

PUBLIC HEARING

before

**SPECIAL COMMITTEE TO INVESTIGATE HAZARDOUS
WASTE DISPOSAL AT MILITARY INSTALLATIONS**

December 17 and 18, 1985
State House Annex
Room 438
Trenton, New Jersey

MEMBER OF COMMITTEE PRESENT:

New Jersey State Library

Assemblywoman Marlene Lynch Ford, Chairwoman

ALSO PRESENT:

Mark O. Smith
Office of Legislative Services
Aide, Special Committee to Investigate Hazardous
Waste Disposal at Military Installations

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ASSEMBLYWOMAN MARLENE LYNCH FORD, (Chairwoman): Good morning and thank you for coming. This is the Assembly Special Committee to Investigate Hazardous Waste Disposal at Military Installations public hearing.

I would like to begin this public hearing by offering my condolences on behalf of myself as well as the members of the Special Committee and the members of the Legislature on the tragic loss of the Army last Thursday of 248 men in uniform on their way home for the holidays from active service in the Middle East. I think it was a tragedy that we should take note of; express publicly our loss. I know that I lost in my district a young man who apparently was among the people listed on the roster of people. We would like to offer on behalf of the Committee our deepest sympathies to the families of the men of the 101st Airborne who have died during the course of their duty and in honor of their Country. To the Army and the other branches of the Armed Services engaged in active service on behalf of our Country's security, we would like to pledge our most profound respect on this terrible occasion.

Let me now start this hearing with a little bit of background. At our public hearing a week ago today, two witnesses who had been requested to appear and to testify and to produce documents for the Special Committee in accordance with our investigative charge on behalf of the New Jersey General Assembly and to the people of the State, failed to appear.

In the case of Mr. Christopher Daggett, who is Administrator of Region II of the United States Environmental Protection Agency, which region includes New Jersey, this is not the first time that Mr. Daggett's obligations outside the United States were offered as an excuse to avoid serving as a critical witness before this Special Committee. I might add that back in October, this Committee delegated to the Chair -- to myself -- subpoena power to compel the production of witnesses and documents, and at that time we contemplated using it to produce Mr. Daggett. It was in light of that threat that he appeared on October 22nd to testify before this Committee.

At that point in time, Mr. Daggett had indicated a willingness, hearing for the first time about certain toxic waste practices at Fort Monmouth, as well as radioactive contamination at Sandy Hook and the Raritan Arsenal, and had promised to share whatever information he had regarding these situations with the Committee.

We have waited and waited until the beginning of December, and made numerous requests prior to that to obtain whatever information was available. It was then, based upon our voluntary request for appearance, which was declined, that we issued a subpoena.

The subpoena was duly served upon Mr. Daggett by the State Police, both personally, at his home, as well as at his residence. In my opinion, Mr. Daggett's absence today signifies contempt for this Special Committee's official charge. I am not at this time recommending, or will I recommend to my fellow Committee members that Mr. Daggett be arrested, which would be within the purview of the Chair, but I am, however, taking the position that the subpoena was valid, that his failure to acknowledge or to appear pursuant to same is contemptuous, and that if we so deemed it necessary or desirable we could act upon that contempt in either fashion of bringing charges before the Legislature, or in having him arrested and produced personally to appear and to testify. I will share with you the fact that I spoke to Mr. Daggett last evening. He indicated that the legal advice he was receiving was that the Federal Government would not honor these subpoenas; the advice I am receiving from our Legislative Counsel is to the contrary. At this point in time he did indicate that by December 31st he would produce certain documentation regarding the two sites that we are particularly concerned about: Sandy Hook, and the landfill situation at Fort Monmouth, and that based upon that representation, I will wait and see what type of documentation is produced and whether it is responsive to our needs.

I hope that Mr. Daggett will reconsider his position. Last night he indicated to me that he would appear personally. I don't see that, quite frankly, in the letter that I received from Mr. Daggett, hand delivered today, December 17th, in which he indicates that he would not appear before this Committee, and he took the position that the subpoenas were invalid.

The second person whose testimony and production of documents was requested at last week's public hearing was also subpoenaed to appear and produce relevant documentation here today.

His present absence is consistent with an utter failure to respond to this Special Committee's written and oral request for information and documentation germane to our official charge.

Major General Robert Morgan, who is Base Commander at Fort Monmouth, has, in the past, sought to excuse his failure to respond to this Special Committee's investigation with the explanation that he has, too, had to travel abroad.

My position with regard to the Major General is the same. The subpoenas were validly issued; they were issued pursuant to statutory authority; that authority was delegated to this Committee, and in turn delegated to the Chair and acted upon after a voluntary request for his appearance and production of witnesses produced nothing.

Last week, a Fort Monmouth representative telephoned the Special Committee offering to appear tomorrow in Major General Morgan's place, together with the requested documentation, and I accepted this substitute in the interest of obtaining the information in my letter to the General, dated December 12, 1985. I would like to read into the record that letter:

"We appreciate the telephone call to our Special Committee Secretary from your installation today promising to send an environmental representative to a public hearing in Trenton on next Wednesday, December 18. The General Assembly Special Committee to Investigate Hazardous Waste Disposal at Military Institutions is pleased that you have responded to this issue and looks forward to the testimony your representatives will give on December 18. You should be advised, however, that the Special Committee expects your good faith best efforts to provide it with all the relevant information which will materialize on that date.

"We are advised as to the validity of the subpoena directing your appearance and production of documents at our public hearing on December 17. We stand ready to enforce our subpoena authority if there

is a failure to appear or the information provided is not fully responsive to the Special Committee's inquiry."

Is there any representative here on behalf of Picatinny Arsenal? (no response) I have been advised of a letter that was received today from the Department of the Army from the Director of Installation Support Activity at Picatinny Arsenal, and directed to the Aide to the Committee, Mark Smith, and I would like to read that also into the record.

"Dear Mr. Smith: We are in receipt of your letter of December 6, 1985 inviting Picatinny Arsenal to participate in a public hearing on December 17, 1985 at the State House Annex, Trenton, New Jersey.

"Since an Army Worldwide Environmental Conference is currently in progress (December 16, 1985) in Norfolk, Virginia, involving all key environmental specialists and officials, it will be impossible to participate at this time." And, it is signed by Thomas E. Fleming, Colonel, Aviation Director, Installation Support Activity.

I would like to ask Mr. Tyler as a representative of the DEP -- or whoever you might designate, Mr. Tyler -- some questions regarding the Picatinny Arsenal, if you could step forward. Mr. Tyler you could bring anybody you want to the table. You were advised that we would be asking some question about the Picatinny Arsenal and the extent of some practices there.

ASSISTANT COMMISSIONER GEORGE TYLER: Yes, ma'am.

ASSEMBLYWOMAN FORD: Okay. Can you tell the Committee how long the Picatinny Arsenal has been active as a military facility, if you know?

ASST. COMMISSIONER TYLER: No, I can't, but I imagine for many decades.

ASSEMBLYWOMAN FORD: Do you know how many hazardous waste sites have been identified by the Environmental Protection Agency at Picatinny Arsenal?

ASST. COMMISSIONER TYLER: No, I am sorry, I can't offhand discuss that.

ASSEMBLYWOMAN FORD: Is it because it is protected information?

ASST. COMMISSIONER TYLER: No. My staff is right now in the process of reviewing the latest scope of work from the Army for a complete facility investigative study, which will be done in cooperation with the U.S. Geologic Survey. That work won't be, unfortunately, completed until about a week from today. What I had planned on doing with respect to Picatinny was sending a copy of our reaction to that to the Committee, and I thought that would suffice in terms of present status needs.

ASSEMBLYWOMAN FORD: When did your Department start evaluating the situation at Picatinny?

ASST. COMMISSIONER TYLER: We've been involved for a number of years in looking at groundwater and other environmental situations at the Picatinny Arsenal.

ASSEMBLYWOMAN FORD: And the report will be ready next week?

ASST. COMMISSIONER TYLER: That's a different-- I don't want to mix apples and oranges. We are reacting to a scope of work that we have had for a matter of weeks, I think, in the Department proposed by the Army to investigate.

ASSEMBLYWOMAN FORD: Does your Department or is your Department in possession of the Federal Facilities Update Report on the CIRCLA Report dated August 28, 1985, regarding the Picatinny Arsenal?

ASST. COMMISSIONER TYLER: I believe we are.

ASSEMBLYWOMAN FORD: Mr. Tyler, I am going to ask the Committee Aide to bring to you the report in question so as to refresh your recollection, because I have some specific questions regarding this.

ASST. COMMISSIONER TYLER: Well, I don't have any personal recollection. I think we have this file on our list. It certainly looks familiar in terms of the style. We have a whole lot of information that looks just like this on all the various Federal facilities in New Jersey. Probably, we sent this to you.

ASSEMBLYWOMAN FORD: For the record, can you then tell me how many hazardous waste sites have been identified by the EPA at Picatinny?

ASST. COMMISSIONER TYLER: You want me to read this report? Is that what you mean?

ASSEMBLYWOMAN FORD: I would like you to answer the question, Mr. Tyler.

ASST. COMMISSIONER TYLER: Well, I don't know who prepared this, and I am not sure of whether or not the contents of it are accurate, offhand. I would be glad to check for you.

ASSEMBLYWOMAN FORD: Well, why don't you review the report and--

ASST. COMMISSIONER TYLER: Well, that's not going to help. I will have to go back to the Department and confirm with our staff that indeed this is the report that we sent you. I didn't realize you were going to have specific questions about this kind of report. I could tell you what it says, but you provided it to me. It says that there are 25 sites at the Picatinny Arsenal. But, again, that's not my testimony before you, that's whoever prepared this report and however you got it.

ASSEMBLYWOMAN FORD: Well, my Committee requested certain information from your Department, did they not, regarding the Picatinny Arsenal?

ASST. COMMISSIONER TYLER: I believe so.

ASSEMBLYWOMAN FORD: And, in connection with that request, were you familiar with the documents that were turned over to the Committee?

ASST. COMMISSIONER TYLER: Yes, I reviewed them generally, and if you are telling me this came in the package from DEP -- I'm really not trying to give you a hard time -- that's fine. I just didn't know where it came from.

ASSEMBLYWOMAN FORD: Do you have any sense or can you disclose to the Committee the extent of the pollution at landfill sites at the Picatinny Arsenal?

ASST. COMMISSIONER TYLER: From my recollection of the briefings that I had with my staff on this particular case, I was told that we had an extensive number of monitoring wells installed at Picatinny on which we had data, and that, in general, there was a groundwater contamination problem on-site that needed to be remediated and needed to be addressed in an installation restoration type

program. I was also told that there was no off-site contamination at this time resulting from the Picatinny Arsenal, which means that we are in a situation where we have to see the installation restoration program through to completion on an expeditious basis.

ASSEMBLYWOMAN FORD: Can you describe for us the nature of these particular toxic waste sites?

ASST. COMMISSIONER TYLER: No, I can't. I apologize for not being able to do that, but, again, I thought it would be sufficient for the Department to submit the reaction to the current proposal for Picatinny to the Committee in writing, and I would like your permission to do that.

ASSEMBLYWOMAN FORD: Sure. Have you done any testing with regard to the soil surrounding the Picatinny Arsenal?

ASST. COMMISSIONER TYLER: I don't believe so.

ASSEMBLYWOMAN FORD: Can you tell us who is conducting the groundwater testing at the Arsenal?

ASST. COMMISSIONER TYLER: Groundwater testing at the arsenal, I believe is being done by the Army and the U.S. Geologic Survey, and we are involved in that, at least in a supervisory sense. We may be splitting some samples with them.

ASSEMBLYWOMAN FORD: Are they using private well or water testing labs, similar to what happened at Lakehurst?

ASST. COMMISSIONER TYLER: I'll have to check on that for you, but, again, the laboratory situation in New Jersey today is a far cry from what it was, even four or five years ago, and it is continually improving. So, if they are using a New Jersey certified lab, we know a lot more about what that laboratory does and how it behaves with respect to good quality assurance and quality control today than we did four or five years ago.

ASSEMBLYWOMAN FORD: You indicated that the groundwater testing at Picatinny indicated toxic pollution of the groundwater. Can you tell me what substances were found in this testing?

ASST. COMMISSIONER TYLER: No. Again, I didn't come prepared today to do a briefing on Picatinny. What I wanted to do was have our staff complete its review of the cleanup program -- or investigative

program more properly — that is proposed for Picatinny and then submit it to the Committee. So, I cannot tell you what substances or concentrations or anything like that--

ASSEMBLYWOMAN FORD: When can the Committee expect to receive your report that you are speaking about?

ASST. COMMISSIONER TYLER: Well, I expect to see a draft of it by the end of this week, so I would say in a matter of a week or at the most two weeks after that I would get that to you, depending on if any revisions had to be made or if-- This time of year a lot of different people in the Department aren't in that have to go over something like that totally. I would commit to have that to you in the next two weeks, if that is acceptable.

ASSEMBLYWOMAN FORD: And at that point in time I assume that you will be available to answer any questions the Committee might have in connection with that report?

ASST. COMMISSIONER TYLER: We've always tried to answer all the questions that you have had, and I don't foresee any change at all in that.

ASSEMBLYWOMAN FORD: You know, Mr. Tyler, when I was speaking to Mr. Daggett last night, he expressed some frustration about obtaining information from the military on some particular sites -- not all of them -- but certain particular sites. Do you know whether your Department has experienced any difficulty in obtaining groundwater data with regard to the Picatinny Arsenal?

ASST. COMMISSIONER TYLER: There was a-- I have a recollection of some hesitancy on the part of the Army to make initial data readily available to us, however, I was also informed that that situation turned around, and as a result we have all the information that we believe is available on Picatinny. But initially, we did have a reaction like that. I also understand that Administrator Daggett went up and met with the Base Commander at Picatinny a few month ago in an effort to resolve those kinds of problems and he reported to us in a letter, I think, we shared with you that those problems had been rectified.

ASSEMBLYWOMAN FORD: Didn't the Arsenal refuse to hand over to your Department the United States Geologic Survey data?

ASST. COMMISSIONER TYLER: Again, I wasn't personally involved in those discussions, I'll be glad to put a reconstruction of that together for you, but my understanding was that there was a hesitancy on their part to hand it over. Perhaps not knowing the jurisdiction of the State or the proper methods for interaction, or whatever— I don't want to speculate, really, as to what their rationale was for not readily sharing it, but, nevertheless, I was subsequently told that that situation had cleared up, and we have that information. So, I don't think it is quite fair to term that a refusal.

ASSEMBLYWOMAN FORD: When did that turning point occur?

ASST. COMMISSIONER TYLER: Sometime in the last two or three months.

ASSEMBLYWOMAN FORD: Do you consider the hazardous waste activities at the Picatinny Arsenal subject to State and Federal regulation under the Resource Conservation and Recovery Act?

ASST. COMMISSIONER TYLER: Well, as I said to the Committee on a couple of prior occasions, the jurisdiction questions with respect to the Resource Conservation and Recovery Act are thorny and not at all crystal clear, in my opinion. We have talked about it internally; as you know we have joined some Federal litigation which would clarify that to some extent; and we have asked for an opinion from the Attorney General's Office on our jurisdiction, I think, generally, with respect to Federal facilities.

ASSEMBLYWOMAN FORD: Are you familiar with Section 6001 of the Resource Conservation Recovery Act?

ASST. COMMISSIONER TYLER: Not offhand; I might be.

ASSEMBLYWOMAN FORD: Has your Department been required to take any enforcement or compliance actions with regard to the RCRA program and the Picatinny Arsenal?

ASST. COMMISSIONER TYLER: Again, I'll defer to a later date to check, but my recollection is we have taken some enforcement actions there with respect to the more traditional parts of the RCRA program. Under the pre-84 RCRA Statute, at a number of Federal facilities they were reporting violations or possibly every manifest type violations

which we took enforcement action on in terms of either notices of violation or notices of prosecution. Therein, with respect to Earle and Lakehurst, the files we have submitted to the Committee-- I would guess we did the same thing with Picatinny, so they should be in there also.

ASSEMBLYWOMAN FORD: Are you familiar with the aquifer that underlies the Picatinny Arsenal and its surrounding areas?

ASST. COMMISSIONER TYLER: I'm familiar that there are groundwater resources that can be impacted by the Picatinny Arsenal, yes.

ASSEMBLYWOMAN FORD: Is that the Rockaway Aquifer?

ASST. COMMISSIONER TYLER: Well-- I don't know. I would have to check. The Rockaway Aquifer, I think, is a fairly limited water formation, not generally--

ASSEMBLYWOMAN FORD: This aquifer has been designated as a sole-drinking water source pursuant to the Federal Safe Drinking Water Act, hasn't it?

ASST. COMMISSIONER TYLER: Okay, if that's the aquifer we are talking about, I don't believe that any of the Picatinny is directly over it, maybe some of it is. But, it is certainly in the same vicinity, and potential impact is available. I would have to check with our geologist exactly how the land and rock formations occur in that area. But, if it would serve your purpose for this meeting, let me say that my understanding is that the Rockaway aquifer underlies Rockaway Township and other portions of Morris County, and Picatinny Arsenal is certainly in that vicinity, and groundwater impacts from that facility if off-site could potentially impact that aquifer.

ASSEMBLYWOMAN FORD: Is it true that Federally funded polluters whose activities may contaminate a sole-source aquifer under the Federal Safe Drinking Water Act may have their Federal funds cutoff?

ASST. COMMISSIONER TYLER: No, the purpose of sole-source aquifer designation is a prospective designation, as I understand it. It is a designation that requires a-- First of all, it assumes that there is little or no groundwater scrutiny of new or proposed projects

in a given area. Secondly, it is a perspective review of Federal funding of facilities -- not necessarily industry; housing primarily, as a matter of fact -- in areas that have that designation. As a point of fact, I will note for the Committee that:

1) The entire State of New Jersey, with very, very few exceptions -- probably 95% of the land area of the State -- overlies areas that properly qualify as sole-source aquifers under the Federal definition of sole-source aquifer. As a result, New Jersey has a Statewide, comprehensive groundwater management scheme -- groundwater management permit program -- that only a handful of states have, and a hazardous waste management program that is Statewide. It is not directed at Federal artificial designations.

As a matter of fact, the entire coastal plain of New Jersey is a pending sole-source aquifer right now before the Environmental Protection Agency. If they grant that approval, then the nine counties that comprise southern New Jersey, in their entirety, will be considered to overlay sole-source aquifers. Beyond that, in order to clarify the situation, my Department has filed a petition with EPA which would designate the entire State of New Jersey with a few -- say five percent -- exceptions that are valid, as a sole-source aquifer. That would, I think, clarify the situation that has really gotten to be an aberration, with respect to Rockaway Township where -- if I could continue, if you don't mind -- the local government, in an attempt to thwart the siting by the County of a solid waste facility, has basically exploited and misused the Federal definition.

ASSEMBLYWOMAN FORD: So, you disagree with that analysis as the connection between Federal funding and pollution of--

ASST. COMMISSIONER TYLER: What I said was I thought it was a prospective funding analysis. In other words, the Federal Government will not appropriate funds or provide funds for any operation, facility, or whatever, that -- in a grant as I understand the program, not to create, say, a military installation, but in a grant -- to any activity that would threaten a "sole-source aquifer" and it is almost an extra level of review, as opposed to a prohibition on that grant. What I'm suggesting is that the review that any new operation that New

Jersey gets, from a permit viewpoint, far exceeds the extra level of funding review that you get in terms of sole-source aquifers that are designated by the Federal Government.

More importantly, there is no difference between the Rockaway Aquifer and any other aquifer that underlies New Jersey, other than an artificially created Federal category. And that is the important point for this Committee, and for the entire process of looking at groundwater discharges in the State.

ASSEMBLYWOMAN FORD: What happens if private well-water surrounding the Picatinny site is found to have been polluted by toxics emanating from the Picatinny Arsenal?

ASST. COMMISSIONER TYLER: What happens in that case is the same thing that happens in any case where potable well-water is found to be contaminated. First of all, the Department would work with the local government to provide any kind of interim water supply that the residents or institutions, commerce needed in terms of drinking water, in terms of available facilities to bathe, shower, and things like that. Unfortunately, we have cases where that is going on, and we have institutionalized that procedure fairly well, I think. Then we would work with both the Federal Government and our own Spill Fund in the Department to set up a funding scheme and an engineering scheme for replacing the water supply. We've got at least 15 priority projects underway right now where we're building new well-fields at Price's Pit, for example, at Atlantic City; we're building pipelines at the Krysowaty Farm in Hunterdon County; we're building a new pipeline at the Bridgeport Oil site in Bridgeport. That's just three or four cases. We probably have ten or fifteen construction projects underway where we're working with the Federal or State funding sources to make dollars available to local government to provide permanent fixes for water supply. That's what would happen if in any particular case a water supply was contaminated.

ASSEMBLYWOMAN FORD: Would your Department, in that case, seek reimbursement--

ASST. COMMISSIONER TYLER: Absolutely.

ASSEMBLYWOMAN FORD: (continuing) --from the Department of Defense, or from whom?

ASST. COMMISSIONER TYLER: Well, in terms of any polluter, the first requirement under both Superfund and the State Spill Compensation Fund, and the other funding sources we have available would be to offer them the opportunity to do the work or to pay the bill. And, failing that, to threaten to subject the polluter to treble damages in terms of any contamination problems they cause. Now, with respect to Federal facilities, as we have discussed, there are particular jurisdiction questions that may, just like any government, Federal or State, there are unique defenses and, I guess, unique courses of action. We have consulted with the Attorney General in that regard, and when we get that reply, and probably when we put the theory included therein into a case and test it, we'll know what the law says.

ASSEMBLYWOMAN FORD: What does remediation of an aquifer entail?

ASST. COMMISSIONER TYLER: Well, typically, a contaminated source is remediated by a pumping and treating program, possibly a recharge program, or possibly an off-site effluent treatment. For example, in numerous enforcement cases, we have wells installed, and pump at a rate designed to pull contamination back to a well field, and then extract contaminated water and put it through a treatment regime. And if it is acceptable for the aquifer, recharge it; and if it is not and still can't be cleaned to a level sufficient to recharge it, then perhaps a connection would be made to a nearby sewage treatment plant with proper effluent treatment technology. Or, we might, as in some remote sites, get involved in trucking material to a treatment facility.

ASSEMBLYWOMAN FORD: Let me just ask you a question, because one of our concerns has been the exchange of information in notice to your Department of situations, and response by your Department as well as other Departments to the toxic waste situations. When did the DEP first learn the extent of groundwater contamination at the Picatinny Arsenal, and how did you learn about it?

ASST. COMMISSIONER TYLER: I would have to check on that for you, I don't have that at my fingertips. I'm sorry.

ASSEMBLYWOMAN FORD: Well, you're in the process of conducting groundwater testing around the site. What prompted that groundwater testing?

ASST. COMMISSIONER TYLER: Again, I'll tell you that I would have to check and put that together for you.

ASSEMBLYWOMAN FORD: The August 28, 1985 EPA Superfund Update on the Picatinny Arsenal says that -- a document that I had Mr. Cantor hand to you before -- indicates that in addition of explosives, propellants, metal parts, and total assemblies, activities at this installation include nuclear munition and radiological material research. Are there any radiological wastes at the facility, and if so, how are they disposed of?

ASST. COMMISSIONER TYLER: I will get back to you on that, also.

ASSEMBLYWOMAN FORD: Do you know when we can expect a response to that question?

ASST. COMMISSIONER TYLER: Yes, I will make it part of the general response of Picatinny that we talked about in terms of two weeks.

ASSEMBLYWOMAN FORD: Is there any Federal facilities agreement or administrative consent order involving the Picatinny Arsenal for your Department or the EPA?

ASST. COMMISSIONER TYLER: Not at this time.

ASSEMBLYWOMAN FORD: Are you in the process of negotiating such an agreement?

ASST. COMMISSIONER TYLER: I am told that the EPA is in the process of negotiating a Federal facilities agreement, and that we are monitoring that process.

ASSEMBLYWOMAN FORD: Are you aware of any points of disagreement that you have encountered with respect to negotiating that agreement?

ASST. COMMISSIONER TYLER: Not at this time, but there might be. I can't tell you that. I wouldn't know that until we got to lagerheads when it couldn't be resolved.

ASSEMBLYWOMAN FORD: Has the Picatinny Arsenal been ranked as a hazardous facility for purposes of inclusion and nomination on the Superfund National Priorities List?

ASST. COMMISSIONER TYLER: (confers with member of staff in audience) We will provide that to the Committee, also, but I am told it has been ranked. In fact, if we did it some time ago I am sure you already have it.

ASSEMBLYWOMAN FORD: And you will disclose to us what that ranking number is?

ASST. COMMISSIONER TYLER: Sure.

ASSEMBLYWOMAN FORD: Do you know when your Department will fully complete its assessment of the hazardous waste sites of the Picatinny Arsenal.

ASST. COMMISSIONER TYLER: Well, just to clarify it, I am not sure that we will ever complete an assessment ourselves, but we will monitor the Federal process, and, I think one of our concerns that we will be expressing in our comments to the Army and EPA and that you will see in our copy to you, is with the schedule.

ASSEMBLYWOMAN FORD: So then, at this point in time, you are at the assessment stage and not at the cleanup stage, obviously.

ASST. COMMISSIONER TYLER: That is correct.

ASSEMBLYWOMAN FORD: You don't know when cleanup will be started or completed at this juncture?

ASST. COMMISSIONER TYLER: One of the other issues which we will routinely address is any instinct or information based recommendations that we would have for immediate action. And if certain information is available to us that warrants, we think, more than a leisurely cleanup schedule, then we will make that clear in our reaction. And I think, just talking about Lakehurst again -- which I am a little more familiar with the details of -- there we saw, of the sites that were listed in the IRP, quite a number of them had already been addressed. I think there had been 25 cleanups done before the IRP process was fully underway, and another seven had been completed since it had been underway. So, it is not like you have to wait for the whole process to be completed. Now, that was the Navy, and Picatinny

is the Army, so we may have a different reaction there. But our answer to them would make that clear to you, or at least would make clear to you what our desires would be.

ASSEMBLYWOMAN FORD: Mr. Tyler, I would like to move on and ask you a few questions about the Naval Air Propulsion Center in West Trenton—

ASST. COMMISSIONER TYLER: Okay.

ASSEMBLYWOMAN FORD: (continuing) --which we had also, like Picatinny, advised your Department we would be asking some questions on.

ASST. COMMISSIONER TYLER: That was a little easier.

ASSEMBLYWOMAN FORD: And I believe that there is a representative here from the Center?

ASST. COMMISSIONER TYLER: I wouldn't know.

ASSEMBLYWOMAN FORD: Okay. Maybe you could step forward and join Mr. Tyler, (To gentleman in audience who indicated he was from NAPC, West Trenton) and identify yourself from the table. (Gentleman indicates he would like to wait to testify until the rest of his group arrives)

ASSEMBLYWOMAN FORD: Maybe we could move on to a different one, and then we'll cover that other one later. Were you also advised that we would be discussing the Bayonne Marine Ocean Terminal today?

ASST. COMMISSIONER TYLER: Yes, and with Bayonne and with the FAA at Pomona, I had again planned on submitting written status reports to the Committee, rather than to try to do it on a "wing it" basis, if you will. If you would let me know what—

ASSEMBLYWOMAN FORD: Maybe I can ask just a few questions and we'll get some idea as to what we're concerned about.

ASST. COMMISSIONER TYLER: All right. Okay, fine.

ASSEMBLYWOMAN FORD: Do you know what the principal hazardous waste site of concern is at that particular Base?

ASST. COMMISSIONER TYLER: No, I don't. Not offhand, again.

ASSEMBLYWOMAN FORD: I understand that there was some landfill activity at the Base covering from about 1940 to 1970, and, I believe it covered about a ten acre landfill tract. There is some

confusion as to whether or not it has been active or inactive since 1970 -- that particular landfill site--

ASST. COMMISSIONER TYLER: Since 1970?

ASSEMBLYWOMAN FORD: Some indications are that there have been small amounts of waste accepted, but there is no clear definition of just what types of waste were accepted, and what the nature of them were.

ASST. COMMISSIONER TYLER: So, then the Committee is asking, "Has the landfill been active after 1970?"

ASSEMBLYWOMAN FORD: Right.

ASST. COMMISSIONER TYLER: Okay.

ASSEMBLYWOMAN FORD: There is also some indication from the EPA that PCBs, municipal waste, pesticide containers, construction and demolition debris, sand blasting residues, waste oil, and greases, were placed into that landfill. I was wondering if your Department could either confirm or deny those reports, and, in light of same, tell us whether or not what the magnitude of the particular waste problem is at that site? We also understand that the Environmental Protection Agency tested a stream adjacent to this facility for contaminants, and I would like to know just what the testing results were from that stream, as well as any surface or groundwater test results in the area.

ASST. COMMISSIONER TYLER: Okay.

ASSEMBLYWOMAN FORD: Obviously, I am a little concerned that this is located adjacent to the Arctic Hills, I guess, and close to the Hudson River, or whatever, and we, of course, have heard of recent contamination in the fish in the Hudson River with PCBs and so forth. I don't know if there is any connection, but it would be interesting if your Department could fill us in on that relationship, if any.

ASST. COMMISSIONER TYLER: You are asking for our assessment as to whether an individual landfill like this one could have an impact--

ASSEMBLYWOMAN FORD: Contribute to the overall contamination of that river area.

ASST. COMMISSIONER TYLER: Well, I can tell you. Generally, it is virtually impossible for one particular landfill, unless it were

the absolute largest PCB depository in the universe, to have the kind of impact that we are seeing on New Jersey fisheries. In fact, what you are seeing is the accumulated concentrations of PCBs from society in general working their way through the water effluent systems into the rivers and bays, and then to the fish estuaries. There is no question that if a landfill took, say, transformers contaminated with PCBs, they might be a very minor, insignificant really, contributor to that. But, the PCB problems in fish is a serious one, and one that we are addressing, but it is a societal problem, not one you could ever even go to a source like a major sewer authority with hundreds or thousands of industrial discharges, and point your finger at it as the major cause of the PCB problem.

We have looked at, for example, the General Electric discharge in the northern Hudson, which is in New York State, and that is the kind of single source that you might be able to point your finger at as a major cause of the problem, where thousands and thousands of tons of PCB waste were discharged over decades from the manufacturer of the insulation material itself. That is just to give you a little relative perspective for a small landfill like this one. But, I will give you the results, if we have them or can obtain them, of the PCB sampling, certainly.

ASSEMBLYWOMAN FORD: Have you had a history of enforcement actions against the Bayonne facility?

ASST. COMMISSIONER TYLER: I don't believe so; I would have to check. (At this time Mr. Tyler is given a report) This would appear to be a record from DEP that your aide has just handed me that shows that we indicated to you previously that we have had a series of enforcement actions there.

ASSEMBLYWOMAN FORD: How many such actions were taken over the years there?

ASST. COMMISSIONER TYLER: It looks like a dozen.

ASSEMBLYWOMAN FORD: A dozen enforcement actions?

ASST. COMMISSIONER TYLER: Twelve, yes.

ASSEMBLYWOMAN FORD: Are you aware of what types of violations were reflected in your own records with regard to these enforcement actions?

ASST. COMMISSIONER TYLER: Yes, they are RCRA type violations under the, again, pre-1984 RCRA Amendments for facilities which generate, store, treat, or dispose of hazardous waste.

ASSEMBLYWOMAN FORD: Was your position, at least before 1984, that RCRA applied to Federal facilities?

ASST. COMMISSIONER TYLER: Yes.

ASSEMBLYWOMAN FORD: Is there a question in your mind today as to as the DEP's jurisdiction over these types of facilities?

ASST. COMMISSIONER TYLER: Well, again, we've asked the Attorney General for their thinking on that, and before we go forward I defer to the Attorney General's opinion, and that is forthcoming.

ASSEMBLYWOMAN FORD: You never received any indication that at least a dozen or so enforcement actions you have taken against the facility prior to that were invalid for a jurisdictional flaw?

ASST. COMMISSIONER TYLER: No, not to my knowledge, no. There isn't any indication here, certainly, of any hearing requests or issues being raised.

ASSEMBLYWOMAN FORD: Are you preparing a plan for remediation and correction of the toxic and hazardous waste sites and discharges at the Bayonne Terminal?

ASST. COMMISSIONER TYLER: We are, I think, in the process of assessing the situation at this time, and it would be the military's responsibility to prepare that kind of plan.

ASSEMBLYWOMAN FORD: Do you know whether this facility is being contemplated for inclusion on the National Priority Superfund List?

ASST. COMMISSIONER TYLER: One second. (witness checks reports) We haven't ranked it yet.

ASSEMBLYWOMAN FORD: Are there any representatives here from the Pedricktown facility? (positive indication from audience) Okay. Are you prepared to answer any questions now, at this point?

MAJOR MICHAEL COCOZZA: Sure.

ASSEMBLYWOMAN FORD: Okay. How about, Mr. Tyler, can I ask that you remain at the table?

ASST. COMMISSIONER TYLER: Sure.

ASSEMBLYWOMAN FORD: Maybe we can double this up and save a little time. Thank you, and can you state your name for the record, and your position? (speaking to Major Cocozza)

MAJOR COCOZZA: I am Major Michael Cocozza.

ASSEMBLYWOMAN FORD: Thank you for appearing. Can you describe to us -- some of us aren't familiar here with -- the Pedricktown Support Facility?

MAJOR COCOZZA: Basically, it is a Reserve Center, used on weekends for Reserve activities.

ASSEMBLYWOMAN FORD: At one of our hearings there was some concern expressed or it was disclosed at the hearing that there was some problem with a hazardous discharge regarding your particular facility, and I was wondering if you could fill us in as to any matters of concern or matters that you have been involved with?

MAJOR COCOZZA: I have no knowledge of any.

ASSEMBLYWOMAN FORD: Can you tell us has there been any testing with regard to groundwater pollution at that facility?

MAJOR COCOZZA: Not to my knowledge.

ASSEMBLYWOMAN FORD: Have you had any testing or investigation done with regard to dredge spoils and possible contamination as a result of that at that facility?

MAJOR COCOZZA: None to my knowledge.

ASSEMBLYWOMAN FORD: Are there dredge spoils that are stored at the Pedricktown facility?

MAJOR COCOZZA: Not to my knowledge. I see the place as a Reserve Center, with a number of buildings, and that we go there on weekends and participate as Active Reservists. That is the extent of the utilization of that Post.

ASSEMBLYWOMAN FORD: Mr. Tyler, the information that we have received from DEP is that this Pedricktown Support facility is used for the storage of dredge spoils, and that is apparently not the understanding of the Commander here -- or the representative of the Commander here. Can you fill us in on that at all?

ASST. COMMISSIONER TYLER: I would, again, go back and look at it. (moves to microphone to become audible) What I was saying was

that with respect to Pedricktown, we have always referred to it as the dredge spoil disposal site for Delaware River dredging. But, that may not be on the same exact piece of property that the Reserve Base is on.

MAJOR COCOZZA: Ma'am?

ASSEMBLYWOMAN FORD: Yes.

MAJOR COCOZZA: I can clarify that. What I am representing, really, is Sievers-Sandberg USAR Center, which I would guess is a part of the Pedricktown Support Activity. It might be a question of nomenclature. I know that there is a large area that is used for dredging. I always assumed that that part of the facility -- and I have been down there since the early '70s -- was a commercial operation and not even involved as part of the actual land proper of the facility itself. So, when I answer your questions, I am referring to the fenced-in property that is utilized for Reserve activities, which is the responsibility of my Commander, Colonel Liebl, who I am representing.

ASSEMBLYWOMAN FORD: Mr. Tyler I understand that there are basilar documents that you submitted to us of sixteen monitoring wells surrounding or at this facility. Is that accurate?

ASST. COMMISSIONER TYLER: If we submitted it to you, then it is accurate, but I would have to check, personally.

ASSEMBLYWOMAN FORD: Why would test wells be placed on a facility if there wasn't any concern about groundwater pollution?

ASST. COMMISSIONER TYLER: Dredge spoil disposal sites are treated as potential problem sites wherever they are located in the State, and they are generally covered by our groundwater permuting program. Monitoring wells are installed whether or not there is an existing problem because you want to make sure that no matter how well you have designed a facility that any problem associated with it remains contained. Now, at this kind of facility it would be routine to require monitoring wells.

ASSEMBLYWOMAN FORD: When did your Department first learn of a possible hazardous discharge problem at Pedricktown?

ASST. COMMISSIONER TYLER: Our first involvement with that site-- I would have to check on that for you.

ASSEMBLYWOMAN FORD: In testing or conducting any monitoring of that site, do you test the nature of the dredge spoils themselves?

ASST. COMMISSIONER TYLER: I don't know. It wouldn't surprise me if we did, but I wouldn't know offhand.

ASSEMBLYWOMAN FORD: When our Committee -- and I will address this to either one of you -- wrote to the Pedricktown Support Facility, and we requested information relative to our investigation, we received correspondence from both Pedricktown and from Fort Dix. Can you tell which facility has lead responsibility for hazardous waste problems at Pedricktown? Major?

MAJOR COCOZZA: The Commander of the Post is the ultimate responsible for anything that occurs within the facility. We are a sub-Post, which means the land belongs to Fort Dix. I am unaware of any liaison between people from Picatinny. As I said, I am just here representing a reserve letter that was addressed to a Reserve Commander -- addressed as the Pedricktown facility, which we call Sievers-Sandberg USAR Center. I would say that this may be a problem in nomenclature or titling.

ASSEMBLYWOMAN FORD: Has the Commander had any involvement with regard to hazardous waste problems at that facility?

MAJOR COCOZZA: We have-- As far, to my knowledge -- and I have been in the unit for 10 years, and a subordinate Unit Commander for the previous four years -- I was never aware of any problem with any hazardous wastes.

For the Committee's understanding, it is a Reserve Center.

ASSEMBLYWOMAN FORD: Well, my question is, I guess, is that because this was Fort Dix's problem as being the owner of the site, or is it because there wasn't a hazardous discharge problem to be concerned about?

MAJOR COCOZZA: Well, that would be my question to you concerning what is the hazardous discharge that you mentioned occurred, because I'm unaware of any. Is it concerning within the Reserve Center, or as you are titling it, the Pedricktown sports facility and the dredging operation which I am unaware is part of that facility?

ASSEMBLYWOMAN FORD: Mr. Tyler, can you also put on your list and check as to why Mr. Hughey represented to us that this was a hazardous waste site in the State?

ASST. COMMISSIONER TYLER: I can tell you that that designation--

ASSEMBLYWOMAN FORD: Oh, you know the answer to that question.

ASST. COMMISSIONER TYLER: That designation with respect to the inquiry of this Committee was with respect to the dredge spoil site.

ASSEMBLYWOMAN FORD: Thank you, Major. That is all the questions I had on Pedricktown, and thank you for coming down and representing your Commander.

Are the representatives here from the FAA Pomona site?
(affirmative response)

Mr. Tyler, I hope that you will be available for any questions that we may have regarding the FAA Pomona site as well.

ASST. COMMISSIONER TYLER: Yes, I'll be out here.

ASSEMBLYWOMAN FORD: Thank you. Could you please state your names and identify your affiliation with the facility for the record?

MICHAEL BERAS: My name is Michael Beras.

ASSEMBLYWOMAN FORD: Can you speak into the-- The one with the black is for projection, and the other two are for recording, so if you could direct them in some fashion towards you, it would help. Your name, sir?

MR. BERAS: My name is Michael Beras. I am on the environmental staff of the Federal Aviation Administration Technical Center.

ASSEMBLYWOMAN FORD: And, to your right is?

ROBERT WEINS: I am Bob Weins, Administrative Manager of the Tech Center.

RICHARD NEWTON: I am Dick Newton, Federal Assistant to the Director of the Technical Center.

ASSEMBLYWOMAN FORD: Okay, thank you. We have received information at some of our prior hearings about contamination sites at your facility, and I have had the opportunity to speak to the Commander

at that site, who has been very cooperative and very open. But, for the purposes of our Committee, can you explain to us how many such contaminated sites have been identified at that facility?

MR. BERAS: Well, I have a prepared statement. Do you mind if I read it?

ASSEMBLYWOMAN FORD: Sure, if you prefer to do that, that would be great.

MR. BERAS: Chairperson, Committee members, the FAA appreciates the opportunity to bring you up-to-date on the status of hazardous waste discharges at the Technical Center. Refer to Page 1 of the handout, please.

ASSEMBLYWOMAN FORD: Excuse me. Could you pull that black microphone around a little closer and speak into it? Push the button to the right and that should do it.

MR. BERAS: Oh, I'm sorry. Location, Page 1 of the handout. The Technical Center is located approximately 10 miles west of the City of Atlantic City. It is a 5000-acre site bounded on the north by the White Horse Pike/Route 30, on the south by the Atlantic City Expressway, on the east by the Garden State Parkway, and on the west by Wrangleboro Road.

Within the facility and not owned by the Federal government is the 120-acre Atlantic City reservoir, the 82-acre Atlantic City Terminal area, the 100-acre Atlantic County Improvement Authority area, and the Laurel Memorial Cemetery.

The major tenant of the FAA at the Center is the 177th Fighter Interceptor Group of the New Jersey Air National Guard.

Mission: The mission of the Center is advancing aviation safety through research, test, and evaluation projects in five major areas of responsibility for the Federal Aviation Administration: air traffic control, communications, navigation, aircraft, and airports. The work includes the long-range development of new systems and concepts. The development of new equipment and techniques is expected to be placed in service in the near future, as well as the modification of existing systems and procedures.

In response to questions in your letter of December 6th, the following information is provided:

A) The following will answer your questions regarding potential environmental health dangers posed by discharging hazardous wastes, including water quality implications and aquifer resources which may be affected, and also when information became available concerning discharges and public agency response.

In the latter part of 1983 and in 1984, the FAA worked with the New Jersey Department of Environmental Protection in a complete environmental assessment of the Center to determine what sources of pollution might be at the Center and the surrounding area. This was done in order to evaluate the feasibility of placing the City of Atlantic City's new domestic water well field at the Center.

The final report was published in October, 1984. It was at this time that information became available concerning the discharges and when response actions were initiated. The following is from that report, which was prepared by Roy F. Weston. It is Page 2 of the handout.

The geology of the Technical Center is such that there are clay layers throughout the Center. The one termed the "mid-Cohansey clay" is a continuous unbroken clay layer which varies between 20 feet and 60 feet in thickness. The depth of the top of the clay varies between minus 40 to minus 110 feet below mean sea level.

The water wells for the Technical Center and the new Atlantic City well field are below this clay layer at depths of between minus 60 feet and minus 160 feet, all under the mid-Cohansey clay, and what is termed the Lower Cohansey Aquifer.

There is also an upper-Cohansey clay which is generally continuous at an elevation of between plus 10 feet to minus 40 feet mean sea level. There are large intermittent clay lenses that are above the upper-Cohansey clay. The existence of these clay lenses is important because it retards to a large degree downward migration of contamination to the drinking wells.

Page 3 of the handout: Approximately 56 sites were investigated for potential pollution sources at and immediately adjacent to the Center. Five of these were selected for a detailed investigation. These sites were:

1) The Fuel Farm and Photo Lab, site 41, 1.5 miles from the well field.

2) The abandoned Navy landfill, site 56, 1 mile from the well field.

3) The Fuel Mis-test facility, site 27, .4 miles from the well field.

4) The Fire Training facility, site 29, 1.4 miles from the well field.

5) The salvage area, site 28, .7 miles from the well field.

Page 4 of the handout: Site 41, Fuel Farm and Photo Lab. Three monitor wells were placed at this site. The depth of groundwater in the three monitor wells ranges from seven to 20 feet below ground. Groundwater flow is toward the North-Northeast. The groundwater velocity is estimated to range from 64 to 248 feet per year.

Assuming flow towards a stream 1300 feet Northeast of the site, it would take between five and 20 years for groundwater from the site to reach the stream.

Assuming the flow toward the reservoir 5200 feet East of the site, it would take between 21 and 81 years for the groundwater from the site to travel the distance.

The water quality data indicates that Well 41-3 had a phenol concentration of 0.006 milligrams per liter, slightly above drinking water criteria, and phthalate compounds ranging from trace to 24 micrograms per liter.

Well 41-2 had phthalate compounds ranging in concentrations from 12 to 20 micrograms per liter and traces of fluoranthene and pyrene.

Well 41-1 had a trace amount of di-nbutyl phthalate.

None of the wells showed evidence of volatile organics, acid extractables, pesticides, or PCBs.

Given the site's distance from the well field, the general lack of any great degree of contamination, and indications of a low permeability clay layer from the FAA well logs, site 41 is not considered a significant pollution threat.

Page 5 of the handout: Site 56, Abandoned Navy Landfill. Five monitor wells and two test borings were drilled at this location. Groundwater samples from the wells at site 56 indicated traces of 1,1 dichloroethanes, and 1,1 dichloroethylenes in Well 56-5, and methylene chloride in small amounts -- 16 through 88 micrograms per liter in all the wells.

Trace amounts of 1,1,1 trichloroethylene were found in wells 56-1, 56-3, 56-4, and 56-5.

The pesticide, chlordane, was found at levels just above the detection limits. There was 2.6 to 3.8 milligrams per liter in wells 56-4 and 56-5. No acid extractables or PCBs were found at site 56.

At site 56, the depth to groundwater ranges from five to 23 feet below ground level. The flow rate is estimated to range from 117 feet to 299 feet per year toward the Southeast.

FAA well 159, 500 feet Southeast of site 56, shows no indication of the contaminants found at site 56, and it is estimated that it would take between 9.7 and 24.8 years for groundwater from the site to reach the vicinity of the reservoir 2900 feet Southeast of the site.

Based upon the analytical results and the hydrogeologic conditions, site 56 is not considered to have any significant pollution potential with respect to the proposed well field.

Page 6 of the handout: Site 27, Fuel Mis-test Facility. Three monitor wells were drilled at this site. The groundwater velocity is estimated to range from 90 feet per year to 183 feet per year, and it is estimated that it would take between four and eight years for groundwater from site 17 to reach the reservoir 700 feet Northeast of the site.

Water quality data indicates that Well 17-2 has a phenol concentration of 0.006 milligrams per liter, slightly above the Federal drinking water criteria. Toluene was found in all three wells at site 27 in concentrations ranging from trace amounts to 140 micrograms per liter.

Well 27-3 also had trace amounts of di-nbutyl phthalate. No priority pollutant acid extractables, pesticides, or PCBs were found at the site.

Any pollution threat from this site would be principally to the surface water, such as the reservoir. Since there are three low permeability clay layers between the water table flow zone at 27 and the lower-Cohansey aquifer from which the Atlantic City Municipal Utility Authority, ACMUA, production wells will be supplied.

Data from the pumping test conducted during the aquifer evaluation phase indicates that the effects of pumping will be negligible in the water table flow zone. Therefore, migration of contaminants from 27 is not considered a serious threat.

Page 7 of the handout: Site 19, Fire Training Area. Three monitor wells were placed at this site. The water quality data indicates that the site is locally contaminated with a variety of volatile organic compounds in the vicinity of Well 29-2. This well indicated the presence of ethylbenzene and benzene at levels of 400 and 200 micrograms per liter respectively. This is apparently the result of the infiltration of unburnt fuels used in fire fighting exercises. There was no indication of acid extractables, pesticides, or PCBs at the site.

The groundwater flow is found at depths of three to 14 feet below ground surface at this site, and the groundwater velocity is estimated to range from 47 to 200 feet per year toward the Southeast. It is estimated it would take in excess of 23 years at the higher velocity for groundwater from the site to reach the vicinity of the reservoir.

Given that, the FAA Well 24 just South of the site, and FAA Well 20, 2500 feet Southeast of the site, show a general lack of contamination. Site 29 does not pose an eminent pollution threat to the well field. The localized pollution at the site is of concern as a potential long-term threat to surface water and the shallow groundwater. The FAA should be notified of the threat so that remedial action can be initiated.

Page 8 of the handout: Site 20A, the salvage area. Five monitor wells and several test borings were placed at this site. Site 20A shows the most contamination of any of the five sites investigated. This results from the leakage of solvents and oils that have been stored at the site. The major soil contaminants are: PCB 1260, tetrachloroethylene, lead, zinc, and copper, which are generally confined to the first six inches of depth.

The groundwater indicated 400 to 3100 micrograms per liter of tetrachloroethylene in Wells 20A-1 and 20A-2. High concentrations of 1,1,1 trichloroethane were found in Wells 20A-1 and 20A-4. Well 20A-4 had a significant concentration, 450 micrograms per liter of 1,1 dichloroethylene, along with traces of other volatile compounds.

The shallow monitor wells in general show traces of several volatile and base neutral compounds besides the specific compounds mentioned above.

No acid extractables or PCBs were found in the shallow wells. Only two of the shallow wells showed chlordane. Well 20A-2 had 13 micrograms per liter, and Well 20A-3 had 1.9 micrograms per liter.

The deep well, 20A-D, which is screened in the upper-Cohansey sand had: 18 micrograms per liter of chlordane; traces of chloroform; 1,1 dichloroethylene; 1,1,2,1 tetrachloroethylene, 11 micrograms per liter; trichloroethylene, 18 micrograms per liter; and traces of phthalate compounds. No acid extractables, PCBs, or significant metallic compounds were found in Well 20A-D.

The groundwater at site 20-A is found at depths ranging from 6.6 to 14.3 feet in the shallow wells, and at 18.5 feet in the deep well. Groundwater flow is directed towards the reservoir to the Northeast. Estimates of groundwater velocity range from 30 to 183 feet per year, and it is estimated that it would take groundwater from site 20A between eight and 50 years to reach the reservoir 1500 feet Northeast of the site.

Based upon the site geology, groundwater velocity, flow direction, and the results of the pump tests of the Lower Cohansey during the aquifer evaluation, the vertical migration of contaminants from the site to the Lower Cohansey is not considered to be an imminent threat.

The differences in concentrations between the shallow wells at Site 20A and the deep well indicate that the upper clay layers are effective in retarding the vertical migration of contaminants.

Site 20A, although not an imminent threat to the ACMUA well field does pose a long-term threat to the groundwater aquifer beneath the site and is a significant threat to the Atlantic City reservoir, which is more likely to be polluted by contaminations from the sites. The FAA should be notified regarding the contamination at Site 20A so that remedial action can be initiated.

Conclusion: The five sites selected from the initial area of reconnaissance for pollution potential assessment have from three to five monitor wells installed at each site. Groundwater measurements indicate that the flow in the first water table zone encountered is primarily horizontal. None of the five sites are considered to pose an imminent threat to the proposed Atlantic City Municipal Utilities Authority's well field.

Within the limits of the investigation, two of the sites -- 20A and 29 -- were determined to be contaminated with a degree that could pose a long-term threat to the surface and groundwaters. Of the two sites, Site 20A is considered to be the most contaminated and poses the greatest long-term threat, conditionally to the Atlantic City Reservoir, but also eventually to the deeper aquifers.

In answer to your question regarding mitigation strategies that have been and will be implemented:

- 1) Sources of the original discharges, such as leaking drums, etc., for all sites have been removed.

- 2) An additional liner has been installed at the Fuel Mis-test facility over the original liner, which was suspected to be leaking. Fuel mis-tests are now conducted only after notifying the NJDEP.

- 3) Areas of Site 20A have been temporarily covered with impermeable liners to preclude rainwater from driving contaminants further into the soil.

- 4) A training program has been initiated at the Technical Center in the area of hazardous waste management.

5) The final versions of the Center's Spill Prevention Control and Countermeasures Plan and Hazardous Waste Management Plan are completed and will be submitted to the NJDEP for approval shortly.

6) Plan and specifications are completed and are being processed for bidding a \$500,000 contract to construct dikes, retention facilities, and approved storage facilities to contain inadvertent spills at susceptible locations, such as the Jet Fuel Farm, etc.

7) Approximately \$300,000 has been spent to decontaminate approximately 100 PCB-filled electrical transformers. Work is presently under way to replace the remaining two PCB transformers in one building and to decontaminate the remaining two PCB transformers in the research and development area.

8) Around Atlantic City's new well field, eight test and monitor wells have been placed and are continuously tested together with nine new production wells.

9) In addition to the 19 monitor wells discussed in the Weston Assessment, the FAA has installed six monitors near the Fuel Mis-test area in preparation for the removal of contaminated soil and the possible treatment of contaminated groundwater.

10) The Technical Center is presently conducting price negotiations with TRC Environmental Consultants, Inc. to perform a remedial investigation/feasibility study. The scope of this contract is to provide a detailed study which will involve eight specific tasks that are interrelated and will lead to a fast-track remedial action at the five known sites and the recommendations for a cost-effective and environmentally sound remedial plan for at least six other sites if these are determined to be contaminated.

11) As discussed previously, Site 20A is considered to be the highest priority site. It is anticipated that the Center will receive the test data and approval to clean up the soil and begin the treatment of the groundwater this fiscal year. It is estimated that \$250,000 will be spent on this activity in this fiscal year.

12) Three million dollars has been budgeted for the cleanup of the other four sites, in addition to Site 20A cleanup, and for

testing and cleanup of any other sites found under the investigative study above.

13) The environmental staff is presently being expanded to support the work in the Center's environmental area.

ASSEMBLYWOMAN FORD: Thank you, Mr. Beras. I wish that we received that type of response and addressing of the issues and questions that we submitted as candidly and forthright as you have prepared. As a result, I think that you have answered most of the questions that I had about the facility.

Let me just get some clarification on a couple of points. Did you want to add something?

MR. NEWTON: Yes, ma'am. We have just recently received a final--

ASSEMBLYWOMAN FORD: Just for the tape, can you tell us-- Identify your name again.

MR. NEWTON: Oh, sure. My name is Richard Newton from the Department of Environmental Protection.

A couple of things: One is that the NJDEP and ourselves have worked together on this. We don't want the indication to be that this is all our effort or activity. The NJDEP has been very helpful and has helped us all the way through this program, so I want to give credit to them also on this pollution assessment.

Also, I have a letter from the Department of Environmental Protection dated November 27th. Specifically, I would prefer not to read the whole letter. We can give you a copy of it but, specifically, what it has to do with is, because this was an assessment, which we just read through, that there were certain data that was given in here that has been since rejected as far as pure test data.

We recognize, and so does the State, that we still have a problem because of lab testing. Some of the actual specific figures may not be accurate. That is the only comment.

ASSEMBLYWOMAN FORD: Well, who conducts your sampling, your testing?

MR. NEWTON: In this case, Roy F. Weston had done the contract for the State of New Jersey, and he did run into some problems

with some of the tests being contaminated. We can give you a copy of this letter, which essentially—

ASSEMBLYWOMAN FORD: This seems to be a repetition of the same type of problem, and the data we received on other facilities — most notably, Lakehurst — in which there were conflicting test results, which on the one hand gave us very alarming results, and on the other hand downplayed it.

MR. NEWTON: If I could read the last paragraph, because it is important towards the— It says, "The recommend"— It gave several samples that were rejected. But, it says, "The recommendations and conclusions reached in the report were not fully acceptable to the Division of Water Resources, namely, the lack of recommendation for further investigation at FAA Site 27, which is the Fuel Mis-Test facility, Site 41, which is the abandoned Fuel Farm and Photo Lab, and Site 56, the abandoned Navy landfill. However, the FAA Tech Center is committed to undertaking a complete remedial investigation, focus feasibility effort and feasibility study at these sites and at others on their property by agreement with the NJDEP. Therefore, any concerns that the NJDEP has about contamination from FAA activities will be fully investigated and mitigated before there is any potential impact on the ACMUA well field."

ASSEMBLYWOMAN FORD: Is the environmental testing confined to your facility, or does it go outside of the periphery of your particular facility?

MR. BERAS: From the Weston Study, they did test areas outside of our facility. That was like a preliminary assessment, but we're focusing on specific areas at our facility with this contract that we're negotiating with TRC Environmental Consultants.

ASSEMBLYWOMAN FORD: Was there any indication of pollution that had emanated outside of the facility into public areas?

MR. BERAS: Not that I know of.

ASSEMBLYWOMAN FORD: Let me just ask you something. Going back to that Weston Study and the issue of the groundwater contamination and its effect upon public water supplied, you mentioned a figure of water migration. I believe you used the figure of eight to

50 years for migration. The Weston Study indicated a closer number, more like 29 years. Are you refuting that data from the Weston Study, or is it fallacious?

MR. BERAS: Which site are you talking of?

ASSEMBLYWOMAN FORD: At 20A.

MR. NEWTON: We could look into it instead of paging through the book. If there is a difference-- We tried to extract this, and there may have been a typo error, because we gave you this data also.

ASSEMBLYWOMAN FORD: I just want to know what figure is right.

MR. NEWTON: Well, it would be in the Weston report.

ASSEMBLYWOMAN FORD: Is it 50 years or 29 years?

MR. BERAS: Well, one was-- From what I understand, one was a manual computation of this figure, and the other was a computer modeling computation. That is where the difference is occurring.

ASSEMBLYWOMAN FORD: Okay. And which did the Weston report use?

MR. BERAS: Well, they stated both of them. They indicated that it would take between so many years and so many years using both figures.

ASSEMBLYWOMAN FORD: Do you have any opinion as to which is the more accurate figure or the more accurate approach? The only difference is the fact that they are both guesses based on empirical data, and one is done by a computer, and one is done manually.

MR. BERAS: No. I don't have any opinion.

MR. NEWTON: Well, the one is done by computer modeling, and I'm sure that he probably knows it better than us. The other one is actually, I believe, a water measure between two wells that might be placed in the ground and then measure the ground flow between those two wells.

What complicates the situation is, if you use the manual method, once you turn on the well field, so to speak, the whole groundwater velocity might change. So, I guess if I had to make a selection, I would go with the computer modeling because that takes into effect the new aquifer draw-down that resulted in the well field.

ASSEMBLYWOMAN FORD: Was the Pomona facility once partly a Navy facility?

MR. NEWTON: Yes, from roughly 1940 to 1958.

ASSEMBLYWOMAN FORD: Are there problems with the facility that are associated with the Navy use or ownership of that facility?

MR. NEWTON: The only thing that we have identified that could be directly associated with the Navy, I would say, is the abandoned Navy landfill. We have not formally notified the Navy as yet of any situation there because we really want to look at the data from the focus feasibility study. As you can appreciate, on a first-hit assessment type study, and from the report that we had up until the report we just got in late November, it did not appear that there would be any further action required there. However, that may change. Should that change, obviously, we'll go back to the Navy and talk with them about the problem.

We are both Federal facilities, and we are not DOD. The Federal Aviation Agency is a civilian agency.

ASSEMBLYWOMAN FORD: Will you be looking to the Navy for cleanup costs or cleanup responsibility of the landfill?

MR. NEWTON: That would be-- I just couldn't be sure at this point. I think if it is-- As we have mentioned, we have \$3 million to \$4 million budgeted, and if their site should go like \$1.5 million or something, I'm sure we will approach the Navy towards their contribution. But, if it is within reason or a small percentage of our cleanup, I don't believe we would.

ASSEMBLYWOMAN FORD: I think that you have answered the questions that I have had both in terms of your written statement and those additional questions, so I thank you for appearing here today and for providing us with that information.

ASSEMBLYWOMAN FORD: I believe we have all the representatives here from the Ewing facility now, and perhaps they could approach the table.

(Representatives set up slide projector)

CAPTAIN HENRY G. CHALKLEY: Good afternoon. Can you hear me?

ASSEMBLYWOMAN FORD: You have to press the button, and there is a little light that will come on.

Good afternoon, and thank you for coming. I know I've had an opportunity also to speak with your facility, and you have been very candid in offering a great deal of assistance to the Committee. I thank you for that.

Perhaps you can introduce yourself, as well as the members of your staff that are here today.

CAPTAIN CHALKLEY: Okay. Good afternoon. I am Captain Henry G. Chalkley. I am the Commanding Officer at the Naval Air Propulsion Center in Ewing Township. I want to thank the Committee for giving us the opportunity to present information about the environmental programs we have at the Center.

Before I get started, I would like to introduce the gentlemen with me. This is Lieutenant Commander Michael Oakes, our Public Works Officer. On my right is Mr. Walter Arkus, our Environmental Engineer. Turning the slides is Mr. Dave Polish, who is our Public Affairs Officer, and in the back behind the screen is Mr. Peter DiPietro, who is our Deputy Public Works Officer.

Our mission at the Naval Air Propulsion Center is to provide complete technical and engineering support to the Navy for air-breathing propulsion systems. The Center is the Navy's only facility for the research, development, test, and evaluation of these systems, which includes their components, accessories, fuels, and lubricants. The plant you see here (referring to slide), and I'll point out some of the areas there, is designed to simulate the operating environment of Naval aircraft so that we can test engines under the conditions they would actually see in flight. The unique equipment and the innovative and dedicated people who work at the Center directly contribute to the capability and readiness of Naval aviation and the Fleet.

We believe we have a credible record of environmental responsibility. We have been, and continue to comply with all Federal, State, and local environmental legislation. For example, we operate with a Federal and State Hazardous Waste Generator Permit. We have a Hazardous Waste Management Plan which was implemented in 1980 under the direction of the Chief of Naval Operations. That directive states that

"all Naval shore activities are to develop hazardous waste management plans in compliance with all Federal, State, and local regulations."

In addition, the Navy has a comprehensive program for the identification and cleanup of any hazardous material sites resulting from past practices. This program, called the Navy Assessment and Control of Installation Pollutants (NACIP), is a three-phase program.

The Phase I team visited NACIP in July, 1985 to interview employees and retirees and to review historical records. This was called an Initial Assessment Study to identify potentially hazardous material sites. At this point, had the team uncovered anything of an immediate threat to human health or the environment, we would have reported that threat to appropriate agencies as required by law. I can state that they did not find any such situation. Currently, the team is analyzing the results of their survey and preparing a report for publication in March, 1986. At that time, we will make full public disclosure of the report.

Phase II of the NACIP program provides for the verification of any potential sites found in Phase I. This verification involves physical testing for the presence of hazardous substances. We have been assured that Phase II will begin immediately after the completion of Phase I.

Phase III provides for the cleanup of any sites required as a result of the Phase II verification.

In short, we feel that we have pro-active environmental programs in place, not only to prevent future problems, but also to mitigate the effects of any past practices that could have endangered the environment.

Recent media attention has focused on a 1981 notification submitted by the Center to the EPA in response to the Superfund Act. This notification reported the existence of a previously used sludge disposal site. To the best of our knowledge, between 1960 and 1965, up to four disposals of a maximum of 88,000 gallons each of cooling tower sludge were made at the site. This sludge consisted of treated water containing 2% to 3% solids, which was spread over the ground at the site and allowed to dry. The sludge yielded approximately 40 cubic yards of solid material.

In 1966, this dry surface residue was removed by a contractor.

In 1979, soil samples were taken in the general sludge disposal vicinity to ensure the safety of a proposed employee gardening site, and gardens were established adjacent to the site.

Let me just break from my prepared text here and point out on the overhead the sites that we are talking about in the areas. All right?

Right here is what is now a ball field. (Referring to slide) Okay? And, the site that is in question is located right here. The cooling tower we are speaking of is a large wooden cooling tower used to cool the water that extracts heat out of the plant.

ASSEMBLYWOMAN FORD: Excuse me. - Apparently they are not picking it up on the tape, so if you could just pull the microphone out.

CAPTAIN CHALKLEY: Okay.

ASSEMBLYWOMAN FORD: It is just for the tape machine.

CAPTAIN CHALKLEY: It is on? It is live?

ASSEMBLYWOMAN FORD: Right.

CAPTAIN CHALKLEY: All right. Okay. The site in question is located right here, in this area right here. The cooling tower, where the sludge was pumped out of, there is a million and a half gallon basin underneath the cooling tower, which was where the sludge originated.

You can see here in this -- hang on -- area where the garden plot was located at the time of this photograph, adjacent to that disposal area.

In 1981, notification of the hazardous waste site was made to the EPA in accordance with the CERCLA Superfund Act. This report contained the results of the 1979 soil sample analysis showing the presence of small amounts of heavy metals. Since our own engineers did not believe this site to be a public hazard and the EPA did not direct any further cleanup, no further action was taken.

Because recent newspaper articles indicated a public concern regarding this site, our environmental engineer consulted with Dr.

Ronald Harkov of the New Jersey Department of Environmental Protection, Office of Science and Research. Dr. Harkov indicated that the 1979 soil test results did not appear to pose a threat to human health and the environment. Dr. Harkov did, however, recommend further groundwater tests to confirm or deny the presence of hexavalent chromium which is soluble in water. We have made those tests and no hexavalent chromium is present in the groundwater beneath or down gradient from the site.

Last Friday, representatives of the New Jersey Department of Environmental Protection, Bureau of Hazardous Site Mitigation visited the Center. The site was examined and in-situ tests were made for the presence of volatile organics in the surface soil. These tests did indicate the presence of some volatile organics, probably due to the trace amounts of fuels that may have been present in the sludge. The New Jersey Department of Environmental Protection has recommended testing for volatile organics, as well as heavy metals.

Following this visit, we directed a contractor to conduct soil and water sampling and analysis. The contractor drilled two boreholes, one hole in the approximate center of the site, and one hole approximately 50 feet distant in the direction of groundwater flow.

Soil samples were taken at depths of one foot, five feet, and ten feet, and groundwater samples were collected from each borehole.

ASSEMBLYWOMAN FORD: Can I just get some clarification on that point? Let me get this straight. Last Friday representatives of the DEP went out to your facility?

CAPTAIN CHALKLEY: That is correct.

ASSEMBLYWOMAN FORD: And tested. Did groundwater samples?

CAPTAIN CHALKLEY: No, they did not take the groundwater samples. They had a tester that tested the surface soils for volatile organics. Is that correct, Walt?

WALTER ARKUS: Yes.

ASSEMBLYWOMAN FORD: When was this visit initially arranged?

CAPTAIN CHALKLEY: They indicated Thursday afternoon in a telephone call that they would visit the facility on Friday morning.

ASSEMBLYWOMAN FORD: And they obtained surface soil samples and tested them?

CAPTAIN CHALKLEY: No, they did not obtain samples. They just made measurements of the surface soil with a portable tester that they had with them.

ASSEMBLYWOMAN FORD: When was the last time that they did any testing at your facility?

CAPTAIN CHALKLEY: As far as I know, never.

ASSEMBLYWOMAN FORD: Do you know what prompted them to decide to visit your facility two days after my last hearing?

CAPTAIN CHALKLEY: Apparently, the gentleman had a call from the Commissioner's office and indicated that there should be some interest to come out and test the soil, or to visit the site.

Let me just point out this. This is a schematic of the site in question. (refers to slide) Here is where we took one borehole sample, which is right in the middle of the site, and then 50 feet away in the direction of the groundwater flow, we have taken another sample. These "x's" here are the four areas where the samples were taken. The surface soil samples were taken in the 1979 original soil analysis that were reported in the EPA notification.

Let me continue. As I said, soil samples at depths of one foot, five feet, and ten feet, and groundwater samples were collected from each borehole. An independent certified testing laboratory is analyzing these samples. They have provided us with the results for hexavalent chromium, which I have previously reported. None is present in the groundwater.

The remaining results for heavy metals, volatile organics, and petroleum hydrocarbons will be reported to the NJDEP as soon as they are available in approximately two weeks.

In order to provide you with immediate unofficial results, our in-house chemistry laboratory has tested for the presence of heavy metals in the two groundwater samples. These results are shown on this view-graph. We feel these results show that the groundwater taken from the site compares favorably with both the NJDEP groundwater standards and the Safe-Drinking Water Act standards.

In addition, all NAPC property is fenced and guarded, and the disposal area is a minimum of 50 feet inside our property line. The entire site is covered with turf or other vegetation.

All NAPC property is underlain by soils of low permeability. The soil borings taken last Friday indicate a dense clay layer at least 20 feet thick underlying the site. The groundwater table is at a depth of 10 feet.

In conclusion, we feel the site is not a threat to human health or the environment. I would like to close with some highlights of our environmental program:

First, all of our fuel or chemical storage facilities are protected by at least secondary containment structures. In fact, most of our major fuel storage areas are protected by third-stage containment facilities.

Second, we have a pro-active Hazardous Waste Management Program which includes daily inspection, labeling, and tight inventory control. We are operating under a State and Federal Hazardous Waste Generator Permit, and we have just completed construction of a \$200,000 state-of-the-art hazardous waste transfer facility which features complete containment for the temporary storage of hazardous waste awaiting removal.

We have a comprehensive oil and hazardous substance spill prevention and control program. This includes a permanently assigned and completely equipped in-house spill response team. In addition, we have an ongoing contract with a private concern to assist when necessary. We have Spill Prevention and Contingency Plan which are part of our Standard Operating Instructions and are filed with the New Jersey Department of Environmental Protection and local agencies.

As you can see, the Naval Air Propulsion Center has a comprehensive and open environmental program. We will adhere to the Navy's full disclosure policy and will work with the State on these matters. For over 30 years, NAPC has been a responsive and responsible member of the community that will continue.

Thank you again for giving us the opportunity to testify. I would like to personally invite you to visit the Center and review our program firsthand.

Are there any questions?

ASSEMBLYWOMAN FORD: Thank you for that invitation, and I will certainly convey that on to the members of my Committee.

Let me just give you some background as to my understanding of your facility. At our public hearing on October 24th, the EPA Regional II Administrator, Mr. Daggett, testified that the Naval Air Propulsion Center in West Trenton is one of several Federal military facilities in New Jersey that is currently under EPA scrutiny and consideration for possible inclusion on the Superfund National Priorities' List. Although this special Committee was aware of the existence of the facility and had learned from DEP of an isolated fuel spill which occurred at the facility in recent years, our information from both the DEP prior and subsequent to the October 24th hearing was that had been an isolated spill whose cleanup had been certified by the DEP.

More recently, and you alluded to this earlier, just last week, a State House reporter brought to the attention of the Committee, and it was reported in a local paper on December 12th, that the U.S. Navy is trying to determine whether a hazardous waste site lies beneath a softball field at the Naval Air Propulsion Center in Trenton.

Although the EPA Region II, which has responsibility for New Jersey, as well as the DEP, has been asked by this Committee to identify special hazardous waste sites at Federal military facilities located throughout the State, it was not until that report occurred in The Trentonian that the Committee learned that in 1981, a report sent to the EPA— The Center stated that from '69 to '65 when you referred to this, waste was spread over land north of a farm at the Parkway Avenue Center, which is located in Ewing Township between Ewing High School and West Trenton. Pardon me. That was 1960 to 1965 when you referred to that.

I just want to be clear on one point because the numbers used in that particular newspaper article were very high. According to reports from the EPA, the reporter in her article indicated that there were 350,000 gallons of toxic sludge that was dumped at the site. Is that an accurate figure?

CAPTAIN CHALKLEY: The 350,000 gallons is an estimate, I think, derived — and, it was in the EPA notification — from what was purely, I would say, judgmental, and we were trying to determine the

amount of sludge without having those records. It comes from taking the 88,000 gallons which I reported to you and multiplying it by four, which it comes out to be roughly 350,000 gallons.

Now, as I stated, that was not toxic waste sludge. It was cooling water sludge. It was primarily liquid and 2% to 3% solid material.

CAPT. CHALKLEY: Incidentally, that is the maximum amount. I mean, that is a very—

ASSEMBLYWOMAN FORD: High guess figure.

CAPT. CHALKLEY: Yes.

ASSEMBLYWOMAN FORD: The article also quoted an EPA official who was later identified, I believe, as the Federal Facilities Coordinator, Mr. Hargrove, who said something to the effect that this volume of dump sludge would represent a "substantial problem." Do you agree with that assessment?

CAPT. CHALKLEY: No, we do not agree with that assessment, in that as I stated, the amount of solid material residue was two percent of that entire amount and that residue was removed a year after we stopped using that disposal site.

ASSEMBLYWOMAN FORD: How big is the area on which the sludge was dumped?

CAPT. CHALKLEY: It is roughly 20,000 square feet.

ASSEMBLYWOMAN FORD: Is this area secured from public access?

CAPT. CHALKLEY: Yes, it is. It is within the Center boundaries, and it is all fenced.

ASSEMBLYWOMAN FORD: Is this the area where they are maintaining there is a softball field, or is that a different area?

CAPT. CHALKLEY: Yes, right now that area is a softball field. Well, it would be-- It is in the same general area. Maybe we should put the view-graph back on to give a better-- (projects slide on screen) It is really the deep outfield of the softball field. (referring to slide)

ASSEMBLYWOMAN FORD: The green patch up in the--

CAPT. CHALKLEY: The green patch is the location of what was then a garden plot which was used to make the softball field. The

entire softball field is located right here in this whole area, and the disposal area was confined just to this part of that field.

ASSEMBLYWOMAN FORD: Left field.

CAPT. CHALKLEY: I would kind of call it center, but--

ASSEMBLYWOMAN FORD: Is this used for recreation?

CAPT. CHALKLEY: Yes, our employees use it for a softball field. And, there is turf and grass--

ASSEMBLYWOMAN FORD: Okay. It is employees, it is not open to the public?

CAPT. CHALKLEY: No, no. It is not open to the public, it is used only by our employees.

ASSEMBLYWOMAN FORD: When did you first-- Was 1981 the first time that you informed the DEP or the Environmental Protection Agency of this situation?

CAPT. CHALKLEY: Yes it is.

ASSEMBLYWOMAN FORD: When did you first inform our State DEP of that situation, if at all?

CAPT. CHALKLEY: As far as I know, we did not report it to the State at the time. We were only required to report it to the EPA through the EPA notification.

ASSEMBLYWOMAN FORD: What was the response of the Environmental Protection Agency when you advised them of this?

CAPT. CHALKLEY: There was no response.

ASSEMBLYWOMAN FORD: Well, other than, I guess, the response recently by Mr. Hargrove that it presented, in his opinion, a substantial problem--

CAPT. CHALKLEY: Right, I am talking about--

ASSEMBLYWOMAN FORD: (continues) --after being informed of it by a newspaper reporter. Is that the only comment from the EPA with regard to this particular situation?

CAPT. CHALKLEY: As far as we know, yes.

ASSEMBLYWOMAN FORD: The one incident that we did receive records from DEP on was the jet fuel spill on January 1, 1983. Can you tell us the nature and extent of that, what was done, and what remediation took place?

CAPT. CHALKLEY: (confers with aides) I must-- I am a little concerned about giving you that kind of comment because I don't have the reports here with me and I really wasn't prepared to discuss that particular spill. Mr. Arkus recalls--

ASSEMBLYWOMAN FORD: Do you have the reports in your possession, or would you like us to furnish you with them?

CAPT. CHALKLEY: Not with us, no.

ASSEMBLYWOMAN FORD: Okay. Maybe we can give you those reports and--

CAPT. CHALKLEY: According to Mr. Arkus, there was approximately a 50 gallon jet fuel spill from a broken fuel line that was completely cleaned up, and totally contained, and did not enter into the groundwater or the surface soil.

ASSEMBLYWOMAN FORD: Were you aware of your consideration for Superfund designation as expressed by Mr. Daggett at our hearing on the 24th of October?

CAPT. CHALKLEY: No, we were not.

ASSEMBLYWOMAN FORD: Have you been involved in negotiating types of agreements as to cleanup or otherwise, with the State or Federal authorities?

CAPT. CHALKLEY: The program that I talked to you earlier about -- the NEESA program -- is the only program we are involved in.

ASSEMBLYWOMAN FORD: Mr. Tyler, can I just ask you a couple of questions on something that came up? (Mr. Tyler moves to witness table) I am a little curious about-- Just out of curiosity, can you tell me what prompted the DEP to arrange on last Thursday a visit of the site on Friday?

ASST. COMMISSIONER TYLER: I thought it was at the request of this Committee that we looked into that site. In fact, I believe you asked us to look at it at the hearing that we held in Middletown Township. I might be wrong on that, but I think that was the nature of any inquiry into this.

ASSEMBLYWOMAN FORD: What-- So you were responding to our request at the October 24th hearing?

ASST. COMMISSIONER TYLER: Yes, I'll check on that, but that is my understanding of what we've done here.

ASSEMBLYWOMAN FORD: Was that the first time you became aware of this additional problem at that site?

ASST. COMMISSIONER TYLER: On October 24 was the first time that it occurred to me or to anyone, really, in the Department that there might be a need to take a look at the Naval Air Propulsion Center in Ewing as a possible hazardous site.

ASSEMBLYWOMAN FORD: And, as a result of that, on Thursday arranged a visit on Friday?

ASST. COMMISSIONER TYLER: I'll have to check on who did the arranging for that and when, but, yes.

ASSEMBLYWOMAN FORD: Will you be sharing with this Committee, also in your package that is going to come in two weeks, I assume, the results of that soil testing?

ASST. COMMISSIONER TYLER: If they are available. I have no idea what the laboratory schedule is on that. We will certainly provide them to the Committee when they are available, but, as I said, I don't think there was ever a concern on the Department's part with respect to this facility in Ewing, and I didn't hear all the testimony this morning, but I would be surprised if the Committee heard anything that didn't bear that out. This is not a problem in any way, shape, or form that I can see.

ASSEMBLYWOMAN FORD: Do you know why Mr. Daggett indicated on October 24 that this site was being considered for Superfund designation?

ASST. COMMISSIONER TYLER: I can tell you for everything that I know that it would rank about minus 50 in terms of the hazardous ranking system. As a matter of fact, no, I can't answer why he said that. It is possible he was responding to a general question of considering all Federal facilities as potential sites for ranking, and then taking a look at them. But, again, I don't have ready recall of the transcript there. I cannot understand why this would be considered for Superfund.

ASSEMBLYWOMAN FORD: And what about Mr. Hargrove's comment that the volume of sludge dumped would pose a substantial problem? Does that concern you or your Department?

ASST. COMMISSIONER TYLER: I don't think— The comments I saw in the press had some caveats on them about potential, and might cause, and probably and something like that. I don't think he said there was a health threat. If he did say that, I guess I would opine that he was wrong.

ASSEMBLYWOMAN FORD: Do you know whether your Department, in conducting its investigation of this site, has evaluated the 1981 Navy IAS Report?

ASST. COMMISSIONER TYLER: I am not sure that we have looked at the entire report, but we have seen the soil data that comes from some older soil sampling. Yes, my staff advises me that it's marginally above background in most cases. There are a few anomalies but they are heavy metals, they are not mobile. There is a clay layer in this area that is really impermeable. There is absolutely no problem at this facility.

CAPT. CHALKLEY: Ms. Ford, excuse me. You mentioned a 1981 IAS Report. There is none. The IAS Report was not published yet for the Naval Air Propulsion Center. The 1981 notification is a notification to EPA regarding this site.

ASSEMBLYWOMAN FORD: Did you ever receive a copy of that 1981 notification, Mr. Tyler, or your Department?

ASST. COMMISSIONER TYLER: I would have to check, again, but I believe EPA provided us with all of the CERCLA notifications, and I think that was what was happening in 1981. I'll add that many facilities filed precautionary notices where whether or not there was a problem in terms of public health or environmental protection, the statutory requirements were viewed with caution, and lots of notices came in, whether or not there were problems.

ASSEMBLYWOMAN FORD: Mr. Tyler, from your offices we received all kinds of information regarding the fuel spill, but we never received anything with regard to the sludge problem.

ASST. COMMISSIONER TYLER: In that case then we would have sent it to you if we had it, I can only assume that they didn't give it to us. I'll put it on my list of things to check on for you. And the fuel spill is, I think, self-explanatory, and again, also insignificant.

ASSEMBLYWOMAN FORD: That's all the questions I have with regard to this facility. Thank you. (Capt. Chalkley leaves witness table)

Mr. Tyler, let me, just while I have you up here, follow up on a couple of questions that we had. Just on Lakehurst, a couple of follow-up—

ASST. COMMISSIONER TYLER: Yes, ma'am.

ASSEMBLYWOMAN FORD: Last week we had requested information regarding reports that appeared in the paper with regard to groundwater testing around the periphery of the site—

ASST. COMMISSIONER TYLER: It is in the final typing right now. We'll have it over here probably this afternoon or tomorrow.

ASSEMBLYWOMAN FORD: Just a follow-up to a question I had last week, also, I assume is in the typing mill, but on October 22 you had sent me a letter regarding certain requests for information and this involved the Lakehurst facility.

ASST. COMMISSIONER TYLER: Right.

ASSEMBLYWOMAN FORD: You indicated you had the Director of your Division of Waste Management to compile for this Committee certain data concerning methodologies and standards employed by various labs that had been involved with sampling and evaluating groundwater around Lakehurst. Last week you needed an additional week to do it--

ASST. COMMISSIONER TYLER: That's what I indicated to you that we'd be over with some time today or tomorrow.

ASSEMBLYWOMAN FORD: Mr. Tyler, we heard again today from the Pomona individuals about problems with the quality of the testing that was done on the groundwater samples there. Again, we have a repetition of this problem. Do you, from your experience and your position see any resolution to this? I know that we have implemented standards for testing labs in the State, and we have implemented municipal well water testing programs, but I keep hearing this problem come up time and time again, with regard to invalid test results, contaminated test results that color the very basis on which other evaluations are made as to whether a site is a Superfund site or whatever. Do you have any continuing concern with regard to the

methods by which we certify these labs and whether they should not be reviewed to strengthen them in light of these continuing problems that are appearing?

ASST. COMMISSIONER TYLER: I'll just tell you that generally quality assurance/quality control is a sleeping giant in terms of environmental protection issues. The bottom line on many cases is what everyone's after, but getting there depends on the laboratories. Laboratory science is moving forward very very rapidly, so that across the nation it is well known that quality assurance/quality control is a problem, not just in hazardous site cleanup, but in air pollution control, water pollution control, Department of Health kinds of activities, or for internal environmental questions. It is a massive question that affects all of your technical regulatory programs in government. With respect to hazardous site cleanup, I would put New Jersey's quality assurance/quality control program up against any in the nation.

We have a Quality Assurance Director in our Division of Waste Management who formerly was with the ETC Corporation, which is one of the nation's foremost environmental testing laboratory services, and before that spent many years with EPA as the Head of Quality Assurance in their laboratory in Region II in Edison. Beyond that, we have a quality assurance/quality control for our certified drinking water labs that is by far the most rigorous in the nation, including, as I've told you, performance evaluation, and regular inspections, both, again, unparalleled.

The bottom line is you are going to hear on hazardous waste case after hazardous waste case, and this is true of publicly funded enforcement driven cases as well as these Federal facility cases -- it is by no means unique to Federal facilities -- problems with laboratories. The main problem in waste cases is it's not so much the level of detection or the monitoring capability at a certain level of detection, but really with respect to some of the unique kinds of matrixes that you're drawing chemicals out of the ground, or out of sludges, or out of soil, with the extraction problem in the laboratory is very difficult. In other words, you get--

ASSEMBLYWOMAN FORD: Doesn't that throw into question all of our evaluation data on so many of the hazardous waste sites, whether they are private or publicly owned, or Federal installations?

ASST. COMMISSIONER TYLER: What it raises is the issue of quality assurance/quality control, and the need for strict rigidity in policing the quality assurance program. I think we do that as well as anyone, including the Federal Environmental Protection Agency, and again, I'll stack our program up against any in the nation.

ASSEMBLYWOMAN FORD: I have a letter addressed to Neil Goldfine of the Atlantic City Municipal Utilities Authority regarding well water testing potential pollution emanating from the sites that we discussed earlier today -- Pomona and so forth. It is dated November 25, just a few weeks ago, and it looked at the pollution assessment report as well as the Weston Report that the Pomona officials referred to earlier. In looking at the test results, there was apparently test data gathered in about ten areas, it looks like, and seven of those ten areas were rejected -- all sample data was rejected -- by the DEP as not meeting validity standards, I assume, for this information. Doesn't this throw into question, at least in your mind, some of the information that we received here today regarding the Pomona facility?

ASST. COMMISSIONER TYLER: No, not at all. What you have to ask is what is the next step, and it is not atypical for laboratory data to be submitted and to be initially not accepted. The solution is one of two possible options. One is that further documentation from the laboratory that carried out the sampling is made available to us, and then, based on our review of that additional data, the laboratory samples are accepted. The other option is that sampling would be reconducted; would be repeated, and under stricter conditions.

ASSEMBLYWOMAN FORD: And let me just clean up with another question that has arisen in reviewing some of the documentation that was received from your Department. We received a memo on the Picatinny Arsenal from the Bureau of Groundwater Discharge Permits, and it appears to be from Dr. John Trela to Ken Siet, and I'm really just trying to get this information into the record and see if you can't document this and give us a time frame as to when it was sent.

It indicates that, "the Picatinny Arsenal is currently being actively evaluated by DWR Enforcement and DWRBGWDP. It is a RCRA facility and is conducting groundwater monitoring under RCRA (data is available in DWRBGWDP). Groundwater contamination is evident with chlorinated solvents, especially TCE. This is to be expected because of the highly permeable soils -- glacial lake -- on-site production wells are contaminated. There is no information regarding potential off-site groundwater contamination. The first township down gradient is Dover, Rockaway Township.

"USGS," I assume that is United States Geological Survey, "has been acting as a consultant to Picatinny. They have groundwater data that the Bureau of Groundwater Discharge Permits has been requesting without success. This should be requested at higher DEP levels.

"EPA does not want to accept Picatinny as a candidate for their 'Facility Management Plan' under RCRA Amendments. DEP is strongly in favor. This should be supported to obtain a full facility overview and hasten correct measures. EPA should be advised, Conrad Smith to Richard Walker, USEPA. These same measures will be included in DEP permanent if EPA fails to agree."

ASSEMBLYWOMAN FORD: I assume that's some type of carcinogenic substance?

ASST. COMMISSIONER TYLER: It's a common solvent. It is found in cleaning fluid and cleaning solutions. It is widely used in industry and commerce, and it is because it is a degreasing agent used in septic systems it is one of the most common if not the most common groundwater contaminant. I'm not sure if it is a carcinogen or not. EPA just downgraded either Tetrachlorethylene or Trichlorethylene from a carcinogen to a probable carcinogen in a recent Federal Register notice, but whether or not this was the compound, it is either a carcinogen or a suspected carcinogen.

ASSEMBLYWOMAN FORD: Are there acceptable ingestion levels recognized within your Department for this substance?

ASST. COMMISSIONER TYLER: In New Jersey there are draft proposed safe drinking water standards for TCE. I'm not 100% sure, but

I believe under the Federal Safe Drinking Water Act, EPA has, within the month, proposed either recommended or final safe drinking water standards for TCE. I could check. But the Federal Register and the announcement of that was within the last month, I would say.

ASSEMBLYWOMAN FORD: Do you know whether that level is more or less than five parts per billion?

ASST. COMMISSIONER TYLER: No, I don't. I don't have ready recollection of what the level is.

ASSEMBLYWOMAN FORD: In some of the-- Let me just move on to one question on Fort Monmouth.

ASST. COMMISSIONER TYLER: Okay.

ASSEMBLYWOMAN FORD: Just something that concerned me. In, again, the EPA CERCLA update, which is dated August 28, 1985, they have a potential hazardous waste sites site inspection report and hazardous ranking score for the Fort Monmouth landfill sites -- 87.5. That's an extraordinarily high hazardous rating score, is it not?

ASST. COMMISSIONER TYLER: Yes, it is.

ASSEMBLYWOMAN FORD: Is that, by any chance, a typographical error?

ASST. COMMISSIONER TYLER: I have no idea. If EPA provided it to you, I guess that's one of the questions you'll have to ask them.

ASSEMBLYWOMAN FORD: Does that rating concern you at all about that particular facility?

ASST. COMMISSIONER TYLER: Since you just told me that number, I'll look into it right away. Based on all of the information I've reviewed and received on Fort Monmouth, I would guess it would be an error. I will check.

ASSEMBLYWOMAN FORD: Just to compare it, I think, when we talked about Lakehurst and the hazardous ranking score, Lakehurst would score about a 45. Is that correct?

ASST. COMMISSIONER TYLER: I don't recall the exact number, but that's a ballpark, yes.

ASSEMBLYWOMAN FORD: What about the Lipari Landfill? Do you know what the ranking score is there, just for comparison purposes?

ASST. COMMISSIONER TYLER: I believe it ranked in the high 50's, low 60's-- In that ballpark.

ASSEMBLYWOMAN FORD: And that's the highest ranking site in the State?

ASST. COMMISSIONER TYLER: Yes. I mean, we could talk for a long time about the accuracy and the relative merits of the hazardous ranking system. But, I guess, it does give you somewhat of a relative picture from one site to the other, and the number of 87 to come up for Fort Monmouth is astounding based on the testimony that you have heard, and based on the files that I've looked at, it would have to be some kind of mistake.

ASSEMBLYWOMAN FORD: Have you received the Federal facilities update report from the Fort Monmouth--

ASST. COMMISSIONER TYLER: I assume we have. We have received it on all the others.

ASSEMBLYWOMAN FORD: Do you have somebody who reviews these, when they come in?

ASST. COMMISSIONER TYLER: Absolutely. Yes.

ASSEMBLYWOMAN FORD: And wouldn't, if a ranking score of 87.5 came in on a site, wouldn't that trigger a little bit of concern, on your Department's behalf?

ASST. COMMISSIONER TYLER: I would hope so. Yes, it would.

ASSEMBLYWOMAN FORD: Do you know when this report came in at all?

ASST. COMMISSIONER TYLER: No, as I said before, I'll check on the memo right away based on discussions with the Division or the researchers' end of Waste Management Staffs, there is nothing I have heard that would lead us to a conclusion that an 87 is anything but a mistake.

ASSEMBLYWOMAN FORD: Thank you, Mr. Tyler.

ASST. COMMISSIONER TYLER: You're welcome.

ASSEMBLYWOMAN FORD: I'm going to ask some questions of the Attorney General's representative who is here, I believe. (Witness approaches witness table) Thank you for appearing at our request of the Attorney General. In our previous public hearing, Mr. Tyler had suggested that we pose certain questions asked of him to the Attorney General regarding the status of litigation and some jurisdictional

issues, and that is why we requested that someone come down here today from the Attorney General's Office who was familiar with this. In the course of scrutinizing some 11 military facilities and literally hundreds of associated hazardous waste sites and incidents dating back at least a half a century, our investigation has led us through a veritable quagmire of jurisdictional questions pertinent to the inquiry with which we were charged last September 12th by the General Assembly.

As you may know by now, the General Assembly resolution also granted this Special Committee all the powers pursuant to Chapter 1352 of the Revised Statute which empowers us to subpoena and so forth.

Early on in our investigation we ascertained that under an Executive Order issued by President Carter, all Federal agencies are required to cooperate with the EPA in the prevention, control, and abatement of environmental problems. We are equally cognizant of a subsequent Executive Order issued by President Reagan immediately upon taking office under which Superfund jurisdiction as to Federal Department of Defense facilities was delegated substantially to the Secretary of Defense. Under a 1983 memorandum of understanding between EPA and the Department of Defense, the Department of Defense implemented its own Superfund program known as the Installation Restoration Program, under which EPA designates certain Federal military installations for inclusion on the Superfund National Priorities List.

At the same time, we have ascertained the military branches in the particular domestic facilities remain regulated persons under the Federal and State environmental statutes, even, hypothetically, under relevant common law. Can you fill us in, if you can, on what Federal or State laws apply to hazardous waste sites and activities located at the Federal military bases located in New Jersey? First of all, I think you should identify yourselves as representatives of the Attorney General.

LAWRENCE E. STANLEY: Yes, thank you. I am Lawrence Stanley, I am a Deputy Attorney General, and I am in charge of the Environmental Protection Section. With me today is Deputy Attorney General Mary Jacobson, who is also in that same section.

We have been asked by the Department of Environmental Protection to give them an opinion as to the applicability of the various State statutes and regulations that they operate under to Federal facilities in New Jersey. That question -- actually, it is a series of questions -- is being researched in our office even now, and we haven't reached conclusions on that. As you note, it is a very complicated jurisdictional question.

ASSEMBLYWOMAN FORD: How recent was that request for an opinion made?

MR. STANLEY: I believe we received that in the earlier part of October, at about the same time that we were also considering the intervention into the petition in the Federal Court of Appeals.

ASSEMBLYWOMAN FORD: Let me ask a couple of questions, because we are interested and concerned about our activity in connection with Ohio versus the Environmental Protection Agency. We understand that on November 12, 1985, the New Jersey Attorney General's Office petitioned the U.S. Court of Appeals for the District of Columbia Circuit for leave to intervene in that action, and I assume that you are the attorney responsible for handling the management of that case? Yes?

MARY C. JACOBSON: Yes, I am Mary Jacobson. The case was assigned to me by Mr. Stanley.

ASSEMBLYWOMAN FORD: Can you describe, for the benefit of the Committee and the record, what issues are at stake in the Ohio versus EPA case?

MS. JACOBSON: The issues at this point are not clear. The lawsuit involves a petition for review, which is a mechanism in the Federal Court system to, essentially, start an appeal from the promulgation of regulations by Federal agencies. On July 15 of 1985, EPA promulgated regulations under the Hazardous Waste Amendment of 1984. Included in that regulatory package was a notice stating that EPA was suspending the permitting requirements for Federal facilities under the RCRA program. As a result of that regulatory action, the Environmental Defense Fund, and several states and industry petitioners, filed what is known as a petition of review from that rule making proceeding.

The petitions for review do not list issues, they simply are a one or two page document stating that the individual petitioners are challenging the regulatory package. Through contact with the Environmental Defense Fund, the State had been apprised that the Environmental Defense Fund and several other states, notable Ohio and Colorado, were interested in challenging, specifically, the suspension of permitting for Federal facilities. However, that was not placed on the face of the petition for review, which was simply a general document which instituted the appeal.

ASSEMBLYWOMAN FORD: The issue is not the substance of the regulation but the extent of jurisdiction, is that an appropriate characterization?

MS. JACOBSON: I don't really understand your question?

ASSEMBLYWOMAN FORD: The petition did not include a challenge as to the regulation which suspended the permitting requirements for Federal facilities?

MS. JACOBSON: The petitions were not specific at all. They simply said, "We are challenging the regulatory package of July 15, 1984."

ASSEMBLYWOMAN FORD: Is it fair to say that it is a question of jurisdiction of state facilities in environmental regulatory areas over these federal facilities? Or, is that one of the issues given the broad frame of the petition?

MS. JACOBSON: At this point, the United States Court of Appeals for the District of Columbia Circuit has established a schedule during which the issues will be developed. They have not yet been developed in any formal way before the Court.

ASSEMBLYWOMAN FORD: But enforcement of RCRA-- Who is that done by, in the State?

MS. JACOBSON: Well, enforcement of RCRA is done by the Environmental Protection Agency, except where a state has received delegation. The State of New Jersey has been delegated to the responsibility to implement the Federal program for RCRA prior to the 1984 amendments. In the wake of those amendments, EPA is requiring a separate delegation agreement which, it is my understanding, the

Department is currently pursuing. As of this point in time, the DEP does not have the authority to regulate the RCRA '84 amendments. It is something that EPA is administering, at this point, in New Jersey.

ASSEMBLYWOMAN FORD: So, the result of these regulations was to deprive in effect New Jersey, regulatory authority that it prior to the regulations, had authority on.

MS. JACOBSON: No, I don't think that's correct. Under the RCRA Program existing prior to the Congressional amendments of 1984, New Jersey had applied for and received what is known as final authorization. Under the prior statute, before the amendments, New Jersey had qualified, in essence, to administer the Federal program. Congress added a number of elements to that program in 1984, and there is an extensive process in which the State government works with the Federal government to work out a delegation package. It typically requires the State to put together a new regulatory package consistent with the Federal regulations, and that is currently underway with regard to the 1984 amendments.

ASSEMBLYWOMAN FORD: Has New Jersey's petition for leave to intervene been granted?

MS. JACOBSON: Yes, it has.

ASSEMBLYWOMAN FORD: And, when did that occur?

MS. JACOBSON: I believe that by order of December 5.

ASSEMBLYWOMAN FORD: When did the DEP or the Attorney General's Office become first aware of these regulations and the impact that it would have upon the State's oversight of the Federal installations?

MS. JACOBSON: I can only speak for myself in that regard. I had been involved with the Environmental Defense Fund in prior litigation under the Superfund Act, and as a result of my contacts with the attorneys for the Environmental Defense Fund, I was on the mailing list of a memorandum that they prepared in late September of 1985, detailing the RCRA amendments and seeking participation among states and other environmental groups in petitions for review of these particular regulations. That package came to me at the end of September and I forwarded it to the DEP, asking them if they were interested in participating in the lawsuit.

ASSEMBLYWOMAN FORD: So, as late as September of 1985, the DEP was aware, through your notification, of that?

MS. JACOBSON: My memorandum to the DEP was dated October 3.

ASSEMBLYWOMAN FORD: Now, the deadline for joining in this lawsuit was October 15, was it not?

MS. JACOBSON: That was the deadline for filing a petition for review. Under the Federal rules of appellate procedure, there is a 30 day period following that to allow for intervention.

ASSEMBLYWOMAN FORD: Why was a decision made to attempt to intervene, as opposed to joining as a direct participant in the petition for review?

MS. JACOBSON: Our office did not receive the authorization to proceed with the lawsuit in time to file a petition for review on behalf of New Jersey. I can only assume that they needed more time to review the extensive issues and concerns involved.

ASSEMBLYWOMAN FORD: Where does that authorization come from?

MS. JACOBSON: The authorization came -- when it did come on November the 8th -- from Commissioner Hughey, and it was communicated to the Attorney General's Office through the Office of Regulatory Services, in the Department of Environmental Protection, and its Director is Michael Catania.

ASSEMBLYWOMAN FORD: So, within four days after receiving the authorization, you had the motion for intervention prepared and filed with the Court?

MS. JACOBSON: That's correct. In addition, the request to file the intervention papers had to be reviewed by the Attorney General's Office, and approved by the Attorney General, and that occurred between November eighth and November twelfth. I had previously advised the DEP that we needed to know their position on the intervention by November 8, and they responded by that date.

ASSEMBLYWOMAN FORD: As the attorney that's handling this case and probably more familiar with the legal issues there, is the impact of the case-- Doesn't it really determine the jurisdiction of New Jersey over Federal facilities?

MS. JACOBSON: At this point, as I indicated earlier, the issues have not been framed. That is certainly an issue that may very well be raised by the parties. One thing that was of great concern to us, however, was that the way EPA handled this situation was to direct an interim suspension. That regulatory package of July 15 does not say one way or the other whether or not Federal facilities are subject to RCRA, whether or not the RCRA is administered in a state by EPA or by the State. So one of our concerns is whether or not the suspension was a valid one under the Administrative Procedure Act. There was no prior notice of the suspension; no prior opportunity for comment or from the participation of the State; no factual record was developed. So one of the legal issues will certainly be whether it was a proper action by EPA. In light of the way they did it, it is not clear at this point what EPA's position is, so the issue that you raised, whether or not the State has jurisdiction, may not directly be raised in this lawsuit. Part of that was because of the character of EPA's action.

ASSEMBLYWOMAN FORD: We heard earlier this morning, when we were talking, I believe, about the Bayonne facility, prior to 1984, for example there, there had been a dozen enforcement actions under RCRA initiated by the Department of Environmental Protection, and I assume handled by the Attorney General's Office, and there was no question at that time as to the State's right to enforce that Statute as well as any number of Federal and State environmental statutes, because of the delegation of authority.

Since then -- and wouldn't you say directly as a result of these changes in the regulations -- there is some question as to State and Federal enforcement and jurisdiction, or whatever, and the extent of it, over these types of facilities?

MS. JACOBSON: I am not familiar with the earlier incidents that you are mentioning with regard to the Bayonne facility. Certainly the suspension of permitting requirements suggests to me that EPA has treated these facilities prior to the suspension as fully covered by RCRA.

ASSEMBLYWOMAN FORD: Let me just ask you something else off that subject to maybe just to an information exchange problem that we

have heard about at these various hearings. At our first public hearing, which was October 10, Commissioner Tyler testified that the EPA was the lead agency to which the DEP turned for guidance and information in the monitoring and regulation of these Federal facilities and the hazardous waste practices at those facilities. Yet, we thereafter heard that EPA never provided DEP with a critical 1983 report on the Lakehurst facility which negated some very serious groundwater test results that were before as well as just a number of other incidents in which information had not been exchanged voluntarily or with our State DEP. On October 23, which was the day before our third public hearing, the Trenton Times published a letter to its editor from Commissioner Tyler, in which Mr. Tyler stated the DEP is the last to know about environmental problems at military installations in New Jersey. And in the same letter, Mr. Tyler said the Federal government had been withholding reports for several years. Both with respect to the EPA, and in certain instances, particularly military bases located within the State, Mr. Tyler's published remarks appeared to underscore the informational difficulties that this Committee has confronted up to the present date in conducting this investigation. Do you have any recommendations as to enforcing our rights under the State or Federal law in terms of obtaining information, especially your own State Department of Environmental Protection in obtaining this information from the Federal authorities both on bases as well as in the Environmental Protection Agency?

MS. JACOBSON: That issue will be addressed in the legal opinion that we are preparing for the Department. My recollection of the timing of the RCRA authorization to the State was that final authorization wasn't obtained until either early in 1985 or the end of 1984. So, the State was not fully implementing the RCRA program until quite recently. So, that may account for some of the earlier problems.

ASSEMBLYWOMAN FORD: Well what about all the other Federal and State environmental laws, the Clean Water Act, the Clean Air Act, and so on and so forth that, like RCRA -- RCRA is just one -- have some type of delegation and jurisdiction within the State to enforce these types of programs? What I am saying is, if there is some question as

to RCRA, then what about all the other Federal laws that give this enforcement obligation to the State?

MR. STANLEY: I think generally, to the extent that DEP has the delegation, particularly in the water pollution area, we wouldn't expect to have a jurisdictional problem in obtaining information. But we haven't had any first-hand information about this type of communication problem. Cases that come to us are usually pretty well prepared, and there hasn't been an information problem. Again, though, the extent to which we can get information from the United States would go along with the extent of our jurisdiction, and that's the question we are looking into now.

ASSEMBLYWOMAN FORD: Have you ever felt it necessary to investigate or to evaluate the filing of a Freedom of Information Act request?

MR. STANLEY: Our Agency doesn't conduct investigations on its own, although the Division of Criminal Justice in the Attorney General's Office does. Our Agency serves as counsel to the various State Departments. Investigations that we are involved in would be conducted and prepared by the DEP. We would then take the facts prepared by them and either advise them or take the matter to court.

ASSEMBLYWOMAN FORD: The reason why I asked that question really relates to the BOMARC missile issue out at McGuire Air Force Base. I know that an FOIA request was made by a local newspaper and they seemed to obtain information that this Committee or the Department didn't have, or additional information that we didn't have through the normal course of procedure, and I guess what I am suggesting or asking you is whether that is a viable alternative to enforcing our rights as a State, either through the Department of Environmental Protection, or a Legislative Committee in obtaining information that might otherwise not be able to obtain through voluntary steps?

MR. STANLEY: Generally, if the matter reaches our office and we have jurisdiction to do something about it, if we file a lawsuit we have opportunities through the discovery processes under the rules of court to obtain information which are at least as broad as the Freedom of Information. I see no reason, in general terms, why a State agency

can't make use of the Freedom of Information Act to the extent that it is permitted to by the terms of that act. Whether that is the most practical approach in all cases, though, I would have to see the individual case.

ASSEMBLYWOMAN FORD: And, before I leave BOMARC, and this will be my last question, and while we are talking about lawsuits, any thoughts of suing the Air Force with regard to the cleanup of the plutonium at McGuire?

MR. STANLEY: We have not been asked to consider that question.

ASSEMBLYWOMAN FORD: Okay. Thank you. I don't know if there is anybody here who wishes to offer any testimony. Those are the questions that I have with regard to the people I've invited to testify here. Seeing no one else who wishes to testify before the Committee, I'll close this public hearing now, and thank you for attending.

(HEARING RECESSED UNTIL DECEMBER 18, 1985)

(CONTINUATION OF DECEMBER 17 HEARING)

ASSEMBLYWOMAN FORD: This is the meeting of the Special Committee to Investigate Hazardous Waste Disposal Practices at Military Installations in New Jersey.

I would like to, for the record, just indicate a series of correspondence that occurred between this Committee and the Commander at Fort Monmouth, Major General Robert D. Morgan.

On October 22nd, Major General Morgan was advised of the existence of this Committee and the special charge to investigate toxic waste disposal practices at military installations. He was respectfully requested to forward all relevant materials to the

Committee Aide, and since that date, no such materials have been received. I would like to include that letter dated October 22nd as part of this record.

On November 27th, notice was sent to all interested parties, including Major General Morgan, advising of the special Committee's hearings to be held on December 10th and December 17th. On December 4th, a letter was sent to Major General Morgan advising him that the Committee invited him or a representative to attend and participate at the public hearing on December 10th. We subsequently received telephone calls from the Major General's office indicating that no such appearance would occur.

Subsequent to that at the December 10th meeting, I requested that a subpoena be prepared to be served upon Major General Robert Morgan at his home, which was duly served upon him in accordance with New Jersey State law.

After service of the subpoena, this Committee, through its Committee Aide, Mark Smith, received communication from the Base indicating that the Major General could not appear himself on the 17th, but would arrange to have a representative appear on the 18th, today's date.

On December 12th, 1985, I forwarded a letter to Major General Morgan confirming the telephone conversation and confirming the arrangement that an environmental representative from the Base would be available at the public hearing to be held this date to discuss hazardous waste disposal practices at the Fort Monmouth Base.

Since receipt of that letter, and as late as last night, we were under the impression that a representative from Fort Monmouth would appear and would submit to questioning by the Committee. It was not until late last evening that the Committee Aide received a telephone call on behalf of Major General Morgan indicating that on the advice -- actually on orders -- from a superior to the Major General, he was not to appear today pursuant to the subpoena issued. It was represented, however, that the Major General would be sending a letter in explaining his position, and that he, too, as with regard to Mr. Daggett, would submit documentary information to the Committee by December 31st.

We have not received that letter. In the event it is received, I am requesting that the Committee Aide, Mr. Smith, include that letter also as part of the record, along with the letters that I just described.

At this point in time, I think that it is incumbent upon the Committee to wait to receive the information that has been promised by both Fort Monmouth and by the Regional Administrator of the EPA. The date we are to receive that, I have been advised, is December 31st. In the event I receive that information, I'll distribute it to the other Committee members, and in the event no such information is received, I will so advise the other Committee members, and we will take whatever appropriate action is necessary at that point in time.

I have also asked and have directed that a letter be issued to the Legislative Counsel, Albert Porroni, requesting that he outline for the benefit of the Committee all legal actions that we have available at this point in time in the event any action is necessary to enforce either the appearance of Mr. Daggett or Major General Morgan, or, in other words, to press charges based upon contempt against them. Upon receipt of that letter, I'll distribute same to the various Committee members, although it is my understanding and my position that no such action will be taken until after the 31st.

Now, I'm concluding these hearings for the time being, and without precluding the right to obtain further hearings in the event the information is received by the 31st, I would like to just perhaps summarize for the record some of the activities of the Committee over the past three months.

This Committee was, of course, created by a resolution adopted by the Legislature on September 12th, which, among other things, authorized it to conduct hearings and to obtain evidence into the question of groundwater resurface and water contamination by toxic substances into public sources of water at the various military bases within the State.

To that extent, we have requested information and received to some extent information from various bases within the State -- 11 bases: McGuire Air Force Base, Fort Dix, Lakehurst Naval Engineering

Center, Raritan Arsenal, Fort Monmouth, Picatinny Arsenal, Pedricktown Support Facility, FAA Technical Center, Pomona, Naval Jet Propulsion Center of Ewing, Camp Earle, Bayonne Marine Ocean Terminal. The bases have been divided. Those governed by the Navy would be Earle, Lakehurst, Ewing, FAA Pomona; the Air Force at McGuire; and the balance of the bases are within the jurisdiction of the United States Army.

We have identified groundwater problems or potential groundwater problems at Lakehurst, Dix, McGuire, FAA, Picatinny, Pedricktown, Ewing, Earle, and Monmouth. We have identified surface water problems or potential problems at Earle, Bayonne, and the Picatinny Arsenal, and we have identified radiological problems or potential problems at McGuire, and as a result of the BOMARC fire at Monmouth and Raritan.

What we have been left with is a great deal of information, some open questions, and many loose ends. There are 11 bases and 10 possible Superfund sites that have been identified as a result of this investigation.

There are several hundred additional hazardous and toxic waste sites which need to be assessed and need to be cleaned up.

Some of the informational problems that we have identified-- And, this is by no means a report from the Committee, but a summary, if you will, and based upon the Chair's observations, some of the major informational problems include a problem as to who is responsible as the lead agency in terms of toxic waste cleanup at these military bases. The question presented is whether it is the Department of Defense, the Environmental Protection Agency, or our own State Department of Environmental Protection.

We have also identified some problems, at least as a legislative Committee, in obtaining access to information regarding the status of these cleanups, and we have raised the question as to whether a better avenue might not be through a Freedom of Information Act request or through litigation and discovery connected with litigation.

In some respects, our own Department of Environmental Protection has been less than forthcoming in terms of providing

information to this Committee. There are still several items that are due to the Committee based on prior representations that they would be received. A last step, through Mr. Tyler, the Deputy Commissioner, we will be receiving within a week the information.

At least with respect to the Fort Monmouth situation, the Committee had to resort to subpoena power in order to even get a commitment to give information regarding Fort Monmouth and Sandy Hook from the EPA and from the Army. I would suggest to the Committee, it would not be forthcoming in the event the subpoenas were not issued.

We did identify a major problem in terms of the exchange of information between the Environmental Protection Agency and our own State Department of Environmental Protection, and I believe it will be one of our recommendations that if these avenues of information exchange have not been upgraded, that that objective be achieved in any event.

I think we have also identified a major problem which might taint all of the other opinions with regard to the situation involving the toxic waste problems, and that is, the very basis for identifying whether something is a major problem or a minor problem is oftentimes based upon water-testing results from private labs. Time and time again, with virtually every base, we have identified problems in which water-testing results were contaminated and, therefore, rejected, requiring further testing at greater expense and greater inconvenience to the public.

We have also identified certain problems with regard to overlapping statutory jurisdiction between the Superfund, the Resource Conservation Recovery Act, the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, Toxic Substance Control, and basically a problem as to identifying, again, in terms of the lead agency enforcement on the State level versus the Federal level.

But, certainly, I believe this Committee is instrumental in terms of prodding the Department of Environmental Protection for intervening into the Ohio versus EPA action, which would have eliminated this State's right with respect to prospective toxic waste sites, this State's right to oversee cleanup activities on military bases.

In many respects, we have received a great deal of cooperation from the military bases. We would have to note that there were particular bases, most notably Monmouth, where a subpoena had to be issued, and the Picatinny Arsenal, and the Raritan Arsenal, who we have some problem with in terms of identifying even who is in charge of activities at that place, as bases where there was less than a full disclosure to this Committee of what was going on.

Certainly, there are many Federal facilities which do not fall within the purview of the Department of Defense, which might present toxic waste pollution problems just as severe. Perhaps in the next session of the Legislature, a new committee should consider reviewing those non-military Federal facilities as to the problems presented at those facilities, as well as the timetable and the plan for cleanup of those facilities.

Finally, I think there is a continuing need in terms of continuing legislative oversight over the toxic waste pollution problems situated on military bases.

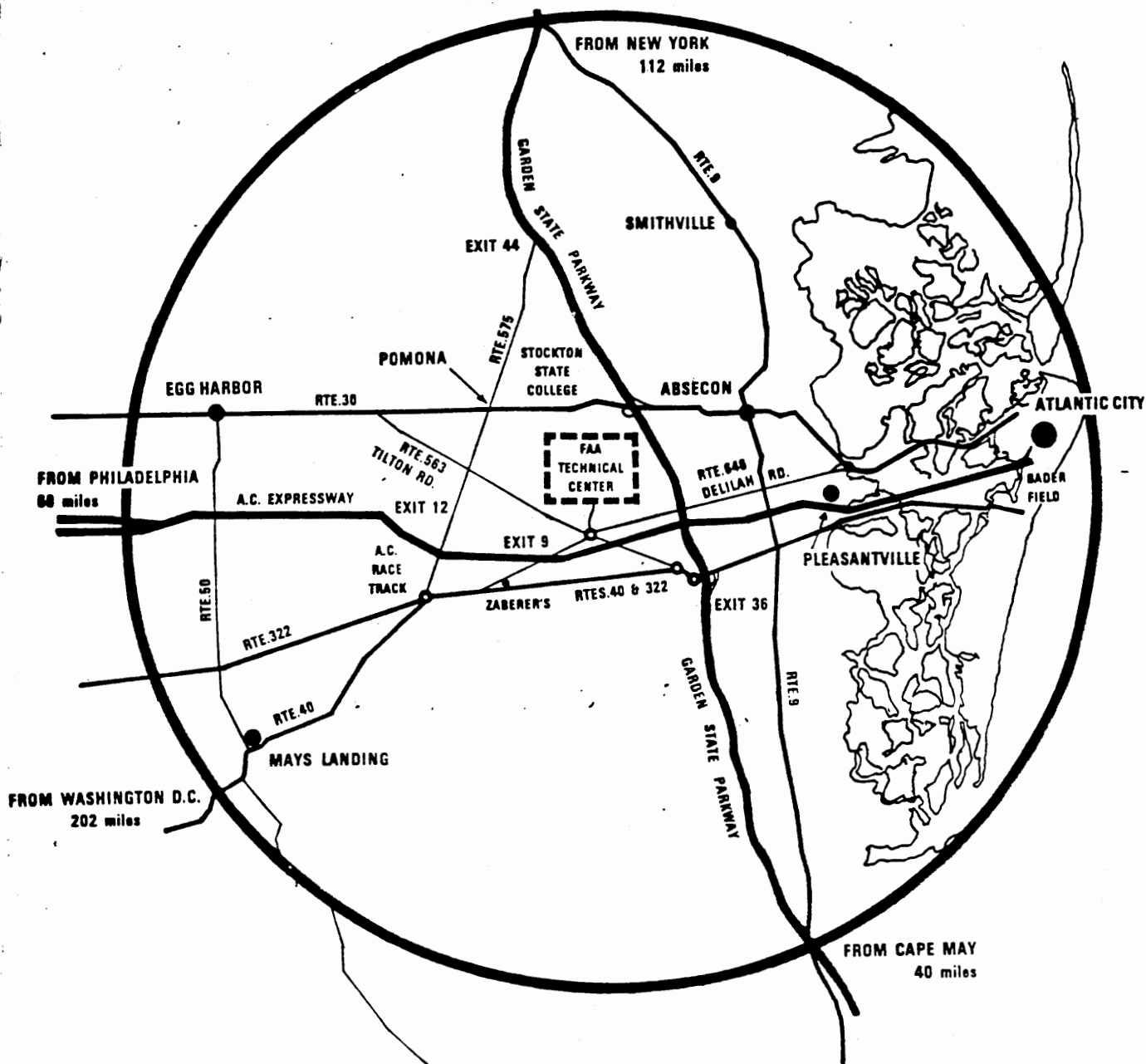
I also, just for the record, would like to indicate that as the Chairman of this Committee, I'm, of course, retaining any right to obtain any additional information from any and all sources regarding military toxic waste contamination until the expiration of this Committee which, I believe, is January 14th.

Seeing no one else who wishes to testify or submit anything for the record, I'm closing this public hearing.

(HEARING CONCLUDED)

APPENDIX

1



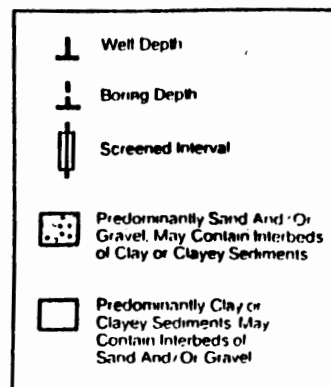
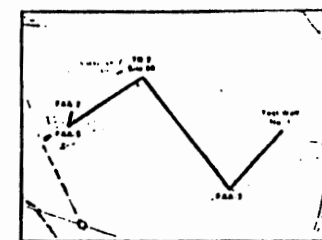
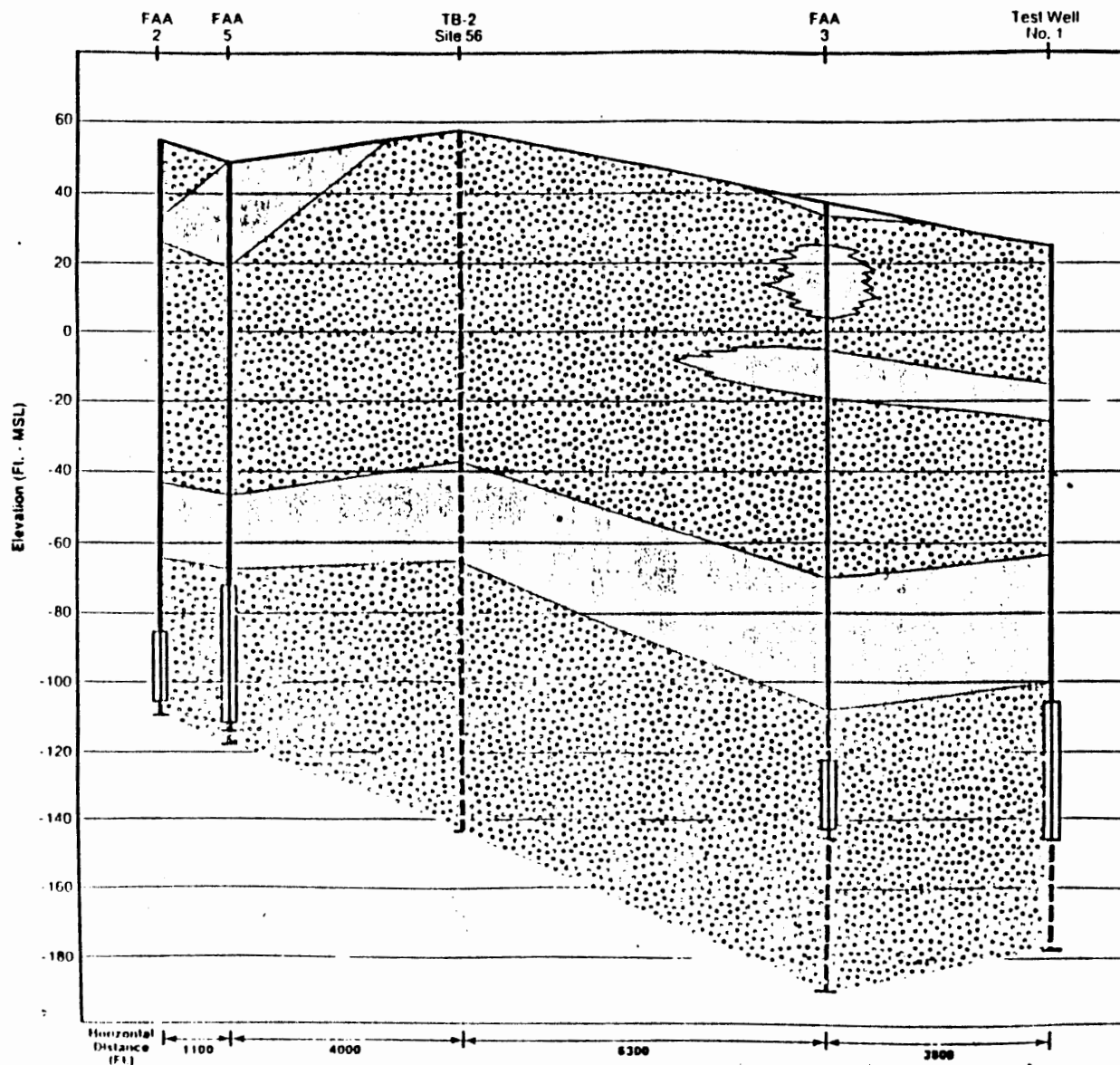
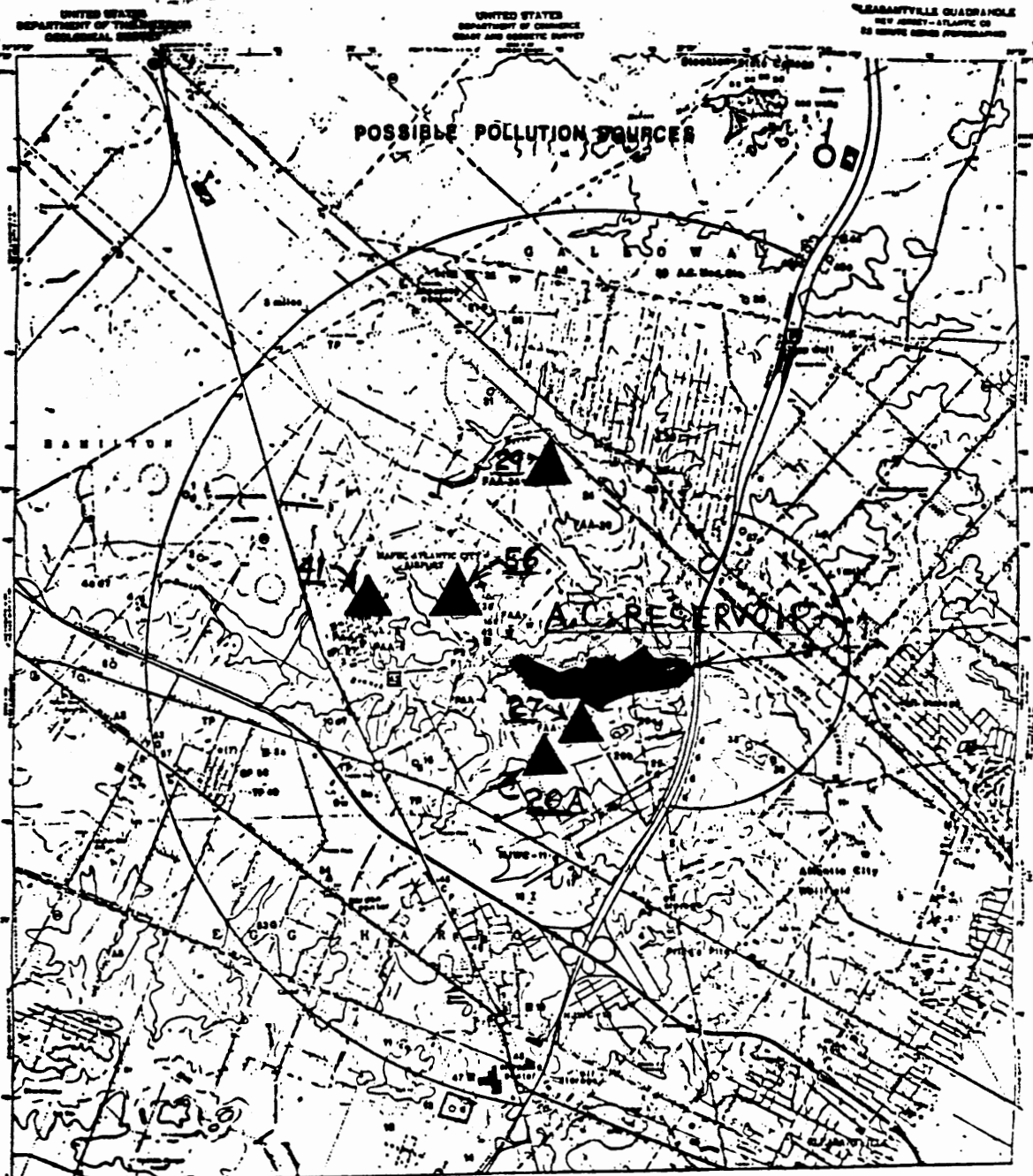


FIGURE 7-1 GEOLOGIC CROSS SECTION EAST-WEST THROUGH IIAFE

11



POSSIBLE POLLUTION SOURCES

LEGEND

- △ Possible Pollution Site
- Sewage Treatment Plant
- Sand & Gravel Pit
- Contaminated Bottoms (less than 100 yds)
- ▽ FAA Test Facilities
- Abandoned S&G Pit
- Contaminated Bottoms (less than 100 yds)
- Chemical Solvents
- Fuel Source
- Storm Water Basin
- Garage
- AS Auto Salvage
- Landfill
- GP Garbage Processing
- RS Road Salt Storage
- Industrial Site
- Flow Direction
- Land Application of Sewage Effluent
- Fuel Storage (abandoned)
- Pond

0 2000
1000 3000
Scale in Feet

POSSIBLE POLLUTION SOURCES
AND EXISTING WELLS

4

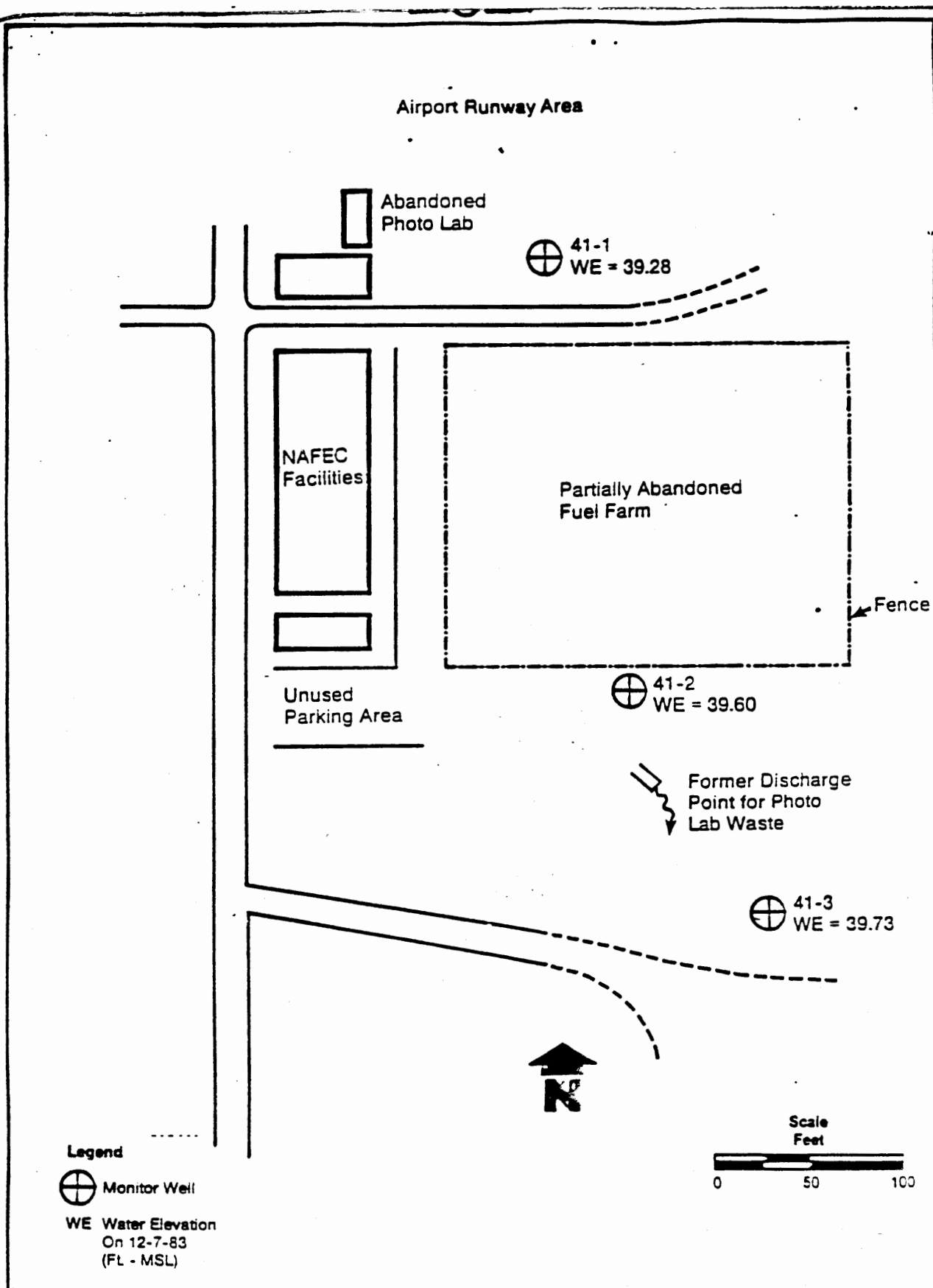


FIGURE 7-7 SITE 41: FUEL FARM AND PHOTO LAB, SKETCH MAP

4X

5X

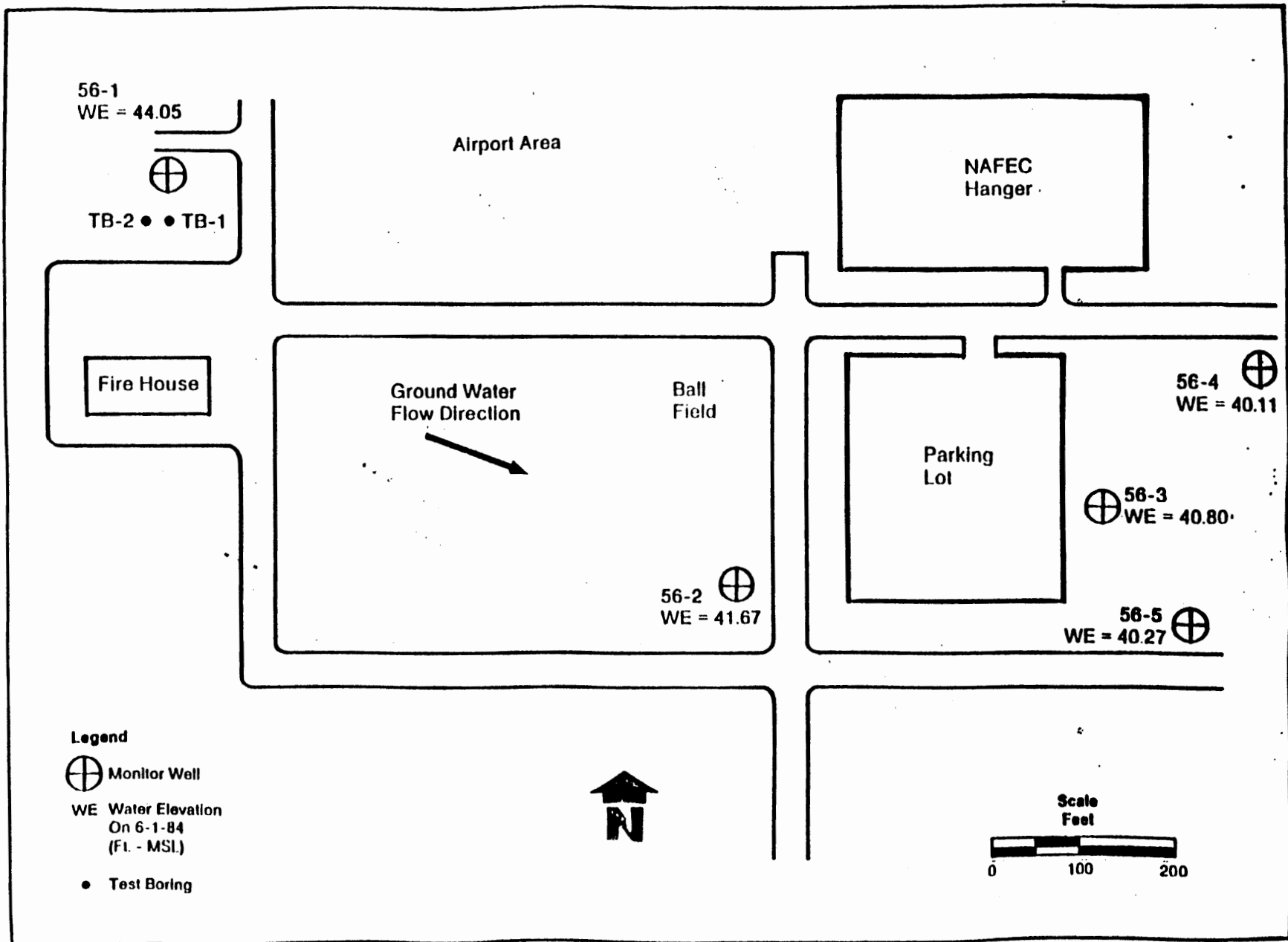


FIGURE 7-2 SITE 56: ABANDONED NAVY LANDFILL, SKETCH MAP

6

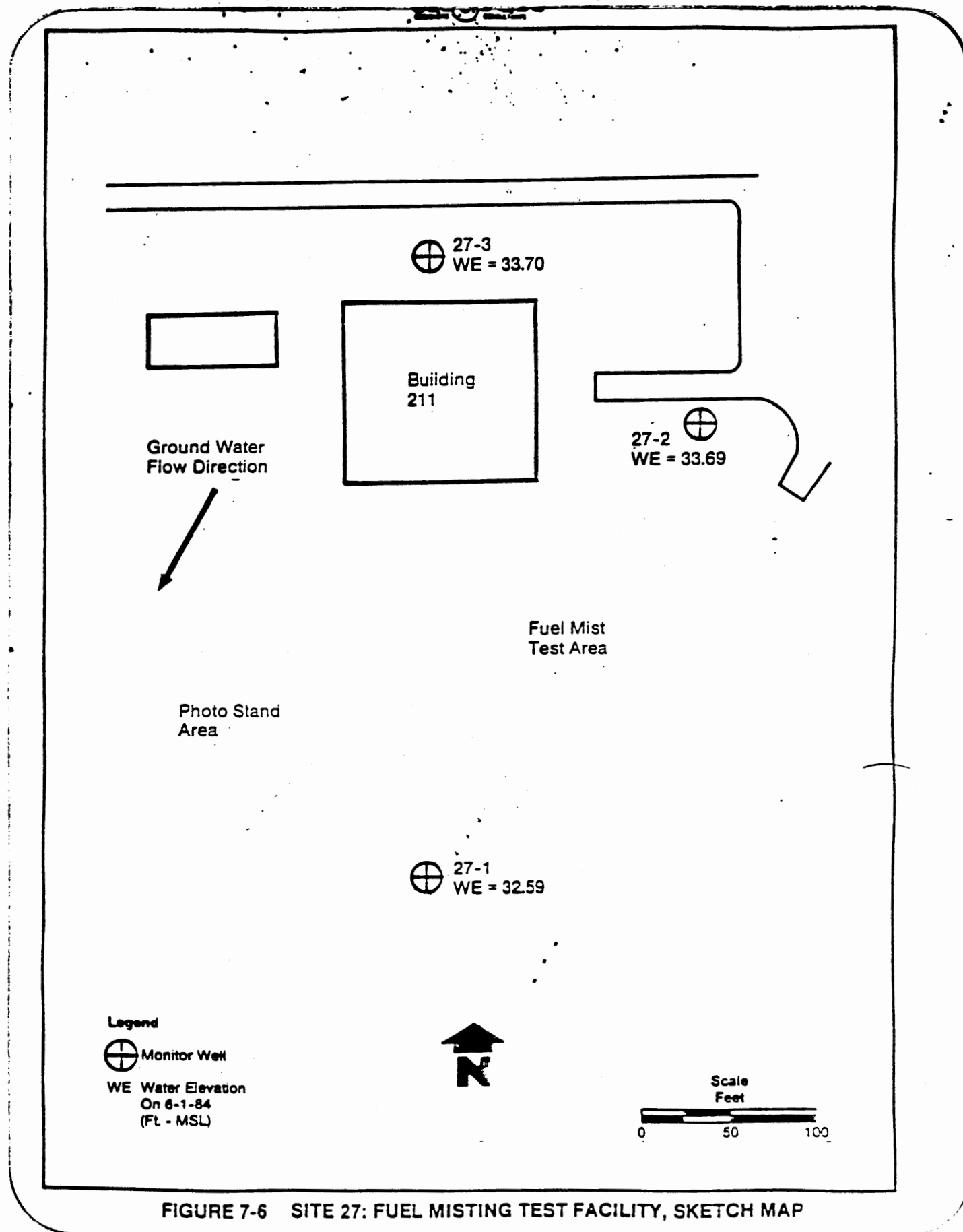


FIGURE 7-6 SITE 27: FUEL MISTING TEST FACILITY, SKETCH MAP

7

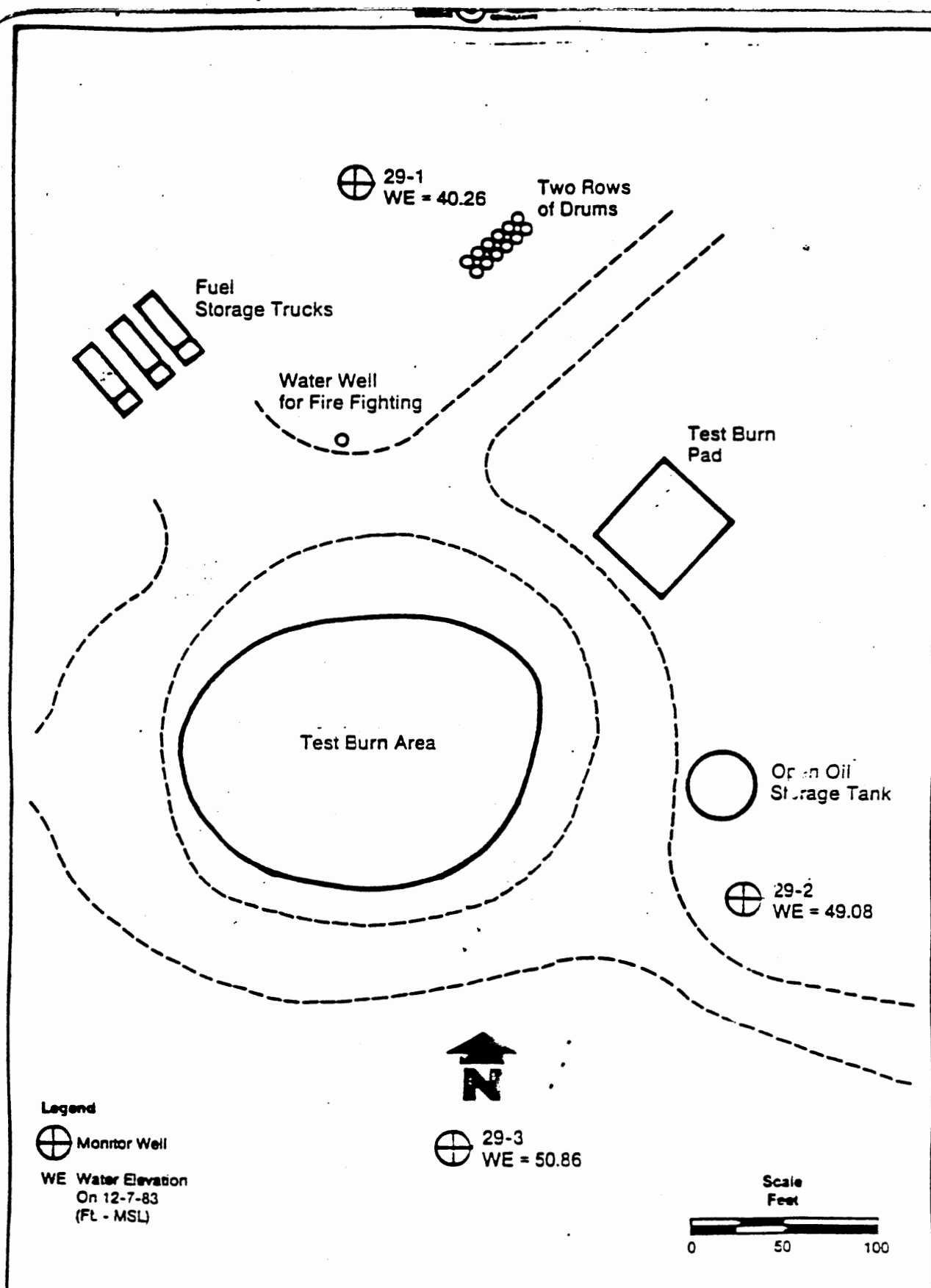


FIGURE 7-5 SITE 29: FIRE TRAINING AREA, SKETCH MAP

7X

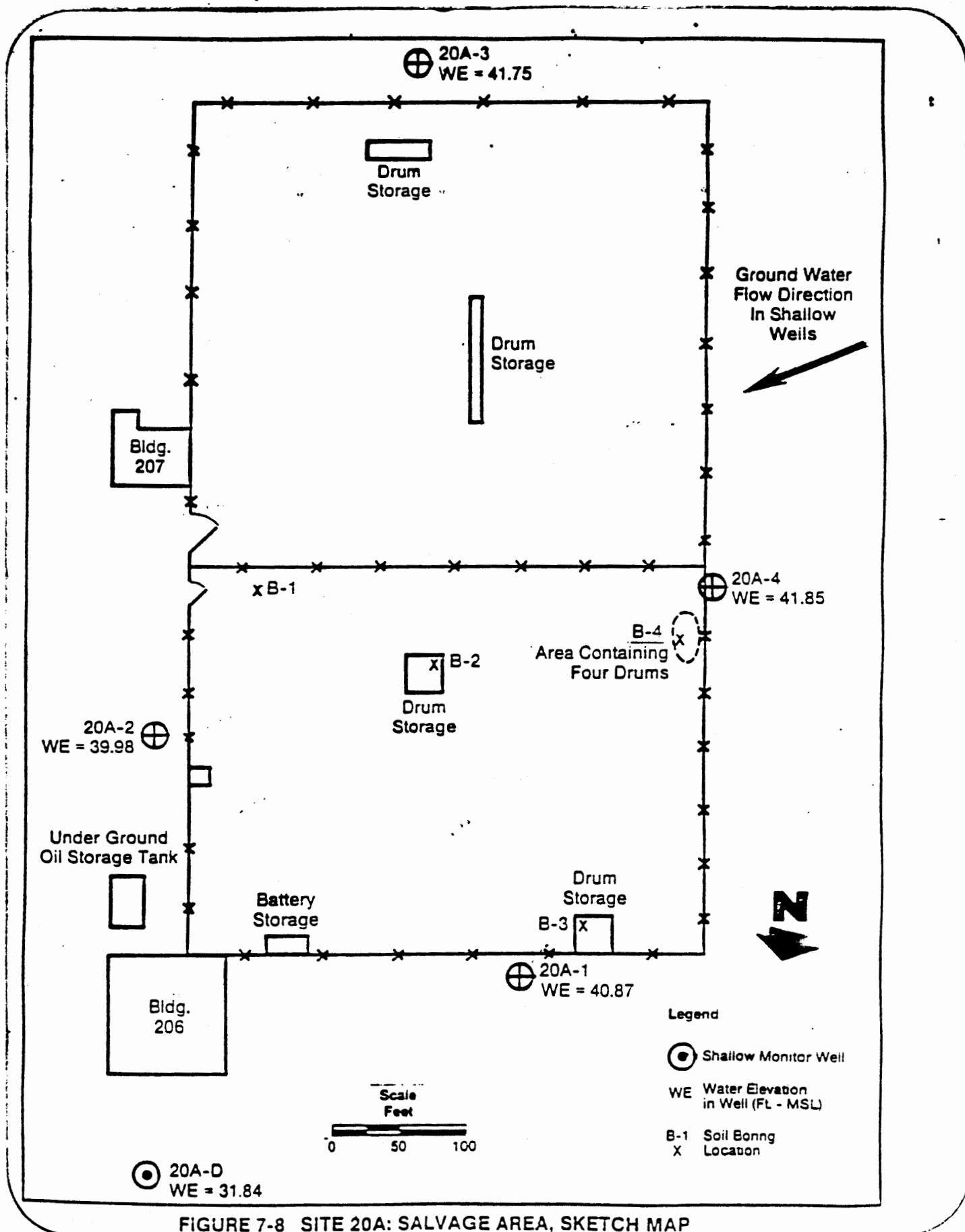


FIGURE 7-8 SITE 20A: SALVAGE AREA, SKETCH MAP



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New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES

DIVISION OF LEGISLATIVE INFORMATION AND RESEARCH

ROOM 206, STATE HOUSE ANNEX

CN-042

TRENTON, N.J. 08625

TELEPHONE: (609) 292-4661

ARTHUR S. APPLEBAUM
Research Director

GLENN E. MOORE, III
Assistant Research Director

October 22, 1985

Major General Robert D. Morgan
U.S. Army Communications
Electronics Command
Fort Monmouth, New Jersey 07703-5001

Dear Sir:

The New Jersey General Assembly has recently, through adoption of Assembly Resolution No. 168, created a Special Committee to investigate hazardous waste disposal practices at United States Military installations located in the State. As secretary to the Special Committee, I have been directed by its chair, Assemblywoman Marlene Lynch Ford, to request from the commander, or the responsible official, all information germane to such disposal practices (whether past or ongoing).

Specifically, the Committee is focusing on the water quality implications of the discharges, the aquifer resources which may be affected, and information concerning mitigation strategies which have or will be implemented. The Committee is also focusing on when information became available concerning discharges from disposal sites and the timing of installation response.

Base Commander
Page Two

October 22, 1985

The Committee would appreciate receipt of these materials in care of myself in Room 305, State House Annex, CN-042, Trenton, New Jersey 08625.

I thank you for your anticipated cooperation in this matter.

Sincerely,

Mark O. Smith
Aide to the Committee

MOS:mam



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ROOM 206, STATE HOUSE ANNEX

CN-042

TRENTON, N.J. 08625

TELEPHONE: (609) 292-4661

ARTHUR S. APPLEBAUM
Research Director

GLENN E. MOORE, III
Assistant Research Director

December 4, 1985

Major General Robert D. Morgan
U.S. Army Communications
Electronics Command
Fort Monmouth, New Jersey 07703-5001

Dear Sir:

At the request of the Chairwoman and on behalf of the members of the "Special Committee to Investigate Hazardous Waste Disposal at Military Institutions," I would like to cordially invite you or your representative to attend and participate at a public hearing to be held by the Committee on December 10, 1985, on the potential environmental and public health dangers which may be posed by the discharging of hazardous wastes at the remaining military installations subject to this Committee's investigation. I have enclosed the memorandum to the Committee's members, which details the time, place and subject matter which will be considered.

I thank you for your continued cooperation in this matter.

Sincerely,

Mark O. Smith
Aide to the Committee

MOS:mam
Enclosures



**LEGISLATIVE SERVICES
COMMISSION**

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Chairman

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CN-042

TRENTON, N.J. 08625

TELEPHONE: (609) 292-4661

ARTHUR S. APPLEBAUM
Research Director

GLENN E. MOORE, III
Assistant Research Director

December 10, 1985

Enclosed please find subpoenas to be served on Christopher Daggett at the address indicated.

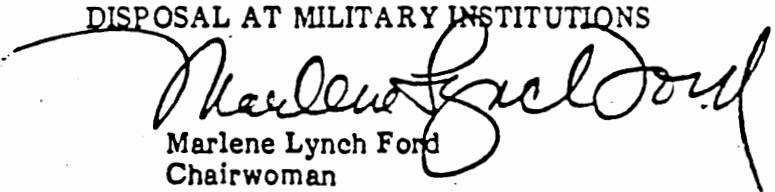
One copy of the subpoena together with a copy of N.J.S.A. 52:13E-1 et seq. should be personally served at the address. The second copy has attached a proof of service to be completed by the officer effecting service, sworn to and returned to this office.

It is important that service be made today.

As always, the cooperation of the State Police is appreciated.

Very truly yours,

**SPECIAL COMMITTEE TO INVESTIGATE WASTE
DISPOSAL AT MILITARY INSTITUTIONS**


Marlene Lynch Ford
Chairwoman

MLF:nm
Encl.

**SPECIAL COMMITTEE TO INVESTIGATE WASTE DISPOSAL
AT MILITARY INSTITUTIONS**

**TO: Mr. Christopher Daggett
126 Dyckman Place
Basking Ridge, New Jersey 07920**

GREETINGS:


WE COMMAND YOU, That, laying aside all and singular business and excuses, you personally attend and appear before the Special Committee to Investigate Hazardous Waste Disposal at Military Institutions created pursuant to Assembly Resolution No. 168 of 1985, at a hearing to be held by the committee at 10:00 A.M. on December 17, 1985 in Room 438, State House Annex, Trenton, New Jersey, to testify to certain matters relevant to the committee's inquiry and investigation relative to discharges of hazardous substances, including radioactive materials, at military institutions in New Jersey, and to produce to the committee all books and papers that you have access to relative to the committee's inquiry and investigation including spills and leaks of radioactive materials at Fort Monmouth, New Jersey; the securing and sealing off of landfills at Fort Monmouth, New Jersey; the burial of liquid mustard and polychlorinated biphenyls (PCBs) at the Raritan Arsenal in New Jersey; and results of the field investigation team concerning elevated radioactivity levels in buildings at the Raritan Arsenal in New Jersey. Your appearance is subject to the Code of Fair Procedure, a copy of which is delivered to you herewith. You shall appear and remain in attendance subject to the direction of the committee.

Failure to comply with this subpoena shall make you liable for such penalties as are provided by law.

New Jersey State Library

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WITNESS, the hand of Marlene Lynch Ford, Chairwoman of the Special Committee to Investigate Hazardous Waste Disposal at Military Institutions.


Marlene Lynch Ford
Chairwoman

Dated: December 10, 1985



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COMMISSION**

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New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES

DIVISION OF LEGISLATIVE INFORMATION AND RESEARCH

ROOM 206, STATE HOUSE ANNEX
CN-042
TRENTON, N.J. 08625
TELEPHONE: (609) 292-4661

ARTHUR S. APPLEBAUM
Research Director

GLENN E. MOORE, III
Assistant Research Director

December 10, 1985

Enclosed please find subpoenas to be served on Major General Robert D. Morgan at the address indicated.


One copy of the subpoena together with a copy of N.J.S.A. 52:13E-1 et seq. should be personally served at the address. The second copy has attached a proof of service to be completed by the officer effecting service, sworn to and returned to this office.

It is important that service be made today.

As always, the cooperation of the State Police is appreciated.

Very truly yours,

**SPECIAL COMMITTEE TO INVESTIGATE WASTE
DISPOSAL AT MILITARY INSTITUTIONS**


Marlene Lynch Ford
Chairwoman

MLF:nm
Encl.

**SPECIAL COMMITTEE TO INVESTIGATE HAZARDOUS WASTE DISPOSAL
AT MILITARY INSTITUTIONS**

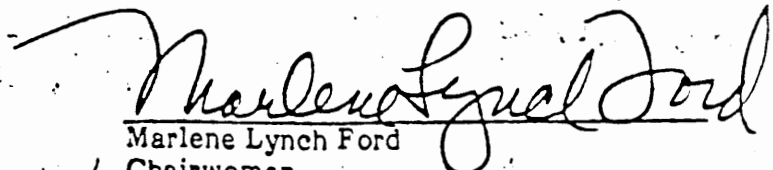
**TO: Major General Robert D. Morgan
United States Communications Electronics Command
Fort Monmouth, New Jersey 07703**

GREETINGS:

WE COMMAND YOU, That, laying aside all and singular business and excuses, you personally attend and appear before the Special Committee to Investigate Hazardous Waste Disposal at Military Institutions created pursuant to Assembly Resolution No. 168 of 1985, at a hearing to be held by the committee at 10:00 A.M. on December 17, 1985 in Room 438, State House Annex, Trenton, New Jersey, to testify to certain matters relevant to the committee's inquiry and investigation relative to discharges of hazardous substances, including radioactive materials, at Fort Monmouth, New Jersey, and to produce to the committee all books and papers that you have access to relative to the committee's inquiry and investigation including spills and leaks of radioactive materials at Fort Monmouth, New Jersey. Your appearance is subject to the Code of Fair Procedure, a copy of which is delivered to you herewith. You shall appear and remain in attendance subject to the direction of the committee.

Failure to comply with this Subpoena shall make you liable for such penalties as are provided by law.

WITNESS, the hand of Marlene Lynch Ford, Chairwoman of the Special Committee to Investigate Harzardous Waste Disposal at Military Institutions.


Marlene Lynch Ford
Chairwoman

16X
Dated: December 10, 1985



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

MARLENE LYNCH FORD

ASSEMBLYWOMAN, DISTRICT 10 (OCEAN)
917 NORTH MAIN STREET
TOMS RIVER, N. J. 08753

RES. (201) 899-1208

BUS. (201) 892-2323

LEGIS. OFFICE (201) 240-2200

December 12, 1985

Major General Robert D. Morgan
United States Communications Electronics Command
Fort Monmouth, New Jersey 07703

BY FEDERAL EXPRESS

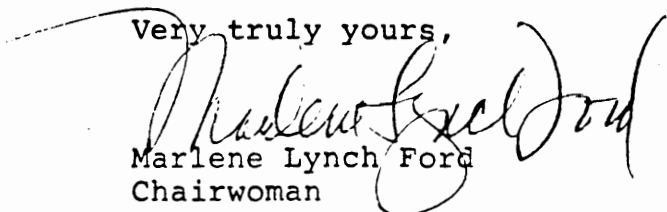
Sir:

We appreciate the telephone call to our Special Committee Secretary from your installation today promising to send an environmental representative to a public hearing in Trenton on next Wednesday, December 18.

The General Assembly's Special Committee to Investigate Hazardous Waste Disposal at Military Institutions is pleased that you have responded on this issue and looks forward to the testimony your representative will give on December 18. You should be advised, however, that the Special Committee expects that your good faith best efforts to provide it with all the relevant information will materialize on that date. We are advised as to the validity of the subpoena directing your appearance and production of documents at our public hearing on December 17.

We stand ready to enforce our subpoena authority if there is a failure to appear or the information provided is not fully responsive to the Special Committee's inquiry.

Very truly yours,


Marlene Lynch Ford
Chairwoman

/mdm

17X



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

December 16, 1985

Marlene Lynch Ford, Chairwoman
Special Committee to Investigate Hazardous
Waste Disposal at Military Institutions
New Jersey State Assembly
Trenton, New Jersey

Dear Ms. Ford:


I have received your subpoena requesting that I appear on December 17, 1985 before the New Jersey State Assembly Special Committee to Investigate Hazardous Waste Disposal at Military Institutions. My legal counsel has advised me that a state legislative committee cannot validly issue a subpoena to me in my capacity as a federal official and that I should not appear under any compulsion from the Committee. Therefore, although I remain willing to cooperate with your committee on a voluntary basis, as I have over the past few months, I must respectfully refuse to comply with your request to produce any documents or to appear personally under subpoena. To do so would unduly and improperly disrupt important Federal business which it is my duty to perform. While I would be happy to cooperate with you and have no wish to impede the work of the committee you chair, for the reasons set forth in this letter, I must give precedence to my duties as an officer of the United States Environmental Protection Agency.

I have a commitment to be in Toronto, Canada on December 17, 1985 as one of the senior representatives of the United States Environmental Protection Agency at a meeting to be held with officials of the Government of Canada, the Government of the Province of Ontario, and the State of New York. The December 17 meeting in Toronto is another in a series of intergovernmental meetings regarding pollution concerns along the Niagara Frontier. My commitment to accompany the U.S. delegation to the intergovernmental meeting in Toronto conflicts with the hearing which you have scheduled for December 17, 1985.

I and my staff have cooperated with the Committee throughout the fall, and I am willing to continue to try to assist it on a voluntary basis. On several occasions I and my staff have informed the

Committee or members of its staff of my willingness to try to assist it in the performance of its functions. I informed Mr. Smith in my December 6, 1985 letter (a copy of which is enclosed for your convenience) that we would prepare the information necessary to complete the data collection stage of the Committee's investigation by December 31, 1985, and we will produce that information on that date for that reason. I trust that we can find a way to work together in a manner which allows both your Committee and my office to continue our important work in protecting the health and welfare of the residents of New Jersey.

Sincerely,

A handwritten signature in cursive script, reading "Christopher J. Daggett". The signature is written in dark ink and is positioned above the printed name.

Christopher J. Daggett
Regional Administrator

DEC 6 1985

Mark O. Smith
Office of Legislative Services
New Jersey State Legislature
Room 206
State House Annex
CN-042
Trenton, New Jersey 08625

Dear Mr. Smith.

In response to your letter of December 2, 1985, I regret that I cannot commit my staff's time on such short notice to brief the Special Committee to Investigate Hazardous Waste Disposal at Military Institutions, on either December 10 or 17, 1985.

However, we would be happy to prepare the information necessary to complete the data collection stage of the Committee's investigation, before the end of this month. I have asked Karen Howard of our Office of External Programs to call you to set a mutually convenient meeting date, should you or members of the Committee wish to visit our offices for a briefing. A list of specific questions submitted well in advance would enable us to make the briefing most effective.

Sincerely,

~~Christopher J. Daggett~~

Christopher J. Daggett
Regional Administrator

bcc: Muszynski
Barrack
Librizzi
Correspondence Control



DEPARTMENT OF THE ARMY
HEADQUARTERS, US ARMY COMMUNICATIONS-ELECTRONICS COMMAND
AND FORT MONMOUTH
FORT MONMOUTH, NEW JERSEY 07703-5000

REPLY TO
ATTENTION OF

Legal Office

17 DEC 1985

Mr. Mark O. Smith
New Jersey State Legislature
Office of Legislative Services
Room 206, State House Annex CN-042
Trenton, New Jersey 08625

Dear Mr. Smith:

Assemblywoman Marlene Lynch Ford, Chairwoman of the Special Committee to Investigate Hazardous Waste Disposal at Military Installations, created pursuant to New Jersey Assembly Resolution No. 168 of 1985, has subpoenaed me to personally attend and appear before the Committee on December 17.

On the advice of counsel, I respectfully decline to appear while the subpoena is outstanding because I am informed that the Committee is without jurisdiction to compel a Federal employee or military officer to appear before it in response to a subpoena. Attempts by a state committee to involuntarily investigate Federal agencies are an invasion of the sovereign power of the United States in contravention of our dual form of government and in derogation of the powers of the United States.

Fort Monmouth personnel remain willing and ready to voluntarily provide information to New Jersey, its agencies and its legislature, concerning environmental issues. This position is a reflection of our continuing cooperation with the New Jersey Department of Environmental Protection. However, I must ask that you request necessary information sufficiently in advance to allow proper preparation and staffing of our response. Meetings with Fort Monmouth staff members should be arranged at a time convenient for all that does not conflict with priority federal duties.

Requests from New Jersey officials should be referred to the Congressional Affairs Branch of the Legal Office, AMSEL-LG-JA, (201) 532-4442.

Sincerely,

Robert D. Morgan
Major General, U.S. Army
Commanding

ROBERT E. LITTELL
Vice-Chairman

DONALD T. DI FRANCESCO
MATTHEW FELDMAN
WALTER E. FORAN
A. THOMAS GAGLIANO
JOSEPH HIRKALA
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New Jersey State Legislature
OFFICE OF LEGISLATIVE SERVICES
DIVISION OF LEGAL SERVICES
SECOND FLOOR, STATE HOUSE ANNEX
CN-062
TRENTON, NEW JERSEY 08625
TELEPHONE (609) 292-4625

ALBERT FORKUM
Legislative Counsel

Assistant Legislative Counsel

LEONARD J. LAWSON
VICTORIA P. LAWLER

Deputy Legislative Counsel

WALTER R. KENNEDY
MARCI LEVIN HOCHM
THOMAS K. MUSICK
MARVIN W. JIGGETTS
REINA KRAKOWER
ADEL MOREIRA SLOC
HOWARD K. ROTBLAT
NADINE L. MILBERG
RAYMOND E. CANTOP
PATRICIA K. NAGLE
PETER J. KELLY
LAWRENCE A. MONTE
ANITA M. SAYNISCH

Reviser of Statutes
(609) 292-5430
MARY JOAN DICKSON

December 20, 1985

Honorable Marlene Lynch Ford
917 North Main Street
Toms River, New Jersey 08753

Dear Assemblywoman:

This opinion is in response to your inquiries relating to two federal employees who failed to appear in response to subpoenas issued by the General Assembly's Special Committee to Investigate Hazardous Waste Disposal at Military Institutions (Special Committee). Your request of December 18 that we provide you with a disposition of issues on this matter by December 20 has allowed us to present our answers in a summary fashion, but should not be taken as representative of a thorough review of all possible resources. Nevertheless, we have attempted to respond as completely as possible to your inquiries within the time available. Each issue is stated and the response thereto follows the issue:

FACTS:

On December 9, 1985 our office received a letter on behalf of the Special Committee requesting that subpoenas be prepared to compel the attendance of Major General Robert D. Morgan of Fort Monmouth, New Jersey, and Christopher Daggett, Region II Administrator of the United States Environmental Protection Agency, at a committee hearing to be held on December 17, 1985. The production of certain documents at that time was also requested.

The subpoenas were prepared and were signed by you, as Chairwoman, at a committee hearing on December 10, 1985. The subpoenas were then delivered to the State Police with instructions to serve each individual personally. The subpoena for Mr. Daggett was served at his home upon his wife, Beatrice Daggett. Major General Morgan was served in Cecom Building at Fort Monmouth, New Jersey. The

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subpoena was handed to Colonel Richard C. Flanigan who stated that he would personally deliver the subpoena to Major General Morgan.

ISSUE 1

Was the efficacy and manner of service proper?

ANSWER:

The State Police, being peace officers of the State and having "in general the same powers and authority as are conferred by law upon police officers and constables," have jurisdiction to make service of legal process on State property.¹ N.J.S.A. 53:2-1. Although there is no provision of law governing the method of service of process issued by a legislative body, the method of service which would most likely adhere to constitutional due process requirements can be found in the rules of court of this State. Service of a summons in a civil case in New Jersey may be effected "by leaving a copy thereof at his dwelling house or usual place of abode with a competent member of his household of the age 14 years or over then residing there." New Jersey Court Rules 4:4-4(a). Service of the subpoena upon Mr. Daggett's wife at his home is consistent with this method of service.

There are possible deficiencies with respect to the service of the subpoena on Major General Morgan which should be raised in this opinion, but which are not addressed in statutory or case law. Assuming that delivering the subpoena to his subordinate at his place of employment satisfies due process requirements, there is a question of whether proper service can be effected on a United States military base.² There is also a question of whether military personnel at a United States military base in New Jersey have sufficient contacts with New Jersey to enable the Legislature to have jurisdiction over that person. If Fort Monmouth is not considered a part of New Jersey for jurisdictional purposes, the Legislature (and the State Police) may have no jurisdiction over the personnel and acts which occur there and the subpoena may be of no effect.

ISSUE 2

What was the legal validity of the summonses?

¹ N.J.S.A. 53:2-2 provides that the State police shall serve subpoenas issued by legislative bodies.

² It could not be determined for the purposes of this opinion whether Fort Monmouth is a federal enclave for jurisdictional purposes. See Paul v. U.S., 371 U.S. 245 (1963) and United States Constitution Article I, Section 8, clause 17.

ANSWER:

By resolution duly adopted by the General Assembly on September 12, 1985, the Special Committee has been given the powers of chapter 13 of Title 52 of the Revised Statutes. These powers, in part, allow the committee to compel the attendance of witnesses and the production of books as is proper and relevant to the matter of the committee's investigation. N.J.S.A. 52:13-1.

The constitutionality of this power was upheld in Morss v. Forbes, 24 N.J. 341 (1957). In Morss, a joint legislative committee sought to compel a county prosecutor to testify and produce documents relevant to wiretapping activities. The court held that the committee had the power to investigate this matter subject to the authority in its enabling resolution. The court held that although a witness who fails to appear or who appears but refuses to testify is guilty of a misdemeanor under N.J.S.A. 52:13-3, failure to appear or testify does not automatically subject the witness to criminal sanctions. Judicial review of the propriety of the investigation and possible immunities is available to the witness. Morss at 356-57.

Under Morss, even if Mr. Daggett and Major General Morgan were to appear before the committee, voluntarily or by compulsion, they might still refuse to testify, asserting their reasons for such refusal, possibly including sovereign immunity and federal supremacy. It is not clear whether a state legislative body may compel a federal official in his official capacity to appear before it to testify or to produce documents absent a federal statute which waives federal immunity. We have been unable to discover a case precisely on point in our jurisdiction. The only case which we have located dealing specifically with a legislative committee's power over federal officials is United States v. Owlett, 15 F.Supp. 736 (M.D. Pa. 1936). In Owlett, the Pennsylvania Senate established a committee to investigate the organization, administration and functioning of a federal agency operating in Pennsylvania. The resolution establishing the commission expressed concern that abuses were occurring at the agency which prevented it from properly serving the citizens of Pennsylvania. In the performance of its investigation, the committee issued subpoenas to several federal agency employees requiring their attendance before the committee. The United States moved in federal court to issue a temporary injunction preventing the committee from enforcing its subpoenas. In granting the injunction, the court held that the legislative committee did not have jurisdiction to investigate the internal workings of a federal agency. Owlett at 740.

Although the Special Committee arguably is not investigating the internal administration of a federal agency, the court's analysis in Owlett may apply to the committee's investigation and issuance of subpoenas. That court stated that a federal agency and its employees are completely immune from state interference. Id. at 741. The court also stated that the immunity was predicated on the necessity to prevent a state from interfering with the proper functions of the federal government. By the nature of our dual level of government, the federal government will always be geographically operating in the states and its actions will affect these

states. The court held that this relationship does not give the states power over these federal agencies. Owlett held that state interference with federal agencies is unconstitutional and stated that:

The attempt by the respondents, a committee appointed by the Senate of a sovereign state, to investigate a purely federal agency is an invasion of the sovereign powers of the United States of America. If the committee has the power to investigate under the resolution, it has the power to do additional acts in furtherance of the investigation; to issue subpoenas to compel the attendance of witnesses and the production of documents, and to punish by fine and imprisonment for disobedience. When this power is asserted by a state sovereignty over the federal sovereignty, it is in contravention of our dual form of government and in derogation of the powers of the federal sovereignty. The state having the power to subpoena may abuse that power by constantly and for long periods requiring federal employees and necessary federal records to be before an investigating committee. This power could embarrass, impede, and obstruct the administration of a federal agency. Id. at 742

The Special Committee in the instant situation is attempting to compel federal officials to appear before it, testify, and produce documents. These are the powers which Owlett found to invade federal sovereignty. It could be argued that to the extent that federal officials appear before the Special Committee, they are incapable of performing their job related duties. Although Owlett is not legal precedent in this State and can be distinguished as a situation where a committee exceeded its jurisdiction by attempting to investigate an area over which it could not enact legislation, Owlett at least raises doubts as to the validity of the subpoenas which were issued by the committee. See also, Civiletti v. Municipal Court, etc., 172 Cal.Rptr. 83 (1981).

ISSUE 3

What are the liabilities or potential liabilities attaching to the summoned parties and their respective agencies stemming from the respective failures to comply?

ANSWER:

The liabilities involved in the failure to respond to a legislative committee's subpoena are statutory and are directed only to the person summoned, not the agency. The specific liabilities in the instant case are arrest and prosecution.³

The remedy for the failure of a witness to comply with a subpoena issued by a legislative committee is found at N.J.S.A. 52:13-2 which provides:

If any person upon being summoned in writing by order of any committee mentioned in section 52:13-1 of this title to appear before such committee and testify, fails to obey such summons, the speaker of the house of assembly or the president of the senate may, upon application to him, by warrant under his hand order the sergeant at arms of the house over which he presides to arrest such person and bring him before the committee, and the sergeant at arms shall thereupon execute the warrant to him so directed.

N.J.S.A. 53:2-2 also authorizes a committee of the General Assembly to request and obtain the assistance of the State Police with respect to the execution of any order of arrest which such committee may issue.

N.J.S.A. 52:13-3 provides the penalty for the failure to testify or appear:

Any witness who refuses to answer any questions decided by the committee to be proper and pertinent shall be guilty of a misdemeanor; and any witness who, having been summoned to appear before any such committee, fails to appear in obedience to the summons or, appearing, refuses to be sworn shall be guilty of a misdemeanor.

3

With respect to the committee's authority to arrest persons subject to military law on a military base, see 32 C.F.R. 503 and the Uniform Code of Military Justice, Article 14 (10 U.S.C. 814). Generally, the policy of the Department of the Army is that commanding officers will cooperate with civil authorities and, unless the best interests of the service will be prejudiced, will deliver a member of the Armed Forces to the authorities upon presentation of a proper request accompanied by reliable information showing that there is reasonable cause to believe the person requested has committed a crime or offense punishable by the laws of the jurisdiction making the request. In determining whether to deliver a member of the Armed Forces to civil authorities, the commanding officer is instructed to exercise sound discretion in light of the total circumstances of the particular case. It is our understanding in this case, however, that the federal officials do not believe the Special Committee has the authority to compel their attendance.

26X

Offenses in this State are no longer graded as misdemeanors and high misdemeanors. N.J.A.C. 2C:43-1b. provides that a crime designated in any statute as a misdemeanor (such as in this case) constitutes, for the purpose of sentencing, a crime of the fourth degree. A fourth degree crime subjects an individual to a fine not to exceed \$7,500.00 and incarceration not to exceed 18 months. (See N.J.A.C. 2C:43-3 and 2C:43-6).

Any incarceration or prosecution pursuant to N.J.S.A. 52:13-2 or 52:13-3 would entitle the defendant to an adjudication on the merits,⁴ at which point issues relating to the validity of any subpoena or the right of any party appearing to refuse to testify could be raised. See, State v. Brewster, 87 N.J.L. 75 (1915); Morss v. Forbes, 24 N.J. 341 (1957).

ISSUE 4

What alternative courses of action are available to the Special Committee and/or its chair, and/or available to the General Assembly or the Speaker or other individual members of the General Assembly, or the New Jersey Legislature as a whole, relative to enforcement, punitive or other remedial actions with regard to each party summoned?

ANSWER:

See the answer to issue No. 3 which states the statutory remedies available to a legislative committee for failure of persons to respond to a subpoena. Also, the General Assembly or the Legislature as a whole may adopt a resolution expressing the body's dismay that federal government employees refused to respond to a legislative committee's subpoena and forward copies to the appropriate federal officials.

Additionally, if those persons subpoenaed moved for some sort of prior judicial review of the matter through a motion to quash the subpoena or for equitable relief to enjoin the action of the committee, then the committee would have the opportunity to respond on the merits without initiating an arrest or prosecution.

4

This would probably be through a habeus corpus proceeding and/or trial.

CONCLUSION

Based on the aforesaid discussion, even assuming that the subpoenas were properly served, there is a question, as yet unresolved by statutory or case law, as to whether the Special Committee has the authority to compel the testimony of the federal officials it has summoned based on principles of sovereign immunity and federal supremacy, absent a specific federal enactment waiving such immunity.⁵

Very truly yours,

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See, as an example, 42 U.S.C.A. 6961 dealing with a federal waiver of immunity in connection with certain solid waste management. This statute provides in part that "[n]either the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any state or federal court with respect to the enforcement of any such injunctive relief." The instant case, of course, does not deal with such injunctive relief. See also, "Federal Supremacy and Sovereign Immunity Waivers in Federal Environmental Law," 15 ELR 10326 (10-85).