have been public noticed and that

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was a clear indication that we were going ahead with this at that point even though that permit actually was not available to them because it was still in a proposal. DeMarco said if we're going ahead with this through his attorney. I never, I never spoke to DeMarco himself the only person I ever spoke to was uh, was uh, Tony Drollas, the attorney. Uh, he indicated that uh, they would be willing to enter some sort of settlement provided that we let them apply for the general permit.

WM: And using the, the encroachment factor of ten acres per year, he would then come into compliance in three years?

LC: That's correct.

WM: So as you have said because of the, uh, Mr. DeMarco's attorney had some knowledge of process within the State organization and, and DEP, um, there are some uh, there's some movement here about trying to settle as oppose to litigate. Are there any particular offers that Mr. DeMarco's attorney is, is making or putting on the table?

LC: We, we had talked about a penalty settlement and all I had told him we never divulged what we thought the penalty would, would be. I told uh, when I say DeMarco I mean

WM: Right.

LC: The corporation not the individual okay. When I told them that uh, we needed a very substantial settlement it had to be something uh, we past the (Laugh) test is basically how I characterized it to them. Something that said yeah this is something that represents a uh, an interest of the State and at that time we were looking at what we had in mind was around \$300,000.

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WM: Which was without his knowledge about 50% of what you had formalized the penalty to be?

LC: What we had formalized the penalty to be based upon our best position okay and I, and I would like to say that, that's probably not what we would have been able to go with because of the way the penalties are set up and, and I'd like to get, get that on there now that the penalties are based upon conducting the activity not and it's different then just some of the other ones that say you do it and everyday that remains after that is a violation, this says everyday you conduct the activity, it's a violation. The activity here is discharge of fill material not clearing anything off. We calculated the \$600,00 penalty based upon their ability to clear 22 acres to stump 22 acres and fill 22 acres taking approximately three days per acre to do that times the \$9,000 penalty that was calculated as a result of using the penalty matrix and came up with almost \$600,000. Uh, I doubt, seriously doubt, that we would have been able to, if we went and presented that to the judge and the judge would have said well you don't regulate cutting and you don't regulate the removal of the soil so lets take two-thirds of that penalty and throw it away so you know I mean to me that's probably what would have happened even if we had went the case, let, took the case to court and won.

WM: But all of that having been discussed. . .

LC: All that being said yes.

WM: You did not obviously divulge any of that to the DeMarco Corporation and you simply said we're looking for somewhere around \$300,000.

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LC: I didn't even say that. I said we're looking for a very substantial settlement.

WM: Okay.

LC: And...

WM: And where does it progress from there?

LC: Well at, at that time they said well look instead of you know, what are you talking about and I said well you know we want, it's gonna be in the six figures, you know I never said

SS: Mmm hum.

LC: We want exactly \$300,000, he said well we can't do that you know and uh, they then went back and, and I guess talked then they called me and said well look can you, would you accept some land donated, some sort of donation to the, the State of land or do uh, some sort of other activity um, go in and, and uh, restoration or anything and some cash and I said yes because we normally do that. So then they came back and said we have this tract of land that the State had indicated interest in, this was the 540 acres whatever it is. Would we accept that? And at that point I checked with our, uh, he had told me that they, the State had expressed an interest in it. I checked with uh, Jack Ross over in Green Acres, John, and he had indicated to me that the, DeMarco had previously turned down an offer of \$649,000 I think it was for this property and I think there may have been the other two lots may have been included with that as a package. And he said yeah if you can get that, that's fine so I went back to DeMarco's attorney and said give us that property - and some cash, we still had the cash on the table and at that time we're thinking \$20,000 - \$25,000 and the property. They came back and said no. We're not,

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we don't want to give that property up. So I said to Tony, I said okay why, you know what's your interest in keeping this? I was using my "interest based" negotiations training.

SS: Laughing.

LC: I said what's your interest in keeping this? And they, he, he told me that they wanted to protect the head waters of their cranberry operation, he had an interest in doing that, they didn't want the State going in there and doing whatever they wanted to do. I said well our interest in this is having the Batona Trail because it crosses the property which they didn't even know, he says what trail? You know they didn't even know that it crossed their, their property. And having this property remain in a natural state, this is what we want to do because it's, it's adjacent to uh, a State forest and it is highly visible from uh, a point out there called Apple Pie Hill. It has a, there's a tower on it and everybody that hikes along the Batona Trail goes up Apple Pie Hill and stands up there and looks out on the Pinelands and we didn't want this area you know cut down and, and put into an agricultural or, or use it for a horse farm or whatever so that was our interest in keeping it natural uh, this is, there was a study done that indicated that this is one of the last remaining large tracts of land in the State and is highly desirable to obtain this land uh, there are all kinds of species, er uh, wildlife species and stuff and actually the report is an appendix to the proposed settlement agreement and it outlines in there what the characteristics of this property is and why we wanted to maintain it and the settlement agreement says that those characteristics have to be maintained so we have this, this

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report that was done that says what it is that we're protecting and we know what it is and we said look we got this, this is what we want protected. If you can do that and give us the public access on the Batona Trail, that takes care of our interest and if your interest is maintaining uh, some control over this property and the water rights from it and you want to retain ownership, we can satisfy both of our interests. Now we have this other \$25,000 out here and he wants to pay. He goes back, comes back to us and said will you take more property for the \$25,000? We discuss it internally uh, I talked to Ray and, and at that time it was uh, Kerri Ratcliffe and say yeah we'll take more property if it's something that we want. He says if it's a piece of property within Bass River State Forest surrounded by State lands and another piece of property he said named Pygmy Forest. So I said I'll find out about these, I called over to Green Acres and they said well look that was, yeah that was all part of this prior offer. Can you get something else? So I go back to them and I say what else do you have? We want some more and that's when they offered up another piece of property that was in an area where some of the NGO's, non-governmental organizations and the uh, Natural Lands Trust was acquiring property and they said we can give you that property. This actually has uh, in order to access some of the other property that has been obtained uh, by some of the conservancies you'd have to cross his property so they, they offered that up, everybody looked at it and said yup that, that's very, that's the property we would want, it, it, you know is uh, building a chain between two State lands is what this is, so this is a conservancies are really connecting uh, I think it's Lebanon and uh, the Wharton tract or one of those tracts. So it's a

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connection between two big chunks of State owned land that's being built and filling in the uh, a hole within Bass River State Forest. So we thought it was a pretty good deal.

WM: The three additional pieces, leave, setting aside the 500 plus acres first. . .

LC: Right.

WM: They are uh, deed transferred to the State correct?

LC: Yes and in entirety, they're total acquisition.

WM: The 500 plus acres was done in such a way as you described it to satisfy the needs of both sides. He maintains ownership so he can, it's deeded still to him so he can maintain his water use rights if you will but he restricts it in such a way with easements and deed restrictions to satisfy what the State wants to see for the future.

LC: Right, and, and, one of the other things that you know he has a cranberry operation, if he ever wanted to sell that to somebody, if they want to go in there and buy it from him, their question to him would be well where do you get your water, you know and uh, how's that protected? So, they, he owns the land now I mean that's why they bought that land to begin with was so that he could have maintained the water that he needs to do his cranberry operation. So that was, what was, I'm not saying that, that's correct. . .

SS: Right.

LC: I'm saying that's what he indicated to me, was their interest in it. That they wanted to maintain ownership of it so in case they ever want to sell the operation, they can sell it with the water rights and everything to it.

WM: The terminology comes up in, in the settlement agreement of donation. Um, is the final

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agreement in such a way that Mr. DeMarco or his corporation is in fact donating all of this land to the State of New Jersey as opposed to, in lieu, satisfying a penalty in lieu of cash?

LC: There is no admission on DeMarco's part.

WM: Of any wrongdoing?

LC: Right.

WM: And how are these properties conveyed? The three that are going to be conveyed were the deed actually changes names how are they in fact conveyed?

LC: Two of them are being conveyed, well they're all being conveyed to the State of New Jersey, two to be administered by Parks & Forestry and one to be administered by Natural Lands Trust.

WM: Is there any consideration for that?

LC: I think a dollar on each is normal.

WM: And, and the conveyance of the, he is just simply agreeing to place restrictions on the 500 plus acres? There is no conveyance of deed there?

LC: There, well there'll be a conveyance of, for again for a dollar of a con, deed of conservation easement. So it is a deed and it will be filed in court and this just, but it's a deed to the rights more than the actual ownership of the land.

WM: Now that we have this proposed agreement pretty much settled, satisfying both sides, who is the ultimate decision maker that says from the State's perspective okay we'll do this?

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LC: Well, the, the Commissioner had recused himself of this. The, by written delegation the agreement would be signed by the Administrator of the Program. Uh, many other people with the exception of the Commissioner and Mike Hogan were consulted on this, so at various times we consulted uh, the Deputy Commissioner, Chief of Staff, they had all been made aware of what was going on by way of memorandums that I sent through Ray Cantor to them.

WM: Is it unusual for the Commissioner to not sign a settlement agreement in any case?

LC: I think it would be unusual for the Commissioner to sign one. It's just about every program has delegated authority down to the similar level.

WM: So with, with you or someone of your position within DEP, negotiating and finalizing and approving a settlement is not an odd situation.

LC: That's a normal situation it would be the only way that would be done different is if the higher level came in and said I want to exercise my right under the delegation agreement to take the authority away from you and I want to do it, but other than that the Administrator has the authority. In some cases, uh, it's delegated down even to uh, the Bureau Chief or Section Chief.

WM: You mentioned and we discussed this previously about the Commissioner recusing himself in this situation.

LC: Yes.

WM: Approximate time frame was May or June of '99.

LC: In, in that approximate time frame is based upon just my recollection that it was about the

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time that I was changing positions and which was June 1<sup>st</sup> and I was actually doing both jobs from February to June. Uh, June I made a break and actually stopped doing both jobs and concentrated on the other one. So it was around that time.

WM: And this was done I think you said by a phone call.

LC: And, it was done by a phone call and why I'm saying it was around that time because the only time that we can really fix as to when it was done, was it was prior to the Hearing on the GP. Uh, my recollection of that, Pete Lynch's recollection, we all knew that it was sometime prior to that because we were talking amongst ourselves at that time as to who was going to conduct the Hearing, you know with the Commissioner recusing himself, what did that mean? I had checked with Mike Hogan on it and Mike Hogan says uh, to continue doing the way we were doing and we didn't need anything in writing and then Mike recused himself of any further discussion with this and like I indicated before I had never talked to the Commissioner about it other than the phone call.

WM: The phone call came to your home I believe?

LC: Yeah at home.

WM: And what was the general gist of the conversation between you and the Commissioner?

LC: Lee I'm recusing myself of this, you stay with it. Goodbye (Laughing). That was it.

WM: And from that day forward til and even probably until now with the settlement still unfinished, what conversation have you had with the Commissioner regarding the procedures that were followed, settlement negotiations etc.?

LC: None whatsoever.

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WM: Has he contacted you?

LC: No.

WM: Um, did you ever get the impression that there was uh, third party contact trying to uh, him contacting you through a third party for example?

LC: No, and, and the reason that's almost a humorous question in there because there was no contact, I mean I had absolutely no guidance whatsoever.

WM: Okay.

LC: You know what I mean so.

WM: You were on your own?

LC: I was on my own you know and, and between me and, and Ray we were working on this with absolutely no influence whatsoever, that I'm aware of you know. I can't tell you if Ray had any influence but I'll tell you I did not, at all.

WM: We also had some discussions about uh, towards the end where we're, we're, trying to finalize a settlement an urgency that you discussed, we discussed, an urgency in settling this case and that was the result of some contact from EPA.

LC: Right, EPA was concerned uh, there's a provision in the Delegation Agreement that says that we must take timely and effective I believe is the wording enforcement action. Uh, they were receiving inquiries from environmental groups, Fish and Wildlife Service and in responding to newspapers I guess that we were not taking timely and effective enforcement issues. I was in contact with Dan Montello who would be the person actually, staff person doing their enforcement actions up there. Ray was contacting

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Division Director up there who was Kathy Callahan who does their permitting and enforcement, so it's the overall program responsibility. Uh, advising them where we were going with this and I think that Dan understood being that he was from formerly with the Corp of Engineers about what it takes to put together a defensible enforcement action it's not something that you do overnight and all this time we were proceeding with this we were negotiating into settlement agreement, we were also getting uh, legal opinions as what our authority was and we were putting together a very comprehensive and defensible inspection report, it was probably the best inspection report I've ever seen, and, and the most sterile one I've ever seen for any case that we've ever done.

WM: There was one other issue that we covered that I would like to memorialize here. We discussed the telephone call in May or June of '99 where the Commissioner uh, officially recused himself.

LC: Yes.

WM: What I have in front of me and I showed you this earlier is a letter from the United States Department of the Interior. It's dated September 17<sup>th</sup> of '99 and it's addressed to Robert C. Shinn, Commissioner, and it says Dear Mr. Shinn in reply to your letter of August 19<sup>th</sup> which on it's face would seem that we still have involvement.

LC: Mm hum.

WM: But your explanation is?

LC: That letter verbatim was written by me.

WM: And it would have gotten addressed to Mr. Shinn, why? Your, your guess, best guess or

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speculation. The response which is addressed to Mr. Shinn.

LC: When, yeah the response because uh, the letter went out under Commissioner Shinn's signature because it went through the Correspondence Unit and they, they put the signature on it and send it out. I mean it's just standard procedure.

WM: Okay. This letter was composed and written by you?

LC: Yes it was.

WM: Without any input or influence from Mr. Shinn?

LC: That's correct.

WM: And this response obviously was in response to what you had sent to um, Fish and Wildlife Services.

LC: It was a response to a, we have what is a refer, known as a Referral Unit in here. Uh, when these letters come in they look at it and assign it to someone, we prepare the response and it gets sent back up to them uh, most of the time unless it's to a legislator or something like that it gets stamped with the Commissioner's signature and sent out. I mean that's.

WM: Thank you. Shawn do you have anything you care to ask?

SS: No, no questions..

WM: Louise?

LL: No I don't thank you.

WM: Do you have anything that you care to add uh, Leroy before we conclude this?

LC: I, I, I would just like to know, let's, let's get back to your question that you had asked me

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before about what do we tell the uh, gentleman in Camden County in the three bedroom ranch house that says what does this do for me and I'd, I'd like to say well it, it, fills in one of your State parks, it goes towards providing a green belt link between two parks, which is uh, the, the area that's being acquired

WM: The time is 11:03 a.m. Uh, the tape ran out on side one, it has been turned over and restarted. Um, Mr. Cattaneo you were discussing um, some issues that were brought up previously before you continue, there were not any discussions other than me flipping that tape over, is that accurate?

LC: And me saying I was on a roll. (Laughter)

WM: Um, where you were in that conversations earlier I had brought up an issue to you if, proposing you, hypothetical, with reference to this settlement, what do you tell the uh, homeowner in Camden County sitting in his bedroom home, what does this do for me/the State of New Jersey and you were addressing that issue, please continue.

LC: I, I, what I said is that it, it fills in a hole within the State park system. It goes towards a green belt connecting two large tracts of State lands that are out there. This is, was the area that's being required by the uh, conservancy groups and the Natural Lands Trust and it goes to protecting the rights of the citizens in the State of New Jersey to use the Patona Trail which crosses DeMarco's land that he could at any given time say no I'm blocking this trail and you no longer have one of the longest, oldest trails in the State and it also protects the view from Apple Pie Hill. I mean how many people want to hike up to Apple Pie Hill and stand there and look at a denuded tract of land that maybe somebody's

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using now for uh, blueberries or horses or whatever he wants to use as because that's what would be allowed even with the Pinelands credits taken off of it, which we didn't talk about. And, the, the other thing is we're now conserving it. All the natural features of this land that were identified in a report that was prepared several years ago that went, when we went to acquire this property. So we know what the natural features are. We know why this whole area should be suited for acquisition. This is one of the areas of the State that's a large tract of unbroken, undeveloped land around and we want to keep it that way. This agreement does that. It protects those interests. While we might not own the property, while people may be upset about it, it protects what the State wanted to do in there. It gives us a big chunk of land out there.

WM: And the other issue that you brought up that uh, we can address briefly is the Pineland Development Credits um, the acre, the 500 plus acres that Mr. DeMarco owned um, comes with development credits that uh, sort of compensates people for restrictions that have been put on their land and he has the ability to sell them to recoup some of those technical losses that uh, he has because the State has restricted development and the land that he is retaining ownership for but deed restricting for the, to satisfy the State uh, he has in fact to our knowledge taken those Pineland credits and sold them to the State, correct?

LC: To my knowledge.

WM: Okay.

LC: However, let me expand upon what you said. You said that this is for uh, shall we say

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property rights, property values that were taken from him, Yeah that's right but taken from him in 1979, okay I mean that, that's what this is about. This is not what was things that he's losing today, okay this was in 1979, they passed the Pinelands Protection Act. You know a lot of the reason they did that is they were gonna build a jetport out there. I mean that was one of the things that was proposed. They were gonna have a major international airport out in the Pinelands, a bunch of other things they were gonna build there. Went and they passed the Pinelands Protection Act. That devalued in their minds, property owners minds how much this property was worth. If we were to compensate them for the, the, for what they owned in 1979, they put on what is known as Pinelands Development Credits (PDC's) that would allow if you were in the preservation area or the agre area to take those PDC's and sell them to a builder who then can take them and build at a higher density in one of the Pinelands growth areas. So it's a density transfer program and an equity transfer program that goes back to what happened in 1979 okay. For whatever reason, DeMarco did not elect to but we'll say sever the credits from the property or strip the credits so that you can sell them so the credits are there but in order to sell them you have to go to Pinelands Commission, get a letter of interpretation that says this property has these many credits associated with it, take that letter to the PDC Bank and say I want to sell my credits, those credits then go into an auction, a public auction, builders bid upon it and then you get the money back.

WM: Okay.

LC: And, and we had discussed it, I just want it on the tape that at one time these credits were

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not selling for that much and there was no incentive to do it so there was another law passed a couple years ago that said the State will buy the PDC credits at 22 whatever the fixed rate. Subsequent to that, the PDC's have been selling much higher like some thirty some thousand dollars, thirty-two thousand, the last sale was. We knew, when I say we I'm talking about Ray Cantor and I, knew and were very aware that DeMarco was going to sever the PDC's from these properties so that he could sell them, and that factored into our decision. We were still comfortable with it and everybody else was comfortable with it. What we did not know and I don't know who knew except Jack Ross was that the State was going to buy the PDC's from DeMarco at less than he could have sold them for on the market so whatever that, that was I mean, I don't understand that myself and I never even thought that he would be doing that because he could have gotten more money selling them on the market, plus if it's sold on the market then the builder can take and build somewhere with those credits. The State buys them they retire the credits so that way the houses don't even happen so you get a benefit somewhat by having the State buy it. DeMarco gets less money and yet everybody still in, in an uproar about it. So I don't understand that. . .

LL: And. . .

LC: And I just want to put that out there and on record because I don't understand what the uproar is about. He sold his credits to the State. The State retired the credits. He could have got more money. . .

SS: (I/A)

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LC: If he sold it on the market based upon the last sale.

WM: And the credits could have been used by a builder who bought them to build at a higher density (I/A).

LC: Higher density than most of the towns want out there and, and that, that's another issue also.

WM: Okay. Anything further? Sir?

LC: No.

WM: The time is approximately 11:11 a.m. All those present at the beginning of the taping of this statement are still present at this time and we will terminate this statement.

**END OF STATEMENT OF LEROY CATTANEO**

**Statement of Leroy Cattaneo**

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**Case No. 00-0031 IG**

**November 8, 2000**

Louise Lester, DAG  
Office of the Inspector General

Leroy (Lee) Cattaneo, Director  
Office of State Planned Coordination, DEP

Shawn Stewart, Civil Investigator  
Office of the Inspector General

Lester: Okay. I'm here with Mr. Lee Cattaneo with DEP. I'm Louise Lester also present is Shawn Stewart. Today is Wednesday, November 8, 2000, and I'm here to ask some follow up questions of Mr. Cattaneo concerning the DeMarco matter. Mr. Cattaneo you're aware that the tape recorder is on and you have no objection to taping this being taped. You also have a tape recorder on and you're taping this simultaneously. Is that correct?

Cattaneo: Hmm hmm

Lester: Alright. Um, as I explained before I turned on the tape recorder we have um just some follow up questions to ask concerning the interview we did with you previously.

Cattaneo: Right.

Lester: Um. And the questions are basically just for clarification to some things that we didn't have answers to. The first thing I'd like to ask you about is um the list of properties done by uh US Fish and Wildlife. I wanted to know if you could tell me the status of each of these um alleged violations.

Cattaneo: The current status?

Lester: Yeah, the current status.

Cattaneo: No, I cannot.

Lester: Okay. Who can help us with that?

Cattaneo: Uh, either Pete Lynch should be able to.

Lester: Okay.

Cattaneo: He's the admin, acting administrator now.

Lester: Okay.

Cattaneo: I'm not. I was, just stayed on with the one case.

Lester: Okay.

Cattaneo: It's the only one I continued with.

Lester: Alright. So I should talk to Mr. Lynch.

Cattaneo: Yes.

Lester: Okay. That won't be a problem. Alright, I also wanted to ask you about this memo which is dated September 30, 1999 and it's addressed to Eileen McGinnis um, and it's from you through Judy Jengo.

Cattaneo: Right. Judy Jengo....right

Lester: And what we wanted to know is um why was that memo sent to the Governor's office.

Cattaneo: Normally, before we do any sort major action whether it's a settlement or new rules or anything else we brief the Governor's office on it. It is also a requirement when we're doing uh, a new rule we have to do, uh a notice over to the Governor's office, so in any major action that's routine to do.

Lester: Okay. Um, let's see. Turning to a page in the statement, this is a transcription of the previous statement you gave us on September 28. And um in the statement we needed some clarification you stated, "We normally would take land or restoration plus cash." What other, we wanted to know what other cases have you taken land or restoration so let me see if I can point out specifically where that's stated. Would you accept some land donated, some sort of donation of state land, some sort of other activity um restoration or any...and you say we normally do that and what I'm, I gather from that is that it's not uncommon for DEP to take land in lieu of money. And uh what we wanted to know is had you done it in the past and in what cases did you do it.

Cattaneo: Specific cases I, I, we had a case in Cape May where we were proposed to do a land swap on it. I don't think that ever went through. We did one in Bricktown uh where the land and both of these were where the lands

adjoin either state or conserved lands and the one in Bricktown was lands that we had taken that went to a uh the wildlife refuge, the federal wildlife refuge and we had and there was another one in Bricktown also and um I forget the name of that case but and I think there were a couple others that we had done. I don't recall exactly the cases but one of the things that I, I do recall is that sometimes they would be listed as property donated to the state and we were trying to have that not listed that way.

Lester: Okay.

Cattaneo: Because it would appear that they were then making a donation when it was in lieu of a penalty.

Lester: When it was in lieu of a penalty.

Cattaneo: Right.

Lester: And have you done that? Have you accomplished that not having the

Cattaneo: Yeah the...

Lester: Donation language

Cattaneo: Well, no, it's not the language. It's just like every year Green Acres gives out a report and they list donors of land in there and we didn't want them listed as donors of land in there so.

Lester: Um, now are there procedures to take land in lieu of money as a penalty?

Cattaneo: Are there procedures?

Lester: Yes.

Cattaneo: No. Do we have formalized procedure?

Cattaneo: No.

Lester: .... to take that....

Cattaneo: No written procedure.

Lester: And how is it decided when it's appropriate to take land for cash?

Cattaneo: When it's offered. When it's, it's clear that we may not get the money. Uh, in, in some of these one or the other cases we would dealing with a

bankruptcy, well actually two other cases we were dealing with bankruptcies.

Lester: Okay.

Cattaneo: And if you're dealing with those it's very difficult to get any money out of it you sort of go to the bottom.

Lester: So it can happen in um any situation for example I violated a provision of the act and I, I don't have any money but I could offer you some type of property as um a potential settlement

Cattaneo: Well

Lester: ... in lieu of cash, in lieu of cash

Cattaneo: I don't really think it's a question of whether or not you have the money it's a question of what, what we're getting.

Lester: Okay.

Cattaneo: You know is this a piece of land that we want.

Lester: Okay.

Cattaneo: Is it a piece of land that's adjacent to other areas is it a piece of land that's going to enhance the holdings of the state and if so we can do that. It, it would, it has to be a piece of land that we want.

Lester: Gotcha.

Cattaneo: Okay. In, in the other cases we always, we checked with our Green Acres people and stuff to see is this land that, that we indeed want. Is this something that parks and forestry doesn't want you know a land, the lot in the middle of uh uh a subdivision where there's no other properties around it. We can't maintain that. So, eith... it's normally a land that will enhance another state (holding or owned?) property,

Lester: That makes a lot of sense. Um. The next thing I'd like to show you. Mr. Davidson, Dennis Davidson in a statement said that quote he said "We had expressed some disappointment with previous attempts to get information from Green Acres on this issue." And if you read prior the issue is the assessment of the DeMarco land. And um I just wanted if you would to elaborate on that. What were if at all the problems that you had with getting appraisals on the land that was the subject of the

administrative consent order.

Cattaneo: I just that we were, I was not getting even return phone calls. You know, I mean its basically wasn't their priority it wasn't within their workload I mean that's not uncommon. You know, I mean it's noth...they have their own workload this is an additional task for them to do and it wasn't getting priority. So that's why I raised it as an issue to the director over there to see if I could get it as a priority.

Lester: And do you recall um the first time you actually contacted Green Acres to try to get a land appraisal on the um subject properties in the administrative consent order?

Cattaneo: Uh. I don't know the exact time it was while Kerri Ratcliffe was here

Lester: Okay.

Cattaneo: A couple of months, I know. I don't have the time period in front of me..

Lester: Would it be in the year 2000?

Cattaneo: Uh I (inaudible) she left, you know.

Lester: Okay. I don't know either I was just trying to....

Cattaneo: I'll be very very honest with you I really don't know.

Lester: Give you a frame of reference.

Cattaneo: Uh, probably late 99 early 2000.

Lester: Okay. Late 99 or early 2000 you tried to obtain an appraisal of the subject properties from Green Acres.

Cattaneo: Right.

Lester: Around that time.

Cattaneo: Yes.

Lester: Because we weren't we weren't clear on that. We just wanted to find that out.

Cattaneo: And uh Kerri Ratcliffe who was the deputy commissioner at that time had requested that. We just didn't get a response on it.

Lester: Now we had an e-mail. I think I neglected to bring a copy of that e-mail with me, I thought I did, maybe I put it in my thing right here. But basically, if you can recall, there was an e-mail and I have the little quote right here. Maybe you can read it, it says "By the way a six a 649,000 donation is worth at least 300,000 in tax savings." And it was an e-mail and I didn't bring it with me and it was an from an, an e-mail from you to um Mr. Lynch. Do you recall what you meant by that.

Cattaneo: I don't have the e-mail. I don't recall.

Lester: Let me make sure, let's turn that off for a second, let me, (tape off). We had tape off um while I looked for an e-mail I just asked Mr. Cattaneo about, and I can't seem to find it, and we've agreed that I'll fax it to him and I'll give him a telephone call later regarding it. Um, let's see. I had another question. We did an interview with DAG Piatek, Christine

Cattaneo: Right.

Lester: And um she indicated that there were some type urgency in getting, getting the settlement done. Uh, I shouldn't say, well that my word urgency but there was a um a sense of rush, rushing it, to get it done. Um and she indicated in the interview that you told her that you were ordered to get it done. And she wasn't sure whether you were using the word order, ordered as a colloquialism or were did someone actually tell you you had to get this done um sooner rather than later. Do you recall. The first part of the question, do you recall that there was any type of urgency in getting this settlement done.

Cattaneo: Yeah, and I believe I

Lester: That you talked about

Cattaneo: Told you, that before.

Lester: And were you (inaudible)

Cattaneo: The urg, the urgency was the EPA was going to over file on us and you know we I was basically told by uh Ray Cantor and I don't know if it was Gary at that time or if it was still Mark Smith that this is something that we did not want to happen and that we were to conclude this either as a settlement or an order from us

Lester: Okay.

Cattaneo: One way or the other. So that was the urgency. It wasn't the urgency to

reach a settlement it was the urgency to take an action.

Lester: Okay. And did anyone quote unquote order you to get um to take an action.

Cattaneo: Not, not you take an action, it was we were given, had decided I guess with everybody that a the best course of action would be to not have EPA do something because we didn't do anything. OK. So it was in our best interest then to either reach a, an agreement which we thought at that time EPA could support and they still might they have not said anything on it or for us in effect to say no we can't reach an agreement here's an order on it. We had the order you know we could have gone either way at that time.

Lester: But just to clarify, it wasn't as though uh Mark Smith or Gary Sondmeyer were saying get this done Lee or, or else.

Cattaneo: No

Lester: It was more or less um let's get this done to avoid an EPA over file.

Cattaneo: Right.

Lester: I had a question um maybe you could help with this, maybe you can't. Mr. Cantor indicated in his um statement to us that we initially, we being the state, initially kept EEPA abreast of all of our settlement negotiations concerning DeMarco. But at some point in time we decided not to let them know about um the state wanting to go for a general permit rather than the individual permit that EPA wanted to take place in the DeMarco case. What brought about that change in keeping EPA (someone enters, unrelated conversation door closes) What brought about the change in keeping EPA apprised of the settlement negotiations at that point? I know that was a long winded question but the jist being um we were keeping

Cattaneo: (Laugh and inaudible)

Lester: EPA apprised of settlement proposals and at some point we decided not to.

Cattaneo: I don't know. I don't know that we never did not keep PA, keep EPA apprised of what we were doing. OK Ray was the contact person with EPA. I was the contact person with DeMarco's attorney and our attorneys here. I think I had even said that before if you look in there that we had separated you know who was doing what on here and Ray was the contact for EPA.

Lester: Okay. So you wouldn't know anything about that.

Cattaneo: I don't know what his discussions were. You know I have some ideas to what he told me but you know I can't represent what his discussions were.

Lester: Okay. And I think the last question I have um going back to the Green Acres issue, what type of information were you trying to obtain from Green Acres concerning the DeMarco property?

Cattaneo: Some. At no time did I anticipate getting a ah shall I say a full blown type of property, you know where they go out and do an inspec.... hiring an assessor to go out to do an assessment for a purchase. No. I just needed you know a fairly good number as to whether or not this represented a fair settlement from them. You know. And that's all I wanted from them. I don't need a 12 page or 15 page assessment.

Lester: And is it normal practice for DP, DEP to get some type of appraisal assessment when they take land in lieu of ....

Cattaneo: We never had an informal one before.

Lester: Okay.

Cattaneo: All we need is an agreement that the agency will will take the property. Okay, I, I checked with them over there to make sure they were going to take it. And the case in Bricktown, and I'm going to give you more information than you need to know. Okay.

Lester: That's fine.

Cattaneo: And I forget the name of it. But this was on Mantoloking Road going out, it was property there that was filled, it was filled with some debris and other things. We wanted that property in lieu of the penalty. It was a good piece of property to have. The state would take it and then turn it over to the fish and wildlife or manage it themselves cause it was adjacent to the national wildlife refuge. They did not want it because of the debris that was on it. So we had to have the property cleaned up before our people would take it. And so we reached an agreement with Bricktown and some other people down there that we eventually got the property cleaned up using some money that we had from beaches because some of the material had washed in or could be washed out again by the high tides because it was waterfront property. So we got it cleaned up and then turned it over but they wouldn't take it ahead of time.

Lester: I see.

Cattaneo: So they have to want the property and take the property. You know. We always check with them on that and say OK you know how, about how much is this worth? Are we in the ballpark on the settlement. We never had an actual appraisal done of it. Appraisals cost a lot money to be done and if you're not purchasing the property we didn't see a need to have a written appraisal done.

Lester: So you'll usually just contact Green Acres to see if they're interested in it, in the property.

Cattaneo: Well not Green Acres. We contact whoever is going to manage the property.

Lester: Gotcha.

Cattaneo: Okay. And we usually ask Green Acres or somebody over there for information as to about how much it's worth because person then in fish and wildlife or the parks service doesn't necessarily know the value of the property. They would know whether or not it was an asset to them or something that they wanted to put in the inventory but they, they wouldn't know the cost.

Lester: So if something is um desirable, the property is desirable, the desirability of the property is more important that the actual value of the property? Is that a fair ...

Cattaneo: To us, yeah.

Lester: Okay.

Cattaneo: Yeah I mean, it's just something that that's going to enhance our holdings.

Lester: Alright, just give me a second to check to see if I have any other questions. (tape off) Um, I'm not sure if I asked you this Mr. Cattaneo. Uh did I ask you why DEP did not try to get input on assessing the value but you did try to get input on assessing the value of the property through Green Acres. I answered my own question.

Cattaneo: Right.

Lester: Um is there anything you would like to add? In conclusion

Cattaneo: Well I'm, was there any issues on, I know that there's some, I didn't have this much information at the last time, as I thought I would pertaining to Commissioner Shinn's recusal, do you need anything else on that?

Lester: If you can recall the date that you were telephoned regarding the recusal that would be great.

Cattaneo: I don't have the, I will tell you my recollection and why I think it's a certain date, okay.

Lester: That's fair enough.

Cattaneo: And I'll, I'll just, I don't think you going to need these but my office, the office I'm in now was set up by administrative order in December of 1998 December 8, okay. I was assigned to that office as director February 17, 1999. I was still administrator and running the office. I was doing both jobs until May 12, 1999 when Pete Lynch was named acting administrator. The only time that seems logical to me when that call was made, would have been May 7<sup>th</sup>. That was in, I was still working AWP up till the time that I moved over and started working for Judy Jengo or reporting to the commissioner.

Lester: Okay.

Cattaneo: Which started in the next pay period after that. So prior to that time I was still reporting to Ray Cantor and getting this other office set up. The office really wasn't operable yet, we didn't have any staff or anything we just hired some people and started in like at the end of May, first of June. That's why Pete wasn't, I was still doing the other duties

Lester: Right.

Cattaneo: Until May 12. The commissioner had called me and asked me to stay with it even though that I knew I was going to be moving on, so that's why I think it was May 7<sup>th</sup>. And also, Karen, who was my secretary then, Karen Proctor remembers she, the commissioner calling me and getting my home phone number and calling me. Shinn then called me but she remembers taking the call. She can't recall the exact day either

Lester: Okay.

Cattaneo: Just right along those time frames. Also on May 14<sup>th</sup> there was a, and we had done the inspections and everything on it and we had written a report to the commissioner I think it was in April or so of 99

Lester: Okay.

Cattaneo: And indicated where we were and that we were going to be meeting with DeMarco and DeMarco's attorney and our attorney to go over the findings

and to start negotiating settlement. That meeting happened May 14<sup>th</sup> and at that meeting I don't have any notes of it or anything else, but I recall telling people at that meeting that the commissioner had recused himself at that time and that was uh you know it was told to DeMarco's attorney

Lester: Okay.

Cattaneo: Because he was at the meeting and some of ours, and Pete Lynch was at the meeting also, but so trying to pin down a time on this

Lester: What year are we talkin'?

Cattaneo: 1999

Lester: 99 May 7, 1999 to the best of your ability to recount the events

Cattaneo: 99

Cattaneo: Well, I can't you know, just the circumstances is all I can recall. I know that I was home, it was a, had to be an AWP day because I wasn't on vacation

Lester: Um hem

Cattaneo: So it would have to have been May 7

Lester: Okay.

Cattaneo: You know because that was my alternate work week day off.

Lester: Now I could be wrong in my recollection but I, you may, I thought that you said that you were on vacation, you were fishing and you used that

Cattaneo: I went fishing

Lester: Okay.

Cattaneo: Yeah.

Lester: You used that as your reference.

Cattaneo: Yeah.

Lester: But that still could have been an AL day is what your saying.

Cattaneo: Yeah. It could have been, uh and what I'm saying is that could have been, I had taken some time in June to go fishing also. So all I remember is I had been out fishing so it could have been an AWP day in May or a day off in June but I think more along the lines that it was the May date because the meeting of May 14 I went back and checked to see when the meeting was

Lester: Right.

Cattaneo: Okay and that was on May 14 and I know that it was at that meeting that I had indicated to everybody that the commissioner recused himself and that was the only meeting that we had on this subject from when we did the site inspection in early 99 until sometime later. There was a period of time there we had, and that was the only meeting.

Lester: Okay. Well that's helpful. It gives us some at least some frame of reference. Is there anything else that you think um, or has come to your mind that you wanted to clarify from your last

Cattaneo: No. I just you know, you know, I'll tell you what my concerns are OK.

Lester: That's fair.

Cattaneo: I do have concerns with this because I don't know what the process is. I know what process your following

Lester: Okay.

Cattaneo: And maybe

Lester: I'd be more than happy to help to explain us.

Cattaneo: Well do,

Lester: You know we're a new office and...

Cattaneo: But you have any procedures or written guidance or regulations or anything else that that you are following so I can, you know, assure myself as to what's going on with this.

Lester: That, as a new employee with the um office, I don't know. Um, but what I can tell you you know we've been asked to do this by the Attorney General, and again it's just a fact finding review. We just want to be able

to inform the Attorney General about the facts and circumstances that led up to the execution of the administrative consent order. That is our mission, plain and simple. But with respect to our regulations and our process, that I don't have

Cattaneo: Okay.

Lester: Um for you. But I would be more than happy to inquire about it and get it for you. But again, my mission is

Cattaneo: Right, I understand that. I'm just, you know concerned that uh you know any time you talk with uh an office that can go who knows where, you know, then you do have, I do have a concern because I don't know what the outcome of this is and uh I don't know if I should have legal representation in here. I don't feel that I've done anything wrong, but who knows what comes out of the process.

Lester: This, I hope this allays your um concern. At least, in some respect this is not a criminal investigation. It is not our um it is not our assignment, quite frankly, to go digging up crime and report it in the report. Our assignment, plain and simple, is to review the process that started the investigation and that ended in the administrative consent order. Uh, nothing more than that.

Cattaneo: Okay, alright, all set?

Lester: Alright we'll conclude the tape then.

Cattaneo: Okay.

Lester: Thanks.

**Statement of Robert A. Tudor**

**Case Name: A. R. DeMarco Enterprises, Inc.**

**Case No. 00-0031-IG**

**September 29, 2000**

**Legend: WM: Civil Investigator William McGough**  
**SS: Civil Investigator Shawn Stewart**  
**RT: Robert A. Tudor, Deputy Commissioner, DEP**

WM: The date is September 29<sup>th</sup>, the year 2000. Time is approximately 11:25 a.m. Place is the Department of the Environmental Protection, Trenton, New Jersey. Present is myself Investigator William McGough, Investigator Shawn Stewart and Deputy Commissioner of the Department of Environmental Protection, Robert A. Tudor (T-U-D-O-R). For voice identification Mr. Tudor would you just identify yourself please.

RT: I'm Bob Tudor, Deputy Commissioner of DEP.

WM: And Shawn would you identify yourself please.

SS: Shawn Stewart.

WM: Mr. Tudor you've been Deputy Commissioner since uh, 5 of May of 2000, correct?

RT: Correct.

WM: But your total time with the Department of Environmental Protection is 20 years?

RT: Correct.

WM: Uh, your date of birth sir?

RT: [Redacted]

WM: And your social security number?

RT: [Redacted]

WM: And a daytime phone number?

RT: (609) 292-9961.

**Statement of Robert A. Tudor**

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WM: As we discussed previously um, before turning on the tape we went through the, some chronological order of your knowledge and/or involvement in the DeMarco incident. Is that accurate?

RT: That's correct.

WM: And having developed some time line and some uh, specifics of your involvement we agreed to memorialize them on the tape recorder which is sitting on the table here. Correct?

RT: Correct.

WM: We discussed that your uh, knowledge and/or involvement or review of this DeMarco incident really didn't even begin until June or July of 2000. Is that correct?

RT: That's correct.

WM: And that involvement really was uh, a coordinated effort with Gary Sondermeyer in reviewing what the potential settlement was, was purported or proposed to be. Correct?

RT: Correct.

WM: Um, I believe you have a memo from uh, to you and Gary uh, outlining what the proposed draft settlement is going to be and it was, you were asked to review that and you obviously did.

RT: Right and I had follow-up conversations with Ray Cantor, Assistant Commissioner.

WM: And at that particular time your opinion of the settlement was what?

RT: That it was well thought out and it satisfied the penalty provisions of the Administrative

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Rules, yet employed some creative thinking in terms of other objectives of the Department related to land conservation, so that we were able to uh, protect water quality uh, you know, administer the penalty and, and conserve land.

WM: Now we also discussed that one of the particulars of that settlement is um, the land that is being uh, surrendered if you will or restricted by Mr. DeMarco is in fact the same land or similar that Green Acres had been attempting to buy some years prior.

RT: The Green Acres has been looking to acquire lots of lands in the Pinelands area and uh, you know it wouldn't surprise me if there was some interest in the part of Green Acres earlier.

WM: And my issue with that is, do you have any knowledge as to uh, how the land of Green Acres was attempting to buy, happen to end up as part of all of the settlement?

RT: Right, I do not know in terms of that dynamic of how the, the, land conservation proposal um, was originally um, you know put forth.

WM: We also discussed that you were made aware at some point uh, in the June, July, 2000 time that Mr. Shinn had recused himself. Is that accurate?

RT: Yes that's accurate.

WM: And that was ultimately why you were asked to get a, perhaps a little bit more proactively involved in reviewing this?

RT: Well I, I might have anyway. I mean like, as I indicated uh, we have a delegated program from the Federal EPA and I quite often function as a liaison between senior members of

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EPA Region 2 and DEP. So especially as it relates to water programs and anything to do with environmentally sensitive area kind of issues in so that I, I would have wanted to know since this particular uh, violation, you had a substantial acreage associated with it, you know, what the perimeters of the decision were before we went forward.

WM: During any of the time that you had knowledge of this DeMarco investigation, did Mr. Shinn ever directly or indirectly contact you for advise, counsel or to determine what was uh, the progress of this investigation?

RT: He never made any contact whatsoever on this particular issue.

WM: Is there anything that you, personal knowledge that you have, that would indicate that anything was handled out of the ordinary in this particular investigation um, determination of penalty and ultimate uh, settlement proposal?

RT: No.

WM: Previously I showed you a letter that's obviously a photocopy or a fax copy um, the header is United States Department of Interior Fish & Wildlife, there's a date stamp of September 24<sup>th</sup>, um, there's a typed date on the letter of September 17<sup>th</sup>, 1999 that's addressed to Mr. Shinn, Robert C. Shinn, Commissioner uh, and the header Dear Mr. Shinn, this is in reply to your letter of August 1999. I go through that just for identification purposes um, there is some writing, the August 19<sup>th</sup>, 1999 is circled and in the corner there is a hand written insert, looks like the date 9/27 Ray Cantor let's discuss and then there's a signature Bob. I asked you if you could recognize any of this

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handwriting and specifically with the let's discuss and the signature of Bob. Do you recognize that signature?

RT: It looks to be Commissioner Shinn's signature.

WM: Okay. None of this writing on here was done by you?

RT: None was done by me.

WM: And the, the obvious is your not the Bob.

RT: I am not the Bob. But the Commissioner gets tons of correspondence everyday and quite often writes little notes like that, that's why I'm so familiar with it.

WM: Okay. So it's not unusual to see something like this?

RT: No, I would see, he, he, stuff like this everyday.

WM: Okay. That's fine.

RT: Because he reads everything that comes to him.

WM: Okay. Shortly after, uh, we talked about the time frame of June, July uh, settlement draft dated 7/17 or date stamped 7/17 arrived that you and uh, Gary were able to review and at least you felt it was a fair and equitable settlement based on the entire set of circumstances and you would uh, put your "stamp of approval" on that. Is that accurate?

RT: That's accurate.

WM: Shortly thereafter um, late July, early August you were on vacation so you would not have had any interaction or any knowledge of anything that transpired after that?

RT: That's correct.

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WM: And since that time, we're now into uh, late September have you had any interaction or . .

RT: Yeah, I have. I mean only because uh, EPA indicated that there was some interest in this so, I, I've got correspondence from uh, see this Ron Barcellino of, of EPA that went to Ray and they, they, that uh, talked about their interest in this case and so that sort of thing.

WM: And generally what is their interest?

RT: Their interest is uh, the fact that um, from their um, enforcement and compliance perspective they would want to make sure it, it meets the uh, the letter of their law so to speak in terms of how we handled this, so it, they have an oversight function um, specifically in our Memorandum of Agreement with EPA um, for, for permits they get to look at a certain class of them similarly for enforcement cases they would reserve the right to make a different decision if for some reason they didn't agree with us.

WM: And is this letter just an indication that we're going to review what's been put on the table . . .

RT: Umm. . .

WM: Or that we are opposed to it?

RT: Ah, it's just an indication that uh, they're gonna take a look at the, the details of the decision, no indication that they're opposed to it.

WM: Okay. Is that abnormal?

RT: Um, it's not abnormal, but there are thousands and thousands of permit decisions, and

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they only look at a very small subset, similarly of the universe of enforcement cases they would look at only a very small subset.

WM: Okay. Shawn do you have anything?

SS: No.

WM: Care to add? Mr. Tudor um, we tried to go over in as much detail as we can the um, your involvement um, directly or oversight into this DeMarco case. Is there anything that we haven't covered that you care to add at this point?

RT: I think you covered uh, you know what's in my file and what's in my head.

WM: Okay, that's fine. Uh, the time is approximately 11:35 a.m. All those present for the beginning of the taping of this statement are still present at this time and we'll terminate this interview.

**END OF INTERVIEW OF ROBERT TUDOR**

**Statement of Christine Piatek**

**Case Name: A.R. DeMarco Enterprises, Inc.**

**Case No. 00-0031-IG**

**October 2, 2000 - 10:55 a.m.**

**Hughes Justice Complex, Trenton, New Jersey**

**Present: WM: Civil Investigator William McGough**  
**SS: Civil Investigator Shawn Stewart**  
**LL: Deputy Attorney General Louise Lester**  
**CP: Christine Piatek**

WM: The date is October 2, the year 2000, the time is approximately 10:55 a.m.

LL: That works for me

WM: Place is the Justice Complex, Trenton, NJ, present is myself Investigator William McGough, Investigator Shawn Stewart, Attorney Louise Lester and Christine Piatek

CP: Piatek.

WM: Christine, for voice identification, if you would identify yourself, please.

CP: My, name is Christine Piatek.

WM: And that is P I A T E K? Correct.

CP: That's correct.

WM: And your position here with the Attorney General's office?

CP: I'm a Deputy Attorney General in the Environmental Enforcement section and I am also a lead DAG in that section, which means I have supervisory responsibilities for individuals in our section and I am also the point person for land use enforcement and also for air and environmental quality and some of the other programs associated with that.

WM: And you have been with the Attorney General since when?

CP: Um, since I think April of '88. I keep wanting to say '88 but I think it's 12 years.

WM: Your date of birth?

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CP: [Redacted]

WM: And your social security number?

CP: [Redacted]

WM: For voice identification, Shawn if you would identify yourself, please?

SS: Shawn Stewart.

WM: And Louise, if you would identify yourself, please?

LL: Louise Lester.

WM: Christine, for the last hour or so, we've had a discussion here about your knowledge and/or involvement in the Department of Environmental Protection vs. DeMarco case. Is that correct?

CP: That's correct.

WM: And what we were attempting to do was go over, refresh your recollection and develop some type of a time line of involvement, is that correct?

CP: That's correct.

WM: And what we have agreed to do now is memorialize that information about your involvement and advice, etc. in the DeMarco case, correct?

CP: That's correct.

WM: Your original knowledge or involvement of the DeMarco incident occurred on or about December 21<sup>st</sup> of '98. Is that reasonably accurate?

CP: That's correct, um, on or about December 21, 1998, we had a meeting at the Department with the Land Use Enforcement program staff, as well as Land Use regulatory program

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staff several individuals from my office, Rachael Horowitz being one, I believe Helene Trajek (Sp) was there. There was a representative from the Pinelands Commission, Bill Harrison, and possibly one other person from Pinelands Commission and the purpose of that meeting was to basically talk about what the department had found to date on the DeMarco property and to talk about the regulatory and enforcement aspects of what had occurred on that property and what the extent of regulation would be under the Wetlands Protection Act.

WM: Would that be a normal situation for DEP to call a meeting and involve their law representatives to go over what we've done and where we're planing on going?

CP: I wouldn't say that the department does that in every case, but certainly cases of sufficient import or where the regulatory jurisdiction may not be that clear, they, they would do it.

WM: And our understanding is that almost from the initiation of this investigation, there were some jurisdictional questions because of the Pinelands and the management system or regulations that they have vs. the State DEP regulations. Is that accurate?

CP: That's correct. Um, one of the major issues in a potential action in this case would involve considering the extent of application of the Fresh Water Wetlands Protection Act to an area involving the violation in the Pinelands and under the Fresh Water Wetlands Protection Act in any other part of the State of New Jersey the regulation would be far more extensive than it is in the Pinelands. And the reason for that is that the Act as it applies to the Pinelands talks about implementation of the federal provisions which in turn talk about the discharge of dredging of -, dredging at, I'm confusing - discharge of

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dredged material. So that is a much more narrow focus as it would be in other parts of the State. So there was some question about what would the application be in addition to that there was some question about what methodology the department would have to follow in this case whether it be the federal manual that is applied in all other parts of the state or whether it would be the Pinelands Wetlands manual that would apply and there are some differences in approach in those two manuals. So those were some of the questions that were raised for discussion at that meeting and around the time of that meeting.

WM: You also had some further meetings with the investigator, the lead investigator about what we would need in court down the road if we were to go to litigation and

CP: Yes that's,

WM: what evidence and how to gather it, etc.

CP: That's correct. I worked pretty closely with Bob Pacione partly because he was so conscientious and motivated I think to do a good job and we talked about gathering the appropriate kind and amount of background data as required by the federal manual and the Pinelands manual as well. We also met a number of times and at least on one occasion with Bob Cuberly who is considered an expert at the department in ariel identification and mapping and we wanted to look at some of the aerials that existed for this property going back in time to see whether some of that information would have any impact on the regulatory questions, . . . essentially just gathering a lot of data that would proceed enforcement.

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WM: At some point during this investigation, you and/or staff were asked to do some research and render an opinion or advice about jurisdiction and language, etc. and I know some of that research was done, but was an opinion ever formally given?

CP: An opinion was not given, the department had asked for advice and I believe that there was several questions in that advice, one was the overlay of the federal provisions to the Fresh Water Wetlands Protection Act in the Pinelands and what the extent of regulation would be, whether it would encompass in this case 22 acres or some lesser amount of acreage based on interpretation of those provisions and there was I believe also some questions asked as to what manual would apply whether it would be the Pinelands criteria for identification of Wetlands or the federal manual which the DEP uses in the ordinary course of business. My understanding is draft advice was prepared by Cari Wild who was a DAG in our office at the time and is now an Assistant Commissioner of the Department and some time prior to issuance of that advice on the regulatory questions the department asked that or indicted that they no longer felt that they needed the advice because some of the issues that they were concerned about they believed were going to be addressed through the promulgation of the general permit provisions.

WM: Now continuing as this investigation progressed, you were in contact pretty regularly with Bob Pacione in reviewing the reports that he was generating and how he was progressing with this. Is that accurate?

CP: Yes, that's correct, but prior to the reports that were actually being generated, there was an onsite inspection that was done at the DeMarco property and that occurred in April of

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1999, so from the time period of I guess, December of '98 until April of '99, there was this pre-enforcement gathering of information and consideration of the questions that would be raised by the violation and then there was preparation for an actual on site inspection. That inspection was done with consent of DeMarco and DeMarco's attorney. That inspection took place in April of '99 and then subsequent to that inspection Bob Pacione began compiling all of the data that was gathered by the different individuals that were involved in that inspection and putting together a comprehensive investigatory report, which he share with me numerous drafts and I worked with him on kind of shoring up the narrative portions of that draft and giving him some recommendations as to better ways of putting it together in terms of using the statute and regulatory provisions and just guiding him as he needed guidance. So there were several, several packages that I did review over a course of the next year I would say.

WM: Were you physically present during the April inspection?

CP: Yes, I was. Sometime prior to the inspection I think I asked the department the question was DeMarco's attorney going to be present at this inspection, and if so, then they ought to consider having us be there as well, and they did advise me that DeMarco's attorney was going to be there at the request of his client, so I did go to the inspection as well. I remember we arrived at that inspection early in the morning, I want to say nine o'clock, sometime around nine o'clock, and I remember it was very cold and windy day and it had rained substantially beforehand, so there was the conditions were not very good and, I mean, it became quickly evident that there was no reason for counsel to be there, so

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around eleven o'clock in the morning, both Tony and I departed the site and my understanding is that Bob Pacione was there probably until around six o'clock completing his inspection.

WM: I think we initially when we talked about the settlement drafts and initial languages that some of these initial drafts were provided to you in, on, or about September of '99?

CP: The first thing that I recall receiving from the department was a draft of an administrative order and notice of civil administrative penalty and assessment and that's the name of the document that generates enforcement of the department, and I received a draft of the document in, on or about September 30, 1999 and that would have been the department's first attempt at memorializing formally the findings of the inspection in April and in preparation for formal enforcement action. Subsequent to that, I reviewed probably four, maybe five drafts an administrative order coming as early or as late into time as August of this year, August, 2000 and as we got to the later drafts, we also were talking about the conservation easement portion of the case. The initial draft that I reviewed did not have a penalty designated in the document, and I believe at that time, the department didn't have a penalty rational. My recollection is the June, 2000 draft that I reviewed had the first insertion of a penalty provision, and the formal penalty that was placed into the document was \$25,000 and at that point we were also discussing the conservation of land and transfer of property.

WM: What is your first recollection of a face to face meeting with New Jersey DEP and DeMarco people to discuss a possible settlement?

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CP: My recollection as to settlement is that we had in mid March of 2000 either March 15<sup>th</sup> or March 16<sup>th</sup> of 2000, a meeting with DEP and a DeMarco representative, named Pat Slavin, who is identified as their farm manager and Tony Drollas, who is DeMarco's attorney, also at that meeting were Ray Cantor of DEP, Lee Cattaneo and Peter Lynch of DEP. I attended that meeting and Scott Dubin of my office also attended that meeting and the reason Scott was there is because I was getting ready to go out on medical leave in April and I was going to be out for four to six weeks and I wanted to make sure that there was some continuity in the event that our input was needed during that time.

During that meeting, which was preceded by a what we refer to as an internal or in house meeting which would have taken place outside of DeMarco's involvement, it was either that day or the week before, I am a little bit vague on recollection of the timing of that internal meeting, but the internal meeting was in essence a meeting where the department laid out its approach and rationale for the meeting with DeMarco in terms of what was going to be presented for purposes of resolving the case. During the internal meeting, we had discussion about the application for an individual permit. There was some discussion of the applicability of the general permit provisions to this case there were some discussion of possible land conservation as forming a basis or a part of the basis of penalty component in the case. There was a discussion of, I believe the department used the terms a substantial cash component to the - to any settlement that we would reach. And there was also discussion of EPA's position up until that time and the understanding that Ray Cantor was having - I wouldn't say ongoing, but at least had had numerous

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conversations with someone from EPA as to EPA's position on this violation and potential settlement of the case. We then went to the meeting with DeMarco and his attorney and the department presented the case as pretty much as we had laid it out in the internal meeting, and that was that they were being asked to come in to apply for an individual permit. There would be a substantial cash component, and I think that the dollar figure in the area of \$300,000 was referenced during that second, during the meeting with DeMarco. There was some discussion again as to whether or not they could benefit by the provisions of the general permit and again, the department said that there would be a substantial cash component to this settlement and I do recall that the department asked DeMarco's attorney to get back in touch within a short amount of time and I think at the time, we were thinking that would be within a week to possibly two weeks, at the most.

LL: Now, you were not involved in the number \$300,000 that was generated as a possible settlement. You were not involved in this.

CP: No, we as a general rule in our office do not tell the department or advise the department about what the appropriate penalty would be in a, in any kind of violation the department as a general rule has penalty rules and matrices that it refers to under the various programs, whether it be land use or solid waste or air, or what have you, um and they use those matrices as a basis for determining penalty. I do remember right around the time of the March meetings receiving a copy of a memo that was dated November 22, 1999 in which Ray Cantor and Lee Cattaneo were writing to Mark Smith and Kerri Ratcliffe who

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were representatives of their upper management with respect to the findings of the April inspection and also with respect to laying out a penalty rational for this case. And my recollection is that the penalty rational was based on a certain number of days that the department determined they could reasonably um reasonably estimate the days of violation to have occurred and then they look at whether its minor, moderate or major conduct and they apply the figures that are presented in the matrice, matrix to get to a penalty. There may, I don't recall specifically, but there may have been some discussion in that memo also about economic benefit component of the violation and that may have been factored into the \$300,000 potential penalty.

LL: Is this the memo? Just for my own. Cause that seems to state or do what um.

CP: Yeah, what I'm talking about was actually a formal memo from these gentlemen to Radcliffe and Smith, but I do think that this portion of what you have shown me would have been reflected in that memo.

LL: Thank you.

WM: Returning very briefly, to the March, 2000 meeting particularly the in-house or private meeting, I think you characterized your involvement at that meeting as being told what DEP was going to do as opposed to being asked to input ideas and concepts. Is that accurate?

CP: I think that's accurate. The um, when we went to the meetings and the department was essentially presenting its framework for resolving the case or taking enforcement action and the department was not really asking us whether one course of action was better than

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another course of action, or whether we thought one penalty was more appropriate than another penalty, it was more or less this is the framework in which we will be working and certainly we could comment as needed, and I do remember one of the things that I thought was important was that if there was going to be a settlement, that it be publicly notice, that was something that I remember commenting on both internally and at the meeting with DeMarco.

LL: Was the settlement publicly noticed?

CP: Yes it was.

WM: The allegations of violations in this case eventually involved approximately 22 acres of ground, is that accurate?

CP: That's correct. That was based on the review of aerials and doing actual, they call it, I think, it's GIS in short - geographic information system, type surveying around the property the department I would say fairly accurately determined that there was 22 acres of wetlands encroachment that had occurred.

WM: And that is a relatively big case in DEP's standards as far as violations go in past history, correct?

CP: That's correct, this I think would have been the biggest violation certainly in my experience representing this program, yes, it was a fairly large violation.

WM: And some of the unique ways that this case was handled, a team approach to the on site inspection, and the length of time it took to put things together, was because of this being such a large case and the possibility of a major litigation and court case, correct?

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CP: I think that that is true, I think the department wanted to make sure that it had the best evidence, the best fact finding in place, before any formal enforcement action was ensued. It is a little bit different than what they do in other cases, but again it was the biggest case to come down the pike in certainly in many years, and in our experience it, its certainly is better when DEP tries to involve us in that initial fact finding and evidentiary gathering because once you have compiled your information and done your inspections it may be difficult to get back on site if you need to supplement that information. So, while they don't routinely do this kind of team approach, I do think they did it in this case, because it was a large violation and there was going to be some probably substantial dispute as to what the extent of regulation would be and well first, whether or not, the umm, whether there was a violation at all, because I think DeMarco's initial argument was that they were not in violation of any laws because they were conducting a farming agricultural activity and then secondly, again, as I had indicated earlier, by looking at the overlay of the Fresh Water Wetlands Protection Act in the Pinelands and the difference in regulation there, that was going to be a major component of litigation if we became involved in litigation.

WM: Did the target of the investigation have anything to do with how this was handled, that being DeMarco himself?

CP: In terms of the settlement and,

WM: The way it was conducted, how it was conducted, was this all because it was a big major case or was there a political influence or the knowledge that Mr. DeMarco may have had

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of other individuals influencing how things were done in this case?

CP: I certainly don't have any information, I can't sit here and say that this was influenced by who DeMarco was, although I think I understood early in the case that DeMarco was one of the, if not the largest cranberry growers in Burlington County. I am sure I had heard about, I'm not sure if I heard about his contributions or any of that until more recent in time, but certainly there was an understanding that he was a big player in this area, but in terms of how the department approached this case, I think the care with which they took to develop the reports and inspection materials was based in large part on the size of the case and the issues involved and the fact that those issues would be hotly contested in court should we go that route. Again, the team approach is not something that's done in every case, but the department does, on the other hand, issue notices of violation and enter into administrative consent orders without often taking formal enforcement action. So that, in and of itself was not unusual, it was unusual in the sense that it was a big case, but the department does, I won't say fairly routinely, but it does from time to time resolve cases after the issuance of a notice of violation without ever referring a matter here or seeking our input into the case.

WM: You have a very good recollection of those individuals whom with you worked in preparing an oversight of this investigation. Was there ever any contact directly or indirectly with Commissioner Shin?

CP: Not by, Not by me, not to my knowledge by anyone in this office. I recall sometime around March, the March meeting, I remember reflecting in a memo that I wrote to my

section chief with a copy to Larry Stanley and Jerry Burke that the information that I had been given from DEP was that Commissioner Shin and Mike Hogan were purposely recusing themselves from any involvement in this case.

WM: And that would be the March, 2000 meeting you're referring to?

CP: Yes, that's correct.

WM: And that's probably around the time frame that you first heard about the recusement of those two individuals?

CP: I think so, but I may have heard about that earlier in time, but I don't recall specifically when. If you look at the November '99 memo that I referenced earlier from Cantor and Cattaneo to Smith and Radcliffe, I supposed in a normal course of events that that memo might go to the Commissioner, but it did not in this instance, so maybe as early as November of '99 there was intentional - I'm trying to think of the right word - intentional

LL: Removal

CP: Or making sure that the Commissioner was not going to be involved.

WM: Ok. During our earlier discussions, we talked about the specifics of the proposed settlement in particular, the acreage that the state was going to now take some control over, and I mentioned to you if you were aware that that land was previously the subject of a land purchase or the desire to be purchased by Green Acres. Do you remember me discussing that?

CP: Yes, I remember that and.

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WM: At any time during the settlement procedures or the settlement discussions, you ever recall hearing that this land is the same land Green Acres had been trying to purchase?

CP: I don't recall ever hearing that, no I don't recall ever hearing that.

WM: During these meetings and negotiations, etc. do you recall the word donations being used in, I guess instead of or in lieu of satisfaction of a penalty, did that become a language issue that you recall?

CP: I don't recall that being a language, well, I don't recall that word being used, if it was used, I think it was a, simply a bad choice of words and that the department was really talking about using land conservation and transfer of land as a component as the penalty in this case or in consideration of the penalty, but not in the sense of donation of land as we would normally understand that term to mean.

WM: And we also discussed, and do you recall that in part of the settlement agreement, there is language that talks about in consideration for a dollar.

CP: Yes, and as you, as I sit here and you indicated to me that there was that provision in the administrative consent order I do recall that that was in there and I also recall at the time not thinking anything of it. So, again, from my prospective we were not talking about the donation of land we were talking about using conservation and transfer of title as the penalty for the violations that occurred in this case.

WM: Shawn?

SS: During the settlement discussions when there was discussion about the land I guess being substituted in lieu of a penalty, was DeMarco's ability to pay discussed? Was that any

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discussions about that?

CP: I do remember that, I remember when I got the draft of the administrative order that reflected a \$25,000 penalty and then between that and the next draft which came around the 7<sup>th</sup> of July which then removed that penalty completely, I remember asking Peter about why the penalty was removed completely and I remember Peter telling, Peter Lynch, who is the program person that I deal with on a regular basis saying that if they considered, the department considered removing the penalty because we were now going to be talking about land conservation and title of transfer and that there was, I guess some discussion between members of the department and DeMarco about DeMarco's ability to pay and I think I recall some indication of DeMarco saying that he was cash poor because of the problems with, apparently the cranberry industry had for awhile been doing very well, and suddenly there was some umm some, concern because there was a glut of cranberries in the market and with obvious economic impacts to him. So I guess they took that into consideration in the penalty formula.

WM: At that time, was there any knowledge or any discussion about him selling development rights?

CP: No, the first in I mean the first inkling I guess of something to do with selling of development credits came up in the context of discussion that we were having with respect to a specific provision of the conservation easement. That provision of the conservation easement dealt with assurances of title, that the grantor was to give to the State of New Jersey to insure that the department would have first right so to speak in the

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case of any existence of mortgages on the property, and for some reason this provision seemed to be causing DeMarco a lot of trouble. And I remember having conversations with Leroy about that provision and also with one conversation with, one or two conversations with Tony Drollas about that provision and what we needed to get from them in order to satisfy that provision. And what we needed was, we thought fairly simple, and that was just a letter from their bank indicating that there are mortgages on the property and agreeing to allow the State's position to be first in line, so that if there was ever a problem with the property, our easement right would be protected as this dealt with the property to be conserved. It continued to be a problem over the course of the week or so, or 10 days that we were in discussion about this provision and another provision. And at some point, I recall, actually, it was the day before the ACO was to be signed and having a call from Leroy saying that he got information from Tony that indicated that Tony said he had some document from the Pinelands Development Bank, that he thought would satisfy our needs, and I told Leroy to, you know, fax it to me, get Tony to fax it in and I'll take a look at it and we'll discuss it. The document came in, I looked at it the next morning, and upon review of the document it looked to me like a, it looked like a conservation easement which was executed in June of this year, so that would have been two months prior to our execution - the department's execution of the ACO and that document was essentially the sale of Pinelands credits involving the sale of Pinelands credits for the piece of property that was to be conserved under the administrative consent order. And upon looking at the document, I then had conversation

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with Leroy and then also later with Tony indicating a concern that we were restricting an already restricted piece of property. And we looked at that closely and found that although we were restricting what had already been restricted by virtue of the sale of the Pinelands credits, there were some differences between our conservation easement and this easement, making our restrictions or our easement more restrictive in nature in terms of what types of development might be allowed on the property. But that was essentially the first, that I had heard about the sale of Pinelands credits. Although I now understand that the sale occurred in June.

LL: Was there any urgency in signing the administrative consent order at any point?

CP: Well, I think the department got to the point where they wanted to get this done, either get this done or issue the administrative order, but move forward. Whether that had anything to do with EPA position at the time, I'm not really sure about that. I do remember in the conversation that I had with Leroy the day before it was to be executed, which was the same day that we were talking about this problem with the restriction of the property, that Leroy said to me that he was ordered to get this done today, and I don't know whether he was just talking I don't want to say well, colloquially is the word that comes to mind, whether he just saying I got to get this done, or else we have to move forward, or whether someone above him was telling him get this signed. I don't have a sense that that was really what he was saying, but he did say to me during that conversation I've been ordered to get this today.

LL: We touched on briefly, looks like we're running out of tape. (inaudible) yeh, we touched

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on briefly, why did it take so long from the issuance of the NOV - we didn't go over that yet to the actual settlement, the first settlement conference?

CP: That's true. The inspection took place in April of '99 and the first settlement conference took place almost a year later. Other than telling you that the department was trying to put its investigative aspects of the case together, shoring up the report, getting all the evidentiary materials together, other than that possibly being the reason for the delay, I don't know what the delay might be. It's not that unusual in my experience with the department in how they investigate violations to sometimes be far out in time from the time of inspection or the initial NOV as compared to the time an administrative order may be issued. So its, that in and of itself is not unusual.

WM: Any other questions?

SS: No.

WM: Christine, is there anything you care to add before terminate this?

CP: I think we went over everything that we went over earlier. No, I don't think so.

WM: Ok. The time is approximately 11:35 a.m. All those present at the beginning of the taking of this statement are still present at this time. I will terminate this interview.

**END OF STATEMENT OF CHRISTINE PIATEK**

**Statement of Dennis B. Davidson**

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**Department of Environmental Protection, Trenton, New Jersey**

**Legend: WM: Civil Investigator William McGough**  
**SS: Civil Investigator Shawn Stewart**  
**DD: Dennis B. Davidson**

WM: The date is um, September 27<sup>th</sup> the year 2000. The time is approximately 1:30 p.m. The place is the Department of Environmental Protection in Trenton, New Jersey. Present is myself, Investigator William McGough, um, Investigator Shawn Stewart, and Dennis "B", as in boy, Davidson. For voice identification, Mr. Davidson, if you would identify yourself please.

DD: I am Dennis Davidson.

WM: And your title with the Department of Environmental Protection as what?

DD: I am Deputy Administrator of the New Jersey Green Acres program.

WM: And how long have you been employed with the division?

DD: About 25 years.

WM: Your date of birth, sir?

DD: [Redacted]

WM: And your social security number?

DD: [Redacted]. I have also been with the Department for over 30 years.

WM: As you have been made aware, Shawn and I are here looking into the circumstances that evolve regarding the DeMarco case. Were you aware of that?

DD: Yes.

WM: And we've had some previous discussions here about your knowledge and involvement

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in this case, and now I told you that I'd like to go back over these facts and memorialize them on this tape recorder. Is that correct?

DD: That's correct.

WM: And you are aware that you are being tape recorded obviously because the tape recorder is sitting on the table, is that correct?

DD: Yes.

WM: Approximately, when did you first have some direct involvement in this DeMarco case?

DD: It was August 3<sup>rd</sup> was the first time I had direct involvement.

WM: Of 2000?

DD: Yes.

WM: And how did that come about?

DD: I was forwarded a draft settlement summary from Cari Wild, the Assistant Commissioner that I work for and I was forwarded this document "FYI", for my information. I opened it up, read it, saw that there were some errors in it based on knowledge that I had from a previous effort to buy much of this land from Mr. DeMarco earlier as part of a Green Acres normal Green Acres project.

WM: So looking at the settlement sheet the reason that some of these errors that you were able to find were so readily evident to you was because this land was very similar to land that you had obviously researched before in an purchase attempt.

DD: Yes, that's correct and also I was aware that the Pineland Development Credits had been removed from the property and that the dollar figures that were listed in that draft

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document were too high in my opinion.

WM: So reviewing this draft of the settlement sheet and seeing some errors, you brought these to the appropriate people's attention I guess.

DD: That's correct.

WM: And who did you contact?

DD: I contacted Tom Wells from the Administrator of Green Acres, described the problems that I saw in the document - actually, previous to that, I contacted Lee Cattaneo and described to him some of the errors that I thought were in the document dealing with acreage of his lots and blocks, overlaps from information that had been in old appraisal reports and my opinion that the value number that was listed there was too high. I then contacted Tom Wells. I don't know how -or whether we should go back to the Lee Cattaneo conversation or not - Lee had expressed some disappointment with previous attempts to get information from Green Acres on this issue. I said, Lee, you shoot the messenger, I am seeing this for first time, and it looks like we have some of these mistakes. Do you want me to work on this?

I think he probably said yes. He did, so I spent a couple of hours working on it getting the facts straight, still saw that we had a problem here with the numbers and then contacted Tom Wells, described the errors to him. We then went and met with Cari Wild, the Assistant Commissioner and described the same problems that I found in the document to Cari. At that time, Cari Wild called Ray Cantor and said we didn't need \$600,000 - to justify \$600,000 in value here that we only needed \$300,000 or something

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near there.

WM: And notwithstanding the block and lot and total acreage issues, but the other issue here was that your reading a document describing the value of land that you deemed to be inaccurate.

DD: That's correct.

WM: And your whole rationale here is to at least provide the corrected information to people that if you're using this particular swatch of land I will tell you that based on my experience, it's worth this, not that. That's pretty much it.

DD: Correct, correct. With the rights that they were acquiring. Cari then explained that this was a settlement agreement they weren't looking for an appraisal to be done, they were looking for an estimate of value a um, we used the word "ballpark" and she said "is it here". And I said, well, we want to take a more detailed look at it, but yeah, probably. You could justify that.

WM: What's that figure - \$300,000?

DD: Uh, yes, yes, or half of what the draft document at that point said that's almost \$600,000. I then went back, called Lee Cattaneo again, he had um, he and I started talking about some of the errors that were there ,again I described that I thought that this was good deal for the department, and, at least from a Green Acres prospective, because it was accomplishing the things that we, most of the things that we had been trying to accomplish with an earlier attempt to buy the land, or least much of this land. Um, and that I thought knowing that, and I told Lee that the Pineland Developments Credits have

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been severed from the property and once they're severed, they can't go back so a lot of the value from those old appraisals were no longer it was there. Whether they had been severed or sold isn't really relevant, they've been severed. I then suggested to Lee that in my opinion, it was a good deal for the State because of what it had accomplished and that we should not be trying to justify it based on value - that it was a complex issue that deals with some complex problems and he agreed. And I believe he even said yeah, he had some conversations like that too, and that he had felt that previously and he thought that's what they were going to do. Next thing I see is a week or so later, is a revised summary of the settlement proposal and it had removed all references to value at that point. A week or so later, um, I see, I received an e-mail from Ray Cantor, where I was copied on an e-mail that he had sent to others that said that he had been talking to the press and that he had told the press that he relied on Green Acres for justifying the value. I was frankly surprised by that, at least somewhat, and eventually replied back that same day that we needed to be talking about this was a good deal for what it accomplished not what its value because it was difficult to get there from the value prospective. I do think you could, I think you keep put together a case with the information that we have in our office and the information that we have gone through um, to you know, justify that kind of a number.

WM: You and I also discussed previously some of that evaluation that would be somewhat subjective as opposed to objective and you have to look at the benefit to the environment as whole, not necessarily what's this acre of ground worth.

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DD: Very much so. There would unlikely be any comparable sales, which is what they normally use for this type of transaction. There would be probably no comparable to this.

WM: Now, the other issue that I wanted to clear up, is that when you read through this projected settlement or proposed settlement, the land that Mr. DeMarco will be transferring due to this settlement is very very similar to the land that Green Acres was trying to purchase several years ago.

DD: That's correct.

WM: Was there any direct involvement from anyone in the Green Acres portion of DEP directly involved in that, the beginning of the negotiations, that said this would be a good plot to negotiate with DeMarco.

DD: As far as the settlement is concerned?

WM: Yes.

DD: No.

WM: It would be obvious that the Department of Environmental Protection would be aware that you are trying to buy this land, but my point is, was, did Green Acres suggest that we use this in the settlement, or did that just materialize somehow?

DD: That just materialized as far as I know, Green Acres didn't suggest it.

WM: And as we also discussed, it could have just as easily come from DeMarco's attorney who said well, since we're talking about a settlement here, I know Green Acres has been interested in land, as opposed to some representative from DEP bringing that up.

DD: That's correct, that's what I would expect happened.

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WM: But you or none of your direct staff was involved in that settlement issue or what would be appropriate to offer as a settlement.

DD: That's correct.

WM: Shawn, do you have anything?

SS: No, I don't.

WM: Mr. Davidson what I tried to do was give you an opportunity to discuss with us your involvement and knowledge of this settlement, is there any particular area that we didn't discuss that you think is relevant?

DD: Not, that I am aware.

WM: If I were to ask you, in your, to describe to me how you would personally describe this settlement, how would you describe it?

DD: I would say that from a Green Acres perspective, it's a good deal for the State that we're getting many of the things accomplished here that we were trying to accomplish with the original acquisition or an earlier acquisition attempt on this property. It's buffering Warden State Forest, its prohibiting the forest from being cut down, it provides public access across a portion for the Batona Trail, it keeps the forest next to a famous piney place called Apple Pie Hill, an important viewing area of the Pines, so it guarantees those things in perpetuity and it impacts the land forever. These easements are on the deed and will be on the deed and in will intact the property forever.

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WM: Anything else? The time is approximately 1:40 p.m. All those present at the beginning of the taking of the statement are still present at this time and I will terminate this statement

**END OF STATEMENT OF DENNIS DAVIDSON**