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Public Hearing

before

SENATE ENVIRONMENT COMMITTEE

"Discussion of the 'Environmental Cleanup and Responsibility Act' (ECRA). The Committee is seeking testimony concerning the current operation of the ECRA program and whether the ECRA program needs to be modified, improved, or made more efficient."

LOCATION: Legislative Office Building
Committee Room 9
Trenton, New Jersey

DATE: March 19, 1992
2:15 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Henry P. McNamara, Chairman
Senator Randy Corman, Vice-Chairman
Senator Jack G. Sinagra
Senator John H. Adler
Senator Ronald L Rice

ALSO PRESENT:

Raymond E. Cantor
Judith L. Horowitz
Office of Legislative Services
Aides, Senate Environment Committee

New Jersey State Library

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, 162 W. State St., CN 068, Trenton, New Jersey 08625-0068

HENRY P. McNAMARA
CHAIRMAN
RANDY CORMAN
VICE-CHAIRMAN
C. LOUIS BASSANO
JACK G. SINAGRA
JOHN H. ADLER
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New Jersey State Legislature
SENATE ENVIRONMENT COMMITTEE
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NOTICE OF PUBLIC HEARING

The Senate Environment Committee will be holding two public hearings on **Monday, March 16, 1992, at 10:00 a.m. and on Thursday, March 19, 1992, at 2:00 p.m. Both hearings will be held in Room 9, Legislative Office Building, Trenton, New Jersey.**

The Committee has invited interested parties to discuss the "Environmental Cleanup and Responsibility Act" (ECRA). The Committee will be seeking testimony concerning the current operation of the ECRA program and whether the ECRA program needs to be modified, improved, or made more efficient.

Any questions concerning this hearing can be addressed to Raymond E. Cantor or Judith L. Horowitz, Committee Aides, or inquires to Elva Thomas, secretary, at (609) 292-7676.

Issued 3/5/92

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SENATOR HENRY P. McNAMARA (Chairman): Please take a seat. Take a roll call, please.

MS. HOROWITZ (Committee Aide): Senator McNamara?

SENATOR McNAMARA: Here.

MS. HOROWITZ: Senator Corman?

SENATOR CORMAN: Here.

MS. HOROWITZ: Senator Sinagra?

SENATOR SINAGRA: Here.

MS. HOROWITZ: Senator Adler? (no response)

SENATOR McNAMARA: He's here.

MS. HOROWITZ: Senator Rice?

SENATOR RICE: Here.

SENATOR McNAMARA: Good afternoon. I'd like to welcome all of you to the second meeting of the Senate Environmental Committee on the ECRA program. Again, I'd like to reiterate that this meeting, like the last, is being conducted on an invitation only basis. We will be hearing from the regulated community, from environmental consultants, engineers, the banking community, and from environmental advocacy groups. I have requested that the Commissioner provide his staff most familiar with the program to assist us in our review, and he has agreed to do so. I will call upon them from time to time to clarify any issues which are still creating some confusion.

I would also like to reiterate that we are not interested, for the purposes of this effort, in hearing the horror stories of years past. We wish to hear of current problems, problems that lend themselves to statutory or regulatory solutions. We are also interested in hearing from witnesses about those improvements they think would be most advisable.

I would like to caution the witnesses that if you have prepared written material, please submit it and it will be included in the record. I would ask you not to read the

material but rather, to summarize it. We are having a written transcription of these proceedings, so all of your testimony, both written and spoken, will be in the record. Thank you.

I also have for the record, a letter from Mayor Rutkowski, from the City of Bayonne, which we will enter into the record.

Our first witness today will be Mayor Doug Palmer, Mayor of the City of Trenton.

MAYOR DOUGLAS H. PALMER: Where do you want me? I see two microphones. Is one better than the other?

SENATOR McNAMARA: That's so that we can hear you twice as loud.

MAYOR PALMER: Is that right? Okay. Good afternoon members of the Committee. Welcome to Trenton, capital of the State of New Jersey. And we are very proud to say that we are celebrating our 200th year as a chartered city.

I'm here on behalf of the New Jersey League of Municipalities and as Chairman of the Urban Mayors Association, but more importantly, I'm here as Mayor of the City of Trenton.

I want to start by saying -- and I've talked to some of the Senators here already, and I know Senator Rice very well -- that I really applaud the intent of the ECRA law, but let's face it, the current ECRA law is simply not working. It has not successfully cleaned up our environment. Furthermore, it has greatly hampered the redevelopment of our urban areas.

I just want to relate to you a few facts: In the last five years, we have had less than ten sales of industrial property in the City of Trenton. Furthermore, it is estimated that more than 80 percent of the land in our Urban Enterprise Zone isn't worth a dime. It has been rendered valueless because cleanup costs are more than the property is worth, or because the buyer is reluctant to take on land that could have environmental problems for which he would be responsible. As

Mayor of New Jersey's capital city, I believe that I represent the concerns of the majority of our cities on the subject of ECRA compliance.

I think we all would agree in principle that polluters should be responsible for cleaning up environmental toxins on their properties before they're allowed to sell them. But in reality, the cleanup standards being enforced by DEPE are so tough and stringent that they're causing potential businesses to shy away from even considering areas where ECRA is applied. Add to that the responsibility and the possibility of future liability, and the idea of redeveloping industrial areas in New Jersey cities is no longer an attractive one.

Because they're faced with enormous cleanup costs, many property owners have either sought protection under bankruptcy, or merely abandoned properties for back taxes. This has left cities like Trenton holding the bag. The result has been an acceleration of urban decay, a loss of tax ratables, and a loss of jobs, a four-letter word that's a critical issue for all of us.

Furthermore, our cities are then burdened with the responsibility of cleaning up these abandoned, toxic ladened properties. Ladies and gentlemen, I'm sure I don't have to convince you that we simply cannot afford that kind of expense. Fortunately, we don't have to. I'm here to tell you that there are a number of realistic reforms that I believe can help ease the burden of New Jersey cities.

First of all, the cleanup standards should take into account the ultimate use of a property. For instance, a recycling facility should not require the same level of remediation as a school.

Secondly, once a property has been sampled, cleaned, and approved for one real estate transaction and no further pollution has taken place, then this approval should be sufficient for all subsequent transactions.

It's most important that we have the ability to assure future owners they have acquired a clean site, and will not be subject to repeated review under current or new laws.

Thirdly, municipalities should be made expressly exempt from the cleanup responsibility when properties have been taken in tax foreclosures.

Finally, I believe a revolving loan fund and grant pool should be established to provide low cost financing for the cleanup of urban enterprise zone sites which have high redevelopment potential. I suggest that funds for the pool could be allocated from the New Jersey Spill Compensation and Control Fund, and the New Jersey Urban Enterprise Zone Fund. The loan or grant would be passed on by the city to a redeveloper as a subordinate obligation of the project. Repayments would be made during the useful life of the property at terms currently unavailable in the private financial market.

I hope, as do mayors across this State of ours, that the Legislature will take a serious look at the present standards and process of ECRA, and provide the cities with the tools to accomplish these goals.

In the City of Trenton, like other cities across the State, we are aggressively trying to make our economic revitalization plans a reality. You know in our city we are strapped by a number of problems, but one of the biggest problems that we face, as in the City of Trenton, we have industrial sites that are now abandoned warehouses, places where not even birds or squirrels or other kinds of vermin will go in, because of the problems, but are left as places where blight is taking place which greatly reduces our ability to be able to provide for economic redevelopment. That's why I'm so happy that this Committee is taking a very hard look at this problem: because we constantly ask the State's help in terms of getting moneys for municipal revitalization or school aid and these kinds of things.

One of the biggest things that the Legislature can help us with is being able to help ourselves. We need help, but we're not helpless. What we do is ask your help in taking a look at some of these laws that have actually been antiurban, and to give us the help that we need so that we can have areas in which we can bring in development. As we look on the Route 1 Corridor and see the problems of growth in those areas, certainly the cities are the areas where we have the infrastructure, have the labor force, where we can attract businesses, and where businesses can help sustain us. But when we have these kinds of requirements in ECRA, it really just turns all those efforts away, and it's a futile effort.

So I ask on behalf of the New Jersey League of Municipalities, Urban Mayors Association, and mayors throughout this State that you really do something to help us so that we can build the kind of cities that we want, and have a stable and secure tax base because of it. Thank you.

SENATOR McNAMARA: Mayor, I was going to ask you a question as to whether or not you thought ECRA was a factor. I think you answered the question before I had an opportunity to ask it. But is the problem really ECRA, or is it the fact of the level of contamination of many of the urban areas? I'm not so sure that it's strictly that ECRA-- You know, ECRA may kick it off at a transaction, but I think it's a certain awareness that's out there, and it's the level of contamination that exists.

MAYOR PALMER: It's really a combination. Of course, I'm for having environmentally safe sites. I wouldn't want to subject our citizens and public to those standards, but I think sometimes the standards can be so stringent that in urban areas that have been, actually, the mother of industrial-- Cities came from the urban areas, and we have had industrial sites here for many, many, many years. To try to remediate the

problem in the cities to such an extent as maybe you would in virgin territory in the suburbs greatly impacts our ability to provide for that kind of use in our cities.

So I think it's a combination, but some of the things that can be helpful is to take moneys from a fund -- Spill Fund, and these kinds of areas -- to help remediate the sites so that then they can be attractive to development.

So I think it's a combination, but if there are ways in which you could look at what can we do to assist cities in remediating these properties that they can become attractive, keeping standards -- looking at different standards though -- then I think that that's going to be a big help for cities.

SENATOR McNAMARA: By your testimony Mayor, I did not take any inkling at all that you were thinking of running your citizens at risk. But the distinction between a cleanup standard for an industrial site, vis-a-vis a residential site, I would then assume is something you would be very supportive of?

MAYOR PALMER: Yes. I think you have to look at them differently.

SENATOR McNAMARA: All right. You referenced to the Spill Fund, but I think it was at our last meeting that the Assistant Commissioner testified that the Spill Fund does not have a balance, but is facing a $50 million shortfall at this present time. So another issue that this Committee as a whole will look into is the possibility of setting up a fund that would build funds, accumulate, and then be able to either finance entirely, or through a loan program at very low interest rate, get certain sites cleaned up within the cities.

MAYOR PALMER: Yeah, I think a combination of a loan fund, or some kind of mechanism-- You know, the State pumps millions and millions of dollars into helping cities. This is an area where I think, if the cities had the resources they could begin to help themselves.

SENATOR McNAMARA: To help themselves. Are there any questions from the Committee?

SENATOR SINAGRA: Just one comment: This morning the Commerce Committee put in an amendment, the Economic Recovery Fund that the Governor has called for. That specifically addresses--

SENATOR McNAMARA: Jack, could you use the mike?

SENATOR SINAGRA: That specifically addresses the ECRA issue, and setting up a fund within the Recovery Fund that can be used for exactly what you are talking about.

MAYOR PALMER: Well that would be very helpful.

SENATOR McNAMARA: Could you explain Trenton's project to identify the redevelopment potential of industrial sites in your Urban Enterprise Zone?

MAYOR PALMER: We have several. As a matter of fact not far from here we have Magic Marker, which was originally Gould Battery, which is a very big problem. Right now it's in an area that's contributing to the blight. We have a laundry -- an old laundry, I'm not going to use the name -- but a laundry facility. We have other industrial plants throughout our city which we have identified. We have begun to identify the sites, and we've had proposals to look at exactly what, in their estimation, would be the amount of help they would need. So at least we have an idea of how much we are beginning to talk about. These are areas that are scattered throughout the core of the city, and quite frankly, scattered in areas where there is a lot of blight, a lot of boarded up buildings.

So we look at not only doing something with our housing stock, but having these places in our neighborhoods become uses for industry, so that that can help revitalize that whole neighborhood. But they are almost tied together in that way.

We've got about eight sites, though, within the City of Trenton that we would need help with in order to have them

ready for redevelopment. We feel they can be redeveloped, but because of the standards, it's just making it impossible. These places will just sit there until something happens. If you do nothing, then these buildings are going to just get worse and not better, because there is no mechanism on the city's behalf that we can remediate them, and no one else is going to touch them, so they will just be sitting there until forever.

SENATOR McNAMARA: I guess, Mayor, that's one of the problems that we have to address, that some urban aquifers may be so contaminated that even an attempt to clean them would be of little benefit if-- But on the other hand, it becomes a question: Do you just abandon an aquifer? There are a lot of questions that we have to address, and the direction in which this Committee is going -- the reason for the hearings -- is to look at that possibility of the different levels of standards, not to put any population at risk.

MAYOR PALMER: Right.

SENATOR McNAMARA: That's a given before we start. But as we proceed, if there is a way of encapsulating something that's there and that is reasonable, and will not harm commercial development, then I happen to agree with you, that unless we do something, the problems that we had 20 years ago in the urban areas that are still existing today are just going to be that much worse 20 years from now.

I appreciate you taking the time and coming forth today and testifying for the Committee.

MAYOR PALMER: Well, it's just time for us to act. We really have to do something. Something that I believe can satisfy reasonable people no matter if they are in the chemical industry, if they are mayors of cities, or if they are environmentalists -- something that is reasonable and that makes sense. That's what we're looking at: ways in which we can help ourselves and help develop our cities.

SENATOR McNAMARA: Thank you.

MAYOR PALMER: Thank you.

SENATOR McNAMARA: Commissioner Miller, would you-- Or Assistant Commissioner -- I have to be careful -- Deputy Commissioner, Assistant Commissioner, Commissioner, I'm just getting you another promotion. Weiner will realize not to make a mistake not coming here. (laughter)

UNIDENTIFIED SPEAKER FROM AUDIENCE: Not too much you can promote him to, though.

SENATOR McNAMARA: No, except if it's out of the job. The Sports and Exposition Authority was just suggested by someone here who-- (laughter) I'm not going to tell you who passed the comment.

Would you like to make any comment in reference to what the Mayor had to say? Please, come up and use the mike.

ASST. COMM. LANCE R. MILLER: Thank you, Mr. Chairman. The only thing that I would like to say is we certainly recognize the urban nature of the problem that Mayor Palmer discussed, and we certainly try to work with those situations when possible.

Mr. Chairman, your comments, though, were also right on mark, when we talk about the contamination often being the cause and not just getting labeled under ECRA. One of the sites the Mayor talked about, the Magic Marker site, is not subject to ECRA, but it's certainly contaminated, and we have been working with the city very well to try to address that site. As a matter of fact, we recently granted what is called a "covenant not to sue" the city so that they could foreclose upon the property and then transfer it to a purchaser who would take over that property and clean it up and redevelop it. That's the kind of partnership that we look to do with our cities so that we can redevelop urban sites. From an overall environmental perspective, that's where we want a lot of the redevelopment to occur. We certainly will do anything that we can to help the cities do that.

I may also add that with the fund that is being talked about, that if that fund gets created, a thing we may want to consider in it is the ability to grant money to municipalities out of that fund so that they can clean up sites. If a site is then clean, it becomes marketable, and then if somebody purchases that site, maybe some of that money from that sale goes back into the fund to help clean up other sites. It's an idea you may want to consider, Senator.

SENATOR McNAMARA: That does make sense. By the way, I'm just wondering, when you are talking about the foreclosure aspect of the Magic Marker site, I wonder if the effort of the Department is equal to cleanup and accommodating the owner of the property when it's public and when it's private? I sometimes get the feeling that when it's private there is a standard-- You know, they seem to hold everything, and dot every "i" and cross every "t." Yet when we talk about public properties, whether it be the State or urban areas, that there is more of an effort to work with, and in conjunction with in getting a clean property, which we all want. If you would please comment on that.

ASSISTANT COMMISSIONER MILLER: I've heard that perception also, Senator. I'd like to be able to sit up here and say it's absolutely not true. We are in-- That's impossible. We have a large number of people working on sites, and you are going to get individual differences. Whether that's because it's a private or a public, of just individuals handling cases differently, I think it's more the latter than the former.

But we are trying to put in place things like our cleanup standards, our technical requirements, so that we won't have those differences, and that a site will be cleaned up to the level of protection of human health and the environment, regardless of whether or not it's being cleaned up with public funds or it's being cleaned up with private funds.

Obviously, when we are expending public funds ourselves, and we do a large number of cleanups, we hold ourselves to the same standards that we would hold private industry. In fact, we're making it very clear that we would not require anyone in the private sector to do anything that we would not do ourselves. There is an obvious logic to that approach, because if we said, "Industry, you have to clean it up to 'X,' but we only have to clean it up to '10X.'" Industry would say, "Go ahead. I'll pay you to clean it up." So obviously that doesn't make any sense. We've recognized that. Obviously, that perception is there. Hopefully through our regulations of cleanup standards and our technical requirements we'll be able to eliminate that perception.

SENATOR McNAMARA: I would hope it would be established and worked off the basis of the scientific rather than-- And I think maybe what happens, and maybe it's a natural reaction, that if it's judged as being political or coming from somewhere else, there might be a natural reaction to draw a straight line and be a little stiffer resistance.

ASSISTANT COMMISSIONER MILLER: And we've certainly opened ourselves up to that attack by not having our standards out. Up until recently if you asked the Department something, it's like going into a black box. You don't know what the decision making process is, and then all of a sudden, a decision pops out. By having the regulations in place, going through the regulatory process, going through a very open process to develop those regulations, people know what the basis for the decisions are. They are now in the regulations. They know what has to be achieved, and I'm hopeful that it will eliminate a lot of that negative perception.

SENATOR McNAMARA: Thank you.

ASSISTANT COMMISSIONER MILLER: You're welcome.

SENATOR McNAMARA: Leo Motiuk?

I. L E O M O T I U K, ESQ.: Thank you, Mr. Chairman. My name is Leo Motiuk. I thought before I give some of my background, just a few brief comments: It would probably be helpful to the Committee to know from where I come, to understand my biases and experiences, what I have seen in my years of practice as an attorney, what has been good as well as what has been bad, because there are certain improvements for which I think the Department should be congratulated.

I'd like to comment on some pending proposals from the Department, and then some suggestions. I'll try to be as specific as I can because that, in a sense, is what, I believe, you are looking for.

I am an attorney. I am a member of the law firm of Shanley and Fisher in Morristown, New Jersey, one of our State's largest. I serve as Co-Chairman of the environmental group of that firm. We represent some of the largest corporations in the United States, medium sized companies, small businesses, individual entrepreneurs. Indeed, it's all spectrums of the economic market, and our exposure to environmental problems has involved all media of contaminants.

I, myself, have been involved with ECRA issues since the inception of the program. We've seen the horror shows; we've seen the good things.

I come to you in this particular spirit; that is, our firm and I myself have a strong interest in New Jersey, in both our environment and our economy, and in an attempt to balance the interests of both, which are extremely important if this State is to grow and prosper and be a good place for all of us in which to live.

I think it may also be important to this Committee, that in my work as an environmental lawyer, a lot of our work takes us outside New Jersey, and indeed, outside this region, not only through the legal work itself, but I serve as the Chairman of an Environmental Committee of the American Bar

Association. I bring that to your attention because in a lot of the programs where we are involved, people come and talk to you about New Jersey. The ECRA law is certainly a unique law, and there is a great deal of debate and discussion whether or not it should apply in another state and how to improve it. They want to know about how it has worked in New Jersey.

SENATOR McNAMARA: Are you going to comment as to what you respond to those types of questions? It would be interesting.

MR. MOTIUK: Yes, I will, Mr. Chairman. And I think it is a mixed response. I'd like to just start out with what has gone well in New Jersey, because I think as you attempt to come up with some solutions, you have to legislate and you have to be as precise as you possibly can. Maybe in a hearing we can talk in broad strokes, but when you have to get to your proposals, they have to be more specific.

Administratively, the ECRA program has gotten better. The procedure for applying for letters of nonapplicability, getting administrative consent orders which will allow a transaction to go forward, dealing with sites that we call LECs -- low environmental concern -- I think the agency has come a long way. I would have hated to have been Mr. McMahon in the beginning, who had this program from day one, and Lance Miller who got it a few years afterwards. It was an enormous task to deal with, and if I were here in 1985 or 1986, I would not be making those comments that I am now in terms of moving the paperwork. That has gotten better. I think you would not get much dispute from most people involved with the practice.

Not quite as good, but getting better, is the responsiveness from the agency. Some of the hostility that used to exist-- And the question that you asked, you know, the contrast between private and public bodies: That's gone. There are individuals who are exceptions to those. No institution is perfect. But I think it's much more responsive.

The problem that I think still exists here, and I'll return to that in a moment, is not a problem of particular individuals, but I think it's systemic in terms of the ability to retain good people, and I'd like to return to that in a few moments.

The agency is somewhat more consistent today than it has been in the past. It's not as much seat of the pants, and I think that comes from learning with the program; and again, here with more exceptions than the past, in certain situations, more realistic. I think that comes with the experience that they have had with the program.

Let me give you a particular example of that. And that applies to ECRA or non-ECRA. One of the problems we all have with ECRA is when we -- comes time to start going into the program, and if we have a site that has problems, the agency then is involved with a site that they have to start dealing with right away. To be able to come in before the ECRA trigger, or to talk to the agency before that, can save a lot of time, money, and effort. I commend Commissioner Weiner and Assistant Commissioner Miller. In fact, we worked with them on this whole memorandum of understanding approach that they now have, which is more Spill Act driven than ECRA, but essentially you can come to them with some information, you don't have to sign one of these draconian administrative consent orders, and they will look at your data and they will give you a response to that. That's a positive step forward, because you can begin to learn about your site and not have to wait for ECRA.

That's what's gone well. The first point I mentioned I think is the best. The others are not quite as good, but I think they are positive, and I would hate to see the Committee not think about those.

What has not gone well? This comes up in the discussions when you go outside New Jersey. One of the key problems with the statute, and I think which aggravates so many

people, is there is no distinction between the innocent party and the so-called polluter although even in terms of polluters, there are some who are much more egregious than others. Many used to run their companies in a way that was fine at that period in our history, but then there are others who even violated standards that most people would have followed at that time. But above and beyond those people, there are people today who own property who never caused a problem on that property at all, but if they go through the ECRA process, and they fall within one of these SIC Codes, they have absolute liability. You know, as lawyers we use the terms negligence and strict liability. Absolute liability is even worse than that. Absolutely by status: You own that property; you're in an SIC Code, you're automatically liable. I'm sure you have heard horror story upon horror story about it. It's a problem with the statute. The agency, in the regs that they put out for public comment, is beginning to try to deal with that by giving some degree of protection to the so-called innocent party that it doesn't give to the polluter.

A big problem in ECRA, and I know that it drives a lot of our clients to a great deal of frustration, is the turnover that I mentioned before. For business people it is not only dollars that you spend, but time and finality that make it very difficult in which to function. How long will it take to know what you have to do, and when you get an answer, is that a final answer? Those two issues in turn affect the image of the State of New Jersey when you look from the outside looking in. And the concern is the timing and the finality is a big problem.

As I said, I think it is a systemic problem in the sense that there are some very good people who have come through the DEP. I think some of the best minds, probably, around the country have come out of the DEP in this area. It's hard to hold them. Many of us can sit here and tell you that we have cases that have gone through four, five, or six case

managers. You will never be able to completely eliminate from this system subjectivity. It just doesn't lend itself to that much precision. I would urge the Committee -- and it's easier for me to identify the problem than it is to come up with the solution -- but some way, in some incentives, to be able to allow Mr. Miller and his colleagues to encourage people to stay. It's very difficult; these people are hotly recruited by the private sector. But as they leave and a new case manager inherits the file, you have that learning curve. You have to go back and reeducate that person. Your consultant comes back again. Your lawyer comes back again. You haven't moved at all, and in fact, you've gone backwards. It's a very difficult problem and it's a great disincentive for the private sector because it's time and its lack of finality to the process.

There is another problem that is out there, and that is with the consultant industry. You're really at the mercy of who you are using. It's very difficult, perhaps with an exception for our largest companies that have built-in expertise, to really know if the information you are getting is good information, accurate information, how will the DEP react to that-- And the costs are enormous.

Another issue -- and Mayor Palmer dealt with this, that frustrates all of us -- is the urban problem. There is no question about that, and we have not seen much of any progress there. And that question is asked a great deal outside the State. What is ECRA doing? New Jersey is perceived as a State that has great urban history, but great urban problems, and are you really making your situation worse?

Now what has been proposed, and what's good in what has been proposed by the agency? As I mentioned earlier and it's in the rules, and perhaps it should be codified into the statute -- the proposed rules, but it will be difficult -- is some recognition of the so-called innocent party who comes to own the property. In the ECRA proposed rules, as I read it,

there is a statement that essentially says, that if you are not a party that has discharged onto the site, once you meet a certain standard, or if in fact, you don't have to do anything, you're finished. and we don't have any right to come back against you. That's helpful, but I think there is a lot more that needs to be done to address the so-called innocent party.

A second improvement that the Mayor has touched on -- it's a start, but not an end in and of itself -- is an attempt to distinguish between industrial and residential property. I assume that's going to be very controversial as the hearings on the regulations go forth. That's absolutely essential. We cannot return all our industrial properties back to the most pristine of properties. I think it would be counterproductive. It does not mean that people should be exposed to risk, whether they live in an urban or a suburban area. But I think it's obvious that certain uses of a site present less of a danger to our citizens, and most importantly, to our young children, than others. That has to be recognized if we are to make any progress in the urban center.

There is a problem, though, in these new rules, in that while something is being done that will improve the situation, it will also hurt the situation. Mr. Miller mentioned that they have the cleanup standards. Now that's good to get some more certainty, but it will be bad if they turn out not to use the provisions that allow for variations, waivers, what have you, because there are distinct differences between many sites. I know many of our clients have come to us; whether we would be better off now with the new standards, or whether we would be better off with the ad hoc standards that went before? You need a mixture of the two, and we just can't uniformly apply all of these standards.

The Department has provisions in the rules that will allow you to apply for exceptions. I wonder how well that will work. That will be an important action to see and observe in the years ahead.

What am I suggesting to this Committee where you can make some improvements? I think you have to go back and look at the SIC Codes in the statute. There may well be room, if not necessarily in the SIC number itself, but in the subcodes -- and the Department has recognized that itself -- to take certain areas out from under. Now that does not mean that these sites will be free from environmental review. There are other statutes that can look at them, and there is the private sector that is very well educated now and is very concerned about the environmental.

But there is something about ECRA that is different than the other environmental statutes; and that is, the State plays a much more intrusive role. Basically, you can't sell these properties without Department approval, which is a very active process. By taking certain of these SIC Codes out from under it, you're going to leave an educated private sector to deal with those. That will bring some pressure to bear, anyway.

Secondly, consultants: I think this State has to give serious consideration to licensing environmental consultants. I know the first response will be, that's another level of bureaucracy that we're going to add in here. It will not be problem free; it will not be easy to do. But you have people out there who are involved in some of the largest expenditures that are taking place now in the State of New Jersey, and especially for the small consumer of these services, there is need for more protection. I'm not being critical of the industry as a whole. There are some outstanding people there, but there is need, I think, for some supervision that does not exist at this point in time.

Third: Letting the private consultants, those who have the expertise, do their work. I think there is a lot to be said for at least experimenting, and perhaps having a demonstration project, of relying on certifications by those who are properly licensed, that being the end of the process.

If they say that it's achieved certain standards, that's submitted, and unless there is something totally arbitrary with that work, that should stand as opposed to an independent Department review.

Fourth, or perhaps as an alternative--

SENATOR McNAMARA: Just on that one point: Your comments about the question of the expertise that's out there. Wouldn't that also then apply to the certification of the so-called licensed individual who may or may not have a particular expertise when it comes to discovery of an environmental problem.

MR. MOTIUK: That's why I think they have to go hand in glove, Mr. Chairman. If we're going to give them the kind of authority that I just mentioned, obviously we have to know who those people are who are out there doing that work. But if you have a good licensing process, and a thorough review, then supposedly these credentials have been reviewed, you know something about these people, and these are the kind of people you would rely on. Will there be exceptions? Will there be some people who fall through the cracks? There probably will be, but if you take that approach, nothing ever gets done. But I think there is room with people who have good background, and there are many of those who do, to rely on those certifications. We just can't rely on government to do everything. And given the turnover that I mentioned earlier -- the time that's lost as people leave -- I think it can be done, for the most part, faster and more efficiently through the private sector.

What I would suggest to you all, is in that may well be controversial, and to the Department, perhaps we should try a demonstration project. Take a county, a particular city, or a particular series of projects, and try it and see how it works. It will not be problem free. I would assume that we can't even anticipate all of the problems that will come

there. But I think there is a need to come up with something that allows things to move more quickly through the system, and much more efficiently.

There's another way that you can use the--

SENATOR RICE: Excuse me. I'd like to be brief. I just want to go on record here so when staff or whoever is going to look at licensing-- I always get nervous with licensure, primarily because it becomes exclusionary. It's always the licensing area where there seems to be a lot of money involved, like this type of stuff today, and I just want to say there is a lot of knowledge-- If you're talking about a license, like a real estate license or a State exam or something like that, fine. If you're talking about licensure where lawyers and others dictate that you have to have all these bachelor's degrees and Ph.D.s, and telling us the staff that has been here three or four years, because this stuff gets made as we go along, involving the law stuff--

So I just want to go on record, that just about every licensure program that I've seen come through, including the social work bill, for which I ran interference, was set up by folks who think they have more than others, and they don't. They just have maybe some paper that's more, and it becomes exclusionary, particularly as it relates to minorities.

So I just want to say that, because then it becomes a consultant thing, a lawyers' thing, and a buddies thing, and big bucks, and no cap on what they cost.

SENATOR McNAMARA: I think they're talking strictly in the area of expertise type, so that we could rely that those people would have that expertise. Continue, Leo. Thank you, Senator.

MR. MOTIUK: I can't quarrel with that at all.

SENATOR RICE: No, you can't.

MR. MOTIUK: Another way in which to use the consultants is in a select number of cases, perhaps more so --

and that could be worked out with the agency -- where in a sense you're privatizing. They would, in a sense, work for the State. We would contract out some of the work that is now being done by the agency. Some of our finest minds are in some of these firms in New Jersey. There are potential conflict of interest problems. I'm aware of that. But they can be addressed. And again, I think you would have more continuity on some of the most difficult sites, to be able to move them through.

Another provision: When the ECRA law was enacted, there is a section in there that talks about deferral, but it's left to the discretion of the Department when to defer the implementation of a cleanup plan. While it's not a panacea in and of itself, for a business person, the ability to defer the cleanup plan could be very important in making a judgment of what to do. I think the Committee might want to give careful consideration, and this is in the statute, of removing some of the discretion and perhaps making a decision of the Department that they must grant deferral if the criteria are met. I mean, there are criteria there about protecting the public, but that's something, and you can ask Assistant Commissioner Miller, but to the best of my knowledge, I think we're talking about one deferral, if any, that's been granted. I think there was an anticipation when the statute was enacted that we would have more deferrals.

Another thing -- again, I think the Mayor touched on this -- and it's extraordinarily important, and the Department is working at this, but perhaps this should be codified into legislation; that if you satisfy one program and you're deemed to be clean, that should be able to cut across the board. It frustrates clients when you go back and have to say to them, "Now you're all right for ECRA, but I don't know if you'll be all right for RCRA, or another statute." That's wrong. There needs to be a way that when you're finished, you're finished. You can't function other than that.

The cleanup levels: There is a provision that I would ask this Committee to scrutinize very carefully, that's in the Department's proposals. That is a provision that says, "Unless specific approval is granted by the Department, you cannot put two feet of clean soil on top of an area that's of environmental concern." The way in which the language is worded, it seems to discourage that approach. I can give you an experience of just three days ago where our firm was meeting, and we represent the seller dealing with a potentially interested foreign buyer -- a large transaction -- that would be economically productive for a major urban area. The difference between putting two feet of clean fill on top of that area and doing some other things is the difference between $250,000 and, roughly, $2 million. Our consultants-- Not to say the Department will reject this approach, but I'm concerned that it's a discouraged way of dealing with it. And yet we say in these regs that if you have a clean area within two feet of the surface, that the public is protected in certain areas. I think we should welcome that kind of approach. To begin to dig and excavate and remove contaminated soil, and where do we take them and all the hazards there; that's something that I think the Department should welcome, even more than it sounds in the rules. I'm troubled by that language.

Again, it's not a perfect relief for every situation, but I think it's something that needs to be encouraged, almost, more than discouraged.

Subdivisions of property: Again, I make the distinction between the innocent party and the so-called polluter. I think if a party is innocent and hasn't caused a problem there, they should be given more ability to subdivide the property, basically have the 20 percent rule, and I know you all continually get into that. But I wonder if it's fair that someone who has not caused any problem and wants to subdivide more of that particular piece of property, why not let them do that.

Now the answer will be, "Well, we can't let more because we're taking the economic strength of that property out and there won't be anything left to do the cleanup when it's needed to be done." But that party hasn't caused the problem. They're not making anything any worse. And again, I stress that's the innocent party.

SENATOR McNAMARA: On that point, actually you're arguing that we should then build some sort of a fund. I mean, if you're going to cut up a pie two ways, or seven ways, and there's only one wedge left, and that's the place where the contaminant is, who is going to clean it up? If it gets foreclosed-- What the Mayor is concerned about is foreclosure. It's abandoned, then the city owns it, and then who pays for it at that point?

So I think I hear what you're saying, but it's a-- Leo, actually, you've argued on every side of the-- I have to tell you one thing. In your presentation, you've made a good case for all sides.

MR. MOTIUK: There is good cases for all sides, Mr. Chairman, in this--

SENATOR McNAMARA: Yeah, which is, by the way, and somebody reminded me the courts set the standards for attorneys, but if we talk about expertise, you know, there's another area of how buyers could be someone using someone of your experience and expertise, or others that deal with ECRA on a regular basis, would obviously be better than someone who dealt with it very rarely and wasn't aware of all the pitfalls.

MR. MOTIUK: Yet they are regulated, and I think that's the distinction.

But to go back on this issue of the subdivision, because I think you have to distinguish between each of these problem areas--

SENATOR McNAMARA: But do you honestly think that we could handle that in the ECRA bill, or wouldn't that take

rather extensive legislation, to make those distinctions of the innocent versus the polluter, and how-- Because ultimately, the property still has the pollution.

MR. MOTIUK: Well, but then you talked about the funds. Here, I think, is a big problem with the ECRA situation. There is need for a lot of sites to be cleaned up. But to put that onus in certain cases on a party that is innocent -- and if you cut to the chase, and you know, one of the biggest questions in ECRA is, to put that onus on the party that is innocent, that has not caused the problem, and in many situations is not going to get any economic benefit out of that property -- I don't know that you're going to accomplish anything. Because, quite frankly, what happens is, the property gets warehoused. You walk away from it. And we have plenty of properties like that that are in New Jersey; yet, you can function enough so they don't trigger the ECRA statute.

You asked in the beginning, what are some of the concerns outside of New Jersey? That is a major concern. My point on the subdivision is that the party that would be subdividing off the good piece of property -- I'm not saying it's got to be 80 percent, I don't know what that number is -- but to say they can't do that and get some productive benefit of their property, they're certainly not going to make the situation any worse, and if you don't allow them to do that, they're not going to get any benefit out of their property.

SENATOR McNAMARA: No. They might generate enough income to clean up some of the other property--

MR. MOTIUK: They may.

SENATOR McNAMARA: --if it's economically feasible.

MR. MOTIUK: That's right. But in this situation they can't.

SENATOR McNAMARA: I also have to remind you that I have several other witnesses, and quite frankly I could most probably continue with you for the rest of the afternoon.

MR. MOTIUK: Mr. Chairman, let me get to my final point, which is probably the most controversial issue that deals with this: Should ECRA survive; should ECRA be terminated? I'm not here to advocate that the program be terminated, and I think it would also be a mistake for those to say, maybe not now but five years from now, because then you will have planning around when the termination date is. But I think what this Committee should seriously begin to consider is removing more sites from the ECRA process. And the way in which I think you can consider doing that is by the potential environmental threat.

We have different ways of prioritizing environmental threat. Let me emphasize when I say that, that it does not mean that these sites will not get environmental attention, or that they can't get environmental attention under other statutes, or indeed, through the private sector. The ECRA statute in many ways has become the model auditing provision for the private sector, but I think we have to get the State out of the approval process of many of these properties. I think if we come up with some way -- and it may be a ranking system -- and you look to see whether or not a site might fall above a certain environmental threat or ranking. Then sites below that would not have to go through the ECRA process.

I think it would help eliminate a large number of matters that are in the process and make it much easier to deal with as a private sector party, and let the private sector deal with it. You'll still get the protection for the public. Parties are not just willy-nilly buying these sites.

SENATOR McNAMARA: I hear what you are saying, and I think there might be some sympathy to look at it from that approach. But on the other hand, you have to remember that there were sites that were discovered that nobody in their wildest dreams thought had contamination; had they not been

caught, they would have caused much more severe problems because of a threat to a nearby aquifer. It's a double-edged sword.

MR. MOTIUK: The proposal, though, that I am suggesting to you is, you would have a ranking system. There would obviously have to be some evaluation of that site, but assuming it didn't meet that criteria-- I mean, there are sites with tremendous variations of environmental problems. It is very rare that you are going to have a commercial or industrial site that has no environmental problems. I'm not talking now about de minimis versus non de minimis. I'm talking about degrees of problems. But if they don't meet a certain kind of ranking with a certain level of environmental problem, keep them out of the ECRA system which requires a very active role by the State, and let the private sector deal with those in the buyer/seller negotiations. I think you're going to hear from a representative of a financial institution later. Insurance companies-- They're all watching this. Then I think the ECRA process will work well on the sites that it should be working on.

SENATOR McNAMARA: Again, I hear what you're saying, but some of those innocent bystanders are people that should have been "buyer beware," that bought something that they didn't realize had a problem.

MR. MOTIUK: I'm not sure you're going to have that problem as much though now. The history has changed. We've dealt with a great deal of change in the history.

SENATOR McNAMARA: I've got to believe that you are not going -- whether there was an ECRA law at the moment -- that you are not going to represent somebody that was going to purchase land, that you would not advise your client to look into it.

MR. MOTIUK: But because of that, we may not need such a heavy hand. Today you have a much greater degree of

environmental consciousness because of programs like ECRA. Maybe they have served their purpose, but at a certain point in time you have to look at what you've picked up with what you've lost. There, I think, you can have a balancing between the two.

SENATOR McNAMARA: Are you suggesting that we should go with something like the Illinois standard, which is just a disclosure to the buyer, without requiring any cleanup?

MR. MOTIUK: I think Illinois and Connecticut and Indiana have a lot to suggest themselves. I'm not sure that I'd go quite as far as they did. There might be certain sites that I would still want to keep in. But I think they have a great deal to commend itself-- I think we have to be realistic in this regard, Mr. Chairman.

In many ways there are things to be proud of in ECRA, and I can't say the other way, because there are pluses and minuses to everything. But to be the only state out of 50 that has gone this way and that far, has to give you some-- We have to compete. Those states are equally concerned about their citizens. They're equally concerned about their economy, equally concerned about their urban areas. It has to give you some pause for concern that we're the only one who has gone this far. And other states have looked at it. In fact, in Illinois when the bill was put in it was so hastily drawn -- at least I have been told this -- that it basically took the New Jersey statute and just said, you know, the Illinois law, and it was the New Jersey law all over again, and people then decided they had to make some changes there.

The New Jersey law has had some great success, but it has to give one pause when we're the only state in the country that has that particular statute, and when we're trying to compete with others who I think are as environmentally concerned as we are.

SENATOR McNAMARA: I hear you. We get the message.

MR. MOTIUK: Thank you, sir.

SENATOR McNAMARA: Thank you, Leo. Are there any questions from anyone on the Committee? I'm sorry. (no response)

I think, Mr. Miller, that you can hold your comments till later, because I think that you might have some comments.

Bruce Siminoff?

B R U C E S I M I N O F F: Thank you for allowing me to address this Committee regarding ECRA. I'm Bruce Siminoff, and I'm Chairman of the ECRA Task Force of the Commerce and Industry Association, which is headquartered in Paramus, New Jersey. We have approximately 2000 business members across many lines. I have personally lived in New Jersey all of my life, which is 55 years.

Our business association has been deeply concerned about ECRA's impact on New Jersey's economy for the last five years. I personally have become so frustrated by ECRA and its viral influences that I have decided to write a book about my experiences. It will be published by Glen Bridge Press in August, and it's title is, "Victim Caught in the Environmental Web."

Researching and writing this book has led me into numerous ECRA directions, as well as to the examination of many ECRA cases and clients. I did not come here today to recite a litany of ECRA cases to you, and I will not waste your time and do that. However, the Commerce and Industry Association now believes that New Jersey should repeal and replace ECRA with a whole new approach that has proven to work elsewhere. In January 1992 we published a position paper to this effect, and I have shared it with Mr. Cantor, on your staff.

We further believe that the bureaucratic abuses which have ravaged New Jersey's cities and companies and have driven jobs to other states and discouraged vital economic development, must be corrected. The Association believes that these problems cannot be solved merely by the reform of ECRA.

Since the abuses of ECRA have essentially been regulatory and procedural rather than conceptual, the Association urges that the current statute be replaced in toto with one that is more workable. It must reflect the business and public consensus that sensible environmental protection is a priority which can be achieved without damaging job opportunities and the economy of New Jersey. It should also not damage traditional American fair play or justice.

In order to protect the public interest against further bureaucratic excesses, the new statute must establish specific regulatory guidelines dealing with fundamental policy issues such as materiality, fairness, timeliness, legislative oversight -- which we lack in New Jersey -- and protection of the innocent.

First, what's wrong with ECRA as our Business Association sees it? These are major negatives. The law has, in our opinion, nearly halted financing of small and medium ECRA subject businesses, and the reasons for that are several. First, banks and mortgage companies, and leasing companies are secondarily liable for cleanup. For the small business, that makes it impossible to get loans in many cases. Some banks view ECRA property, machinery, and equipment, as having diminished value under book value. Hence the borrowing power of these small businesses therefore eroded. Even after a property is clean, the bank has no control over future events such as a bankruptcy, and hence the secondary liability of ECRA gets thrown back in their face again, and this has thrown a monkey wrench into small business financing.

Number two: Landlord/tenant relationships have been negatively impacted in New Jersey. Most landlords now prefer non-ECRA tenants. Hence, by law and by regulation, we have forced manufacturers, especially small ones, to seek other quarters, other places, other states. If a tenant does not clean up, if he flees in the middle of the night, the landlord

must do it in his place. In many cases this cleanup can exceed the value of someone's lease. Hence, on a business basis we have legislated out a class of business in New Jersey, those small ECRA subject tenants or clients, and this has harmed New Jersey and its business economy, and it will continue to do so unless it's halted.

In the case of old buildings, ECRA is a total disaster. Environmental misdeeds that began in the late 1700s in the State of New Jersey and elsewhere in the United States when manufacturing began, cannot be corrected in one swoop. The present owner, innocent or guilty, is held responsible in the same net for what he didn't do, or didn't know about, or did do. He can have his assets, if he's innocent, drained simply by the crime of ownership. Ownership of old property: That's the crime -- no other reason for that crime.

One of our examples of what happens to jobs, businesses, and New Jersey economic climate through ECRA and old buildings -- I think in one of the best examples, not a horror story, it's an example of what happens by this -- happened in Warren County recently. That was Ingersoll Rand Company in Phillipsburg. Last year the company underwent a $44 million consolidation program which involved the tearing down of 30 buildings. Many of these buildings, such as the Cameron Building, were in good condition and could have been leased or sold to other companies. Another portion of the company's property along Route 22 is a prime spot for industrial development. But none of this will happen. It will remain fallow for decades. To quote Ingersoll, "We were stymied from selling the Cameron Building because any transfer would trigger the ECRA law." -- according to Walter J. Schmidt, the General Manager -- "so we decided instead to tear it and other buildings down." Similarly, the company will now not sell the vacant land for new industry, even though Phillipsburg is very hungry for jobs. "God knows what you'll find underneath our

property for the last hundred years," said Mr. Schmidt. "Any problems that we had on our site, we've cleaned up. We've always operated according to environmental regulations. But we've been manufacturing here since 1908."

The net result of this fiasco, which I don't view as a horror story, is a loss of ratables to Phillipsburg, a loss of jobs in the future, a loss of choice property along Route 22. Is this a spur for economic development in New Jersey? Hardly.

ECRA in urban areas -- and I won't repeat too much of this because you have been told this by the Mayor of Trenton already -- is another disaster. No one has the money or the intestinal fortitude to tackle the industrial areas of Newark, Trenton, Passaic, or Clifton. Who is going to take over these properties? What is going to happen to these properties? Present owners can't afford to go through this with contamination, cross contamination, and historical contamination. Who knows what happens underground, or the water table? It's a disaster, and it must be resolved.

ECRA has also resulted in the rampant persecution of innocent parties. This injustice has occurred in several ways. First, the present owner approach is unfathomable. Why does an innocent present owner, who did no wrong, made no mess, polluted nothing, and not even knew about it, have a legal cleanup responsibility? Properties in New Jersey along rivers, such as the Hudson River, were built by dredging and backfilling in the early 1900s and late 1800s, and this occurred legally, in many cases by the Army Corps of Engineers. In those days, you could not spell the word environmental. Why does the present owner inherit that problem? He didn't do it, didn't know about it, may not even know about it today. This is no way to welcome business or jobs, and to create any kind of a positive economic attitude in New Jersey.

One of the things that I have personal difficulty with, and I've talked to attorneys about this -- I'm not an attorney myself -- and these are the words found in the ECRA regulations: "that parties shall be liable jointly and severally, without regard to fault." I want to repeat those words, "jointly and severally, without regard to fault." These words are unfathomable to me. Where in the history of Western jurisprudence, from the date of the Magna Charta to today, can any Western legal system have words that hold anybody responsible for anything without regard to fault? That doesn't make any sense. Every time I shave I think about that. How can you be held, jointly and severaly, without regard to fault? It's unbelievable. In my opinion, this should not occur in America. It should not occur in New Jersey. It's an attack on innocence, and it's ensnared many people unjustly.

And what it has done, even worse, it has given New Jersey the reputation of being a zany regulator, where we are the laughing stock of the United States, and every business conference I have ever been in, we're from the ECRA state. This is not what we want in New Jersey.

I could go on and on about ECRA defects, but let's turn the other side of the coin. What do people think who have been through ECRA? A little more than a year ago we did a study of 624 New Jersey companies and received a response from 160 as to how they felt about ECRA, people who are ECRA wise, who had gone through ECRA. I'm not going to read you the whole survey, I gave that to your aide. I just want to highlight a couple of things.

First of all, most companies that went through -- 90 percent -- found ECRA to be very complicated. Secondly, most of them were in ECRA for from two to four years. That may have gotten a little better. The worst problem, though, is that we asked people what this did with the time and resources involved in complying with ECRA and New Jersey environmental

regulations; what has your company been influenced to consider to change its business plans, whether closing down, moving out, or staying in New Jersey? It was an interesting question, and I want to give you all of those answers, because I think it is important.

Three percent said they had sold their business. Two percent are bankrupt or in Chapter 11. Twelve percent of the respondents said they were not moving or changing their plans. Thirty-seven percent of the respondents did not know. Forty-six percent of the companies answering this question said that they were considering moving or changing their New Jersey business plans and/or employment due to stringent environmental and/or ECRA regulations.

The second question, I think, that was very important that we asked: We asked the respondents: ECRA has reportedly caused lending problems to small business and business in general in regard to financing loans and mortgages; what have you experienced? Seventy percent of the respondents said ECRA did create problems with extended time involvement regarding financing of their business. Seventy-five percent said ECRA created additional expenses regarding financing their business, and 73 percent said that ECRA had created difficulties in financing their business. That is not a positive business environment for the State of New Jersey when we're competing with 49 other states.

A couple of people -- 75 of them, which is about half of the survey -- decided to write in answers, and there are a few answers I would just like to share with you, because I think it's not just what I say, it's interesting to see what people who have gone through this have said.

One person said, "The law should be modified to protect owners from sins of their predecessors. ECRA should only apply in the event of a 100 percent sale of a business or bankruptcy. We will not set up future operations in New Jersey and are presently making our plans to relocate to the South."

Another gentleman said, "We own two multileased factory buildings in Essex County, New Jersey, and have under 20 tenants. We have been unable to remortgage the buildings, unable to refinance, and of course, can't sell them. They are older type buildings, and we have about 10 ECRA subject tenants. We are absolutely stuck, and can't figure any way out. After 20 years of paying down my mortgage, I'm afraid to reinvest my own funds. I guess that after my death they will become in disuse. It's a strange way to reward me, because I didn't pollute, for hard work, and a strange way to clean up New Jersey."

Another gentleman said -- or woman, "The concept is good, the implementation is absurd."

A final comment from outside was, "We have canceled plans to build another facility in New Jersey. Our company will be relocating in Pennsylvania specifically due to ECRA. We are not in any way polluting the environment. However, the time and money required to comply with ECRA has made it impossible for us to consider business plans or operate in New Jersey any more."

My feeling that our Association's belief that ECRA should be repaired is not antienvironment, it's profairness and pro-America, and projobs and proeconomy. I don't view it as an antienvironment stance at all. We believe that ECRA should be reinstated similar to and patterned after the Illinois Responsible Property Transfer Act, which permits cleanup of sites with government oversight, but lets the private sector provide impetus and funding. Generally accepted business practice throughout the nation has long embraced the private property, environmental audit, and cleanup approach with these hazards.

Illinois, we believe, has correctly harnessed the process for regulatory purposes. The Association urges the adoption of this enlightened regulatory philosophy in New

Jersey as the best means of ensuring environmental quality and fairness, while minimizing compliance costs and administrative demands. If the Legislature cannot bring itself, due to pressure from outside groups, environmental groups, and whomever, to fix what's really wrong, and if ECRA is not repealed, then in our opinion, our Association believes that at a minimum we must do the following: We must reduce paperwork, the number of tests, and the overzealousness of the DEP. We must protect innocent parties. The present owner approach is unfair, unjust, un-American, and un-New Jersey-like. We must free up lenders' liability so as to free up lending in New Jersey for small business. We must privatize the process more and more. We must retain constitutional guarantees, respect due process, and private property. We must correct all unfair aspects of ECRA to take this blot off of the New Jersey scene. We must solve problems of old buildings and inner cities. Pollution should be the responsibility of who did it. We must reduce the number of ECRA triggers. We must reduce the number of times the same property goes through a cleanup process, and we must publish the statewide standards, but they must be flexible standards, especially in brown field zones. The New Jersey environment cannot be cleaned up in one day, one week, or one month. Let's allow this to happen over a period of time.

Our Association believes that many companies have sworn off New Jersey. We believe many companies here are expanding elsewhere. We believe the present unfair, unwieldy, zany approach is costing jobs, chasing out business, scaring lenders, harming innocent parties, and just not working. We believe that a positive business and job environment in this State must be created to restore liberty and justice for all. Thank you. (applause)

SENATOR McNAMARA: No clapping, thank you. I think maybe that ECRA is even being blamed beyond what ECRA does. I

think the Federal Superfund Act, and the Spill Act, kick off certain requirements, if I'm not mistaken. Mr. Miller, is that true or not true?

ASSISTANT COMMISSIONER MILLER: (speaking from audience) Correct.

SENATOR McNAMARA: And another reason for going through this process is, we are interested in New Jersey, and we are interested in jobs, as well as anyone else, but we are also interested in that balance.

Your first proposal of a repeal of ECRA, I cannot speak for the Committee, you know, because I am speaking for myself, I don't think that's realistic in this day and age, to be very honest with you. As far as a number of the suggestions that you made, we will certainly take them under advisement, and I think a number of them are areas in which we intend to look at.

I think, also, if I am not mistaken, and a point that maybe you might do a service to business and industry, to let them know. I think when they cease operations in a particular facility, tearing down the building, doesn't take them out of ECRA. I think it kicks it off. Mr. Miller, is that correct?

ASSISTANT COMMISSIONER MILLER: (speaking from audience) That's correct, Mr. Chairman.

SENATOR McNAMARA: So I mean, just so that they would be aware, those members of that organization, that they should be aware of what they're doing-- It they're doing it to avoid ECRA, they're actually creating-- They're kicking off ECRA.

MR. SIMINOFF: That wasn't the intent in that case, Senator. The problem with -- as a landlord-- The problem with a multitenant landlord, in the case of taking that property and bringing in 10 tenants is, the landlord becomes jointly and severally liable without regard to fault. The landlord becomes put in the position that if one tenant does something wrong it can affect all the other tenants, and the landlord may not have

enough money to perform cleanup based on the lease amount of what the tenant does. So what you've done is, you've put the landlords in the position that landlords do not want to lease to this class of client, and what you've done is pushed a class of business -- and I don't know what percentage it is of New Jersey business -- out of the State, especially if they are small.

Now if you have Mobil or Exxon or somebody like that that comes to you, sure they'll give you a large bond and you can understand that, but a small company can't do that.

And what most people in the DEP -- and I've debated Lance Miller many times, and I consider it a friendly debate, I hope he still does -- DEP doesn't understand, that when they take all of these bonds, and they're always talking about how they have this half-a-billion dollars worth of fund bonding, what they have done with small businesses, when a bank gives you a loan and they say you have a million dollar credit, if you take half-a-million dollars of that and put it into a bond, the bank now says, you have half-a-million dollars in credit. So they have reduced the amount of money to small business that is available.

SENATOR McNAMARA: Bruce, I don't think you were here Monday?

MR. SIMINOFF: I was not here Monday.

SENATOR McNAMARA: All right. That subject was discussed at the hearing, and it is an area which we intend to look at. Again, because it's a double whammy. It's putting up a bond, and then spending the money, and some people of limited assets would not be able to do both.

MR. SIMINOFF: That's correct.

SENATOR McNAMARA: They might be able to do one, but they can't do both.

MR. SIMINOFF: That's correct.

New Jersey State Library

SENATOR McNAMARA: That is an absolute area that we are looking at. Are there any questions from any member of the Committee?

SENATOR RICE: No. But Mr. Chairman, if it will make him feel any better, and I'm in the minority, I've been there all of my life, I would wipe out ECRA, Superfund, and everything else and come back with a whole new scenario. But as the Chairman says, it's not going to happen, because I'm only one vote.

MR. SIMINOFF: Well, I must say this to you, Senator: I'm pleased that you said that for one reason. My feeling is that when you have something wrong, you fix it, you don't tinker with it. The mere fact that it's controversial and people are afraid to do something to make it right is not the right reason not to make it right. New Jersey is suffering severely -- severely -- with this law, and I think we got to make it right.

SENATOR McNAMARA: I think your criticism -- you're entitled to say whatever you want to say -- but I think your criticism might be better left until after we've looked at it and taken some steps. What you suggest is that the Legislature and/or this Committee refuses, or will refuse, to look at ECRA in any meaningful way.

MR. SIMINOFF: Oh, I didn't mean to impugn you in any way, Senator.

SENATOR McNAMARA: I did not-- When I said that we would not repeal ECRA, I don't believe that there is support, statewide, to repeal the statute, period. To make modifications: That's why we're going through the process.

MR. SIMINOFF: Well, if you polled the business community without having to give their names, I think you would find out that 80 percent would tell you that you should. The problem is that that's where are economy is derived from, and I

think we can't just go like this and say, "Well, it's okay if this company moves out or that company doesn't move in." That's where I sit and what I'm seeing.

SENATOR McNAMARA: I hear what you're saying, Bruce, and I hope you hear what we're saying.

MR. SIMINOFF: I did. I know you're going to do a good job. I did not mean to impugn what you are going to come out with at the end. Thank you very much. I appreciate the opportunity.

SENATOR McNAMARA: Thank you.

SENATOR RICE: Mr. Chairman, the people who are making statements, are they leaving copies that we will get later, do you know?

SENATOR McNAMARA: There's a total transcript being made of the entire hearing, plus of those who read statements.

David Rosenberg, Environmental Compliance Services?

D A V I D M. R O S E N B E R G, ESQ.: He's a tough one to follow. Good afternoon, Mr. Chairman, and members of the Committee. By way of introduction, my name is David Rosenberg. The company that I represent-- I would like to thank you in advance for giving me the opportunity to discuss what some of our experiences are with ECRA. The companies that I represent are Environmental Compliance Services and Consulting Services, Inc.

By way of introduction, Environmental Compliance Services is an insurance underwriter. We provide a national program of insurance for companies with an environmental liability exposure. We write numerous fixed site facilities here in the State, as well as numerous transporters and contractors that are involved in site remediation and environmental cleanup.

On the environmental consulting side, our company, while not doing any ECRA type or government work, is involved

with such important issues today as environmental audits regarding the lender liability issue, and assisting lenders with some of their environmental problems.

SENATOR McNAMARA: Mr. Rosenberg, excuse me for one second. I hope that you are going to summarize, you know, and not-- If you follow what I'm saying, so there might be some opportunity for people to ask questions, plus the fact that we do have two or three other people to testify behind you.

MR. ROSENBERG: Sure. I might add that I do not profess to be an expert on ECRA; that my companies will not benefit from the repeal of ECRA; they will not benefit or be affected if ECRA is modified; that I would be happy to provide during the questioning period my personal opinions as to the ECRA law and its effectiveness. But really my testimony is limited today to real world experience, and some of the problems that we confront with respect to the practice of environmental due diligence.

You've heard prior testimony indicating that the professional community has the ability to exercise professional judgment in the preparation of environmental audits, in the approval of cleanup plans, and to make certifications that cleanups are completed in accordance with these plans. I would caution the Committee to the potential problems involved, what I consider to be the privatization of ECRA. I'd like to cite some of the real world experiences that are happening in the marketplace today.

Coincidentally enough, I received this letter dated May 12, from an association that I am aware has been in operation for close to a year now. With the Committee's indulgence, I would just like to read, verbatim, what the letter states. It's addressed specifically to myself.

"Dear Mr. Rosenberg," I, by the way, am an attorney not involved in the practice of law, but involved in providing insurance and consultant services to the environmental

industry. It says, "As a professional in the real estate industry" -- obviously I'm not involved in the real estate industry -- "you know the tremendous effects on value that can occur if there is an environmental problem on a piece of property. Lenders and governmental agencies, are also aware of this fact, which is the reason they are requiring in ever increasing numbers, a phase one environmental inspection report.

"Your experience allows you to provide an environmental inspection, and makes you eligible to join the Environmental Assessment Association as a CEI -- Certified Environmental Inspector. The mandating of the phase one Environmental Inspection Reports should provide you with an immediate source of new income.

"Membership in the Association as a Certified Environmental Inspector is available to you by simply completing the special application form and mailing it, together with the annual membership fee of $125."

I submit this to you as real world experience of what is happening in the marketplace today with the problems of defining what is environmental due diligence, and the problems of discussing just what should an environmental audit entail.

I would submit that there are certainly problems, of which the Committee is well aware of regarding the ECRA process. There are certain inherent problems involved in the privatization of ECRA, and in the private marketplace with respect to the services that the private marketplace is providing to industry today.

In particular, the practices that we see everyday in competing in environmental audits for lenders, we find that, unfortunately, the lending community is really shopping price -- that there are numerous people who are certified as an, "environmental inspector," that are able to perform these audits for relatively inexpensive costs, and there is relatively little concern with what the definition is of due diligence.

I think that conducting a comprehensive audit should obviously be a prerequisite to any business purchasing or acquiring commercial or industrial real estate. The problem here is that if we leave this solely to the private marketplace to determine the elements of a proper audit, and the qualifications of due diligence, we have the abuses as we previously cited.

SENATOR McNAMARA: Mr. Rosenberg, just on that one point: Are you saying that banks are shopping in order to give them the ability to more readily make money available? Because if that's the case in New Jersey, I'd like to find out the bank. That's not the complaint that I'm getting from anyone.

MR. ROSENBERG: What we see, Mr. Chairman, in the lending community -- and we have good lenders and bad lenders with respect to their environmental practices -- when an environmental audit is required, if the lender is involved in lending moneys to a borrower who is purchasing a piece of property, or is a going concern, or is going to establish an industrial type of business on that property, the lender is aware that they must perform an environmental audit on that particular piece of property. The problem that we see in the lending community in the way that is handled is that, traditionally, the lender has a number of consultants that they feel are qualified to perform this survey -- a dozen or so consultants. They then leave it up to the borrower to go out and select a consultant of their choice.

Now, if you were the borrower, and you were going to select between somebody who was going to do a property assessment survey that allegedly conforms to proper due diligence, and you were going to pay $1500 as opposed to $3500, whom would you choose?

SENATOR McNAMARA: But if I was the lender, and I had those who I felt were qualified, it's like using appraisers. Banks will tell you that you use one of this list. Because

under New Jersey law, they ultimately can become liable. I'm glad to hear the testimony, I'm just surprised, with all the problems that banks are having that there are still some banks out there that may be following that practice.

MR. ROSENBERG: There is no question about it. There is no question, that as far as we're concerned, and we've had experiences in Pennsylvania as well as New Jersey, that there are banks utilizing environmental consultants which they allegedly qualify, that really are not performing their due diligence.

SENATOR RICE: Mr. Chairman, I have to say this again. That's the part that bothered me. You see, God did not give individuals without their own brains. I may be cheaper, but you see this whole field has opened up, and attorneys are now practicing. It opened up because when the Superfund and all those things came down, there was no environmental law. This law is being made every day as we go along doing things like this, NLC, the Federal government, and everybody else.

You see, if we are going to do legislation, there is some kind of a way we need to start (indiscernible) that supply and demand thing, because it becomes exclusionary. And when you get enough law in place, then folks say, okay, I'm an expert. You tell me what school most of these folks went to, including the ones that went to law school. Because I've been in law school, and there was really, no environmental law. There were courses called environmental law, but it was like we'll go along and make some things happen. That's the advantage of getting in at the ground level.

I just want to say that as I'm reading here where it says, where one pays $1500, versus $3500. You know what? I'll pay for the $1500 if he can answer the question I want answered. Because you're right. Ultimately the liability is going to fall, and one will pay for the other.

SENATOR McNAMARA: I hear what you're saying, Senator. I don't think that's what Mr. Rosenberg was referring to, necessarily. It was more the fact of that brochure that you could get a -- be rated as an environmental specialist if you could come up with $150.

MR. ROSENBERG: I'd be happy to report to--

SENATOR RICE: Through mail orders and things like that, but that's always the exception to the rule. We can stop that. But don't make somebody, an attorney, or some other high credential, to get into this field. That's where it's going, the way we are writing laws. I'm going to keep saying that so we don't do that.

MR. ROSENBERG: I'd be happy to report to the Committee at a future time, my efforts in terms of becoming a Certified Environmental Inspector, because I did send the $125, and I'm curious to see if, in fact, I will become a Certified Environmental Inspector.

The problem, just to -- and I'd like to echo the concerns of the Chairman-- The problems are not necessarily unique to the State of New Jersey. I think these problems are certainly exacerbated by New Jersey's numerous industrial sites, the unfortunate dubious distinction of being number one on the national priorities list with an excess of 110 Federal Superfund sites that are in need of cleanup. Certainly in my travels, ECRA is looked at as state-of-the-art. When you are comparing apples to apples, I would suggest that you look at other states and some of the industrial sectors of those particular states. I would venture to say that such states as Illinois and Connecticut, which Connecticut to my knowledge has somewhat followed the example of ECRA, but certainly there are problems in the future that will come up with the privatization of an ECRA type legislation in the state of Illinois, which I think that the Committee is not yet aware of.

I'd also like to echo the sentiments of Mr. Chairman in the sense that this is not just a State problem with respect to strict joint and several liability. The Federal Superfund law, in fact, implements not only strict joint and several liability, but also retroactive liability as well. So it is a problem that industry experiences not necessarily on a State level, but on a Federal level as well. We are involved in doing business with people who are in the environmental industry, that the impact of Superfund and the liability implications of that law have a serious effect on their business. Do we then relegislate the entire Federal Superfund law, and who do we point the finger at for polluting the environment well prior to the legislation itself?

One gentleman previously discussed modifying ECRA, or developing a certification program for hazardous waste professionals. A certification program I would certainly applaud. Only a handful of states currently require certification in the area of contamination assessment and remedial action. No states have a certification program for the qualifications of an environmental scientist. The state of California is the only state that certifies hazardous waste professionals in the area of preliminary site assessments. An example that is provided in my written testimony, and for time's sake I will not go into a detail as far as what this association does provide, but an example of an excellent certification program is that offered by the National Environmental Training Association.

In conclusion, I hope these comments have provided the Committee with some insight into the problems that currently exist in the private marketplace regarding the definition of due diligence on the performance of qualified audits. I would be happy to answer any questions the Committee might have. Thank you, Mr. Chairman.

SENATOR McNAMARA: Thank you. Many people have argued that the Superfund due diligence is sufficient to replace ECRA requirements. Can you tell us the difference between what is required for Superfund due diligence and for ECRA?

MR. ROSENBERG: Mr. Chairman, I think that that's a problem with the Federal Superfund law; is that there is no Federal standard that specifically defines what due diligence is. On a Federal level my company is involved in specifically lobbying that issue. Representative Curt Weldon in Pennsylvania has introduced some legislation with respect to what is due diligence. We have provided, as part of our written testimony, what we feel would be due diligence in a certain given situation; that is the performance of an environmental audit, or what is traditionally knows as your phase one audit.

SENATOR McNAMARA: That's included in this?

MR. ROSENBERG: In the written testimony.

SENATOR McNAMARA: Thank you. I would like to ask -- I think I know the answer -- but do you believe that the same level of environmental audits and cleanups would occur today if ECRA were not in place, or if more reliance were placed the private environmental consultants?

MR. ROSENBERG: If more audits would take place?

SENATOR McNAMARA: Yes.

MR. ROSENBERG: Absolutely not.

SENATOR McNAMARA: How would you compare the quality of the ECRA program to those of other states?

MR. ROSENBERG: To my knowledge, and again, I'm not here to provide testimony with respect to ECRA, and I don't profess to be an expert. Obviously, you have heard testimony as far as some of the initial problems with ECRA, and the amount of time that it may take to perform an ECRA compliance. I think that it has been largely criticized by economic development and real estate people in that it impedes business

growth. Quite honestly, if I was a buyer, I would look very seriously to purchasing in the State of New Jersey since I would be guaranteed of a certification that the property is clean.

In terms of other states, I think it is favorable. The State is to be, in my personal opinion, applauded for the efforts it has taken since 1984 with respect to cleaning up some of its problems -- its environmental problems. I think that other states look at this legislation very cautiously. Other states have somewhat mirrored this legislation. Most states, quite candidly, have limited the environmental reporting requirements and kept the state government out of oversight responsibilities. But I think that it is fair to say that in my travels, certainly, all eyes -- not only in the ECRA sense, but in the environmental legislation sense -- all eyes are upon the states of New Jersey and California as being recognized as being the most proactive states in this particular area.

SENATOR McNAMARA: Are there any questions? (no response) Thank you very, very much, Mr. Rosenberg.

MR. ROSENBERG: Thank you.

SENATOR McNAMARA: Walter-- I'm going to fake you out. (speaking to Mr. Onsdorff) Walter Nacnodovitz?

K E I T H A. O N S D O R F F, ESQ.: You did.

SENATOR McNAMARA: Sorry about that. Is Walter here? (no response) Then he's not. First Fidelity? (no response)

Okay, Keith?

SENATOR RICE: They faked you out.

SENATOR McNAMARA: Absolutely. Well, every once in a while you get had.

MR. ONSDORFF: Thank you, Mr. Chairman. I'm intending to be even briefer than I had originally planned to be. I'm up from Washington, D.C. and I'm hoping to get back tonight. So with the weather conditions as they are, I'll summarize my testimony and take your questions.

I would like to share with you briefly, however, my background and my current employment position, as I believe these facts will provide the Committee with a fuller insight on the unique perspective which I believe I bring to this timely and very important legislative inquiry.

Presently I am counsel to the Chicago, Illinois law firm of Seyfarth, Shaw, Fairweather, and Geraldson in its Washington, D.C. offices. Before joining Seyfarth in November of 1990 I served as the Acting Director for the Office of Criminal Enforcement, United States Environmental Protection Agency. From 1980 through December of 1983 I was employed by the New Jersey Department of Environmental Protection as Chief of Enforcement. I began my legal career as a Deputy Attorney General in the New Jersey Department of Law and Public Safety in 1974. I served as Litigation Counsel for the DEP from 1976 through 1978. It was in this position as a Deputy Attorney General that I handled the toxic contamination case that led ultimately to the proposed legislation that became today's ECRA statute. I then assisted Senator Lesniak in drafting the ECRA statute in my capacity as the DEP's representative to the working group of industrial, chemical, and petroleum interests he assembled. I should point out that all these private sector interests supported the bill after we made numerous changes to address their concerns. Thereafter, I was requested by the DEP Commissioner to serve as the public interest representative on the ECRA Industrial Advisory Council which was created in 1984. I participated in the Council's meetings from their inception through its most recent deliberations this past week.

I have no current financial interest in any New Jersey property or businesses. With this said, I would just like briefly to--

SENATOR McNAMARA: Is that because you know the law? (laughter) That bothers me. I would feel more comfortable if you were an investor.

MR. ONSDORFF: Actually I'm hoping to get involved with helping some people get through the law.

I would like to point out, extremely briefly, the case that I worked on and a follow-up case, which were instrumental in the adoption of the ECRA law. In 1978 I was asked by both -- actually three agencies of State government, the DEP, the Department of Health, and the Department of Agriculture -- to initiate litigation against the prior operator of a pesticide packaging firm located at a warehouse in the Meadowlands Racetrack Complex. The interior surfaces -- walls, floors, and ceilings -- of the complex had been severely contaminated with mercury pesticides. These commercial premises had lain vacant for over four years until new tenants had begun their cleanup and renovations, preparatory to their anticipated business use. Unaware of the potentially lethal levels of mercury inside the building, which hazardous condition -- as most toxic time bombs are -- was undetectable to the human senses of sight, smell, or touch, and these exposed workers were finally forced to seek emergency medical attention when their blood levels of mercury got so high that they were experiencing severe headaches, blurred vision, and skin lesions. Only after comprehensive site sampling and several hundred thousands of dollars in site cleanup was this warehouse complex rendered safe for human use and occupancy.

The first lesson here was that the prior tenants had engaged in intentional hazardous waste disposal practices. The contamination was exclusively the result of inadvertent fugitive emissions and spills of valuable product and ingredient. Secondly, the migration of the spilled toxic chemicals had not stopped at the original property boundary. In fact, the contamination had migrated to adjoining premises which were used as a business of providing feed to the just opened Sports Authority Racetrack.

Now due to a massive find of dioxin contamination in a part of Newark, in the Ironbound section, a second toxic time bomb which exploded and thereby helped enact ECRA, did so in the spring of 1983. Governor Kean had to declare a state of emergency when DEP tests at the former Diamond Shamrock plant revealed dioxin levels in one sample which exceeded 50,000 parts per million, dioxin. The Federal action level at that time was one part per billion, dioxin in soils. The tragic aspect of this Newark episode was the fact that the purchaser of the long closed agent orange manufacturing plant, again, apparently ignorant or unmindful of the magnitude of the sites chemical hazards had undertaken cleanup and renovation for his new commercial venture using local college students who were hoping to make some money over spring break, when instead their vacation jobs, all performed without protective clothing, respirators, or any other protective means to prevent exposure to this unobservable witch's brew of chemicals, may well have jeopardized their well-being and health for the duration of their lives.

I do not need to rehash the fundamental lessons of the Newark dioxin crisis other than to point out that the State's Superfund supervised remedial action is still not completed, and of course, as with the Meadowlands mercury emergency, has included numerous neighboring properties.

The short history of ECRA's origin should confirm, I believe, that ECRA serves two vital public interests. The first vital interest is the discovery and cleanup of toxic sites before they cause significant damage to public health and the environment. I think one of the biggest points that has been made today is that ECRA has a long and difficult winding road through the high environmental hazard sites. Well, those sites are complicated, expensive, arduous to get through, because of the complexity and the cost of the environmental

hazard. The truly unique feature of the ECRA program is its ability to intercede and catch problems before they become Superfund sites by having a routine mechanism.

Another point that's made, it imposes liability on innocence. It doesn't actually do that. This may sound overlawyering, but ECRA imposes no liability on an innocent owner of land. It imposes a condition on the transfer of land. To the extent that an innocent owner has information that proves who is the actual polluter, the courts are open around the State to reimburse that innocent owner for his damages.

SENATOR McNAMARA: If, in fact, that the individual that caused it has any assets that could, in fact, pay for it.

MR. ONSDORFF: Of course. That's always a reality of the judicial system.

SENATOR McNAMARA: Right.

MR. ONSDORFF: But the point as to liability is actually erroneous. There is always a cause of action against the actual polluter. The point of the beneficial use of property: There are many costs that are imposed upon landowners because of the beneficial use that they obtain from owning and having the use of property. ECRA is another imposition of an obligation on the transfer of property once a landowner has enjoyed the beneficial use of the property, and presumably, is going to enjoy the beneficial return of selling the property. That's a different concept than liability. Any innocent landowner who feels injured as the result of the ECRA compliance has a full legal right to be compensated upon ascertaining who the actual polluter is.

A second important point on the ECRA statute is that because it involves the requirement to redress contamination, off-site as well as on-site, there needs to be greater involvement rather than a privatization of ECRA. It is simply a fallacy to suggest that in the private sector the public

interest would be addressed. This is not a value judgment or moralization or a condemnation. It is a simple economic fact that a corporation or other landowner has a fiduciary obligation to conserve the assets of the private sector entity, and will not address off-site contamination. ECRA requires off-site contamination to be remedied at the time of the site cleanup. Now that issue is being contested.

SENATOR McNAMARA: I misunderstand-- I thought the Supreme Court just ruled that you can't require off-site cleanup under the ECRA statute.

MR. ONSDORFF: I know the appeal argument was held.

SENATOR McNAMARA: The Appellate Division? The Appellate Division, I'm sorry. I guess it's going before the Supreme Court.

MR. ONSDORFF: If, in fact, this legislative Committee would do any-- And I'm not recommending opening up the ECRA statute, but were you to do so, I think reaffirming the understanding that it does require off-site, because some, quite frankly--

SENATOR McNAMARA: But, why--

MR. ONSDORFF: Some of the most severe environmental hazards are off-site.

SENATOR McNAMARA: I hear what you're saying, Keith, but I think under the Spill Fund, that it's covered under that particular statute, if I'm-- Can I interrupt you for one second? Mr. Miller?

ASSISTANT COMMISSIONER MILLER: (speaking from audience) Mr. Chairman, any contamination would be addressed under the Spill Act.

SENATOR McNAMARA: So the off-site contamination could be addressed there.

MR. ONSDORFF: In most circumstances, that's true. There could be circumstances, and certainly when we're talking about the situation of governmental efficiency addressing in a

single event all contamination remedy obligations of an entity that's before the Department, rather than saying, "Well, you've gone through ECRA, you've got part of the problem. Now we're going to send you to a different office down the hall to deal with the people who are in the spill office." It ought to be more efficient, more cost-effective, to have a single ECRA approval that is fully effective, to deal with off-site and on-site aspects of contamination. That is one of the things this Committee should take a look at, particularly in the access area. There are some questions as to what type of partnership arrangement needs to be finalized between the DEPE and the private sector to ensure access to off-site properties. So rather than making this adversarial, which was I think, once again, one of the key factors in the success of ECRA was making it nonadversarial, if you try to say innocent people are caught in the net of this act, innocence is not in the eye of the beholder. Those type of cases such as the mercury case in the Meadowlands would have taken years, and in some cases decades, to actually determine who was the polluter -- who was the single most egregious polluter.

When you have those type of litigation situations-- In fact, I'm aware of one Superfund site in California in which, in the adversarial process, the costs now, between expert witnesses and attorneys is up over $22 million, and it's estimated that the full cleanup will take maybe $15 million. That is a major misallocation of scarce societal resources, to have a fault based cleanup program. When you are talking about uses of property in the future in order to protect public health and safety, that is a condition of the property, as opposed to who caused the pollution in the first instance.

That's not to say that an innocent party, if a party truly is innocent, shouldn't be able to go back and recover the damages for fronting the cleanup costs, but the key point is, if the cleanup takes place as a routine element of a closing,

you have saved money, done it quicker, and done it in a way that does away with the decade-long trials and inevitable appeals which just makes the cleanup more expensive. Because the status quo in an adversarial setup is, no cleanup happens until you find the polluter, and ECRA avoids all that ensnarement, which just-- I mean, we have a lot of complaints that this is an imposition on business, but when you have those type of Superfund claims where you've got litigation that drags on for decades, I assure you the imposition of costs and delays on business can far outstrip the problems with the ECRA statute.

The only other point I would like to raise with the Committee is that in any cleanup setting, human health should be protected at the same standards. As Senator Rice has said, the question as to industrial versus residential urban versus rural. ECRA is not antiurban, antieconomic development, or antieconomic growth. It is antipollution, but so are the other environmental statutes in New Jersey, and when you have health based standards, they will be imposed whatever the program is, whatever the bureaucracy is that's addressing an environmental contamination situation. It's not ECRA that drives the cleanup standards. It is an analysis of exposure pathways and exposure times, and in some settings, if you have a situation where there are industrial uses of the same chemical that's found at a site that may then be reopened up for that same industrial use where you will have a routine exposure in the workplace, you may have to have, unfortunately, a higher cleanup standard than you would in a rural area where that same chemical would not be encountered in a subsequent use because of the existence of the exposure in the normal handling of the chemical in the industrial activity. So to say that ECRA--

SENATOR McNAMARA: But you're talking of a specific toxic chemical?

MR. ONSDORFF: That's correct.

SENATOR McNAMARA: If you were talking, in a sense, of something that could be encapsulated so that a site could be used for a different industrial use, not a residential use where the exposure would be greater for the people living there, and/or children playing there, are you saying you are against that type of difference in standards?

MR. ONSDORFF: No. The remedial approach ought not to be different by ECRA, or by Superfund, or the Spill Act. And in terms of what remedial program is implemented, you have to be site specific and you have to be use specific to understand the exposure pathways. If, in fact, encapsulation removes an exposure pathway, and there's not a realistic expectation that the encapsulation will be penetrated by construction, building foundations, or swimming pools, or whatever the intended use is, encapsulation is a perfectly acceptable remedial program. That's why I don't think the criticisms of ECRA, based upon residential versus industrial--

SENATOR McNAMARA: Well, except that most industrial complexes don't build swimming pools in their backyard, where homes do. So I guess what I'm trying to drive at, are you-- Were you here earlier when the Mayor testified?

MR. ONSDORFF: Yes, indeed. And as I say, my understanding is that the DEPE is taking a look at situations where there will be a fuller analysis of residential uses versus industrial uses. And I would hope and expect, as I say, if one were going to be opening up a lead plant, and the site was already contaminated with lead, and the lead workers were going to have a routine -- even though it were within OSHA standards -- exposure to lead, there would be more concern about the preexisting--

SENATOR McNAMARA: Lead that was on-site.

MR. ONSDORFF: --lead that was on-site.

SENATOR McNAMARA: All right. I concur with what you're saying.

MR. ONSDORFF: I think that's the type of sophisticated analysis that goes beyond merely residential and industrial, and I think over the 20 years that the DEPE has been in the site remediation business, they've gotten to that level of sophistication and are moving in a direction that doesn't require further legislative instruction in that area. The ECRA statute provides instructions to the DEPE to develop those kinds of standards and they've taken a while to do it, but they are there now, as far as I understand.

SENATOR McNAMARA: That's what we're hopefully encouraging them to move a little post haste, because you have to admit, they have taken a little while to get there.

MR. ONSDORFF: It's been a long process, but it's been a worthwhile one, Mr. Chairman.

SENATOR RICE: Mr. Chairman, I just need some clarity, because I'm not sure if he-- There is a difference. There may not be a difference-- You see, the difference is in the application and expectations. When I say expectations, you take urban cities, and let's use Newark, and let's talk about Camden, where nobody would have gone and rebuilt houses. Now we know to go in there and to build on vacant lots, when the history of that community has been nothing but housing, whether it's Newark or rural America, that there are ways that when you apply the law. How do you test? What are your expectations? Because with just housing, with log burning years ago, and coal, etc., you can almost expect what you are going to find from the bottom of the perspective. But what's happened in the process of the residential community, is that DEPE is saying that these are means that you can test, but these aren't means of signing off. We're won't sign off on that, but you'll be okay.

Then the question becomes, well, what happens 10 years from now? You didn't sign off. So my point is that, yes, we're environmentalists to the point that you want to protect

the health safety aspect, but don't want to be pinned down. Now, if you go on the commercial side, and you are saying for example you are knocking down some plants and chemical plants, there is another expectation. You're right, we're not going to pay you for that and we don't think innocent people should pay for it. We think we should identify some folk, or there should be a fund to help.

So there is a line in urban that we are talking about, a distinction between "residential," as to what that process is, so our projects aren't held up. We can move right through them, once Council approves them. The developer is not stuck there from these testing mechanisms and things like that.

MR. ONSDORFF: I'm not sure I quite understand where you are going with that?

SENATOR RICE: Don't worry about it. I'll take care of the legislation. It will be clear when--

MR. ONSDORFF: I think the truism that we all recognize is that developing in urban areas, because of the history of industrial uses for over a hundred years in some instances, is more complicated than developing in pristine woodlands in the rural part of the State. I think, obviously, businesses make an overall assessment of workforce availability, access to schools, access to transportation corridors. I don't think Newark is inhibited, with the magnificent port, the Newark Airport, the access to the Turnpike. In terms of the economics, the environmental equation is only one factor in overall economics. Quite frankly, with the recession and with the collapse of some of the financial institutions in lending, I think ECRA becomes an awfully convenient whipping boy for problems that are way beyond the existence of ECRA. We have discussed the Superfund liability. That obligation on the purchaser to buy property that's cleaned up or to face Superfund liability exists whether

ECRA does or not. So ECRA is just a convenient, handy excuse for a lot of things that are not the fault of ECRA, in my judgment.

SENATOR RICE: Well, you wrote the law with Lesniak. That was clear.

SENATOR McNAMARA: Do you feel the SIC Codes should be expanded or contracted?

MR. ONSDORFF: I think, in light of the experience, there are some opportunities for some expansion, and probably over time there are some areas where they could be lessened. Today I would not offer any specifics, but I think that's an ongoing process. I know the DEPE, by regulation, has reduced the number of SIC Codes covered by the Act in the past. In light of experiences I think that they'll continue to make that examination. They clearly understand the need to work on the important environmental problems, and they're not going to keep in the program those sites that come up clean repeatedly.

SENATOR McNAMARA: Any questions? (no response) Thank you very much, Keith. Thank you very much for your testimony.

W I L L I A M C. S U L L I V A N, ESQ: Thank you. Mr. Chairman, I'm not listed on the printed agenda, but I appreciate the opportunity to give some brief comments in addition to the comments that Mr. Onsdorff has made. My name is William Sullivan, and I'm a staff attorney at the Rutgers Environmental Law Clinic, Rutgers Law School, in Newark. The Clinic represented environmental groups and concerned citizens in one of the legal challenges to the first set of ECRA regulations. Prior to my employment at the Clinic, I was an environmental attorney in private practice for five-and-a-half years with Gordon and Gordon in West Orange. In that capacity I was involved in a number of ECRA cases. Gordon and Gordon also represented--

SENATOR McNAMARA: Mr. Sullivan, I appreciate the commercials, but if you want to make some comments and you're sneaking under the wire, you had better sneak quick--

MR. SULLIVAN: Fine.

SENATOR McNAMARA: --or you're going to be--

MR. SULLIVAN: I'll do my best. I'm pleased to hear that it appears to be the sense of the Committee that ECRA's general goals and purposes are valid and necessary to improve environmental quality in New Jersey. I would echo the comments that Mr. Onsdorff has made about the fact that responsible parties under ECRA, whether they be innocent or not, do have a remedy at law against those which are the actual polluters. ECRA has resulted in many contaminated sites being remediated which would have gone undetected indefinitely if it had not been for the statute.

Of course, there have been some problems with ECRA's implementation. I think the Department has taken some very positive steps to improve ECRA efficiency. One important step is the proposed site cleanup standards, which will regulate cleanups under ECRA and other State and Federal statutes. Environmental groups and concerned citizens have numerous problems with these standards, and we're going to be addressing them at the hearings that are coming up.

SENATOR McNAMARA: That would be the appropriate place to address them. And if you have written testimony, maybe you could submit it, because I have three other people who have been scheduled to testify and it would be really unfair to the others who have sat out here that would like to testify and have not had that opportunity and have submitted that testimony.

MR. SULLIVAN: Mr. Chairman, if I might, then, I would just like to make one comment in response to a lot of discussion that's gone on today. One of the things that we will be discussing at these cleanup standards -- and I think it is very important for this Committee to look at -- is this

question of whether or not there ought to be separate industrial and residential limits. We feel very strongly that ECRA is being used as a whipping boy for a lot of other bigger problems that are causing urban decay in this State, and that a lot of very good urban redevelopment work that's taking place in a residential context is going to be actually deterred here because if you have a piece of property that has been used for industrial purposes, and a residential developer wants to come in and build -- and Lord knows we need more urban residential development -- that development is not going to take place under these proposed standards, unless the developer--

SENATOR McNAMARA: I don't believe so, because if there is a standard for development of commercial, or industrial, and/or residential, they just have to meet a higher criteria.

MR. SULLIVAN: But the industrial property user, who otherwise would be required to clean up to the residential level, if these standards exist, would only be required to partially clean up the property, and then it will be forever condemned for industrial use, unless the residential developer coming in, on his own will decides to pay the additional money to clean it up.

SENATOR McNAMARA: I don't want to argue the point here, and I have some concerns along the same lines that you do, but if we do not have areas where factories -- where people can get jobs and have employment, we're not going to have the housing anyway, because then they can't pay the rent.

MR. SULLIVAN: I understand, but I think we also ought to be encouraging urban redevelopment of residential property.

SENATOR McNAMARA: I am very much in favor of that myself.

MR. SULLIVAN: Thank you.

SENATOR McNAMARA: Thank you. Mr. Joe Douglas?

J O S E P H D O U G L A S: Thanks for having me in here today to offer my views on the ECRA program, both the good and the bad. Before I give you my thoughts, I think it's necessary that I give you just a brief background so that you can understand where I'm coming from.

I'm an environmental scientist with 12 years experience, approximately half of which was spent with the DEP, the other half on the outside. I spent five years with New Jersey's largest industrial Realtor, and due to the decline in the industrial real estate market I spent the last year working for an environmental consultant in New Jersey. I've had experience with hundreds of ECRA cases working on both sides of the issue, and I think I offer a pretty well balanced perspective of both the good and the bad that the program has to offer.

On the positive side, ECRA has accomplished some major things for New Jersey and for the environment. ECRA has jolted a major awareness of environmental liabilities throughout the business and regulated community. Environmental issues are no longer overlooked as they were 10 years ago. Environmental issues are in the forefront of business planners and business managers today.

Obviously, ECRA has stimulated numerous cleanups and has prevented small problems from getting larger and from having a greater impact on the public health.

ECRA has also forced many issues that were larger than the ECRA program itself, such as how clean is clean. ECRA has standardized procedures for site evaluation, for testing, and continued steps along these lines are the proposed cleanup standards and the proposed technical regulations that were referred to earlier. There have been problems with the consistency of the Department, and you see those between the ECRA program, and in the past, the Underground Tank Program, and other programs within the Department. But there has been

very positive steps towards resolving the differences from one agency to the other, and I think a lot of the credit for that goes to the ECRA program.

Another issue that ECRA has forced, which none of us has an answer to right now, is the liability for preexisting conditions. Obviously, there are many cases out there where contamination has been identified, particularly in the older urban and industrial areas, where the current owner or operator clearly didn't cause the problem. The question that I hope this process will help answer is: How do we deal with that problem in a fair and equitable manner to all?

On the negative: Obviously, you've heard many complaints about the cost and the timing of complying with the ECRA program. Many of those complaints are true. The ECRA program can as much as double the cost of going through the environmental process in connection with a real estate transaction. By the environmental process, I mean the disclosure and the due diligence process. The ECRA program adds the agency oversight fees and the timing that is necessary for agency review each step of the way.

The ECRA program's focus could be better. You've heard references to HECs, MECs, LECs, the level of environmental concern. Historically, the ECRA program, 60 percent of their cases -- or over 60 percent -- have been what they called low environmental concern cases. I think we have to look hard at the use of our limited resources, and I think perhaps they could be put to better use than to spend that much time on low environmental concern projects.

There has been a problem, partially as the result of the ECRA program, in perception of New Jersey. Zealous regulation, overregulation -- I think the problem, while partially attributable to the ECRA program is also partially attributable to the Legislature. That is because when the program was implemented, there was inadequate oversight.

Basically the Legislature came up with the idea and said, "Here you go, Department, implement this." without sufficient guidance along the way. The Department, obviously, is made up of environmental professionals. They don't have the broad perspective to take into consideration all of the social and economic implications of the program. As a result, we are where we are today.

Many of the environmental issues that are addressed by the ECRA program don't pertain to SIC numbers. I'm talking about building construction, underground tanks for heating, whether the building is a warehouse or manufacturing facility. I'm talking about asbestos for insulating the warm water, regardless of what that water is used for. I think if you look closely at the ECRA program, at the cleanups, you'll find that many or most of the cleanups pertain not to issues relating to a SIC number, but rather to issues relating to the construction of the building.

Many environmental programs have come into being since ECRA was originally enacted in 1983. I'm talking about the Right to Know program, the Underground Storage Tank program-- Some of those duplicate ECRA's efforts, and reduce the need for ECRA's active involvement in those particular cases -- underground tanks in particular.

The most important thing that I have seen come out of the last 10 years of environmental practice have been the due diligence mandates. ECRA helped drive that issue, as well as the Federal CERCLA program. But due diligence has become commonplace in the business community today. It is no longer a question of getting a property through and getting the necessary approvals so you can close a deal. Buyers and lenders both are extremely concerned about the environmental condition of the property that they are buying. The are aware of the extreme potential liability if they don't pay sufficient attention to the environmental condition of the property.

The concept of due diligence has been developed to the extent that standard practices are now in place. To some extent, those practices mirror the ECRA program -- the ECRA requirements. You've heard references to the phase one environmental audit. They have become extremely standardized: what kind of questions to ask, what to look for, what constitutes an issue worth further evaluation, and when is a property acceptable? This is a due diligence guide. (witness demonstrates) I just wanted to show you the extent to which this information has been collected and is now available to the business community.

The environmental audit procedures, independent of ECRA, or independent of any regulatory requirement in this manual are developed by ASTM -- they're not a fly by night outfit by any means -- and they're 40 pages long. It's probably more diligent than the ECRA process.

The point I'm trying to make is that we have to use our resources to their best potential: We can't afford waste, and we can't afford to lose economic growth in New Jersey. I think the ECRA program deters economic growth. I think it actually scares manufacturers away. In my experience with the real estate organization, I came across many building owners who would not consider an ECRA subject tenant for their space. They would rather leave it empty than to expose themselves to the potential of future ECRA compliance which could reveal problems they had no knowledge about, but could potentially bankrupt them. It certainly wasn't worth putting a small tenant in for the monthly income it would derive.

We also spoke in the real estate business to many large corporations -- manufacturing corporations, heavy industry -- and typically they would laugh if you suggested locating a facility in New Jersey because of our environmental record, and because of the perception of zealous environmental enforcement in New Jersey. We definitely have a track record, an image -- a national image -- that needs to be improved.

Probably the biggest misconception about the ECRA program is that when you're done with it you have a certification -- a clean bill of health. The way ECRA works is, the seller discloses information about the property, what he knows is there, what he has done, the materials he has used, to the State. The State reviews it all; they review all the other records they can find on the property. They come out and look at the property, and through that process, the environmental issues are identified, and when those issues that have been identified through that process are resolved, you're done. The piece of paper you get does not say, "This is a certification that this property is clean." It says that, "Based on the information that we've reviewed, no further action is required at this time." If any other environmental program wants to do something else with the property, they are entitled to. The fundamental problem--

SENATOR McNAMARA: Joe, could you kind of get to the point of where you are going?

MR. DOUGLAS: Certainly, certainly.

SENATOR McNAMARA: Thank you.

MR. DOUGLAS: The fundamental problem is that the buyer isn't involved, and what he is getting is a bill of goods developed between two parties who have no future interest in the property, okay? The Department is not going to own that property after the transaction has closed, and the purchaser must be involved in the process in order to know what he's buying and in order to know the risk and accept the risk. The ECRA process does not provide the due diligence that the Federal law is required to protect you as an innocent party. That's the primary point.

SENATOR CORMAN: Mr. Chairman, if I may? Mr. Douglas, are you suggesting that if we placed the burden of liability on the buyer rather than on the seller, the cleanups would be performed in a more expeditious and efficient manner?

MR. DOUGLAS: I'm not only suggesting that, I'm suggesting that you take the Department out of the middle when there was an issue down the road, and those are becoming more common. My previous employer bought a property that had been through ECRA three times before he bought it. He did not do his own due diligence and he ended up with over $100,000 in cleanup bills for preexisting conditions. That's after three times through the process, okay? I'm saying the buyer must be involved in the process, and ECRA doesn't provide that right now. I'm saying that the applicability is flawed and that we're wasting too much time on properties that don't warrant it, and we're missing other properties that do warrant it that are not regulated because of this SIC scheme.

SENATOR McNAMARA: What would you do, make it every transaction?

MR. DOUGLAS: You have two options, really. You can privatize the process entirely and let the buyer beware, following the Illinois practice of full disclosure, combined with the due diligence mandates. So you have the seller fully disclosing what he knows about the property coupled with the buyer who has a real great interest in knowing what's there, performing his due diligence. I think it's a more effective, quicker manner of identifying what the environmental conditions are. Then, thanks to the progress that's been made over the last 10 years, we have cleanup levels in place. They're in proposal form, but it's a lot more than we had 10 years ago. We know what is a reasonable cleanup level today. We have a clear target, and I think with the Department in a more oversight rather than a micromanagement role, it can be most effectively achieved.

SENATOR CORMAN: Mr. Chairman? At the prior hearing we had, another speaker who also advocated that we go to some form of Illinois disclosure law, stated that one of the reasons-- Well, he actually objected to ECRA as a

transactional based statute in the sense that that hits the seller at a very vulnerable point in time, though he did concede that that's one of the things that has brought about a large number of cleanups being accomplished. In your opinion, if we went to an Illinois disclosure statute, would there be more cleanups performed or less?

MR. DOUGLAS: Honestly, I don't think you'd see much difference. I think you'd see a savings in current ECRA cases that just aren't necessary due to either a lack of true environmental concern. But in terms of cleanup, I think the cleanup would take place because both the buyers and the lenders insist on it, regardless of ECRA. That's the business practice today. I hope the bank is here to give their perspective, but I'm not-- In my experience, the banks are tougher than the DEPE, anymore. They don't want liability. You have a standard that you have to perform to.

In connection with a more privatized process, I'd like to add that a certification of environmental professionals is absolutely necessary. I agree that mail order certifications are not sufficient. Right now, anybody in this room can hang a sign on their door and call themselves an environmental consultant. There does have to be a professional standard in connection with privatizing the process.

SENATOR McNAMARA: Thank you, Joe. Are you finished with your testimony?

MR. DOUGLAS: I guess I am. Yes.

SENATOR McNAMARA: Okay. Thank you very, very much. First Fidelity Bank?

I didn't want to offend two out of three. That's why I didn't announce who was coming up, so if you would please introduce yourselves -- and if somebody would be so kind as to get an extra chair.

T E R R Y W. M A R T I N: Good afternoon. My name is Terry Martin. I work for First Fidelity Bank Corporation. My

offices are in Newark and also in Philadelphia. Joining me on my right is Frank Graczyk, who is an Assistant Vice President with us. He is also an engineer and a registered environmental professional. On my left is Rikki Field, who is an attorney with our company. I have a comment or two -- about two or three points that I'll try to make quickly, recognizing the hour.

The first thing is that I appreciate very much, and our company appreciates the opportunity to come here in front of you today to talk about the environmental policy that we have in New Jersey. I would say that that environmental policy, though, extends across state lines, and my responsibilities run through both Pennsylvania and New Jersey. So there is sort of a perspective here that belongs, probably, in two different jurisdictions.

The bank's environmental policies are directed at those loans where real estate is taken as collateral. An environmental audit is not required every time a loan is closed. Prior to making a loan or working out or modifying an existing loan which is secured by real estate, it is the bank's general policy to require an environmental audit of that property in order to evaluate, prudently, the following risks:

First what is the impact on the borrower's credit worthiness: Environmental liabilities and responsibilities imposed on a borrower or guarantor, significant financial costs, and those financial difficulties which could be incurred by a borrower or guarantor, that which we bear, probably, foremost in our minds.

Secondly, it's important that we evaluate the impact on collateral. The existence, actual or perceived, of a hazardous substance on a property or waste contaminating a property may impair or destroy the value of that property. So it is property value and the value of our collateral that is important to us.

Finally, the impact on the bank's remedies: Additional environmental law such as ECRA impose procedural requirements which can hinder and/or delay the liquidation of collateral. The bank's liability for cleanup costs are those that we would incur normally as an owner of property where we own property, but we do not view liability as the primary motivation for us to obtain phase one or phase two environmental studies on property that we are taking as collateral.

SENATOR McNAMARA: Terry, on that point, there was someone earlier that testified -- a Mr. Rosenberg -- that in fact, some banks were taking risks in the sense of hiring so-called experts who had a limited expertise. It kind of came across as almost putting a deal together, which fascinates me, in the times that banks are going through at the moment. Would you please comment on that?

MR. MARTIN: Well--

SENATOR McNAMARA: Unfortunately, you weren't here for his testimony.

MR. MARTIN: No, I didn't hear that testimony, but I might point out that our environmental policy and our process is not just in response to ECRA. We're looking at SERA and CERCLA, and both Federal and State regulations that affect us. Indeed, we incur some costs that we wouldn't otherwise incur without those laws and regulations. I have a staff of three people that are dedicated -- a great deal of their time, and two people, almost 100 percent of their time -- in evaluating the quality of the studies that we get from environmental professionals. We do not go out for our own book, do the studies, and take a risk that our professionals are, indeed, seeing everything there is to see. But we do need some translation in the work that comes back from the professionals, and that's why I have someone like Frank. In Pennsylvania I have a registered geologist that-- These people collaborate

with one another. They talk to one another. There is a third gentleman on our staff who is an engineer. We do take a very hard look at the quality and the performance of the environmental study firms that do do our work.

SENATOR McNAMARA: Do you have a preferred list of environmental study firms?

MR. MARTIN: We do, and we've reached that as a result of setting out criteria that help us evaluate those that are giving us both a high quality result and a timely and cost-effective -- not only to our borrowers, but in our case where we do have a certain level of real estate. We finance something in the order of $3 billion worth of real estate in the State of New Jersey. Some of that real estate clearly is not performing as well as we'd like to see it, and when we have to go through the foreclosure process, of course, we are going to incur some of those study costs for ourselves -- our own account, and it's not a small price. In fact, it's a very heavy price that we're paying at this point for that process to take place.

SENATOR McNAMARA: Do you feel it's most banks, or do you set yourself, and I don't mean it in a sense of-- But are you the exception rather than the rule?

MR. MARTIN: We're probably not an exception with respect to our size and class of bank in that we're considering ourselves as a large regional, or superregional bank, in the parlance of the day. The large money center banks are employing teams of professionals that incur the similar costs that we are incurring. We do so on a slightly less aggressive scale. However, we are probably -- and I'm going to make a supposition because I don't work for these other institutions -- but basically smaller banks do not have the luxury, if you will, and I don't consider it necessarily a luxury to have these staff members in place. We clearly are different from a

small bank. A bank that's $5 billion or $6 billion in size is certainly not going to have environmental professionals to the extent that we do.

I'd like to make two other points. First off, the effect of the environmental laws in general has been to add a level of time, cost, and uncertainty to the bank's business; time, clearly, in the assessment of real estate, which is done by an outside consultant. It just takes time to accomplish that. Depending on what a phase one reveals, sometimes we have to go to a phase two, and we won't simply cut and run from a borrower or a lending situation because we've got an environmental feature with a property. It does make sense to find out how much is it going to cost to clean it up.

Secondly, I made the point earlier that costs are clearly important to us as a bank, and to our borrowers. But most importantly is the uncertainty that these laws generally seem to kick out. Having regulators suggest that we do not have certain liabilities -- and I cite the fleet factors type of liability -- the inability to know with any level of certainty that all the environmental problems relating to a site have been uncovered makes the decision making process more complex. Ergo, I have Frank on my team.

It is difficult to prove a negative; that is, that there are no environmental problems relating to a parcel of land or its surrounding area. The effects of this uncertainty may cause us to reject the loan. It impacts our ability to operate quickly in the liquidation field. We are not able to clear our decks of real estate that we would like to clear faster and get on with other better things, and it may lead the bank to simply abandon potential collateral that we would otherwise have foreclosed on had the environmental features not been staring us in the face.

I'd add to that that I just heard this morning at a Robert Morris Associates Bankers Association, advice by an attorney there who said, "If you have a borrower who is on the

ropes, and you've got even an inkling of an environmental problem, you're better off operating in bankruptcy than you are continuing to finance because you need the protection of the court rather than stumbling into the possibility of becoming liable through the ownership or operation, or even the implication that you had some nature of control over that business." So it does complicate our lives.

SENATOR McNAMARA: I'm sure it would, but if there was an exemption from liability, would that alter the current level of environmental diligence that you now impose?

MR. MARTIN: No. Absolutely not.

SENATOR McNAMARA: But would it-- Again, your particular organization is of a certain size and of a certain caliber. What about the industry in general? Those that number one, don't have that ability at the moment, and they have that risk, what would make them to be--

MR. MARTIN: It's not the risk of liability that should be driving the lenders. In fact, in most cases, even those less sophisticated institutions that would not necessarily have environmental professionals on staff, it is the value of the collateral that you are taking. It is a business decision. I was making this point to staff earlier in the week. If I foreclose on a piece of property but cannot turn around and sell it to someone without incurring a cleanup cost, I don't have valuable collateral. I'm going to make that decision in the front end of my lending process, before I even get to the point of putting dollars out and taking that particular property as collateral. It does me no good to take a piece of property that is so encumbered by an environmental liability as to be rendered worthless.

SENATOR McNAMARA: Agreed, but wouldn't that have been a very good past practice?

MR. MARTIN: It would have been an excellent past practice, and it has become a practice since the CERCLA and SERA -- the Federal regulations -- and the redundancy of state

regulations in both this State and our neighbor in Pennsylvania, adds some measure, but maybe adds to our misery rather than our relief. I don't think, given Federal law, that we would operate any differently with or without the absence of State law.

SENATOR McNAMARA: Please continue. I'm sorry.

MR. MARTIN: I would make two recommendations. First, that the bank wants to encourage environmental responsibility on the part of its borrowers. However, the bank is ill equipped, and really unqualified to be environmental regulators. We should not be the insurers or guarantor of the environmental condition of real property that has been pledged as collateral for a loan. Yes, we need to make a judgment, but please don't put the regulatory onus on our back.

Secondly, ECRA can eliminate some of that uncertainty in the bank's attempt to evaluate the environmental condition of the property. Clearly, a property that has that negative declaration has a certain sense, in my business judgment, as being transferable. Whether or not it's clean, on whose judgment 10 years from now, certainly that's at issue in this discussion.

And foreclosure and subsequent sale of property by the bank in a liquidation should clearly not be a triggering event for ECRA. But I understand the property transfer requirements don't exempt us, necessarily, from that.

SENATOR McNAMARA: Would you recommend that there be State standards for consultants? You mentioned yourself that you do have a preferred list, so how would you feel if there were State mandated standards?

MR. MARTIN: Frank, do want to take a crack at that?

F R A N K M. G R A C Z Y K: Sure. That would certainly give us a level of comfort in dealing with other certifications. The most recent one is the Underground Storage Tank Certification program that's out there. I do feel a level

of comfort knowing that I'm dealing with a consultant who has that, whatever it's worth. Based on that, I would see that definitely as a positive for certification.

Terry spoke earlier of a certified environmental professional. What exactly does that mean? Nothing to you gentlemen. There are so many certifications out there that I would imagine that it would be a very difficult task to come up with a true certification that means the consultant is qualified, and he is not going to make a mistake.

Certainly, insurance requirements would be something that we would be interested in seeing. It is our policy to have our consultants have a million dollars worth of professional environmental consultants' errors and omissions insurance. That's a concept that I think the State should be looking at, and they do address that in the Underground Storage Tank program as far as tank pulling and subsurface evaluation.

SENATOR McNAMARA: Earlier we had discussed the possibility of if the Department came up with standards, one level being for industrial, another for residential. One of the concerns that I would have, if in fact that came about, what would prevent 20 years from now, or 10 years from now, or 15 years from now, that commercial property being developed as residential? How would you handle it and address it? If, in fact, deed restrictions were put on that property, what kind of an impact would it have from a banker's point of view as to the value of that property?

MR. MARTIN: From a construction lender's standpoint -- and I serve both in an administrative and a lending capacity, primarily -- today, we are being very careful to make sure the municipal government involved in a construction project has put their final seal of approval on the process, and we would not close a loan without knowing for certain that that process is complete. To the extent that a property had a clear deed restriction on it as to its property use, clearly we

wouldn't proceed if the use that was being suggested was something other than that which the title would permit, and we would be foolish to do so.

SENATOR McNAMARA: Would it hinder or-- How does it affect the value of that particular property if the deed restriction is that it is to be used only for an industrial or commercial use?

MR. MARTIN: Any time a property is deed restricted it can alter its value, either up or down. Clearly, limiting it to a specific type of use -- you know, it's very difficult for me to envision 15 or 20 years from now -- but it has been generally my experience in two states that deed restrictions can have a detrimental value to the property.

SENATOR McNAMARA: Again drawing on your experience, is there any other way to address that particular problem without going to the extreme of a deed restriction?

MR. MARTIN: I'm not certain that I understand the question.

SENATOR McNAMARA: Well, in other words, going back to the example that I gave you, because I have some concerns about deed restrictions also, but then again, I don't know if it could be addressed through the municipal code or through some filings that would be with the DEPE, or-- If you know what I'm saying?

MR. MARTIN: Yes, I do. Speaking as a former zoning board member in another state, I would say that when the property use is altered, clearly the local municipality is going to have something to say with respect to use permits. I would prefer to see regulation of property done in that fashion rather than through true title restrictions. Title restriction that runs with the property forever and a day, clearly has a different effect than that, and may, indeed, hurt the efforts of those who are doing municipal planning or regional planning

as to property use and property zoning. So I would clearly favor not utilizing the deed restriction route to get to property regulation.

SENATOR McNAMARA: Nor through the type of board of adjustment use variance type of--

MR. MARTIN: I'd much rather see through a use variance type of a regulation, particularly if use changes or multiple uses -- the property goes from single use to a multiple use, that that be the point in time where the municipality or the State is empowered to decide whether or not that's an appropriate use of property.

SENATOR McNAMARA: Jack, any questions? (no response) Any further comments?

MR. MARTIN: No.

MR. GRACZYK: There are some technical issues that the bank has difficulty in dealing with ECRA, since we're talking about ECRA specifically. The situation arises often where you have a site of low environmental concern. We'll characterize that as a site having contamination of less than a $1 million; $100,000; $200,000; whatever it may be, and it is an ECRA applicable use, and the property is in a situation where it's in an asset recovery -- it's a troubled property. The owner has no capacity, nor is he willing to get involved in the ECRA process.

We, as a bank, need to do something with that property. The first thing that we need to do is assess its value. The difficulty in assessing a property that is subject to ECRA, as well as all environmental laws, is figuring out what is the environmental cost. That often entails getting feedback from the DEPE. Unless you are formally involved in the ECRA program or some other program, it is very difficult to get feedback from the DEPE.

As a bank, we certainly-- As a bank who has a mortgage on a piece of property, we certainly don't want to get

ourselves directly involved with the ECRA filing. Again, we're talking about properties that are distressed.

SENATOR McNAMARA: Right.

MR. GRACZYK: One thing that is needed is some feedback from the DEPE so that we can assess what the true environmental cost is, and deal with it on business terms.

SENATOR McNAMARA: Whether you should foreclose or not, or allow it to go into bankruptcy?

MR. GRACZYK: That's correct. Whether we facilitate a sale to a subsequent person without actually foreclosing on it. That's often the case as we try to bring another person in and facilitate the sale.

SENATOR McNAMARA: Right.

MR. GRACZYK: Again, I stress the point, it is very difficult to get feedback when we are performing our own assessments on our own about what is the true environmental cost. There is a program right now that DEPE has started -- memorandum of understanding. We are looking, right now, to get ourselves involved in that program somehow, on sites that are ECRA applicable, as well as not, that do have contamination. We are performing phase two assessments trying to assess the costs, spending lots of money doing this, and after spending that money, coming up with the report that the answer is that now we need to go to the DEPE. Well, you know, our hand is being forced to go to the DEPE when we are, in fact, not the owner or the operator of the property. The memorandum of understanding is supposedly the informal way to approach the DEPE, and that program right now is not up and running. If there is something that we can stress out of this Committee, is that we get that program up and running. Have the bank have an avenue to talk with the DEPE and get binding answers, so to speak.

SENATOR McNAMARA: With being with a vested interest in a property, I hear exactly what you're saying, and I see

that Mr. Miller might have something to say, as he's getting a little fidgety.

ASSISTANT COMMISSIONER MILLER: (speaking from audience) I can't let that last comment go by, because the MOA -- the voluntary cleanup program is up and running. All they have to do is submit the application, and we'll be happy to review--

SENATOR McNAMARA: That's a voluntary cleanup program. I think what he's asking, unless I'm misinterpreting, is that as a banker -- and he wants to know whether he can really put a deal together with this property or not -- can he go to the DEPE to get an estimate of costs?

ASSISTANT COMMISSIONER MILLER: We will be happy to review any submission that they make to us under a MOA -- under a memorandum of agreement.

MR. GRACZYK: Has any been done thus far, with a bank in place?

ASSISTANT COMMISSIONER MILLER: Not with a bank. You just fill out the application and send it in. We'll be happy to execute it and conduct a review.

MR. GRACZYK: One of the things in having counsel review. that particular document is then it's a regulatory document and not a codified legislated document. Attorneys speak of indicia of ownership. There is no language in that document whatsoever that gives it any sense of finality. It simply says, "Supply this information and we'll be glad to look at it at a cost." I understand that there are meetings going on right now that they will figure out what their cost for their oversight is. But there is no finality to it. It's a policy document, or a document under a regulatory body. It doesn't mean something like that can't change, and we can't somehow, under current legislation be dragged into the whole situation. What we want is some kind of legislation that would make that agreement binding; where we are merely a bank looking

for some feedback and not looking to get involved in administrative consent order or any type of a provision that even comes close to an administrative consent order. It is my understanding that no banks have entered into a memorandum of understanding, and there is a reason for that. It's because--

SENATOR McNAMARA: Lack of trust.

MR. GRACZYK: Well, it's the unknown. I don't want to say lack of trust. It's the unknown.

SENATOR McNAMARA: No, I hear what you're saying. I think the unknown is a nice way of saying it, but I think it does boil down to lack of trust.

MR. GRACZYK: I'll leave it as the unknown. So while it may be up and running, I certainly would like some feedback from Mr. Miller, but as far as I know, if we were going to go through this process right now, it certainly couldn't be done timely; it certainly couldn't be done in the time constraints of trying to get this property out of our portfolio and save the bank some money.

SENATOR McNAMARA: I think it's something that we can-- I don't want to get a debate going between you and the Department, but I think it's somewhere maybe that we can be a positive way of getting the problem resolved. I take it from the DEPE that they are looking for the same goal that you are in working together. But I understand the problem of the unknown, okay? So maybe we can address it or discuss it with the Department.

MR. MARTIN: Thank you very much.

SENATOR McNAMARA: Thank you very much. I appreciate your time. Sorry for the late hour, but it's been one of those kind of days.

MR. MARTIN: That's quite all right.

SENATOR McNAMARA: Angelo Morresi?

A N G E L O C. M O R R E S I, P.E., ESQ.: It's always a pleasure to be last, and everybody is fidgeting, so I'll try to keep you guys on target. Hal told me, originally, that was

going to be last, so he -- Hal Bozarth, the Executive Director of the Chemical Industry Council -- told me that I was going to be last, and that I should try to give you something to ponder as opposed to the same old routine.

SENATOR McNAMARA: Remember that old saying, "The last shall be first." (laughter)

MR. MORRESI: Honorable Chairman, Committee members--

SENATOR McNAMARA: It could be an execution.

MR. MORRESI: --distinguished guests, my name is Angelo Morresi. I'm an attorney and a professional engineer in New Jersey. I'm also Vice-President of Safety, Regulatory and Environmental Affairs at Givaudan-Roure Corporation. I'm here to provide this testimony on behalf of the Chemical Industry Council of New Jersey.

My home is here in New Jersey. New Jersey is my home. I've lived here my whole life, and I've gone to school here. So I have a vested interest in New Jersey. I hope my kids stay here and go to school here. I've also been an environmental professional in New Jersey for 20 years, and I have seen a lot of the conflicts that have been created in that 20 years. I believe right now we're at the crossroads, because environmental issues are much too critical, and the economic issues are much too critical to allow them to get caught up in the rhetoric that continues. We have to develop a way of working together to develop an environmentally sound and economically stable New Jersey.

I have provided you with some testimony on a host of issues, but I believe that we can talk about three basic issues here: privatization, the urban industrial alternate standard, and some type of de minimis underground storage tank exemption.

But when we talk about working together and making a workable system, this isn't brain surgery. It's easy. I think we can develop a workable system for environmental issues. We have to develop this system because if you think about it,

we're going to be working with this system for the next 50 or 100 years. We can't go on the way we have been going on in terms of the rhetoric over the past six or seven. We have to have a day-to-day system that is as natural to us as getting up in the morning and putting on our shoes. The system shouldn't be a monument to hardship or economic drain.

If you really think about it, every substance you touch is hazardous. If you drink too much water, you'll drown; if you don't have enough, you'll thirst. Just the right amount and you'll be healthy. No substance is harmless, nor any ways and means of handling it harmlessly. So what I've done is basically looked around and tried to give a little uniqueness to this. I've tried to look at how other programs work, maybe not in the ECRA area, and look at some of the successes and try to peel them off and pull them back.

There was some mention before about privatization. Probably this whole building which houses thousands of people, or a much larger building, could be built on the signature of one professional -- a professional architect. If he were smart -- but he doesn't have to -- he could use a licensed engineer to look at the structure and also a licensed engineer to look at the electrical and mechanical part of it. Basically he could do it all on one signature, but three would be best to do the job appropriately. That's something that could be thought of in terms of the ECRA program.

To really think about it more, one of the most hazardous things we deal with day to day, that you take for granted -- we all take for granted -- is electricity. It starts out at a power plant at about 20,000 to 30,000 volts, whatever. It's transmitted across the lines. It's brought into your house at about 220 volts, and then it's distributed safely, according to code, to the outlets, where my daughters -- they're six and seven -- get up and plug in their Nintendo, and they turn on the TV, and everything is very copacetic. It can be handled safely.

A couple of months ago I had to redo my bathroom, and I had to install a Jacuzzi. The process was quite simple.

SENATOR McNAMARA: Had to? You must have a tough wife. (laughter)

MR. MORRESI: Well, when you have two daughters and a wife, you know, you have to do these types of things. I called up the licensed electrician because I was very concerned about that issue, of a Jacuzzi, an electrical, with the water. I called up a licensed individual who is licensed by the Division of Consumer Affairs. He came to my house to look at the project. I'm sure you're all familiar with the system. He comes in, he sees what has to be done, goes back out, gets the permit, comes back in, and completes the work. Then we have an inspection. The inspector likes it or doesn't like it. He makes a couple of changes. The electrician comes back and makes the correction, and the job is done with a green seal with a reinspection. It's that simple. Here now, I trust my most cherished possessions to go in that tub and turn it on with that system. So there are workable systems that we can trust.

I believe that this type of system, a clear and simple system that works effectively and efficiently, can be put in place in dealing with ECRA and all environmental issues for that matter.

A second issue I wanted to talk about is the urban industrial alternate standard issue. You know, as I'm getting older I'm realizing that maybe my grandfather and great grandfather, are getting a little bit smarter. In the old days they set up our cities and they set up industrial zones, and they set up residential zones. The set up the industrial zones for people to work, and the residential zones for people to live. Different standards for different uses. It was a valid concept then; it's a valid concept now.

Right now if a business cannot afford to stay in business or cannot afford to sell because of the cleanup that's going on -- and sometimes it's across the ECRA board, here -- what happens? It goes out of business. As a result you have lost jobs, lost services, lost tax revenues, and lost opportunities. The deli down the street is out of business. The hot dog man is out of business. The gas station is out. Then the whole neighborhood starts to deteriorate. What we have to bring into the environmental issue -- and it's something that has been lacking for the whole term of environmental programs -- is the human condition.

That little kid in Newark whose father is out of work is not worried about us having an intellectual discussion about how clean is clean. What he's worried about is whether or not he's going to have breakfast tomorrow morning. Now, we're worried about him having something to eat, and we're worried about him having clean air, and we want him to have clean water to drink. But we also want his father to have a job. So then you have to start thinking, what are the ultimate questions you have to ask, with having the most stringent standards? Will the sites ever be cleaned up? Will the environmental hazards that are perceived and real ever be removed? And will that whole area ever be much cleaner with strict compliance with the laws? I think you have heard the testimony today from others, but I think you can just see for yourself. I'm from Newark, half of my family still lives in Newark, so I see it everyday. It's probably not. You're probably not going to accomplish those goals. It hasn't happened so far.

So then you have to ask the question: Do these high standards, which we all would think are the best available, are they attainable for these areas, or do they actually stymie cleanups? On the other hand, a lower standard for limited and identified areas -- industrial zones -- should not be construed as preferential treatment. Pragmatics tell us, despite the

pragmatics of thinking about it and going forward, that lower standards will probably result in more sites being cleaned up, more problems being addressed, more locations becoming environmentally-sound and economically productive. One thing for ECRA you have to remember is that the cleanup is triggered by the transaction, not by the imminent environmental hazard.

This is a case in argument, there is a dual standard available already. It's been out for a couple of decades, and it's been in the area of workplace safety. OSHA sets exposure limits for the workplace based on eight-hour limitations. It's called the permissible exposure limit. If you talk to any health professional, all the medical doctors from the College of Medicine and Dentistry, and elsewhere, all the risk assessors, they would not use that same standard for the residential setting. It would be much lower because of a number of factors including the exposure potential. So it's been done before, and it's available. It's not like there have been no precedents.

Finally, I'd just like to say on that issue, that the dual standard makes environmental sense, it makes economic sense, it makes social sense, and it also makes ecological sense, because if you start recommercializing and reindustrializing the cities, you have got to be relieving some of the pressure on the open spaces for development.

Now, finally, I'd like to talk to you about something that is dear to my heart. That's a de minimis underground storage tank exemption. It goes to the heart of duplication of effort, and appropriation of allocation of resources.

I'll go back to my electrician story. When I did my Jacuzzi, I also needed a plumber. And the plumber did the plumbing, and the electrician did his electricity work. The electrician didn't have to go look at the plumber because he was satisfied it was done. The same could be true in applying

all these laws. In fact, there was mention before about workers' safety. If OSHA is not doing the job, then OSHA should be held accountable. You can't move it into another law just because it sounds good.

But under the underground storage tank rules-- We have the strictest in the nation. If you're in full compliance with us, you should be exempt from ECRA for those tanks. The precedent exists because you already have that in place for gasoline service stations where they don't have to go through the ECRA process.

On the other hand, UST will not wait for ECRA. At my site I'm removing 50 tanks in the next year -- as many as you can get out at the moment. So it's not a matter that ECRA is going to have anything to do with it, it's just that the process has to continue.

Couple that with a real de minimis; a de minimis that -- to get rid of the trivial reviews. The reviews that are only in there because you have paper. Persons may have small quantities of commercial products on hand -- lubricating oils, whatever, 1040 oil comes to my mind very quickly. Remove them out. It has been suggested to me by people who do a lot of ECRA work, that you put those two things together and you can relieve the ECRA caseload of almost 30 percent to 40 percent of the cases. Obviously, you check with our friends in the back to see if that is true, but that is the number that I have been hearing.

Now that's without any environmental consequences and it's also without the burden of the paper, and the burden of having to file for-- You have your ECRA fee, but the ECRA fee is a small part of it. Then you have your consultant and your attorney you have to bring in. It's great to have to go through that six or seven times. It pays for an associate in a year. So I just look at it from a practicality point of view.

Getting back to our purpose: Our purpose only is to make ECRA work better and to make all of our environmental programs work better, because we have a common goal. That common goal is an environmentally sound New Jersey, and an economically stable New Jersey. Thank you.

SENATOR McNAMARA: Thank you, Angelo. When we started these hearings, one of the comments that I made was that hopefully we would end the adversarial role between environmentalists and those who are involved in business and industry, also those who are involved from the Legislature and from the DEPE, because our goal is a cleaner and sounder and safer New Jersey.

Your analogy is not too bad, but I would hire an electrician that wouldn't have to come back to have a green seal applied. So maybe that speaks well as to why we need standards.

MR. MORRESI: Well, there is a code, right?

SENATOR McNAMARA: There is a code, yes. You'd better check on that gentleman.

SENATOR RICE: I would have hired a handyman so I wouldn't have to pay two people.

SENATOR McNAMARA: But that means you would have been doing it without a permit, and that's illegal.

SENATOR RICE: I'm a Councilman. (laughter)

SENATOR McNAMARA: Are there any other questions from any members of the Committee? (no response)

Lance, I would give you an opportunity at the close of the day to make some closing remarks, since it's 5:10--

ASSISTANT COMMISSIONER MILLER: I will be exceedingly brief, and I thank you for your indulgence.

Mr. Chairman, members of the Committee, I would like to thank you for the excellent process that you have put forth to have the ECRA issue discussed over these two days. Mr. Chairman, at your direction the witnesses followed your

instructions. They focused on the issues that needed to be examined to improve the Act. I think we had a tremendous number of ideas come forth in these few days, and it was really a pleasure to sit here. I was certainly nervous over the weekend as to what Monday was going to bring, and again last night. It was a pleasure to be here and not be bashed alongside the head, and I thank you, Mr. Chairman, for making sure that that didn't happen.

The Department certainly looks forward to working with this Committee to improve the Act. Some of the suggestions that have been brought forth, we will be taking back and looking at and going over as to what we can change in our technical regulations, that as I said on Monday, will be coming forward as they sunset at the end of this year. We'll be looking to make whatever changes we can to help with the consistency aspects. We feel our cleanup standards that are out for proposal now will help in that area, as will our technical regulations that are due out in May.

We will also be looking at the issue of the subsequent transfers in lessening the transactional burdens of having to submit duplicate and triplicate paperwork time after time in those areas.

Obviously, there are some issues that need legislation -- the funding issue being obvious in that area.

We would also like-- It came out very clearly that that funding issue is also beyond ECRA; that there are many situations where that same issue of who should pay for the cleanup is at issue, and it's preventing either redevelopment or preventing the cleanup from occurring. If at all possible, we may want to look beyond ECRA in that area.

Another issue that came up is the requirement to check an industrial establishment at the time of transfer. I think we have to keep in mind that the law the way it is currently written causes that site itself to be reviewed, not just the

industrial establishment. That's a key aspect of the current law and it is certainly one that can be reexamined if you wish, but I think something that we want to keep in mind.

There was a lot of talk about privatization. I think we should consider it very carefully. This is something that the Commissioner is also having us look at. There is a little bit of concern when I see Mr. Douglas come up with a book this thick to say, "This is what due diligence is." When we talk about level of detail and level of risk that would be accepted, maybe in the governmental agency we're willing to accept a lot more risk than somebody who would be putting their license on the line. And I'll tell you, the cost of going through a preliminary assessment or site investigation of a book that thick would be very costly.

SENATOR McNAMARA: The same thought ran through my mind when he showed me the book.

ASSISTANT COMMISSIONER MILLER: Our regulation that will address this is much thinner than that, and maybe it's because we're willing to accept a lot more risk because we're able to. In the governmental area we need to-- We recognize that there are economic and environmental tradeoffs here, and we are not looking to return the State of New Jersey to pristine environmental conditions that existed before any person was ever here. Man has had a major impact on this State. We have to recognize that, and we have to try to address the problems that have occurred. We have to protect human health. We have to protect the environment. That's all the Department is trying to do. It's not trying to put business out of the State of New Jersey. It's not trying to prevent business from coming into the State of New Jersey. It's just trying to provide a clean place for the citizens of this State to work and to recreate and to live.

Thank you, Mr. Chairman.

SENATOR McNAMARA: Lance, if there were any comments that were made that you feel compelled that a response should be recorded, you can submit it in writing and we'll see to it that it's made a part of the record.

ASSISTANT COMMISSIONER MILLER: Thank you for that opportunity.

SENATOR McNAMARA: Thank you for your cooperation and for the Department's cooperation.

SENATOR RICE: Mr. Chairman, through you?

SENATOR McNAMARA: Ron?

SENATOR RICE: The hearings are over, I would suspect.

SENATOR McNAMARA: Well, they're never over until they're over, but they're over today.

SENATOR RICE: Right, today. But I would suspect the transcripts, hopefully, will be comments and suggestions to be developed into some legislation. I don't like regulation, sometimes. And I would hope that Mr. Miller would go back, as he said, and not look at some of the comments; actually, objectively look at them all, and hope the Department can submit to us the kinds of things that they can agree with and disagree with, so as we do legislation we will kind of have a feeling of what they're talking about versus what, "we're talking about." And we'll probably wind up someplace in the middle.

The final thing I wanted to say was that I just don't want to keep this issue of industry, because see-- Residential people get hung up in the middle of industry and the environmentalists. That's really what happens. You did end your remarks by saying that you're not trying to hold industry down or keep them back. Then you talk about living. But you never talk about the fact that all that is happening is having the greatest impact on urban cities moving forward rapidly. Forget about the industry side. There has got to be a balance in the thinking of the residential side. As an local elected

official, I cannot move industry forward. I'm not even looking-- My area is not even industry; it's housing. But I can't have a colleague come in and read the bill and then we say, "You can test this way, but we won't sign off. Oh, that's okay." So that's where we have to have some balance.

I'm going to keep reminding that residential-- I've got a homeless population, you know? I've got ratables that are not coming in because of vacant lots, and I've got all those kinds of problems. If we can clean those communities up, I'm sure industry is going to come as we do the other things.

ASSISTANT COMMISSIONER MILLER: Mr. Chairman, if I may?

SENATOR McNAMARA: Yes.

ASSISTANT COMMISSIONER MILLER: Senator, as you know, I was involved in your discussions with Mr. Cali. Those discussions broke down years ago over the administrative consent order process. I think we now have with the voluntary cleanup, the method to deal with that situation. If we have somebody who wants to develop a residential area and they want to come forward and say: "We've analyzed the site. We feel this is the only problem. This is what we are going to do there," we now have the mechanism to review that and to give a Department approval that the redevelopment of that site is acceptable; that it will be protective of human health; it will be protective of the environment. That's what a developer would then need to be able to go to the banking community and say, "Yes, what we're going to do out here, I've had the site tested, the Department has looked at it and they have concurred with the redevelopment plan." I think now the pieces start to line up to enable that to happen. I'm sorry that I wasn't smart enough to think of that a couple of years ago. It took the Commissioner to come in with some new ideas and to move that program forward. But it's now here and hopefully the economy is getting ready to take off, and we want to be in a position in the Department to not impede that economic recovery at all.

SENATOR RICE: I was smart enough. You wouldn't listen. (laughter) The issue was sign-off. But does that mean you would sign off on that now?

ASSISTANT COMMISSIONER MILLER: Yes, sir.

SENATOR McNAMARA: See, dialogue does make progress. I think that the Department has shown itself to be very cooperative with our staff in getting these hearings together, so hopefully it is the dawn of a new beginning.

Thank you very much.

ASSISTANT COMMISSIONER MILLER: You're certainly welcome. Thank you.

SENATOR McNAMARA: That's it.

(HEARING CONCLUDED)

APPENDIX

New Jersey State Library

TESTIMONY OF DAVID M. ROSENBERG, ESQ.,
EXECUTIVE VICE PRESIDENT, ECS, INC.

BEFORE THE SENATE ENVIRONMENT COMMITTEE
ON THE ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT

MARCH 19, 1992

IX

Mr. Chairman and members of the Committee, thank you for the opportunity to testify today on the Environmental Cleanup Responsibility Act (ECRA). My name is David Rosenberg, Executive Vice President of ECS, Inc., one of the leading environmental insurance underwriters in the nation. My company is headquartered across the Delaware River in Exton, Pennsylvania.

By way of introduction, ECS is an organization dedicated to assisting environmental companies with their insurance, safety and compliance needs through the unique combination of in-house expertise in insurance underwriting, environmental consulting, and technical risk management. Our major subsidiaries are ECS Underwriting, Inc. and Consulting Services, Inc. (CSI).

ECS Underwriting is a national provider of environmental insurance services combining underwriting, administrative claims handling and loss control skills. In fact, ECS is one of only two companies writing environmental insurance nationwide. ECS Underwriting primarily functions as an underwriting manager for Reliance National Insurance Company, and is responsible for underwriting and administering a program of insurance for companies facing an environmental exposure. Our total book of business is in excess of $120 million in annual premiums and includes approximately 900 accounts. It is safe to say that ECS Underwriting offers the most comprehensive insurance program for those companies facing an environmental liability exposure in the marketplace today.

Out of the more than 900 accounts that we write nationwide, approximately one-third represent contractors, many of whom work in New Jersey. This includes hazardous waste remediation, response action, mobile treatment or disposal, and industrial maintenance contractors. Many of these contractors perform ECRA type cleanups.

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CSI is a full service environmental consulting firm. CSI provides business and industry with assistance on the technical aspects of environmental and insurance liability exposures through the performance of environmental risk assessment surveys, property transfer audits, and the development of environmental management, and health and safety training programs. CSI has extensive experience in providing environmental property transfer assessments to business and industry. The property transfer assessment or Phase I audit is frequently utilized by businesses considering the transfer of property, developers considering the purchase of property for development and resale, banks and other lenders financing the purchase or acquisition, and attorneys and real estate brokers representing sellers or purchasers.

At the outset, I want to make it perfectly clear that I do not profess to be an expert on ECRA. My company does not benefit by the ECRA law and would not be affected if, in fact, ECRA was repealed. My remarks are limited to real world experience and the problems we confront with respect to the practice of environmental due diligence in today's marketplace.

As a matter of sound risk management, the need for environmental due diligence and a comprehensive environmental audit should be a prerequisite of any business, particularly lending institutions making extensions of credit secured by real property and those involved in the purchase and acquisition of commercial and industrial real estate. The audit provides a great deal of information in a quick and cost effective manner, and identifies problems based upon the past and present planned uses of the site. Every purchaser of commercial or industrial real estate who has an environmental assessment performed, does so with at least two goals: To

gather information about the property; and to qualify for the Innocent Landowner Defense if contamination is discovered after the purchase. To qualify for the Innocent Landowner Defense, one must make "all appropriate inquiry . . . consistent with good commercial and customary practice . . ." 42 USC9601 (35)(B).

The most important effect of the "appropriate inquiry" requirement has been the development of the environmental assessment as a common tool for purchasers. However, no government mandated standards exist to define appropriate inquiry. Consequently, the information necessary to qualify for the "Innocent Landowner Defense" is, at best, dubious. H-2787 introduced by Representative Curt Weldon (R-PA) in the House of Representatives in June 1989, proposes an establishment of standards for environmental audits. However, nothing has been significantly accomplished on that bill to date. Although attention is likely to resurface in light of the wide-spread concern with this issue and the upcoming reauthorization of the Superfund Amendments Reauthorization Act (SARA), this does not help the situation of American business in the interim.

Lacking such standards, the industry must be aware of selecting environmental "experts". Many businesses in need of environmental audits are still selecting the so called environmental professional by price alone. By shopping price, many businesses fall prey to audits performed by unqualified consultants.

Unfortunately, many environmental consultants are taking advantage of this new and lucrative market, offering and performing audits for ridiculously inexpensive pricing. There are even environmental "experts" whose qualifications stem from a mail order certification. One so called "professional" association offers three separate environmental assessment

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designations. To qualify, one must complete an application, pay a membership fee, and pass an examination. The examination is mailed to the applicant with a special study guide and then forwarded to the association for grading.

The result of these actions is that the client often receives an incomplete report which does not qualify as an appropriate level of inquiry into the potential environmental contamination problems of a particular parcel of property. Additionally, the public interest is not served in that a potential contamination may still remain undiscovered.

The ramifications of this problem is illustrated by one particular incident experienced by our consulting company. An environmental consulting company was hired to perform a Phase I property audit as a result of a recent purchase of a vacant parcel of land. After numerous problems with this company, we were hired to ultimately conduct a second environmental audit, only to discover significant problems.

It was discovered that the area surrounding the site was never examined in the first audit. Further examination of that property revealed two leaking underground storage tanks, approximately 2000 feet from the surveyed site. Further document review also revealed that two leaking underground storage tanks did exist and had been reported to the appropriate authorities. In addition, an underground storage tank leak was reported to have occurred on another site approximately 1000 feet southwest of the site where the initial audit was conducted. No soil samplings were taken in the first audit, and subsequent investigation discovered residual problems on the client's site as a result of the leaking underground storage tank.

Obviously, it is unreasonable to assume that one national standard can be applied uniformly to define due diligence in every transaction. However, a broad national minimum standard can at least be used as a benchmark to facilitate commercial and industrial real estate transactions and most importantly, protect the interest of the public in the discovery of contaminated property. I have attached a basic listing of the elements that we feel an environmental property transfer assessment should encompass (Exhibit 1). This listing is utilized by our consulting company.

A possible solution to the problems discussed above is a certification program for the hazardous waste professional. The hazardous waste practice is a complex, multi-disciplined practice requiring the services of professionals in many technical areas. The practice is relatively new and constantly developing. Certification is one way to establish minimum competence. Current certification programs exist but often do not establish certification on a task by task basis. Rather, the categories employed by certifying bodies are extremely broad. For example, a registered environmental manager certification is broad enough to encompass more than one task that may need to be undertaken in a federal or state regulated program. It is interesting to note that while every state has a state certification program designating a professional engineer, not one state has a program which certifies an environmental scientist. In addition, only a handful of states certify hazardous waste professionals in the area of contamination assessment (Florida, Oregon, South Carolina) and remedial action (Arkansas, Florida, Maine, South Carolina). The State of California is the only state which certifies the hazardous waste professional in the area of preliminary site assessment.

An example of an excellent certification program is that offered by the National Environmental Training Association (NETA). The certification is the Certified Environmental Trainer (CET). A formal system for this association to measure, document and demonstrate technical competency among its members was developed in 1983. The first credentialing examinations were offered in 1986.

As a result of the program's recent development and its rigorous examinations, fewer than 250 CETs exist worldwide. Fewer than one in five applicants pass all examinations on the first try. Applicants must prove technical competency in one or more environmental specialty areas, including water treatment, waste water treatment, transportation of hazardous materials and wastes, occupational health and safety, hazardous materials and waste management, OSHA's Hazardous Communication Standard (HCS) and asbestos abatement. Certification requirements include

- 270 contact hours in each training area;
- 3 letters of reference attesting to an applicant's training abilities;
- Proof of 6 eligibility units acquired through experience in a relevant technical area or combination of education and experience (3 units or 3 years, must be relevant to technical experience);
- Successful completion of an instructional technological test and one or more technological tests; and
- Renewal every 3 years by evidence of continuing education programs and training hours.

CONCLUSION

I hope these comments offered by ECS, Inc. will provide the Committee with some insight into some of the problems that currently exist in the marketplace regarding ECRA, environmental due diligence and certification. Thank you for the opportunity to present this testimony before you today. ECS, Inc. looks forward to participating in further discussions on this and any other issues of importance to the Committee.

PROPERTY TRANSFER ASSESSMENT REPORT SUMMARY

General Site Information

Exact site location (street address)

Legal site description from deed

Site location map depicting property boundary

Current property owner

Current property use

Planned property use

General Environmental Setting

Regional weather and climate information

Site location on a 100 year floodplain or location relative to 100 year floodplain

Regional USGS topographic map depicting site location

Description of and relationship between regional and site soils, geology, groundwater and surface water

Regional groundwater and surface water utilization

Site Historical Information

Investigation of site historical usage through vehicles such as title history, land use records, past tenant usage records, etc.

Historical aerial photography (over last 30 years when available)

Discussion of the past activities, environmental practices, disposal practices, quantities and types of materials/chemicals manufactured and used by prior owners and operators

Information (including sampling and analytical results) from past closure activities, remedial efforts, and/or environmental studies

Any use, storage, or disposal of PCBs

Current Site Data

Observations from complete site walk-through including stained soil, stressed vegetation, fouled water, evidence of abandoned/demolished structures (containment structures, paved areas, buildings, lagoons, etc.)

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Discussion/description of types and locations of buildings and other structures, lagoons, production and monitor wells

Site operations including types and quantities of chemicals/materials used and manufactured

Tank schedule including tank type (aboveground, underground) sizes, construction, materials contained, secondary containment, date and results of last integrity test, inventory control, level alarms

Onsite waste handling, treatment and disposal practices, including monitoring data

Environmental permits, including monitoring data (provide copies of permits)

Results of environmental sampling and analytical programs and comparison to established quality standards

Identification of all point source discharges

Sewerage systems for stormwater, sanitary and industrial wastes

Fuel dispensing equipment, storage capacities and practices

Records of PCB equipment at the site

Asbestos - known or suspected use, past removal activities

Planned Site Use

An evaluation of the current site data as they apply to the activities/operations planned in the future, including modification/construction plans and schedules and whether excavation, soil removal or well construction activities will take place.

Adjacent Site Information

Historical and current site usage and conditions

Ongoing environmental actions

Interviews/Contacts

Persons contacted and information obtained

Agency contacts (fire, health, environmental) to discuss prior operations and regulatory involvement

Adjacent landowners/operators

Prior owners/operators

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KEITH A. ONSDORFF
ECRA TESTIMONY
THURSDAY, MARCH 19, 1992
SENATE ENVIRONMENT COMMITTEE

Mr. Chairman, Members of the Committee, I appreciate this opportunity to testify today. Let me first share with you, briefly, my background and current employment position, as these facts will provide the Committee with a fuller insight on the unique perspective I believe that I bring to this timely and very important legislative inquiry.

Presently, I am counsel to the Chicago, Illinois law firm of Seyfarth, Shaw, Fairweather & Geraldson, in its Washington, D.C. offices. Before joining Seyfarth in November of 1990, I served as the Acting Director for the Office of Criminal Enforcement, United States Environmental Protection Agency. From 1980 through December 1983, I was employed by the

New Jersey Department of Environmental Protection as Chief of Enforcement.

I began my legal career as a Deputy Attorney General, in the N.J. Department of Law and Public Safety in 1974 and served as a litigation counsel for the DEP from 1976 through 1978. It was in this position that I handled a toxic contamination case that lead ultimately to proposed legislation that became today's ECRA statute. I then assisted Senator Lesniak in drafting the ECRA statute in my capacity as the DEP's representative to the working group of industrial, chemical and petroleum interests he assembled. All these private sector interests supported the bill, after we made numerous changes to address their concerns.

Thereafter, I was requested by the Agency's Commissioner to serve as the only public interest representative when the ECRA Industrial Advisory Council was created in 1984. I have participated in the Council's meetings

from their inception through its most recent deliberations on March 10, 1992.

I have no current financial interest in any New Jersey property or businesses.

With this said, I would like to refresh everyone's recollection of the two main, and wholly avoidable, environmental debacles which prompted New Jersey's adoption of the ECRA law in the Spring of 1983.

In 1978, I was asked by Department of Environmental Protection, Department of Health and the Department of Agriculture to initiate litigation against the prior operator of a pesticide packaging firm located at a warehouse in the Meadowlands racetrack complex. The interior surfaces -- walls, floors, ceilings -- of the complex had been severely contaminated with mercury pesticides. These commercial premises had lain vacant for over four years until new tenants began their cleanup and renovations preparatory to their anticipated business use. Unaware of the potentially lethal

levels of mercury inside the building, which hazardous condition was (as are most toxic time bombs) undetectable to the human senses of sight, smell or touch, these exposed workers finally were forced to seek emergency medical attention when their blood levels of mercury got to be so high that they were experiencing severe headaches, blurred vision and skin lesions. Only after comprehensive site sampling and several hundred thousands of dollars in site cleanup was this warehouse complex rendered safe for human use and occupancy.

It is worth noting here that the prior tenants had engaged in no intentional hazardous waste disposal practices: the contamination was exclusively the result of inadvertant, unintentional, fugitive emissions and spills of valuable product and ingredients. Moreover, the migration of the spilled toxic chemicals had not stopped at the original property boundary. In fact, it migrated to adjoining premises

which was used by a business providing animal feed to the just opened Sports Authority racetrack.

Due to a massive find of dioxin contamination in a part of the Iron Bound section of Newark, the second toxic time bomb which exploded and thereby helped enact ECRA, did so in that spring of 1983. Governor Kean had to declare a State of Emergency when DEP tests at the former Diamond Shamrock plant revealed dioxin levels in one sample which exceeded 50,000 p.p.m. dioxin. The federal action level at that time was 1 p.p.b. dioxin in soils.

The tragic aspect of the Newark episode was the fact that the purchaser of the long closed Agent Orange manufacturing plant (again apparently ignorant or unmindful of the magnitude of the site's chemical hazards) had undertaken cleanup and renovation for a new commercial venture using local college students who were hoping to make some money over

spring break, when instead their vacation jobs (performed without protective clothing, respirators or any other protective means to prevent exposure to this unobservable witches' brew of chemicals) may well have jeopardized their well being and health for the duration of their lives.

I do not need to rehash all the lessons of the Newark dioxin crisis, other than to point out that the State's Superfund supervised remedial action is still not completed, and of course, as with the Meadowlands mercury emergency, has included numerous neighboring properties. Nonetheless, it is important to emphasize that the bill's sponsor and the Assembly and Senate Committees which considered the ECRA legislation were indeed concerned about the off-site contamination problems in Newark and in the Meadowlands. They saw ECRA as sufficient to address these problems in the future, however.

This short history of ECRA's origins should confirm, I believe, that ECRA serves two vital Public Interests: (1)

discovery and cleanup of toxic sites before they cause significant damage to public health and the environment, and (2) prevention of future Superfund sites with their inevitable off-site contamination and their massive costs to the taxpayer. While seemingly costly to N.J. businesses and real estate interests in the short-run, ECRA has and will continue to put this state far ahead in competing for business growth and development over the decade ahead. This prediction, which some might characterize as wildly optimistic, is premised upon the fact that the private sector working in ECRA partnership with the DEPE, and not as its adversary in enforcement cases, can achieve site clearances with buyer safety assurances, unmatched anywhere else in this nation.

Unfortunately, experience nationwide has shown us that these goals of pollution prevention and off-site remediation cannot be achieved through any less intrusive regulatory mechanism. The old cliche that: "you can pay me now or you can

pay me later" (at a far higher cost) is very apt for this law. And of course, one sure lesson from the state's eight year experience with ECRA is that due to the off-site migration of contamination, property owners are not well equipped to protect the public health beyond their site boundaries. Off-site access needs to be assured by either DEPE regulation or new legislation, for ECRA to be fully effective.

No one has or will, I'm sure, come before the legislature to assert that ECRA is a perfect statute. Nonetheless, the New Jersey ECRA statute is the most far reaching pollution prevention law ever enacted. It is not anti-urban, anti-business, anti-economic growth or any of the other fallacies which have been propounded by the statute's vociferous and misinformed critics.

Indisputably, ECRA is but one thing, it is Anti-Pollution. And to borrow another well worn, but apt, cliche, an ounce of prevention is worth a pound of cure. It is

for this reason that proposals to restrict ECRA jurisdiction only to the most polluted sites are potentially so injurious to New Jersey's future prosperity and well being. While Superfund and the Spill Act may be invoked to address the worse sites, ECRA alone mandates remedial action before harm has been inflicted. By requiring cleanup of low environmental concern sites at the time of plant sale or closure, FCRA prevents the creation of high environmental concern sites.

The unique advantage of ECRA that its critics fail to acknowledge is that site contamination problems that are allowed to fester and are not corrected at the time of plant sales or shut-downs do not go away. They spread, worsen, migrate and contaminate off-site properties and underground drinking water sources. When they cause such widespread problems that they are declared to constitute an imminent hazard to public health and safety, then emergency response actions are taken. At that time, the lawyers and lawsuits for

toxic exposure and lost business profits and diminition of property values and liability for cleanup commence in earnest, with costs to society and to the private sector that dwarf the so-called excessive transaction costs of the ECRA Pollution Prevention Program.

I know personally of just one Superfund Site in California where the attorneys fees and consultant studies have cost over $22 million dollars on a cleanup expected to cost $15 to $18 million dollars. This after-the-fact Superfund approach constitutes a major misallocation of scarce societal resources, in which an ever increasing portion of the total program costs go to adversarial proceedings which are almost wholly unrelated to the actual remedial efforts intended to protect the public and the environment.

Unquestionally, the administration of ECRA needs to be significantly improved; everyone connected with this regulatory program agrees that the delays -- cleanup plans approval and

other prerequisites to closings -- take too long. This program's streamlining and expediting of the processing of ECRA cases requires a full commitment by the DEPE Commissioner and the Governor to the staffing, training and organizational needs of the ECRA office; all these program improvements can be achieved, however, without amending the ECRA statute.

In fact, a persuasive argument can be advanced that legislative changes to ECRA would entail substantial program delays. It is inevitable that with the uncertainty of new provisions to the law, ECRA program managers would await official interpretations from the attorney general, new regulations might be required and procedures totally re-evaluated -- this list of legislatively imposed transition delays goes on and on.

In conclusion, I would like to recommend that the legislature confirm the existing ECRA jurisdiction over off-site contamination. Furthermore, the Legislature should

provide express statutory authority for DEPE assisted access for parties undergoing ECRA cleanups to neighboring properties to facilitate remediation of such off-site remediation. In all other respects, ECRA implementation improvements are well underway pursuant to DEPE auspicies and should be allowed to stay their course.

Thank you for consideration of my view, I welcome your questions on my testimony or any other ECRA concern.

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Mr. Chairman, Senator , members of the committee,

My name is William Sullivan and I am a staff attorney at the Rutgers Environmental Law Clinic at Rutgers Law School in Newark, NJ. The Clinic represented environmental groups and concerned citizens in one of the legal challenges to the first set of ECRA regulations. Prior to my employment at the clinic, I was an environmental attorney in private practice for 5 1/2 years at Gordon&Gordon in West Orange, and in that capacity I was involved in a number of ECRA cases.

I welcome the opportunity to speak to this Committee regarding ECRA's merits, the problems involved in some aspects of its implementation, and ways to improve ECRA application review. I would also like to discuss one issue related to NJDEPE's proposed cleanup standards, because of their relationship to ECRA and its much talked about effect on the economy.

I was pleased to learn, from some of those here on Monday, that the sense of this Committee is that ECRA's general goals and purposes are valid and necessary to improve environmental quality in New Jersey. Without ECRA, the NUmber of sites cleaned up would be dramatically reduced, since there would be no pressure to do so in every transaction, facility shutdown, etc, as there is now with ECRA. Because of ECRA, many contaminated sites which would have gone undetected indefinitely have been identified and remediated.

Have there been problems with ECRA's implementation? Of course, and the Department is taking some very positive steps to improve ECRA efficiency. One important step is the proposed site clean-up standards, which will regulate cleanups under ECRA and other state and federal statutes. Environmental groups and concerned citizens have numerous problems with these standards and we will be submitting extensive comments at the hearings and in writing. However, in terms of improving ECRA implementation, the standards will provide some long-overdue consistency and predictability to DEPE's decisions. Removing some of the case-by-case analysis of each site will certainly speed up the process. The Department has also implemented program management measures to improve efficiency, as discussed by Lance MIller of the Department on Monday.

I would also suggest, and these suggestions may have been made by others, that the Department consider teams of case managers for a given site, so that there is continuity when the inevitable turnover of personnel occurs, although I am told that the private environmental professional market is now sufficiently saturated that turnover is not as high as it used to be.

Also, the Department could specialize its site remediation personnel and could also assign more to the large Number of ECRA

cases which involve a narrow on-site issue, such as asbestos or USTs, for example. That would allow these simpler cases to move faster and not wait in line with far more complicated matters.

These issues can be addressed without the need of additional legislation. The environmental community is very concerned that reopening ECRA to address essentially administrative matters may result in drastic changes to the substance of the law, thereby resulting in environmental harm throughout the state.

However, if any amendments to ECRA are ultimately considered, two clarifications or additions could be helpful. First, the Supreme Court has heard an appeal of an Appellate Division decision which held that a person responsible for cleaning up a site under ECRA does not have to clean up beyond the boundaries of the property. Pollution does not recognize artificial property boundaries. Off-site impacts frequently occur. The extent, if any, of off-site contamination is a critical issue in determining insurance coverage for the parties involved. Furthermore, the decision is fundamentally unfair to the public in general and to adjoining proerty owners in particular. It is our opinion that this anamolous result was not intended by this Legislature, and that the Appellate Division will be reversed on appeal. Nevertheless, the Legislature might consider reiterating more clearly that those who pollute must pay for its cure, no matter where the pollution has traveled.

The second issue which could be addressed by amendment is the addition of certain industries within the purview of ECRA. I know that some have complained that far too many SIC numbers are included now, but I believe DEPE has been rather diligent in exempting many industries when it was clear they did not belong under ECRA. On the other hand, two industries in particular, junk yards and dry cleaners, are not covered by ECRA. The reason for including junk yards is obvious. Dry cleaners use large quantities of TCE and other volatile organics, which are among the most typical and problemmatic of the contaminants found on ECRA sites. The Legislature should carefully review those two categories.

I would also like to point out that many people, environmentalists and non-environmentalists, would have serious problems with one proposal articulated Monday, which was that the State maintain a taxpayer-funded line of credit for those instances in which the responsible parties cannot provide the financial assurance that is required for the clean up. This sounds like a JUA waiting to happen, as the State guarantees funds for cleanups and ends up footing the bill. Private parties should fund private cleanups.

Finally, regarding the proposed cleanup standards and ECRA's economic impact, I must disagree with those who believe that the best way to revitalize our cities is to permit polluters to only partially cleanup, so long as the property remains restricted to industrial use. One need only look to the decaying industrial base in our neighboring cities of New York and Philadelphia to see that

it will take far more than fixing ECRA to return our cities to the glory of yesteryear. Meanwhile, people continue to flee our cities in enormous numbers. Some of the best urban redevelopment which has occurred has been residential redevelopment, such as the Society Hill townhouses in Newark, or the transformation of the old textile mill in Little Falls in condominiums. If the proposed standards were in place, and if the proposed housing was formerly industrial property, then that vital redevelopment could not take place unless the residential developer agreed to pay for it himself, and why would he, when there is clean property elsewhere, probably in the suburbs? Meanwhile the polluter gets away chepaly by only partially cleaning up the mess he created. This is not the answer to urban decay. If anything, it will only make it more unlikely that we will return people to New Jersey's great cities. Do not think that this particular standard is one of the ways to make ECRA better for the economy. A clean environment is good for the economy.

We at the Clinic and in the environmental community in general are willing to work with DEPE staff and industry on ECRA matters and would like to attend the meetings between DEPE and industry that were proposed on Monday. In addition, perhaps it would be appropriate for the Chairman to form a task force composed of legislators, industry, government and the environmental community, so that we discuss these issues at length in a less formal setting, in order to address these matters critical to our environment and our economy.

TESTIMONY OF ANGELO MORRESI, P.E., ESQ.

GIVAUDAN-ROURE, CLIFTON, NEW JERSEY

On Behalf of

THE CHEMICAL INDUSTRY COUNCIL OF NEW JERSEY

March 19, 1992

Senate Environment Committee

New Jersey Legislature

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TESTIMONY OF ANGELO MORRESI, P.E., ESQ.

GIVAUDAN-ROURE, CLIFTON, NEW JERSEY

On Behalf of

THE CHEMICAL INDUSTRY COUNCIL OF NEW JERSEY

March 19, 1992

Senate Environment Committee

New Jersey Legislature

Honorable Chairman and Members of the Committee, my name is Angelo Morresi. I am an attorney and engineer currently employed as Vice-President of Givaudan-Roure of Clifton, New Jersey in the Safety, Regulatory and Environmental Affairs Department. I have been an environmental and safety professional for the past 20 years. I am here today to address the issue of ECRA reform.

As many of you are aware, the ECRA program has been relatively successful in forcing the cleanup of a large number of industrial and commercial properties in our State. Since its inception, thousands of tracts have been treated environmentally before passing to new owners. ECRA has brought a great understanding of the issues of property contamination. Due diligence inquiries must now meet ECRA like standards. Most non-ECRA properties still go through the "ECRA TYPE REVIEW". The road to ECRA for many the traveller, however, is long, winding and difficult, often without clear directions, adequate sign posts, or a fair sense of the time it will take to reach the final destination. And, although, in the end, most succeed in making the journey, few can say they have really enjoyed the trip. For those that succeed, the prize is one ordinarily attained less than ten years ago with the stroke of a pen, the signing of a deed. Particularly for smaller businesses today, however, the ill-equipped venturer through ECRA can easily be bogged down.

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NJDEPE personnel have done their best to deal with issues of enormous complexity. Their most recent efforts to streamline the process has been very productive. However, they cannot change this leopard's spots.

You who serve in our Legislature have the ability and resolve to work with business and industry, with the employers and employees of this State, with industrialists and environmentalists to make ECRA a workable process to clean up our environment while, at the same time, preserving our tax, employment and general economic base.

While there is general agreement on the need to continue the scope and objectives of the program, there is also widespread support for **streamlining the process, increasing efficiency and lessening the adverse impact** ECRA has on small businesses, especially those in urban areas. Even though some wish to avoid the trip through ECRA completely, the business community is fully aware that the clean-up of our State must continue. One must ask, however, must it be such a difficult process? Must it be so seemingly adversarial, uneconomic, and bureaucratic?

Traditionally, the most common problems experienced in the program have been:

* uncertainty over date requirements
* processing delays
* a lack of cleanup standards
* lack of financial decision making

Our position is that it need not be what some skeptics call " the final nightmare of doing business in the Northeast."

There are several proposals on the table before us that need further discussion and consideration. They are designed to protect the integrity of ECRA and to make it more workable and practical. After all, what is the sense of having rules and regulations that are difficult to understand or follow?

May I, on behalf of the Chemical Industry Council, respectfully suggest the following specific revisions of the ECRA Statute:

I. Alternative Standards

The findings of the Act (N.J.S.A. 13:1K-7) should be amended to include a statement that:

A. The goal of the Act is to achieve cleanup levels sufficient to protect public health and the environment consistent with realistic land uses for properties subject to the law;

B. Procedures and requirements of programs administered under the Act should recognize that alternative land uses may require different levels of clean-up; and,

C. That the economic development and redevelopment goals as promoted in State, County and Local plans should be recognized to determine appropriate land uses to be followed in the program.

In connection with that revised statement, here are some of the areas which the Legislature should discuss and investigate further:

1. Establishment of Urban and Industrial Zones

All commercial and industrial zones identified on zoning maps as of the inaugural date of ECRA shall be held to a different standard than residential zones. Clean-up standards shall be

based upon the last five (5) years of sampling in the area. Applicants would not be required to perform additional sampling to establish ambient levels.

Businesses in the more highly populated commercial and industrial areas of our State centered in the older urban centers have suffered greatly under ECRA. A more pragmatic and practical application of the regulations without compromising the high standards of ECRA would have a dramatic positive impact on the health of urban businesses.

The DEPE should study the practical application of the ECRA Statute on our urban centers. I believe that it will find that in many cases, it has a negative impact on the environment and fails to produce the results it was originally designed to attain.

EXAMPLE:

As a case in point, take the older industrial site which may employ hundreds of workers. Should the owners decide to sell or otherwise transfer the property, they may find it uneconomic after considering the cost of an ECRA clean up.

What are the realistic alternatives for the owner if he cannot "afford" to sell? Is the factory closed, never to reopen again? Will jobs be lost? What is to happen to the ancillary businesses surrounding the large employer - garages, gas stations, diners, delicatessens? What effect will a vacant building have on the tax base? Wouldn't the owner immediately file an assessment appeal based on the uselessness of the site? And, the ultimate questions, will the site be cleaned up, will the environmental hazards, whether perceived or real, ultimately be removed? Will the area actually be cleaner if strict compliance to the Statute is imposed?

These are questions that the Legislature must address in assessing if the high standards of ECRA, at times, border on the unattainable and actually stymie legitimate efforts by commerce and industry to clean up our urban environment.

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Setting lower standards in some strictly limited and identified areas of our older, urban industrial centers should not be construed to mean these areas do not deserve equal treatment. Instead, adopting lesser standards is more a pragmatic approach that will, in the end, result in **more sites being treated, more problems being addressed, and more locations becoming environmentally sound and economically productive again.**

Finally, with those that have open space in mind, perhaps the recommercialization and reindustrialization of our urban centers which may ensue will relieve some of the pressure business and industry has put on our undeveloped rural farmland and forests which continue to be rapidly sacrificed for new industrial plants, commercial office space and housing.

2. Deed Restrictions and Covenants, Etc.

The Legislature should allow the approval of site cleanups pursuant to Section 13:1K-10a that involve measures to mitigate contamination without removal from the site with conditions that the property uses be limited through restrictive covenant until such times, further measures are taken or the allowance of additional uses are supplemented and approved.

a. Deed Restrictions:

The Legislature should allow deed restrictions and notifications to expedite and facilitate transfers. The deed restriction should provide notice of a problem. Once the environmental problem is identified, in many cases limiting the future use of the property temporarily or permanently may be a reasonable way to permit the transfer.

b. Limited Conveyance:

The Legislature should allow the transfer of different blocks and lots. In addition, clean portions of a larger property should be allowed to be transferred without the

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entire site undergoing an ECRA treatment. This is also true for situations where condemnations are enforced against unwilling owners.

c. Administrative Consent Orders (ACOs)

In many cases, Administrative Consent Orders (ACOs) are signed at the eleventh hour in order to permit a transaction to take place. Often, under these circumstances, the parties to the transaction are forced to compromise their rights in order to consummate the transaction. This does not seem to fall in line with the original spirit and intent of the Statute. In addition, the Legislature should consider amending the current provisions in order to allow participation in the process by the prospective buyer.

d. Clean-up Deferrals

ECRA clearly allows for and intends clean-up deferrals. New legislation should clearly define provisions to defer clean-ups, especially in the urban zone areas identified above where the deferral of actual clean-up is allowed as long as the same or similar use is maintained. Remember, the ECRA cleanup is triggered by the transaction, not an imminent environmental and public health risk.

3. Regional Pollution

A more realistic and pragmatic approach to the contamination problem which may, in the end, effect the same goals and result in the same conditions, could enhance the chances of businesses continuing to operate in our State, paying our taxes, and employing our citizens in productive, manufacturing jobs. This approach would be to recognize that although one particular site is found to be contaminated, it is actually the entire area which needs remediation. It does not seem fair to isolate one property owner because of the present SIC Code and force a

costly clean-up while allowing other sites in the vicinity such as a grocery store, an office or a hospital to do nothing to remediate the contaminated area it shares.

4. Historical Liability

The Legislature should allow establishing a limitation on historical liability for ECRA purposes. Although the intent of the Statute is to eventually clean up all contaminated sites in the State, to put the entire burden on the unlucky current owner has proven to be counterproductive. Further, the federal statute CERCLA already regulates this area.

5. Corporate Triggering Mechanisms

The corporate triggering mechanisms such as the 30% clause which triggers ECRA should be reconsidered. Under principles of corporate law generally recognized by the Courts, the transfer of 30% of the shares of a corporation does not constitute a sale/transfer. Under ECRA, it does. This Legislature should discuss and further investigate the merits of the standard as is currently defined in the Statute.

6. Financial Assurance

Financial assurance should be established to allow for a more realistic draw down. Reasonable self-insurance standards should also be allowed.

II. Underground Storage Tank Exemptions/De minimus Exemptions

New Jersey has the strictest underground storage tanks rules in the nation. Those tanks in compliance with that law should be exempt from ECRA. This is the case for gasoline service stations. In fact, it has been suggested that with a de minimus exemption and with a full compliance with the underground storage tank exemption, the ECRA caseload could be reduced by 50 percent. The duplication of coverage is unnecessary and unwarranted. (De minimus should be for one 55-gallon drum and consumer products in original packaging.)

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III. Uniform Clean-up Criteria

Section 13:K1-10a of the Act should be amended as follows:

The DEPE shall within three months of the enactment of this amendment propose as rules uniform cleanup criteria or standards intended to meet the goals of the Act. The criteria and/or standards shall recognize alternate land uses ranging from residential to industrial. The criteria or standards shall also recognize that remediation activities can include containment, in-place treatment and other techniques to reduce exposure of hazardous materials as part of a remedial program.

a. Remediation and Remediation Alternatives:

A new section should be included in the Act embodying detailed procedures for the Department to follow in review of applications including the following:

(i) The review process for individual applications shall consider various facts in determining the need for and adequacy of remediation proposed for individual sites to meet criteria and standards for given land uses. These factors shall include technical effectiveness, reliability, cost and other environmental and social impact of the remedial technique.

(ii) Remediation alternatives shall be considered, including such techniques as containment, in-place treatment and off-site treatment and disposal.

b. Timeframes

The Legislature should require regulations which define the ECRA application review process and establish maximum timeframes for review of each step in

the application and review process. In no case shall the review timeframe for an individual step in the review process exceed ninety (90) days. (This will require amending Section 13:K-10b).

c. **Guidelines on Procedures and Techniques**

The Legislature should require public guidelines outlining the minimum procedures and technical approaches for each step in the application process. Applicants shall, however, be entitled to follow alternate technical approaches and methods for site investigation and characterization and risk assessment provided that these approaches are scientifically defensible.

d. **Self-Certification/Licensed Professionals**

Today, we can build a 40-story skyscraper to house tens of thousands of people safely on a single licensed professional signature. We cannot get a small oil spill cleaned up without a major negotiation.

Therefore, in addition to the other suggested provisions regarding application processing, professionals licensed under the auspices of the Division of Consumer Affairs should be allowed to certify that site investigations and remediation as necessary to meet the requirements of Section 13:K-10 have been carried out consistent with standards and criteria establish under the Act.

This procedure could be referred to as "certification". The applicant would proceed through the requirements of the Act including the submission of Negative Declaration as described in NJAC 7:26B-5.2 by a process of certification, the applicant may do so by filing with the Department Notarized Certification Forms

as promulgated by the Department. The forms shall recognize the steps undertaken by the applicant to identify, sample, study and remediate as necessary any contaminants at the site to levels that will meet the Department's criteria and standards for appropriate land uses.

The Department will acknowledge Certification Forms by a duly licensed professional and provide an approval based on the representations of certification provided, however, that the Department shall not certify projects for which it has reason to believe there remains an imminent public or environmental health risk potential, that information used to certify is invalid or false, or if the Department has data concerning the site that is contrary to the certification.

Just as many professions are licensed by the State Division of Consumer Affairs, so too could those dealing specifically with ECRA compliance be licensed. Use of licensed individuals by applicants to meet ECRA requirements would significantly reduce the backlog and caseload of the Department as it stands today. In addition, it would provide a much needed upgrading in the quality of the environmental professional as well as eliminating some of the uncertainty involved in having "Consultants" and NJDEPE "negotiate" a clean-up. Of course, the DEPE would continue to have the final say in issuing permits, negative declarations, and the like.

e. **ECRA Applicability:**

The NJ-DEPE must review and re-identify which SIC codes actually present environmental problems. Those that do not should then be exempt under the ECRA Statute. Further, ECRA should apply to similarly situated operations in a

like manner. For example, if chemicals stored in a warehouse are exempt under a certain set of conditions, then, they should be exempt under all conditions provided the conditions are not environmentally related.

f. **Data Acceptability - Quality Control/Quality Assurance (QC/QA) Problem/Use of Existing Data**

NJDEPE certified laboratories provide adequate data with regard to Clean Water Enforcement Act permit conditions. The same laboratory certification should be acceptable under ECRA. There should be no need to supply further Quality Control and Quality Assurance data which must be reviewed. Such additional requirements would be unlikely to create an environmental good. Further, the statute should permit the use of existing data in a given area, rather than require additional sampling and monitoring wells where these are not needed. This should be acceptable, even if, regardless of whether the original case manager or original consultant are no longer available and the new case manager and consultant "do not feel comfortable" with the old data.

g. **"State of Art" Hydrogeology:**

Minimum requirements based on minimum standards should be established. These standards should be required to reflect a cost/benefit approach, noting that a perfect understanding of the subterranean is not possible. The goal is environmental protection, not research. More specific standards and guidelines would eliminate some of the guess work and "negotiation" that goes on under the current system resulting in delays.

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IV. ECRA Appeal Board

The Department shall establish an ECRA Appeal Board which shall make independent recommendations to the Commissioner for cases in which applicants seek to appeal decisions or requirements of the ECRA program without resorting to a cumbersome and costly judicial appeal. The ECRA Appeal Board shall consist of seven members appointed by the Commission, serving four-year terms. The membership shall represent local and/or county elected officials, labor, industry, professional engineering and environmental interests.

SUMMATION:

In my testimony today, I have attempted to draw your attention to some critical areas of the ECRA Statute in a very positive way, with an eye toward revising some of its provisions which, in their practical application, need to be reformed. The spirit and intent of the original Statute was to clean up an environment long abused in the past. The lessening of certain restrictions, the streamlining of procedures, and the establishment of better definitions and criteria are suggested solely to make ECRA work better. My suggestions to you today are presented in a the same spirit of cooperation and an interest in working together with you to make New Jersey environmentally sound and economically stable for all that live and work in our fine State. Thank you for the interest you have shown in allowing me and others in my industry to testify here today.

If you have any questions or wish to discuss anything I have testified to, I will be happy to make myself available now or at a later date to you or your staff.

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City of Bayonne
630 Avenue C
Bayonne, New Jersey 07002

Richard A. Ruthowski
Mayor

March 18, 1992

Mr. Henry P. McNamara, Chairman
New Jersey State Legislature
Senate Environment Committee
Legislative Office Bldg. - CN-058
Trenton, NJ 08625-0068

Dear Mr. McNamara:

The Environmental Cleanup Responsibility Act (ECRA) is partially responsible for New Jersey's stature as a national leader in environmental legislation. Among all national and state legislations dealing with toxic contamination, ECRA is unique and only a few states have enacted similar laws.

Since its inception, the ECRA program has undergone some changes to become one of the Department of Environmental Protection and Energy's most powerful tools for forcing cleanups at industrial sites across the state. However, the ECRA program still needs to do some fine tuning to maintain its effectiveness.

A case in point is the adoption of a two-tiered system that protects residential areas, yet allows industrial areas to be cleaned in an environmentally and economically sound manner.

While everyone would love to have all contaminated sites cleaned to "pristine levels," one must look at the hard reality of such a notion. Areas that have been heavily industrialized in nature for extended periods of time, and will be remaining as such through zoning requirements or deed restrictions, may not have to undergo cleanups to the extent mixed industrial-

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residential or strictly residential uses may require.

Some may argue that we may be writing off areas as "not worth saving" or "compromising ecological values," but this is not the case. Industrial areas that will remain as such still would have to be cleaned to levels that protect human health and the environment, but will still allow title transfer without being in a pristine state.

By allowing a two-tiered cleanup aspect, ECRA cleanups will be parallel to those proposed by the Department in its new Cleanup Standards for Contaminated Sites. At the same time, it will allow companies to remediate sites in an environmentally sound and economically feasible manner. The ECRA program should also look into the usage of some of the innovative technologies, much like the USEPA has done with the Superfund program. This can allow new technologies to be tried on some smaller scale sites and may result in a faster cleanup, while serving as a field trial for those technologies.

One other area the ECRA program can be improved upon is coordination with local officials. Presently, there are many times when local officials only find out about ECRA activities through quarterly updates. Many municipalities have qualified environmental staff people who can provide valuable information to case managers. These are the same people who receive the local inquiries about what is going on at XYZ Company. Many times the local resident does not want to hear they have to call someone at the NJDEPE; they expect City Hall to answer their questions. While it is not necessary to send a duplicate of the application, it would serve everyone's best interest if a summary could be sent to the municipality. Such a summary could include proposed cleanup methods, sample results, etc. Along the same lines, a copy of any negative declarations should also be forwarded to the municipality.

ECRA provides a valuable benefit to the residents of New Jersey by forcing cleanup of contamination that might otherwise go undetected. It also can provide

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insurance against the creation of commercial properties. There is no doubt it is a much-needed regulation, but it does need some fine tuning to increase its efficiency and operations to meet the challenges it will face for the rest of the decade and beyond.

Sincerely,

Richard A. Rutkowski

RICHARD A. RUTKOWSKI
Mayor

bf

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The Voice for Real Estate™

MEMO TO: Members of the Senate Environment Committee

FROM: Greg DeLozier, Assistant Director of Government Affairs

DATE: March 19, 1992

SUBJECT: ECRA Reform

On behalf of the 40,000 member New Jersey Association of REALTORS, a statewide trade association comprised of licensed real estate brokers and sales agents, thank you for the opportunity to comment on the ECRA program.

The concept of a buyer protection program to ensure that a prospective purchaser is aware of on-site environmental problems is a good one and as originally conceived, could have been beneficial to the continued long-term economic development of New Jersey. Unfortunately, in the process of developing a viable program something went wrong. The program administered by the Department of Environmental Protection and Energy has not had positive economic impacts; rather, it has been a source of fear for businesses in the State, as well as to those looking to move facilities to New Jersey. In part, this is attributable to the fact that the program was without equal in the rest of the nation. However, the over-reaching and burdensome regulations adopted by the DEPE also played a role. To be fair, the Department has made significant improvements in the ECRA program; however, statutory amendments are needed to facilitate the kind of ECRA reform that is needed.

NJAR's remarks are limited to three major problem areas: 1) the broad scope of the statute; 2) the enormous costs of getting through ECRA; and 3) the length of time it takes to complete the process. We have identified possible solutions to each of these concerns in our testimony.

As you know, sites covered under the ECRA program are determined by the Standard Industrial Classification (SIC) code of the facility. Unfortunately, a number of sites that should not be covered by ECRA are under the jurisdiction of the program. We believe the Department should be required to undertake a study of the facilities reporting under ECRA, and then remove those SIC codes which do not produce medium or high risk sites from the program's purview. The DEPE has nine years of experience with ECRA and should know what types of operations do not cause environmental problems. In addition, the statute should be clarified to provide that contiguous parcels of land that are not part of the manufacturing process or involved in the storage or handling of hazardous materials would not be ECRA-subject.

As you are aware, it is expensive to get through the ECRA process and many businesses simply do not have the resources to do this. Besides the various DEPE-mandated fees, one must pay attorney, consultant, engineering and laboratory fees. NJAR, along with numerous others, believes that by allowing licensed Professional Engineers to certify environmental audits and completion of interim stages of the remediation process, costs would be significantly reduced. For low and medium risk sites there is really no reason to

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have the Department integrally involved in every step of the audit and remediation process. Certainly its resources would be better expended on those sites that pose higher risks to the public and environment. In addition, certification of sampling results from certified labs should be permissible in all cases, with DEPE technical staff only performing spot checks or periodic monitoring of remediation efforts.

In addition, industrial sites are currently subjected to departmental reviews which take far too long to complete. The Department should be required to establish fair and reasonable time frames for submission and review of information. A process for resolving disputes between the Department and applicants is needed--perhaps something in the way of a binding arbitration proceeding.

Transactions are also burdened by the draconian Administrative Consent Order (ACO) process in which applicants are required to participate. The ACO process should not require the waiver of rights to contest Department decisions, nor should it set penalties for non-compliance. The purpose of the ACO is to set a time frame and goals for the cleanup. Those parties required to enter the program should not be treated harshly if they are cooperating with the Department. The legal "club" of a harsh ACO should only be pursued for recalcitrant parties. Also, the revolving door policy of DEPE with regard to case workers often results in new case workers forcing a re-examination of resolved issues. This practice must stop, possibly via a provision to allow the reopening of cases only where a material error or threat to public safety exists.

DEPE has made some technical improvements in the ECRA program, however clear cleanup standards are needed to give applicants a concrete goal to work toward. The current system does not give applicants a standard with which to comply until the process is well underway. Also, with regard to definitive standards, exemptions for de minimus quantities are needed. Finally, any condition (i.e. underground tanks) which would fall under the jurisdiction of another program should be remediated to the standards of that program.

In practical economic terms, we need some mechanism to assist in the cleanup of sites, particularly for small and medium-sized industrial establishments and/or innocent owners. NJAR is currently working on a proposal to accomplish this.

Thank you for the opportunity to participate in the ECRA reform discussions. The REALTORS look forward to working with the committee on this and other issues.