C O M M I T T E E M E E T I N G

of

ASSEMBLY LEGISLATIVE OVERSIGHT COMMITTEE

on

Review of the status of the cleanup of the CPS/Madison industrial site and discussion of Department of Environmental Protection policy with regard to industrial cleanups

Held:
February 22, 1985
Council Chambers
Municipal Center
Old Bridge, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman William E. Flynn, Chairman
Assemblyman Thomas P. Foy, Vice Chairman
Assemblyman Frank M. Pelly

ALSO PRESENT:

Assemblywoman Jacqueline Walker

Steven B. Frakt
Office of Legislative Services
Aide, Assembly Legislative Oversight Committee

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ASSEMBLYMAN WILLIAM E. FLYNN (Chairman): Would everyone please take a seat so that we can get started with this public hearing. Would those persons who wish to testify please come and sit in the first two rows, so that you will be readily identifiable and we won't miss you. I know most of the people who want to testify, but there may be some who have not called or signed in.

This is the Assembly Oversight Committee. The topic today is the toxic waste situation, with respect to CPS and Madison Industries: what the problem is, what has gone on in the past, and what the solutions are. At the end of a series of hearings, which we are going to have, the Oversight Committee will issue a report and recommendations, with respect to action.

It is already anticipated that there will be another hearing next Thursday in Trenton, at which time, the representatives of CPS and Madison Industries have been invited to testify and to present their side of the story, so to speak. In addition, those who are here today are welcome also to come to the hearing in Trenton. If there is anything left unsaid today, or if more is necessary to be said by way of rebuttal, we might be able — if time permits — to allow additional testimony. But I would hope that those, who testify today, will testify solely and completely on relevant and germane points.

I think it is only fair today to have as our first witness the host mayor, Mayor Russell Azzarello from Old Bridge. Without further introduction, Mayor.

MAYOR RUSSELL AZZARELLO: Thank you very much. Will we be using these microphones?

ASSEMBLYMAN FLYNN: Yes. The microphones are basically for recording this hearing and for preparing a transcipt. They are not for amplification, so you will have to keep your voice up.

MAYOR AZZARELLO: Okay. First, I would like to thank the Oversight Committee for having this meeting here in Old Bridge; it gives an opportunity for those people who are most affected -- the people in Old Bridge and surrounding communities — a chance to attend this meeting. Many times, I am sure that these various hearings are heard in the Chambers in Trenton; people don't always have the

opportunity to travel those distances. So, to the Assemblypeople, welcome to Old Bridge, and my sincere thanks.

I would like to start out with one basic statement that has been made by the people who have been working very hard on the problems and the concerns that are facing Old Bridge Township and the surrounding areas, and that is, the concern for the most important natural resource to the entire world: our water. As everyone knows, it is in this area — in the South Bay Basin — where we are all concerned about the quality, as well as the quantity, of water.

We are doing different things to enhance the bringing of water to the town and to the area, and we are also seeking the additional diversionary rights to pull water out of the ground. It is absurd to think that we are seeing that most precious commodity, that most precious resource, threatened by the pollution which exists, and which might continue to exist, with continued operation of two of the major polluters — this has been found to be a fact by the State Department of Environmental Protection and is registered as one of the 12 worst sites in the country. It makes absolutely no sense to see that kind of industry remain in an area so sensitive, as a watershed. I would like the Oversight Committee to please consider that in their deliberations.

There are some very important factors, however. A group known as the Citizens Advisory Committee, under the very able leadership of our Chairperson of the Environmental Commission in Old Bridge, Mrs. Blanche Hoffman, has been meeting periodically. This committee is made up of three communities represented not only by the three mayors who sit ex officio, but also by representatives of each community, who discuss their environmental concerns.

We have come to a basic conclusion; the conclusion is that total cleanup is the only answer to protect today and the future, as well. The conclusion -- total cleanup -- does not just talk about containment or the putting in of dikes that are going to offer us simple diversion of the path of water, but it also says that we must contain and then remove the polluted areas. This is a strong position; it is a position that I don't think we should wane from. I think, in

addition to the total cleanup, there must be removal of the pollutants, because there will always be concern and fear in the minds of the people, as to what else is going on and what else can be harming our communities. I would like to stress those points.

I would also like to stress that the Department of Environmental Protection has taken some positions which we find to be less than understandable. We are talking about the industries which have created the problem coming up with a plan. The industry plan appears to be the plan that the DEP is willing to accept. It is analogous to the fox building the chicken coop. I find that to be totally unacceptable at this point.

I do think the responsibility falls clearly in the hands of the Department of Environmental Protection. I don't think it belongs in the hands of the local community. I don't think it belongs in the hands of the Citizens Advisory Committee to have to come up with the technology necessary. We know the technology exists, but we feel it is their responsibility to take and manage the cleanup operation. We feel that the role, which we must play, is to see that they manage the cleanup operation. That is the role we play; we should not have to come up with the technical expertise. We do believe that we should have a say; we do believe that we should have some sort of veto power, when we think things may not be properly addressed. But we also believe that the Department of Environmental Protection has the sole responsibility to ensure that their name -- Environmental Protection -- is continued.

I would like to be as brief as that, and to be firm and make a statement that we won't accept a pacification. We feel that this has gone on much too long. I take it, by those who have visited the site, that it is very obvious that we, in Old Bridge, as well as those in the surrounding communities, have a problem that is a clear and present danger and which should be addressed immediately. Less than total cleanup is unacceptable.

I thank you very much, again, for coming to Old Bridge. If there is any way that we, as a community, the Citizens Advisory Committee, or the Office of the Mayor can be of further assistance, please feel free at any time to come and address us this way.

ASSEMBLYMAN FLYNN: Thank you, Mayor.

MAYOR AZZARELLO: Thank you.

ASSEMBLYMAN FLYNN: Are there any questions by the Committee? (no questions) Thank you, Mayor.

Next, I would like to call on Mayor McCormack from Sayreville.

MAYOR JOHN B. McCORMACK: As Mayor Azzarello commented, I would also like to thank the Committee for the convenience of today's meeting.

My name is John McCormack. I am the Mayor of Sayreville. I appreciate the opportunity to present comment on behalf of my administration and the citizens of the borough I represent.

Since mid-1984, the borough has been a participant in the Citizens Advisory Committee for CPS and Madison Industries; their membership was appointed by the mayors of Old Bridge, Perth Amboy, and Sayreville. The Committee, under the direction of Blanche Hoffman, has done an excellent job in securing and analyzing a tremendous amount of data on studies of remedial action plans addressing the CPS and Madison Industries sites. I have watched with interest the progress of the Committee, as it worked with consultants and DEP officials in an attempt to clarify the issues for each respective participating municipal government. I have digested, as much as possible, the material that I have received from the Commission.

One fact remains clear: The situation was unresolved one year ago; it was unresolved six months ago; and it still stands today unresolved. More than any other community, Sayreville is threatened by CPS and Madison Industries. The sole source of potable water for the Borough of Sayreville lies 1,000 feet north of the contaminated CPS/Madison Industries site. No community should have to live with this type of threat posed against its water supply.

The list of pollutants discharged by the industries is lengthy, and it includes several heavy metals, as well as dozens of volatile organics. Many of these substances are toxic, carcinogenic, and mutagenic.

Several plans have been discussed by the DEP and the Citizens Advisory Committee. Sayreville, initially, can accept only a plan that provides for total containment with assurances that the pollutants contained within are removed.

The plan presently proposed by the DEP in the consent order does not provide for this; therefore, it is totally unacceptable, as it falls far short of providing even minimum guarantees to Sayreville's water supply.

The closing of the industries and the total cleanup of the area would be the ideal or the bottom line. Any plan that does not provide containment of the maximum area impacted by the discharge of pollutants from CPS and Madison Industries and does not provide assurances that the pollutants will be removed, is totally unacceptable to the Borough of Sayreville, as it leaves us no protection.

I understand that any plan requiring the containment necessary to protect Sayreville's well fields would be extremely costly. However, when the health and welfare of 30,000 plus citizens of Sayreville is in jeopardy, costs should not and must not be the issue. If costs are an issue, who will guarantee Sayreville's water supply?

I am distressed that this issue has gone on for such a long time and has not reached a conclusion which satisfactorily protects the environmental health of Sayreville's citizens and the citizens of the surrounding communities. I am distressed that anyone, or any organization, would consider a plan calling for less than total containment or total removal.

In our political climate, which is environmentally sensitive, costs should not be an issue over public health. For this issue to have come this far and have gone before the Oversight Committee is an indication that the administrative, technical, and legal process has not been conducted in a satisfactory manner. Sayreville demands a satisfactory resolution of this issue now.

I thank you for your time, and I stand ready to work with you toward a positive conclusion to this matter. In addition, and not to change from your planned program, I have with me Mr. Robert Stockwell,

our project geologist, representing the consulting firm of EFP, a consulting firm that Sayreville has hired to review this. I would like to call on him as part of my testimony.

ASSEMBLYMAN FLYNN: All right. I was going to call Mayor Otlowski first. Mayor Otlowski, will you yield to this gentlemen?

MAYOR OTLOWSKI: (from audience) Yes. I have no problem with that.

ASSEMBLYMAN FLYNN: Fine. For the record, please give your full name and your company affiliation.

ROBERT STOCKWELL: Thank you. My name is Robert Stockwell from EFP Associates. I am a geologist, representing the Borough of Sayreville. Our involvement in this case has come about because of the proximity -- as mentioned by Mayor McCormack -- of the contaminated sites to the well fields which provide the drinking water for the Borough of Sayreville.

All I want to do is make a brief statement: The information which we have reviewed, at this point, which does not represent all the information available, but the primary documents, especially those related to cleanup proposals, do not address the issue of the Sayreville water field. The studies that have been conducted, for the most part, do not mention the location of it or any possible effects that the cleanup will have on that water supply.

ASSEMBLYMAN FLYNN: Have you done any preliminary work as to what would be required, by way of a modification of any of the plans, to solve the problems that Sayreville is indicating?

MR. STOCKWELL: I am not implying that the proposed plans will affect it. At this point, I can only make the statement that the plans, as proposed right now, and the studies which were done in creating those plans, do not address the fact that the well field is located where it is and do not address what impact the proposed plans would have on the well field.

ASSEMBLYMAN FLYNN: I see. Are you referring specifically to the Wehran Plan?

MR. STOCKWELL: No, I am referring to the water treatment plant operated by the City of Sayreville on Bordentown Avenue.

ASSEMBLYMAN FLYNN: There are two plans that are on the table right now: the Wehran Plan and the plan that Judge Furman approved. Are you saying that neither of those plans makes reference to your concerns about Sayreville?

MR. STOCKWELL: That is correct.

ASSEMBLYMAN FLYNN: You haven't done the initial engineering to determine what might have to be done, if anything, because, at this point, you haven't investigated that; is that correct?

MR. STOCKWELL: That is correct.

ASSEMBLYMAN FLYNN: Are there any questions from any members of the Committee? (no questions) Okay. Thank you.

MR. STOCKWELL: Thank you.

ASSEMBLYMAN FLYNN: Next, I would like to call on Mayor Otlowski from Perth Amboy. They also have a serious concern here. Mayor.

MAYOR GEORGE OTLOWSKI: Thank you very much, Mr. Chairman. First of all, Mr. Chairman and members of the Committee, I want to not only express my thanks, but my particular commendation for the action that this Committee has taken and for the fact that the entire Committee is here today. This may be the beginning of real legislation, the kind of legislation that is needed to correct many of the evils which exist here.

I think Assemblyman Flynn -- and maybe Assemblywoman Walker, but I doubt that, because of her age; she is far younger than Assemblyman Flynn (laughter) -- but in any event, I think that you and I are aware of the fact that one of the great tragedies and one of the great shames that exists here is the shame on our State, particularly for permitting what took place here in this area: that, the great State of New Jersey, all of those years, witnessed and took part in the poisoning and the contamination of one of the greatest natural resources that existed in this area. The great artisan wells that existed here and that were part of the Perth Amboy system were completely destroyed. The thing that precipitated the action with Judge Furman's court was the fact that those 36 artisans wells were closed. A great system was destroyed. Destroyed, no question about

it, by Madison Industries and CPS. The proof is conclusive because of the judgment that the court made at that time.

We are now in the position, I think, where real legislative action has to be taken. First of all, I made it known on the record that I agree with the two mayors that the judgment of the court is totally unsatisfactory. It doesn't solve the problem; it doesn't meet the problem; it will not cure the problem; and, as a matter of fact, it will not help maintain a natural aquifer and a large supply of water that is desperately needed, particularly by Old Bridge and Sayreville in their development.

Old Bridge, of course, is now caught -- not between the devil and the blue sea -- but between the devil and all of the wonderful water that would be made available if we act with intelligence and some speed here. Old Bridge is court-mandated and court-monitored now to provide housing. Old Bridge cannot provide housing when they don't have the water. This is where Old Bridge sits now. Old Bridge is a part of one of the great natural water wells in the whole country. You know water, water, and Old Bridge can't have a drop of it. This is how ridiculous this whole business is. The court decision that was made, as I indicated, hasn't helped at all.

As a matter of fact, we are dealing with very arrogant people at Madison Industries and CPS, who are saying, "The public be damned; the court be damned," because they haven't met their obligations under the judgment. You know something, this is how arrogant they are: They use our water and then they don't pay for it until we threaten to shut it off. This is the arrogance of these people. They have no concern for the public policy. They have no concern about the obligation that they have: to preserve a great natural resource.

Let me just tell this Committee something, because this is very important for you to know. We are going to be spending $11 million in Perth Amboy in developing our new well system, moving away from the contamination of the 36 wells that I alluded to. We are going to be spending $11 million; $2.5 million of that money is Federal money. The Federal government has mandated that we build a fence around all of our property to protect our wells. The fence is going to

cost about $1 million to build. Then, after we build the fence, we are going to lock the fox in the chicken coop, because the fox will be inside the fence. This is the most ridiculous thing I ever heard. This is an example of bureaucracy running backwards, when they should be going forward. This is just another classic example of a first-class screw-up. These are some of the things that this Committee has to look at to see if there are legislative remedies.

ASSEMBLYMAN FLYNN: George, the fence you are talking about, what type of fence is it? Is it an anchor-type fence?

MAYOR OTLOWSKI: It will be an anchor-type fence about nine feet high.

ASSEMBLYMAN FLYNN: What is that designed to protect?

MAYOR OTLOWSKI: It is designed to protect the whole shed from people entering, getting on it, and committing acts of vandalism. As a matter of fact, we have a history in this area of not only vandalism and people destroying some of the pipe lines, but also trespassers going onto property and endangering the workers on the site. We have had that history all along. The fence, of course, is supposed to correct all of that. The fence, also, is something which is being mandated by EPA; it was mandated by the money that the Federal government made available. The fence was absolutely necessary to protect the shed.

ASSEMBLYMAN FLYNN: So they are giving you $2 million?

MAYOR OTLOWSKI: $2 million. $1 million would go for the fence.

ASSEMBLYMAN FLYNN: You have to spend $1 million for the fence. It is not going to stop the problem of the toxic wastes leaching under the ground. That is not going to stop that problem.

MAYOR OTLOWSKI: Precisely. Forgive me if I speak in anger; I think that this is the kind of thing which calls for angry people finally to express their anger. As a matter of public policy, I am thinking, particularly, of Sayreville and Old Bridge, but also of Irvington, Newark, and Jersey City. You know that in Jersey City there is now a dump site on their shed; there is the possibility that it could contaminate their water. This has been our history, generally, that we haven't protected our water supplies.

What I hope to point out to this Committee -- and I hope that the Committee will give this some real thought, not only in thinking of Sayreville and Old Bridge, but in thinking of the water problem, generally as it exists, and the obligation that public water supplies, like Perth Amboy's, have to the State and to the people, and the obligation that the so-called private purveyors have. The private purveyors aren't sitting on something that they have created, on something that they have manufactured; they are sitting on a natural resource. They have a public obligation to be cooperative, to meet their public responsibilities, to meet the public demands. They should be monitored more than they are. There should be a whole plan of the interlocking public and these so-called private purveyors, so that the communities will have the benefit of the total water supply, under reasonable circumstances — and not with some highhanded approach that they are a private company and that nobody is going to tell them what to do. I think that this Committee has to look at that whole thing if Sayreville and Old Bridge are going to be helped.

Let me just point out a simple thing: There is a pipeline that Perth Amboy has, which runs across the river, that can bring Sayreville and Old Bridge 20 million gallons, or better, of water a day. For the moment, we can only give Sayreville and Old Bridge about 1.5 gallons of water. But there is Middlesex Water, a private purveyor. They could very well use this pipeline and use our reservoir to make sure that water was made available to all of these communities. That is not only existent here, it is existent throughout the State, where these companies have set themselves separate and apart from the total needs of people. This is something that the Committee has to look at, and, as a matter of fact, I hope that — looking into that whole area — is just the beginning of the work of this Committee.

ASSEMBLYWOMAN WALKER: Mr. Chairman?

You mean that this pipeline is underutilized at the moment because Perth Amboy can't supply more water?

MAYOR OTLOWSKI: There is no question about that. Perth Amboy has two pipelines. We are repairing the second pipeline. Hopefully, that second pipeline will be ready shortly.

ASSEMBLYWOMAN WALKER: And the Middlesex Water Department has not been receptive to overtures?

MAYOR OTLOWSKI: I don't want to get into that at this moment. I hope that the Committee will get into that in greater depth because the truth of the matter is that I may be appearing before the Public Utilities Commission on this very problem. At this moment, I just don't want to reveal the plan that we have to meet that situation. But, obviously, from what I said, I hope that I have triggered the minds of this Committee about the fact that legislation is needed here, that these people just can't go off, while Old Bridge is being pressed by the port, while Sayreville is being pressed by development, and while the pipelines are there and they can't meet their requirements of water and they are desperately afraid of the future. This is something which this Committee has to look at in greater depth. But so much for that.

Getting back to Madison Industries and CPS, which is the other thing this Committee is primarily interested in, and which, as a matter of fact, prompted your visit here today. I agree with the two mayors who testified. They have to be removed from this site. And, as a matter of fact, I hope that Sayreville, Old Bridge, Perth Amboy, and our legal departments, notwithstanding the fact that we brought the action against these industries and the fact that we were the ones who precipitated the judgment in Judge Furman's court, and notwithstanding the fact that we are the primary parties in that, have now come to the point where we have to look, along with their law departments, at these three communities, and explore — and we may have to come back to this Committee — the possibility of condemnation. Take that property, throw those industries off of that property, and, as a matter of fact, seek to determine if we can work out some kind of an agreement with the court. The court has laid down the judgment of $5 million that these industries are supposed to pay to build some kind of nightmarish Egyptian upside-down pyramid.

In any event, maybe we can convince the court that what we are talking about is not only more practical, but also is needed. I am not saying, put these industries out of business; I am saying, move

them. Move them to someplace where they belong, and not on top of a watershed. I think this is something which we are going to come back to this Committee for -- that is, the proper legislation to help us with our condemnation proceedings.

Generally, this is the story. I think what I have told you here -- aside from the great tragedy that has been perpetrated on this whole area, and the great disgrace and the great shame -- is that there is still time for intelligent action, for united action, and for using the resources that are here. Old Bridge shouldn't have any qualms or fears about water. Neither should Sayreville. It is here; it is a matter of using the facilities which are here to make sure that they have the water. I just want to get that on the record. I hope that the Committee is going to explore that in greater depth with the idea of getting the kind of legislation that is needed to bring about quick action, intelligent action, and using the resources that we have, and that is, the so-called private purveyors. They are far from private purveyors. They are not manufacturing chewing gum; they are using a gift which God has given to this Nation. It is everybody's responsibility to use that in the best interests of the public. This is the responsibility, it seems to me, of this Legislative Committee -- to make sure that is done. As a matter of fact, I think this is a good beginning. It should be a happy note for the people of this whole area, that this Committee has come down here today and has taken a first-class look at this whole situation. I have great faith that we are going to see real action come out of this Committee.

ASSEMBLYMAN FLYNN: Mayor, I have a question. You are basically saying that neither of the plans which have been put together are acceptable to your town; is that correct?

MAYOR OTLOWSKI: That is correct.

ASSEMBLYMAN FLYNN: In other words, neither the court-ordered plan nor the Wehran Plan?

MAYOR OTLOWSKI: That is correct.

ASSEMBLYMAN FLYNN: What action would you want this Committee to direct the DEP to do? To try to draft another plan?

MAYOR OTLOWSKI: I think they should draft another plan immediately to get them out of there. That is the first thing. The second thing the DEP has to do after we get them out of there is to have a plan to clean up the site together with the EPA, using Superfund money and the cleanup money. It needs to be cleaned up, once and for all.

ASSEMBLYMAN FLYNN: This site is the number-one site in Middlesex County on the State list, and it is also the number four on the State of New Jersey list, so it is very high up on the Superfund list of priorities. Your feeling would be to try to eliminate them—

MAYOR OTLOWSKI: (interrupting) Get them out there and then use this money.

ASSEMBLYMAN FLYNN: (continuing) —and then use the Superfund money to do the cleanup, rather than go with either of the existing plans?

MAYOR OTLOWSKI: Right.

ASSEMBLYMAN FLYNN: Where would you propose the condemnation moneys come from?

MAYOR OTLOWSKI: As a matter of fact, I think this is something for the three legal departments to sit down and work out--

ASSEMBLYMAN FLYNN: (interrupting) It is premature at this time?

MAYOR OTLOWSKI: Right.

ASSEMBLYMAN FLYNN: Then we won't get into that yet, at this point. Does anybody else on the Committee want to ask any questions along those lines? Isn't Albert Seaman going to be able to be here?

MR. SEAMAN: (from audience) Here I am.

ASSEMBLYMAN FLYNN: Great. He is very knowledgeable in this area, so maybe I will call on him next.

MAYOR OTLOWSKI: As a matter of fact, I think it is generally known that Albert Seaman is still representing us in Judge Furman's court, but I don't want to get into that because Albert Seaman has a very nasty temper and everytime we get into the business of that suit, we get into violent arguments because he tells me that I am not a lawyer.

ASSEMBLYMAN FLYNN: Thank you, Mayor. And incidentally, if you, Mayor McCormack, Mayor Azzarello, and anyone else who testifies today, want to amplify your comments, or if you have prepared comments, we would be happy to receive those, either at my office or at the Committee's offices. In addition to what you have testified to today, you can mail to us any other comments which you may have.

Thank you, Mayor.

MAYOR OTLOWSKI: Mr. Chairman, thank you very much. Members of the Committee, thank you very much.

ASSEMBLYMAN FLYNN: I would like to call Albert Seaman. Albert is the attorney who was involved in the court suit; he probably knows as much as anyone about the court action. He is a highly regarded attorney from Perth Amboy.

ALBERT W. SEAMAN: I would just like to make a note that there is no water on the table and I understand why. (laughter)

ASSEMBLYWOMAN WALKER: There is no water up here either.

ASSEMBLYMAN FLYNN: The other day I had a meeting in Perth Amboy and they were using bottled water.

ASSEMBLYWOMAN WALKER: Is that right?

ASSEMBLYMAN FLYNN: You have the floor, Albert.

MR. SEAMAN: I am not as nasty as I am frustrated. I am frustrated because, as a lawyer, I know that civilization depends upon the operation of the law. It is the one thing which keeps us alive.

We have a court action, and I am the last of the Mohicans because the attorneys-- Madison Food Industries, or whatever, were represented by Senator Lynch, who has retired from the case. The attorneys from CPS have been replaced and I understand there is some sort of a malpractice suit against them. Judge Furman has gone to greener pastures, as has Judge Cohen. From the Attorney General's Office, Steve Gray has gone into private practice; Rebecca Fields, his associate in the case, has returned to some other branch of the Attorney General's Office. So, I am sitting here with my hand on my frustration and waiting for the law to have action and to become a meaningful process.

The judgment of Honorable Judge Furman is an order in which, I think, the State is in contempt. They have a judgment that they could settle for one dollar and then have to explain to the world why they took a dive and let this ruinous thing happen without availing themselves of a judgment of remedy. The court rendered a remedial action, or whatever the Mayor and I refer to it as — whether it would be a "Rube Goldberg," which was one of my expressions, which dates me, or, as the mayor says, an upside-down pyramid, which I heard for the first time today.

Allow me to quickly run through it and patronize you, because I want to be sure you understand where I am coming from. This watershed is a natural phenomena, where the waters from the heavens come into this sponge and are somehow stored below in what was generally referred to as the Old Bridge sands. How this terrible thing happened-- And, of course, I made a complaint on deceit, misrepresentation: Madison Foods — who in the hay would ever think that a food company would make poison and poison our water?

Then we have CPS: Control Pollution Science. Isn't that a wonderful thing? Well, the pollution science became the opposite of what their deceit was, and they put upon this watershed — this natural blessing for sustaining life -- these offensive plants. I don't know of any remedy that has been invoked, as a result of this judgment, to stop the ongoing cancer. This is the primary site; this is the place that cancerized, metastasized with its spreading cancer, this watershed.

Now, okay, Big Daddy owns the water, so the big State pushes us aside and says: "We own the water; you only have diversionary rights; we are going ahead." They went ahead. I am an old man and I sit back, and maybe I make stupid judgments, but my observation is that you have Mr. Steven Gray, who did a nice job, but this was one of his first affairs, and the case lasted a number of weeks. They were very zealous and held their hands close to the breast. They would make available to us their proof and so forth. They wanted to do it their way, which they did.

The judgment was obtained -- somewhere in the neighborhood of $5 million -- to get this correction. Judge Furman sought his own expert. When I gave out a wail of a cry that I didn't want to pass on the judgment to a professional outfit -- rather than have the judge make his judicial call of the case, based upon the evidence of a contested action, where we would bring our experts, they would bring their defense experts, and then you would decide to have none of that -- he went out placating me that I wouldn't have to pay, the city wouldn't have to pay. The expert, the offenders, would. And they did pay the experts. This tremendous plan was submitted.

While I was a wise guy and called it a Rube Goldberg plan, I think I had in the back of mind that this place was beyond salvation. Be that what it may, they came in with what was proposed to be the bathtub effect: digging this thing down all the way till it hit the clay bottom of the Farrington Sands, which I understand is something like 400 feet below the surface of the present land topography. Then they would seek to use the clay as the bottom of the tub and put in this slurry wall, which is a new thing. It consists of certain compositions of soil and stuff that are supposed to be impervious so the pollutants wouldn't get out and flow down.

When you put up the ring around this bathtub effect, and you contain all the pollutions within the bathtub, the next question is, how do you get rid of it? There was some talk during the trial, and witnesses were produced, that the Middlesex County sewage system, or something like that, would take it, if its content was not offensive. How are you going to get rid of it now that you contained it?

That was part of our problem. The other part of the headache is that if, in this plan, which was proposed by Judge Furman's experts, and which he accepted and based his judgment upon, they were to siphon or take off all this material and somehow process it -- waste here is created here; it is the source of the cancer -- and then take this cancer and try to dump it on some other place, some way, either in a liquid or a softened form, this is a problem.

While I am shooting here from the hip and talking, these random thoughts occurred to me: The testimony was there by the

experts, that they couldn't guarantee if this plan came out the way they wanted it to be, that we would still get potable water; we would have to drop the standards to make it potable. So, all right, we have the bathtub; we are supposed to get the junk off. That is fine for me, but I can't stand what is happening to us. This plan proposes that they are going to build upon our watershed a building to process this water and stuff.

I know Old Bridge would like us to get out of Old Bridge and get lost. But, that is not the problem. The point of it is that this water that is going to be processed on our land— Who gives them the right to take our land? Who puts a building on it? And loving Old Bridge will not shut off a road, which is a source of abuse of our property and which you don't need along the railroad there. This is a watershed that may benefit you because the pollution has to be going through our water to pollute your water down the lines. You have to know that beyond this bathtub there are already so-called plumes of the stuff that are out of the barn — the horse that is out of the barn — and is already floating down and beyond the bathtub which is supposed to correct. So, we sit on our frustrations all these years, and now we come up with a bright new idea that we are going to do it for less and we are going to do it better. To the better means that we are going to do some kind of horseshoe or something with an open-end upgradient. This stuff is supposed to come down here; they are going to pump it away, or whatever. If I were sitting on a $5 million verdict, I don't think I would settle for $2 million unless I had some good causes. It is possible, but I don't know why.

I don't know why it is taking so long for the State to exercise its judgment. Presumably you, the people— I don't know who the State is; the DEP is not something apart from the people, apart from the law, or above the law, so how have they explained themselves as to why they have sat on their duffs and done nothing?

I must tell you this: We — the City of Perth Amboy — have a judgment for $100 thousand, which they haven't paid, and I suppose I have to go execute against their trucks or something else, or find out what is in their name, and try to torment them until they pay. But we

have all kinds of promises for the payment, and it is supposed to be forthcoming, but we still haven't seen any of the green yet.

Aside from that, Perth Amboy has a judgment which the judge didn't see fit to give to us, in dollars, but said to clean out a certain part of our land; the cost was estimated to be in the neighborhood of $600 thousand. But the State was to oversee the expenditure of that money. In other words, the court didn't see fit to trust Perth Amboy; maybe we are going to use the money for cops, or teachers, or I don't know what. He gave it to them, but it is our money. We haven't seen any of that. So really what happens is, we are the tail trying to wag the dog, and we aren't getting anywhere because we don't seem to have what I would consider intelligent direction. We have a formal court judgment. I think there is contempt of the court.

Now I have come here and I don't know what the program is today; I am just shooting my mouth off, just to give you some of my feelings about the matter and where we are coming from. We have a judgment; the judgment by Judge Furman was: Let this program of correction, remedy, go in, and be enforced; then, Seaman or City, when you find out what your damages are, after you get remedies or some relief, then we will clear the atmosphere and see what you suffered as residuals. So here I am to bet those odds. The pollution continues. There is no stopping of it, as far as I know. Business is as usual. We are hogtied because we are tied in with Big Daddy, who owns all the water in this State. So we only have diversionary rights. But it is still a property right. So, we are locked in. If I am elected, I promise a chicken in every pot. (laughter)

ASSEMBLYWOMAN WALKER: That is a good line. I think I will use that.

ASSEMBLYMAN FLYNN: I have some questions. You have your judgment of $5 million plus—

MR. SEAMAN: (interrupting) Whatever. Plus interest, I would assume.

ASSEMBLYMAN FLYNN: (continuing) Just so I can understand, is it a monetary judgment or is it a judgment that they have to do certain things that cost—

MR. SEAMAN: They have to do something, and the cost was estimated to be $5 or $6 million.

ASSEMBLYMAN FLYNN: So it is in the nature of a specific performance type of judgment?

MR. SEAMAN: Right.

ASSEMBLYMAN FLYNN: Okay. I am trying to understand whether you want this judgment enforced or whether you don't. Mayor Otlowski is not too happy with the end result. He doesn't think it is enough.

MR. SEAMAN: I think we tipped you off how we feel about the matter.

ASSEMBLYMAN FLYNN: In other words, do you think it should go far beyond this?

MR. SEAMAN: No, I am American, even if I am not from Texas. As an American, I believe we have a court judgment that ought to be enforced or vacated. That is all. Why are we standing here running in place? We aren't getting anywhere. We have a judgment. How do you enforce a judgment? I am not the State. I am the tail. That is my beef. The DEP ought to do something.

ASSEMBLYMAN FLYNN: What I am trying to get at is that the Mayor doesn't seem to think he wants the judgment enforced as is.

MR. SEAMAN: I think the Mayor is right, as he usually is, and I am wrong. That is for posterity, of course. Nobody is listening. The Mayor, I think, is realistic when he says that this ongoing "'til death us do part" process, this cancerous-making mechanism is there. The most practical solution would be to remove it, but we would still have the metastasis that they left. So if you cut out the primary source, you still have to deal with the metastatic course, which is the spreading cancer; it is ongoing.

Now, if I can relate and make it the way I have my own experience, you go to the source of the cancer and destroy it and then run like hell to try to catch the metastatic cancer which is going downgradient. You people have to realize that your problem of creating water or collecting water, and just the mechanics-- You probably know this, but I will impose upon your time. The water comes from the heavens and goes into this sponge. So Old Bridge wants to become L.A.

or London or something, as the largest metropolis in the world, by building buildings. The roof collects the water; it goes down the drain into the sewer and into the bay. It doesn't get into the water, the aquifer, where it has to be recharged with this water from heaven, which is probably acid rain and everything else, but nobody cares. So, if this water comes down into our aquifer, we collect it in the sands.

Of very great concern to me are the following questions: What is the life of our water system? How long can we rely upon this? Is this a forever thing? Will it ever stop or will we overdraw? You know the mechanics of the horror of the Farrington Sands. You people draw the water off like crazy and you create a vacuum -- I learned in high school science that nature abhors a vacuum -- and then salty water comes from the South River in through the little rivulets. And we don't have any hands to use little fingers in the dike to stop the inflow of this water, so the Farrington Sands have been raked by the overdraft. It comes in through this place and now you have saltwater in your Farrington Sands. It is irrevocable. You can't plug up the holes in this Swiss cheese of soil that permits the flow. The more you draw, the greater the downgradient going down toward you and past you in Old Bridge is -- the ruined and wonderful blessing of Farrington Sands. Now we are talking about Old Bridge sands with these pollutants. If the Mayor says to get them out, I'm with him. In the meantime, what do we do about the metastatic cancer?

ASSEMBLYMAN FLYNN: That is what I am trying to drive at. Getting them out may be an ideal ultimate solution, but it may not be the short-term solution.

MR. SEAMAN: The terrible problem of this is, if it took them four years to get to nowhere, where do we go with the condemnation?

ASSEMBLYMAN FLYNN: Exactly. What I am thinking is: We have a plan -- Plan A, the plan that the judge had drafted--

MR. SEAMAN: (interrupting) You, as a lawyer, what do we do with it? Do we sweep it under? Do we let the layman in Trenton put it under the rug?

ASSEMBLYMAN FLYNN: Hear me out. We have Plan A; now we have Plan B, the Wehran Plan, which the DEP, I guess, is favoring.

MR. SEAMAN: In Perth Amboy, we call that the "shove it" plan.

ASSEMBLYMAN FLYNN: Now this body could theortically do a lot of things. One of the things this body could do would be to direct a specific plan to be implemented.

MR. SEAMAN: How can you fool around with the judgment? You vacate the judgment.

ASSEMBLYMAN FLYNN: From what I have heard today, though, Perth Amboy doesn't want Plan A, the judgment, to be implemented.

MR. SEAMAN: I am still a lawyer. I don't care what the Mayor says; we have a judgment. I am part of that judgment.

ASSEMBLYMAN FOY: I have a question.

MR. SEAMAN: (interrupting) How do you vacate a judgment?

ASSEMBLYMAN FOY: Mr. Seaman, I have some questions. Since you were intermittently involved with the litigation, I want to fully understand it, in the context of the correspondence that has been provided to the members of the Committee. I have a letter dated November 29th from Mrs. Hoffman to Mr. Gaston of DEP in which point three of her letter indicates that primary responsibility must remain with DEP, as stated in the court-mandated plan. Is it a fact that the judge said the DEP would be responsible for this cleanup?

MR. SEAMAN: Yes, sure. Judge Furman used to be an Attorney General. This action is by the Attorney General. The identity of whatever process his thinking was, he trusted them to do it. But he isn't the A.G.; he is just a judge now. If he were the A.G., maybe we would have a forceful movement of this judgment.

ASSEMBLYMAN FOY: But within that judgment, in the court orders, DEP was assigned the responsibility for this matter; is that correct?

MR. SEAMAN: You bet.

ASSEMBLYMAN FOY: The second sentence says: This is the opposite case in the Wehran Plan, with primary responsibility shifting to the industries which have been proven to be the polluters of this site. Where did DEP get its authority to modify the judgment? Did they go back into court and seek a modification of the judgment?

MR. SEAMAN: That is kangaroo law. I don't understand that. I don't know how they can do that.

ASSEMBLYMAN FOY: They have a judgment which directs them to do certain things.

MR. SEAMAN: Right.

ASSEMBLYMAN FOY: And to assume responsibility pursuant to the court order. The impression that I get from this is that there is now a shift in terms of what the consent order is, allowing the responsibility to go to the polluters. Is that correct?

MR. SEAMAN: For whose accommodation?

ASSEMBLYMAN FOY: I assume for the accommodation of the people who polluted this site. I mean it's not the fox in the chicken coop; that is giving Dracula the key to the blood bank. (laughter)

MR. SEAMAN: I am with you.

ASSEMBLYMAN FOY: In response to that, Mr. Gaston sent a letter in which he says, "In response to your concluding paragraph, let me indicate that the Department is unwilling to modify its position with respect to point three of your letter." They are simply not willing to adhere to the court order. I hope somebody is here from the Department because I have rather pointed questions about how you can go about overturning a court order.

MR. SEAMAN: Get Ralph Nader on the phone.

ASSEMBLYMAN FLYNN: Albert, one thing: the DEP was a plaintiff and Perth Amboy was a plaintiff; is that correct?

MR. SEAMAN: You bet.

ASSEMBLYMAN FLYNN: In answer to Assemblyman Foy's question, a plaintiff can also agree to take less than what the court ordered.

MR. SEAMAN: For his part of the case, not my part.

ASSEMBLYMAN FLYNN: Exactly. Do you have an affirmative judgment on that aspect of the case?

MR. SEAMAN: Sure. My damages haven't been awarded. It is subject to this remedial action.

ASSEMBLYMAN FLYNN: The DEP couldn't really do anything in terms of modifying the judgment in terms of Perth Amboy's consent is your position?

MR. SEAMAN: They might have to answer to the people.

ASSEMBLYMAN FLYNN: Well, forget about that for a minute.

MR. SEAMAN: That's the trouble. They have been forgetting about the people.

ASSEMBLYMAN FLYNN: Just forgetting about that, they have to answer to a court. In order to modify a judgment, they have to get consent of all parties who were prevailing parties in judgment.

MR. SEAMAN: That is what they are requesting. They are requesting a modification of the judgment. What is the prudence of that?

ASSEMBLYMAN FLYNN: Have they done that officially?

MR. SEAMAN: They are trying to.

ASSEMBLYMAN FLYNN: Is there a motion pending, for example?

MR. SEAMAN: They are threatening.

ASSEMBLYMAN FLYNN: That is the legal way they are getting about doing this?

ASSEMBLYMAN FOY: Just so I understand the context in which this is occurring, and I haven't read all the papers in litigation, but I am operating on the--

MR. SEAMAN: (interrupting) You would have to take off a long time to do it.

ASSEMBLYMAN FOY: (continuing) assumption -- and if my assumption is incorrect, let me know -- that when the judgment was issued, the court ordered that DEP was responsible for devising and supervising a cleanup plan. Under that assumption, DEP would let the contracts to appropriate contractors and arrange for a cleanup. What I understand to be the consent-order issue is that they are saying to the people who polluted it: "Okay, come up with a plan and we will oversee your cleaning up of this site." Is that correct?

MR. SEAMAN: I am not quite sure of this, but I think that the defendants have concocted this plan.

ASSEMBLYMAN FOY: And the DEP is willing to go along with it?

MR. SEAMAN: I think so. I hope I am not misquoting, and I certainly don't do it out of malice, but I think there was a court plan, the judgment; there was some modified plan by-- I think the

State hired somebody that even wanted to enhance the first plan. Then we got the lesser plan: heaven.

ASSEMBLYMAN FOY: But under the lesser plan--

MR. SEAMAN: (interrupting) The Worrington Plan or Warrington Plan? I don't know.

ASSEMBLYMAN FOY: (continuing) But under the lesser plan, the people, who are going to be hired to clean the place up, are going to be hired by the people who polluted the place in the first place. Is that right?

MR. SEAMAN: I don't even want to hear that. That is so ridiculous. I don't want to admit that I was even around when that sort of thing was happening.

ASSEMBLYWOMAN WALKER: But that is a fact?

ASSEMBLYMAN FOY: That is what I understand from the correspondence that I have received.

MR. SEAMAN: To separate the men from the boys, that's all.

ASSEMBLYMAN FOY: Thank you, Mr. Seaman. Thank you for spending the time with us.

MAYOR OTLOWSKI: (from audience) Would you also give us the kindness and extend the courtesy to hear our consultant, who has been the consultant for Perth Amboy for over a decade?

ASSEMBLYMAN FLYNN: Certainly.

MAYOR OTLOWSKI: Would you let him testify to give his views?

ASSEMBLYMAN FLYNN: Yes.

MAYOR OTLOWSKI: Charlie Robinson.

CHARLES ROBINSON: My name is Charles Robinson. I am a professional engineer in the State of New Jersey. I have been consulting engineer for the City of Perth Amboy since 1970.

ASSEMBLYMAN FLYNN: Charles, were you working with Mr. Seaman on this case?

MR. ROBINSON: Yes, sir.

ASSEMBLYMAN FLYNN: Okay. Sit down and tell us what you can about this.

ASSEMBLYWOMAN WALKER: Or stand.

MR. ROBINSON: I would rather stand, if you don't mind.

This problem began down there in January of 1970 with the detection of zinc — uncommon concentrations of zinc in Perth Amboy's water mains.

ASSEMBLYMAN FLYNN: Zinc in the water mains themselves?

MR. ROBINSON: That's right. We started to look around, naturally, as to where the zinc came from. We started suspecting that perhaps these industries were causing this. DEP did come in and run testing, between 1970 and 1973, as did we. The first DEP report was published in 1973 and dealt mainly with inorganic compounds, such as your heavy metals, as did our investigations. These tests pointed out, without a doubt, that that material was coming from the industrial complex.

ASSEMBLYMAN FLYNN: From the two industries we are talking about?

MR. ROBINSON: At that particular time, we had sort of identified Madison Industries, which used to be Food Additives, as producers or users of inorganic compounds, and then CPS Chemical later, as organic compounds. But the concentration was on the heavy metals, the inorganic compounds.

After the report, during the study phase, the city was ordered in March of 1971 to shut down the first six wells in the system. These were vacuum wells. Ladies and gentlemen, who were out there this morning walking along the road, it is the well line that was close to Madison Industries. The first six wells along that line were shut off in 1971. More studies were done. Our firm did a comprehensive study to see whether, in fact, these materials were coming from the industrial complexes. So, very simply, and with a little common sense, we hope, we installed some wells and observation points upstream in the groundwater tables of these two industries, and then others downstream. We found, beyond a doubt, that wells upstream were clean and the ones downstream were dirty, so to speak.

In March or April of 1973, we received orders from the State DEP to shut down the rest of the well lines, which is that line that runs from Madison Industries all the way back to the water treatment plant.

In our study, we discovered that there were tremendous concentrations of heavy metals, including mercury, cadmium, and zinc. Those were the three metals that we targeted as tracer metals for this investigation.

We also went down below Prickett's Pond. Prickett's Pond is a pond that Perth Amboy dug in 1972. The purpose of that pond was to supply groundwater recharge for those wells along the road, the one you walked along this morning. Thank goodness, Prickett's Pond was constructed; it acted as a sink, as a collector for the surface, and it transported materials out of the industrial complex. We took samples down to the depth of that pond, and we found literally tons -- something like 27 thousand cubic yards of material -- at that particular time.

ASSEMBLYMAN FLYNN: Twenty-seven thousand cubic yards?

MR. ROBINSON: Of material.

ASSEMBLYMAN FLYNN: Of metal?

MR. ROBINSON: Of material. This is a sediment that went to the bottom. These sediments contained concentrations of zinc, mercury, and lead up to very high levels. I am talking in the hundreds of parts per million.

We also went down below Prickett's Pond and we checked Prickett's Brook, downstream. We found the same situation there. Then we went downstream below that, into the low end of Tennent's Pond. Tennent's Pond is, historically, the big recharged basin impoundment for the city's water supply system. We went there, down toward the dam. Prickett's Brook runs into Tennent's Pond, down at the lower end, and then runs over a dam, and runs down to the South River. We found high concentrations of lead, zinc, and cadmium at that time too. This sets up the story, as far as the inorganics go.

The organic testing was done mostly by the State and by, as I understand it, the consultant for the port, which was Dames & Moore. The Dames & Moore Report, which is quite voluminous, gives map after map showing concentration levels of inorganic and organic compounds in the area. They found that the organic compounds were indeed down toward Prickett's Pond and traveling down, dipping towards Tennent's Pond.

The court case went on to, let's say, 1980. The Dames & Moore Report was dated 1980. After the trial with Judge Furman, a plan was accepted by the court to go in and clean up the area. Basically, what this plan did was to construct a slurry wall all the way down from the surface, all the way down to the fluid and pump it out, purge it out slowly, gradually, treat it, and put the waste to sewer.

The problem we have today, and the problem of the three municipalities, which you heard from the CAC, is an argument which says: Shall we take the Dames & Moore Report, or should we accept the modified report which was prepared by the industries? An argument has come up about this. We have examined in detail reports of Wehran Engineering; we have examined in detail the report by Dames & Moore; and we have examined in detail the report of CH2M Hill who was hired by DEP to evaluate the other reports.

Our problem with advising the city in not adopting the report as prepared by Wehran Engineering has many facets to it. Reading the report, we are not comfortable that the assumptions made in the report, without backup, are true. They are done by mathematical modeling, under, what we call, unknown conditions. We fear that our watershed to the south, the Tennent's Brook watershed, where we have new replacement wells, will be polluted. We fear that not knowing exactly where this pumping is taking place and at what capacities and what volumes it will be done, there is definite, definite danger to the Sayreville Water Department. The closest well, I think, is about 700 feet from the site where we know there were heavy metals.

This brings up another problem. I attended one of the CAC committee meetings, and the Wehran Plan was being presented. Testing had been done, in the meantime, in Prickett's Pond, again, to detect the levels of metals in the pond. The reports came out that the lower two-thirds of Prickett's Pond was no longer polluted. This may be true. This may be true because metals will transport out of your aquifer and go downstream. The question was asked: Where do the pollutants go? Out of total frustration from this whole thing, I am going to say this: The answer was that this is out of our study area; if you want to sue someone, then you can go sue them too.

ASSEMBLYMAN FLYNN: Who said this to you?

MR. ROBINSON: One of the State representatives; I don't remember.

ASSEMBLYWOMAN WALKER: From DEP?

MR. ROBINSON: It may have been the attorney. I don't know because I didn't know the gentleman at the time.

ASSEMBLYMAN FLYNN: Would you have notes on it that might reflect who is taking this cavalier attitude?

MR. ROBINSON: We are being asked to accept the Wehran Plan. Our problem is: We cannot accept the Wehran Plan because we don't have enough information to evaluate it. A lot of assumptions are made in that plan.

ASSEMBLYMAN FLYNN: Do you know if the DEP itself has evaluated the computer model that the Wehran Plan used? The independent evaluation?

MR. ROBINSON: No, I do not. I would think not.

ASSEMBLYMAN FLYNN: We will try to find that out today. What basically, then, is your position, in terms of whether the original court-ordered plan should be enforced, or if there should be a modification of that, but not the Wehran Plan?

MR. ROBINSON: Well, now I am going to give a personal opinion of what--

ASSEMBLYMAN FLYNN: (interrupting) Your professional opinion?

MR. ROBINSON: My professional and personal opinion. I have been down there so long, it seems like home. One of the things that I can't understand, but, perhaps, I just don't understand things like this, but, we -- DEP and the City of Perth Amboy -- went to court, and we won. We got a judgment. The judgment was for some $5.4 million. It then was appealed.

ASSEMBLYMAN FLYNN: That $5.4 million is the equation, as to what it would cost to do the job?

MR. ROBINSON: Right. Under the Dames & Moore court-ordered plan.

ASSEMBLYMAN FLYNN: Does it ever mention the figure?

MR. ROBINSON: You have to add up all the figures and it comes to about that. It is in different paragraphs.

ASSEMBLYMAN FLYNN: But that would have been in 1981 dollars?

MR. ROBINSON: Right.

ASSEMBLYMAN FLYNN: So maybe today, you might be talking about $8 million.

MR. ROBINSON: Right. The case went through the Appeals Court. Judge Cohen signed the final order on June 14, 1983. In the meantime, of course, we were told that the reason for adopting the Wehran Plan is that it will work faster and be better. It may be, but we are not convinced. We are not convinced by what was said in the Wehran Plan -- what was technically said. We are concerned, that once it gets in there, it is going to be one of these "well, we will figure it out, after we get going" plans. What we are concerned with is the increase in pumping in that area, which may affect Sayreville, ourselves, and our new well system. This is why we can't accept it.

ASSEMBLYMAN FLYNN: Where would you go from here?

MR. ROBINSON: If I had a choice right now, based upon what we have evaluated, I would take the court plan. However, DEP employed CH2M Hill to review these reports, and they wrote a report. There were recommendations in that report that said more work has to be done, and they gave some recommendations on what should go.

ASSEMBLYWOMAN WALKER: Mr. Chairman?

ASSEMBLYMAN FLYNN: Yes.

ASSEMBLYWOMAN WALKER: Do you have thoughts on another alternative?

MR. ROBINSON: No.

ASSEMBLYWOMAN WALKER: You don't have another plan?

MR. ROBINSON: No, because that is all we have evaluated. We have never really looked into a plan unto itself.

ASSEMBLYMAN FLYNN: What did the Hill Report say? Or were they saying that they need more information before they can say anything?

MR. ROBINSON: Logically so. If you think about when the pollutants were mapped at that time, prior to 1980, and here we are in 1985, it obviously moved. I think this is probably one of the points

that CH2M Hill was making: that before you go in and start putting walls and wells down and saying "We hope we have hit it," it would be nice to know that you have, and that you are in the right ball park.

ASSEMBLYMAN FLYNN: Is there a time-lag problem, though, that no matter when, somebody else would do a new study and get new information, and by the time they put that study together, there would be a change again?

MR. ROBINSON: I can see going in and finding that the wells are out. It is not a problem of drilling a lot more wells, but I can see going out and re-identifying that.

I like the court-ordered plan over the Wehran Plan because the court-ordered plan leans toward lighter pumping. You have to understand that there are three watersheds on the city's 1,300 acres. The smallest ones are about a mile to a mile and a half -- one and a half square miles in area. The others are eight square miles and sixteen square miles. This is just a small portion. We have relocated the wells that we lost, not just the ones along that road, but pumped wells as well. The city has spent over $1 million in the last year and a half, just to relocate those wells. Those wells are put into the next basin, outside of any influence of the pollution that is there now, but we have to be assured that whatever is done in the pumping and whatever is done in the excavation of the relocation of streams, or anything else, that it is not going to bring pollution into our new well field area. That is the point. And, this is our big concern.

I still want to emphasize again that I think that Sayreville is in an equally dangerous situation.

ASSEMBLYMAN FLYNN: If you were sitting on this Oversight Committee, what would your recommendations be to do here?

MR. ROBINSON: As I understand it, we went in and won the first court case. The award was $5.4 million. As I also understand it, it went through the Appeals Court. And, as I also understand it, the Appeals Court lifted the monetary limit.

ASSEMBLYMAN FLYNN: This $5.2 million? The Appeals Court came up with a figure of $5.2 million?

MR. ROBINSON: They removed all of that. They said, "whatever has to be done to clean it up."

Just as a business person, if I were to make a choice, going into this thing with what we know right now -- taking $5.2 or $5.4 million or what it takes to clean it up -- I would take what it takes to clean it. I don't understand why the push is for reducing that to the Wehran Plan.

I must say this: We have not been in contact with DEP during the review -- we have received copies -- of the Wehran Plan or the State plan, for that matter. There has been no contact.

ASSEMBLYWOMAN WALKER: You haven't contacted them, or they haven't contacted you?

MR. ROBINSON: There has been contact at field levels -- no problems there. But, we just have never been told what was going on.

ASSEMBLYMAN FLYNN: Getting back to my question, what would you do?

MR. ROBINSON: I would take the court-ordered plan and go with the judgment and the lifting of the monetary amount by the Appeals Court. If I really had a choice, I would get the industries out of there, but I am talking about--

ASSEMBLYMAN FLYNN: (Interrupting) What is doable soon?

MR. ROBINSON: Yes.

ASSEMBLYMAN FLYNN: Are there any other questions from any members of the Committee? (no questions)

Thank you, Mr. Robinson.

MR. ROBINSON: Thank you.

ASSEMBLYMAN FLYNN: I noticed that we had some other elected officials here. They have been in and out. Are there any other elected officials who would like to testify? I know Councilmen Maher, Dunlop, Haney, and O'Malley were here.

ASSEMBLYWOMAN WALKER: Councilwoman Cannon was also here.

ASSEMBLYMAN FLYNN: I did not see Barbara Cannon. Councilman Dunlop, I know you are here and are interested; I am going to give elected officials an opportunity to testify, if you want to speak; if you prefer to sit and listen, that, too, is your option.

Next, I would like to introduce Blanche Hoffman, Chairperson of the Old Bridge Environmental Commission and Chairperson of the Task Force.

BLANCHE HOFFMAN: I have prepared information that I would like to share with you as part of my testimony. (distributes written testimony)

ASSEMBLYMAN FLYNN: Now, you have given us, in concise chronological order, chapter and verse of this whole episode. I appreciate this as do, I am sure, all the Committee members. I am sure some of the Committee members, being unfamiliar with the problem, are somewhat confused as to the chronology of events. This shows it in a clear, succinct manner. You are to be commended for your efforts. From what I gather, you spent hundreds of hours on this problem.

MS. HOFFMAN: Thank you. First of all, I want to say that the current gridlock could have been avoided--

ASSEMBLYMAN FLYNN: (interrupting) Gridlock -- that is a good word.

MS. HOFFMAN: Thank you. (continuing) --had DEP worked with the community and industry to find a solution, instead of pressuring the community to accept industry's plan for cleanup. The fact that the companies have been indicted and no cleanup plan has been implemented by DEP is a grim indication that the current planning within DEP has not been effective.

The information I gave you has been broken into four categories. Some of it may be repetitious. I have given you background, some correspondence we have had with Commissioner Tyler, CAC activities from its inception until the current date, and a review of the various cleanup plans.

As far as background is concerned, in 1968, CPS became operational. In 1969, Madison Industries came to the township under the name of Food Additives. They, subsequently, changed their name, and operate as Madison Industries, and most recently, as Madison Chemicals. In 1970, Perth Amboy detected unusual concentrations of zinc in its water. In 1973, the Bennett Suction Line was closed.

ASSEMBLYWOMAN WALKER: Excuse me, would you explain the Bennett Suction Line?

MS. HOFFMAN: There is a line of 32 wells that runs along the road where the contamination came in. That was where the engineers --

when Perth Amboy was doing its testing -- recognized pollution in those wells.

ASSEMBLYWOMAN WALKER: Those were the six wells George was talking about?

MS. HOFFMAN: No. I think they are the 32 wells the engineer mentioned. He can probably explain it a little better than I.

Between the years 1974-76, Perth Amboy found tremendous amounts of lead and zinc in Pricketts's Pond. The Chancery Court case, CPS/Madison Industries versus DEP and Perth Amboy, was filed October 16, 1981.

ASSEMBLYWOMAN WALKER: We have a different date for the institution of that suit. We have 1977.

MS. HOFFMAN: It was decided then -- October 16, 1981, was the decision date.

ASSEMBLYMAN FOY: All right. It was instituted March 16, 1977, so this litigation is about to celebrate its eighth birthday. (laughter)

MS. HOFFMAN: Thank you. In that case, there are several aspects that were resolved that have been mentioned: construction of a slurry wall surrounding the two industries; installation of four maintenance wells; installation of four decontamination and monitoring wells; Prickett's Brook was to be diverted; and there was to be dredging, pumping, and disposing of contaminated sediments of Prickett's Pond.

In December, 1982, the CPS/Madison Industries site was named fourth in the State and twelfth in the nation on the Hazardous Waste Site priority list.

On April 20, 1983, CPS and Madison Industries appealed to the Appellate Court. At that time, the court upheld the Chancery decision; the companies were held jointly and severally liable; and the financial ceiling was lifted.

In 1983, Wehran Engineering and Converse submitted an alternative plan to DEP. The Wehran Engineering Plan was for CPS; Converse was hired by Madison Industries. That plan included a wall one-third of the way into Prickett's Pond; however, the wall does not

surround the two industries, which would be the size of the court-ordered wall. The focus of that plan was to concentrate on pumping -- three pumping wells to capture and control the plume of contamination. The plan also called for the relocation of Prickett's Brook. Further, there was no addressal of the implementation of dredging and disposal of contaminated sediments of Prickett's Pond.

ASSEMBLYMAN FLYNN: Before you go to the next point, Blanche, I have a question. Do you have any idea how the Wehran/Converse plan was generated? In other words, did the companies just go out on their own and say, "Well, maybe we can give the DEP a plan they will go for"? Or did the DEP solicit it from them? What caused them to get these plans?

MS. HOFFMAN: I do not know. You would have to check with the DEP and also with the companies.

On April 20, 1983, there was a meeting in Trenton of the Subcommittee of the Old Bridge Environmental Commission; the Old Bridge Health Officer; and Dr. Sadat, Anthony Farro, Len Romino, and Grace Singer, all of the DEP Hazardous Waste Mitigation Administration. They had given us a copy of a four-year Plan for Hazardous Waste Cleanup in the State of New Jersey by that particular division.

Hazardous Waste Mitigation also notified the representatives that the Division of Water Resources was the lead agency -- rather than them.

On July 13, 1983, there was another meeting in Trenton of the Subcommittee of the Old Bridge Environmental Commission and Director Gaston, George McCann, James Mumman -- all with the Division of Water Resources -- and then-Mayor Kondrup of Freehold Township. At that time, we were officially notified of the two-track system: the court-mandated plan and the Wehran Plan. We asked for a copy of the Wehran Plan at that time; we were told we could not have it.

On August 1, 1983, there was a meeting in Old Bridge of Township officials -- then-Mayor Bush, then-Councilmen Miller, Blackwell, O'Connell and Azzarello -- and from the State, Deputy Attorney General Steven Gray. He was, at that time, assigned to the case; he subsequently left and was replaced with Ronald Heksch and the

DEP Hazardous Waste staff. The names of the people from DEP who were there escape me right now.

At that meeting, we were told of the two-track system. We asked, again, for a copy of the Wehran Plan; we also asked for samples of sediments the State said they had taken. We were told the DEP would send them to us.

In 1984, the DEP had been sampling some sediments. They also notified us that the performance bond could not go below $3 million until they were satisfied with the workability of the plan. In addition, we were told there would be a third-party consultant, who would be paid through the escrow fund, working for DEP to evaluate the performance of the recovery system.

On April 23, 1984, we met with the DEP in Old Bridge. At that time, we were given the (RFP) Request for Proposal for Completion of Contract Documents and Construction Management Services for remedial action implementation for CPS and Madison Industries. A copy of the Wehran Plan was, again, requested. We still have not received it.

ASSEMBLYMAN FLYNN: Did they ever give you a reason why they didn't send it?

MS. HOFFMAN: No. No, they did not. They just ignored that. Ultimately, they told us it was proprietary, and they suggested we get it from the industries. We asked the industries, but they would not give it to us either.

I must say that, at one time, Mr. Schwartz said he would have to talk to us before he could give us the plan. We found that unacceptable. We wanted to see the plan first, in order to evaluate it and ask intelligent questions, rather than have him come down and tell us what the plan included. We never got the copy from him.

ASSEMBLYMAN FLYNN: Wasn't he the lawyer for CPS?

MS. HOFFMAN: Yes.

ASSEMBLYMAN FLYNN: (Reading from Ms. Hoffman's written testimony) "A performance bond cannot go below $3 million." What does that mean?

MS. HOFFMAN: I think you will probably get that from DEP. That is really their information. I am just giving you chronology.

ASSEMBLYMAN FLYNN: All right.

MS. HOFFMAN: In May, 1984, the Citizens Advisory Committee (CAC) was formed. You know how that came about and who sits on it: the three mayors from Old Bridge, Perth Amboy, and Sayreville, and representatives from the three communities. The mayors are ex officio.

In August, 1984, CH2M Hill reviewed the court-ordered plan and made recommendations to DEP. So much for background.

We have also had correspondence with Assistant Commissioner George Tyler.

ASSEMBLYWOMAN WALKER: May I ask a question before you go on?

MS. HOFFMAN: Certainly.

ASSEMBLYWOMAN WALKER: When did you finally receive the alternate plan?

MS. HOFFMAN: In 1984. I believe it was received in late September.

ASSEMBLYWOMAN WALKER: So, a year and two months went by before you finally got your hands on a copy of the alternate plan?

MS. HOFFMAN: That's right. We have been terribly frustrated with the Environmental Commission and, out of desperation, we decided to write letters. We have been writing letters but have not received any response. On May 8, we wrote a letter to Commissioner Hughey; we also wrote to Senator Bradley, and to the new Deputy Attorney General Ronald Heksch expressing concerns over DEP foot-dragging.

On June 13, 1984, we received a letter from Senator Bradley advising us that we would be hearing from the DEP. On July 19, 1984, we received a letter from Assistant Commissioner Tyler in answer to the letter sent from Senator Bradley. Commissioner Tyler stated that we would be notified and consulted prior to the final decision on CPS and Madison Industries.

This is a point on which I want to focus, because, repeatedly, we have tried to make it understood that we wanted to have input at an early stage, before a final decision was made. We were assured that would be done.

On August 29, 1984, the CAC wrote Commissioner Tyler and recommended that the CAC be involved in drafting a plan for remedial

work at CPS and Madison. On September 24, we received a letter from Commissioner Tyler stating that the Division of Water Resources was coordinating all the DEP's efforts in the CPS/Madison Industries matter. He also reassured us that the CAC would be informed of remedial plans before the agreement was finalized. Director Gaston was to work on the mechanics of DEP's interaction with the CAC.

On September 17, 1984, we wrote to Commissioner Tyler, acknowledging that he would continue to act as our liaison with the Division of Water Resources to ensure CAC's role in the decision process. We also expressed hope that Director Gaston would have the mechanics in place within the next few days.

On October 23, 1984, a letter was received from Commissioner Tyler stating he had forwarded our letter of September 17 to Director Gaston. On October 27, 1984, we sent a letter to Commissioner Tyler, inviting him to our November 12 meeting. We advised him that his assurances of a CAC consultation prior to the final decision for remedial work had been breached. We also stated that Director Gaston informed the CAC they would have input only if the court-ordered plan was implemented.

On November 21, 1984, a letter from Commissioner Tyler was received. He clarified the statement whereby Director Gaston said the CAC would be a partner only if the court-ordered plan was implemented. He stated that there was no change in DEP's position. You may refer to his letters of July 19 and September 4, which state that we would have input at the early stages.

A final letter was sent to Commissioner Tyler on December 12, 1984. At that time, we expressed regret at his absence from our November 12 meeting; there he could have reaffirmed the DEP's position regarding the CAC role in the cleanup and could have made everyone aware that the CAC has a participating role with DEP, regardless what plan is ultimately implemented by the DEP.

We feel the CAC has a right and a duty, as representatives of their respective communities, to play an active role in all phases of the process; we feel that our input should be considered in the DEP review of this matter. Are there any questions?

ASSEMBLYWOMAN WALKER: You have been very thorough.

MS. HOFFMAN: This is a complex situation. Cleaning up an aquifer is complex. I really want you to have all the facts, from our point of view.

ASSEMBLYMAN FOY: May I ask one question? Has the company continued to operate during this time frame?

MS. HOFFMAN: Yes, and they are still operating. We took a tour; unfortunately, Assemblyman Foy, you could not make it. We went early this morning. They are operating.

ASSEMBLYMAN FLYNN: Is there any indication that there are continuing pollutants going into the--

MS. HOFFMAN: (interrupting) Well, you would have to check with Perth Amboy, because they are the ones doing the monitoring; you should also check with the DEP.

I will now recount the activities we have had with DEP.

On June 20, 1984, a detail was received from the DEP Division of Waste Management for the court-ordered plan and industry design of the wall. On June 25, we had the organizational meeting of the Citizens Advisory Committee. On June 20, because we were going to have this meeting, I contacted the DEP and asked them if they could give us some information on the court-ordered plan and industry design of the wall -- at that time, we had received it from the Department -- so, at our June 25 organizational meeting, we could look at it and discuss it.

On July 24, 1984, the CAC met with Paul Harvey, who is with the DEP Division of Water Resources and Dave Paley, who is with the DEP Division of Waste Management. They gave us an overview of the plan. The CAC asked for a copy of the Wehran Plan, but we were told it was proprietary. On that same day, Mayor Azzarello wrote a formal letter of request for access to the files in DEP. We wanted to look at the files, and we were told that we would have to submit a letter before they would let us do this. Thus, there were stumbling blocks all along the way. It was almost as if we were an adversary, rather than just an entity trying to make an intelligent review so we could understand the problem.

On July 27, 1984, we wrote to Paul Harvey and Dave Paley thanking them for their participation in the meeting. On August 16,

the CAC representatives met with the DEP Division of Hazardous Waste in Trenton to review the hazardous waste files. On August 18, the CAC received, from Paul Harvey, analyses of groundwater samples that were collected on May 4-5, 1983.

At our August 28 meeting, we met with Dave Paley from Hazardous Waste Management and Mr. Howey, a representative of CH2M Hill. The Department hired CH2M Hill to review and sign off the Dames & Moore court-ordered plan. We were told by Mr. Paley that within six weeks a decision would be made as to which plan would be chosen. At that time, the Department was still vacillating between the two plans: the court-ordered plan and the Wehran Plan.

ASSEMBLYMAN FOY: Let me ask a question, at this point. You were aware of the litigation all along, is that correct? You had a copy of the judge's order?

MS. HOFFMAN: Yes.

ASSEMBLYMAN FOY: Did the judge's order provide that an alternative plan was an option pursuant to that order?

MS. HOFFMAN: No, I don't believe it did.

ASSEMBLYMAN FOY: From where did the alternative plan emanate?

MS. HOFFMAN: I don't know, because I did not develop it. I'm sorry.

ASSEMBLYMAN FOY: Well, all right. Hopefully, we will find out where it came from. I know it came from the companies, but I am trying to determine whether it was solicited by the DEP or whether they offered it as an alternative to the court-order--

MS. HOFFMAN: (interrupting) There are two agencies in the cleanup within the DEP: the Division of Water Resources and the Division of Hazardous Waste Management. When the Division of Water Resources got involved in the cleanup process, I believe, they worked with the industries to develop the Wehran Plan. That is just an assumption.

ASSEMBLYMAN FOY: All right. We'll find out.

MS. HOFFMAN: The meeting of August 28 was fruitful. Mr. Howey made several recommendations to the court-ordered plan; as a

matter of fact, it was the CH2M Hill plan to extend the parameter of the wall and go halfway through the pond. We, again, asked for a copy of the Wehran Plan and, again, received the same answer.

On September 3, 1984, we wrote a letter to Deputy Attorney General Heksch in which we asked for sediment samples that were taken in April, 1984. We also said the CAC agreed with the CH2M Hill recommendation, and that the CAC wanted a cleanup of the sites, not merely containment.

On September 4, we received, from Paul Harvey, a report on sediments that were collected from Prickett's Pond in March, 1984.

We had an internal meeting to set goals on September 18. On September 20, CAC representatives met with Paul Harvey in Trenton to review the files. I am sorry Assemblywoman Walker is not here now. At that time we received a copy of the Wehran Plan. The Wehran Plan was dated May, 1983, so the Division of Water Resources had access and was working with this plan for over a year.

On September 25, 1984, the CAC had a meeting with Paul Harvey during which he gave us an overview. We asked Mr. Harvey if negotiations had started. Of that, he said, he was unaware. At that time, the CAC drew up questions for the DEP. On September 27, the CAC sent letters to Commissioner Hughey describing the make-up of the CAC. We recommended that the CAC implementation plan provide for cleanup, not merely containment. We expressed the desire for a partnership with the DEP in the CPS and Madison cleanup.

On October 12, 1984, a telephone call was received from Director Gaston. At that time, the DEP was working on the language of the agreement with CPS and Madison Industries. It was what they called the COA, the consent order, amending the agreement.

On October 15, 1984, we sent a letter to Director Gaston confirming our telephone call. We expressed concern that the CAC was not contacted before the DEP decision. We also expressed concern that the DEP was negotiating a settlement without addressing our technical questions dated September 25. We also stated that the CAC must have a copy of the COA before our meeting with DEP on October 23.

DEP was coming to our meeting on October 23, and we did not get a copy of the draft letter from Mr. Harvey until October 18 — five days before the meeting.

At our October 23 meeting, the CAC met with Director Gaston, George McCann, Paul Harvey, Dan Toder, District Attorney General Heksch, and Ted Schwartz, the attorney for CPS. At that time, we reviewed the COA. Director Gaston said the CAC was a partner only in the court-ordered plan, not in the Wehran Plan. Mr. Heksch advised the CAC that the DEP was attending the meeting to answer questions and said that if the CAC was unhappy we could take legal action. The CAC asked for another meeting with the DEP, because we had many concerns regarding the consent-order agreement.

On October 27, we wrote to Director Gaston confirming the meeting of November 12 and reiterated the CAC partnership role. On October 29, the CAC had an internal meeting to evaluate the consent order. On November 6, we sent a letter to Director Gaston rejecting the DEP court-ordered agreement, because it would not provide the best cleanup implementation for the site. We attached CAC's comments on the draft of the consent order of June 13.

ASSEMBLYMAN FLYNN: Before you go any further, on November 6, you said you sent a letter to Director Gaston rejecting the court-ordered agreement?

MS. HOFFMAN: No — rejecting the DEP consent-order agreement.

ASSEMBLYMAN FLYNN: The COA is the consent-order agreement?

MS. HOFFMAN: Yes. What it is--

ASSEMBLYMAN FLYNN: (interrupting) I've seen a copy of it. I thought it was court-ordered agreement. COA could be either.

MS. HOFFMAN: No, but that is a good point. I'm sorry.

On November 12, the CAC met with Director Gaston and Mr. McCann. The DEP verbally responded to the CAC comments of November 6. The CAC requested a written response to the November 6 comments, and to letters and questions we posed to them on September 25. The DEP told us that written comments were unnecessary. We told them we needed the information for a meeting of November 27. On November 19, we sent a

telegram to Messrs. Gaston and McCann urging immediate information for the November meeting.

On November 20, a letter was received from Mr. McCann with answers to the CAC questions of September 25, responses to the November 6 comments on the draft of the consent-order agreement, and responses to CAC comments brought up at the November 12 meeting. On November 26, we received a copy of the MCUA's letter to Mr. Harvey. The MCUA also reviewed the consent-order agreement. They said, in the letter, that metering should not be accessible to the industry; pretreatment must be considered; and unless monitoring wells were secured, testing could be meaningless.

On November 27, the CAC met. At that time, the Old Bridge Township Sewerage Authority responded to pretreatment. We had some concerns, and we wanted to know their thoughts on pretreatment. They said pretreatment was a must. We also discussed a copy of the letter of June 21 from the MCUA to Mr. Goldstein in the DEP, which gave conceptual descriptions of the needs -- that is, discharge meets the MCUA requirements for pretreatment influent limits.

We sent a letter to Director Gaston on November 29, advising him of the CAC's rejection of the consent-order agreement, the Wehran Plan. Specifically, we advised him that it did not provide adequate cleanup; there were too many areas which were not adequately resolved; the responsibility must remain with the DEP and not with industry; and unless the DEP significantly modified its position, there would be no further discussion necessary.

ASSEMBLYMAN FLYNN: By using the word "responsibility," Blanche, do you mean more than oversight? Do you mean actually letting the contracts, and that sort of thing?

MS. HOFFMAN: The DEP hires the consultant; the industry does not hire the consultant. The moneys are in escrow, and the moneys by the industries are to pay for this cleanup. It seems foolhardy, however, to have the industries choose the consultant. The financial reponsibility is with the industries; the other responsibilities should lie with the DEP.

On December 6, 1984, we received a letter from Director Gaston reiterating that, if DEP continued to favor the industries' plan, the DEP would not modify its position. We have a bit of rebuttal, because we feel the DEP continues to reject the Wehran Plan. At our October 23 meeting, Director Gaston stated that the COA was developed over several months. The CAC was unaware of the existence of the consent-order agreement until October 12. Even if the CAC would agree with the Wehran Plan, it could not be implemented because it does not have the approval of all the litigants, namely Perth Amboy. On December 17, the CAC acknowledged Director Gaston's letter to tell him that we would be meeting in reference to his letter.

On December 20, the CAC received a copy of a letter sent to Commissioner Hughey from Assemblyman Flynn. At this time, Assemblyman Flynn wanted a detailed comparison of the two plans; he wanted to know why so much time was wasted in implementing the court-ordered plan; he wanted to know why objections were raised to the court-ordered plan; and he wanted to know how the alternate plan would address these issues.

On January 10, the CAC met to evaluate Director Gaston's letter. We reiterated our position; it remained the same; we rejected the Wehran Plan. On January 15, the CAC met to formulate written testimony in preparation for this Oversight Committee meeting. And, on February 4, we sent a letter to Director Gaston reiterating, again, the CAC's position, expressing hope for reconsideration by the DEP and requesting continued monitoring of the site -- which is rated fourth in the State and twelfth in the nation -- because the company was still continuing to operate.

These are the preliminary reviews of the various cleanup plans by the CAC. In the court-mandated plan, Judge David Furman ruled in favor of the plaintiffs, DEP and Perth Amboy, against the defendants, CPS and Madison, on October 16, 1981. This decision was upheld by Judges Bischoff, J.H. Coleman, and Gaulkin of the Superior Court of New Jersey, Appellate Division, on April 21, 1983.

This is a brief summary of the court-mandated plan:

(1) A slurry cut-off wall of bentonite clay tied into a continuous impervious clay layer shall be constructed around the two industries and the contaminated area at the entrance to Prickett's Brook per Dames & Moore.

(2) A maximum of four maintenance wells shall be installed within the walls.

(3) A maximum of four decontamination wells shall be installed outside the walls.

(4) Pumping from the wells will total 700 GPM, or one-million gallons per day, with waste water being sent to the MCUA through the Old Bridge Sewerage Authority's sewer line. If pretreatment if necessary, a plant will be constructed.

(5) Monitoring wells will be installed.

(6) Prickett's Brook will be rerouted to south of the industrial sites.

(7) DEP and/or its contractor shall develop specifications for the remedial measures and submit them to the defendants and Perth Amboy. The specifications are subject to approval by the court.

(8) Perth Amboy is ordered to mechanically and hydraulically dredge contaminated solids from Prickett's Pond and a portion of Prickett's Brook per Dames & Moore, using money from the defendants.

(9) Perth Amboy shall pump out the pond water of Prickett's Pond to the MCUA.

(10) Exposed piles of metals shall be removed within 90 days of the court order.

You saw those piles today.

ASSEMBLYMAN FLYNN: We saw piles today of, I guess, zinc and lead. Is that part of the Wehran Plan? It seems to me that should be something different.

MS. HOFFMAN: No, no. We will come to that. This is the court-mandated plan that was prepared by Dames & Moore.

ASSEMBLYMAN FLYNN: So, the industry has taken the position that they are not going to implement any of the court-mandated plan?

MS. HOFFMAN: No, not quite. We will get to that.

(11) The plaintiffs shall be granted access to the industrial sites based on reasonable notice.

(12) The court established financial responsibility between the two industries and procedure for paying for the cleanup.

(13) The Superior Court, Appellate Division, imposed joint and several liability for all costs against the two industries.

(14) The Superior Court, Appellate Division, extended liability of all costs for the cleanup to the two industries.

The CAC critiqued -- we looked at -- the court-mandated plan, and our comments are as follows.

ASSEMBLYMAN FLYNN: (interrupting) In your last paragraph, do you mean the Appellate Division?

MS. HOFFMAN: Pardon?

ASSEMBLYMAN FLYNN: That last note. Do you mean the Superior Court, Appellate Division?

MS. HOFFMAN: Yes.

ASSEMBLYMAN FLYNN: Because you've got the Superior Court on both of them.

MS. HOFFMAN: That was the Appellate Division.

ASSEMBLYMAN FLYNN: So, we can write in on our copies, "Appellate Division"?

MS. HOFFMAN: Right. The second and third paragraphs really refer to the Appellate Division. It was the Appellate Division that imposed the joint and several liabilities. Okay? And it was the Appellate Division that lifted the cap.

ASSEMBLYMAN FLYNN: Mark that on the official record also.

MS. HOFFMAN: This is the CAC's critique of the court-mandated plan after we reviewed it. We reviewed the mandated plan and the Dames & Moore report with the following comments:

(1) Pumping within the wall area would be at approximately 60 GPM to remove precipitation and industrial losses and maintain the water-table level. This would be, primarily, a containment, not a cleanup. In other words, when rain water falls, this would take care of it. It would not have any impact on the cleanup.

(2) There are data on the stability of the bentonite wall to assure that it will maintain intact and totally contain the contaminants for a long period of time.

(3) Dames & Moore assumed that 10 to 30 displacements would be required to decontaminate the aquifer. There are no data to prove this is true.

(4) Dames & Moore estimated that four years would be required to decontaminate an area 700 x 700 feet outside the wall when pumping at 750 GPM. They estimated it would take approximately 10 years to decontaminate the entire area of 1800 x 800 feet at 750 GPM. They state that all the estimates are approximate.

(5) Pumping must be continued until the contaminants are removed and not limited to the four-year estimates.

(6) The heavily contaminated zone of soil above the water table would not be cleaned up under the court-ordered plan.

(7) Contaminated areas under the two industrial sites will not be cleaned up with the court-ordered plan.

(8) Dames & Moore recommended pretreatment. The court left this up to the DEP, which has ignored this question despite the report by Princeton Aqua Science -- which was hired by DEP -- that stated pretreatment was needed. The MCUA also stated that the water must be pretreated to remove the zinc.

(9) Pumping at one-million gallons per day for four or more years without treatment and recycling is a waste of water in an area where water is desperately needed and where diversionary rights are obtained only with proven recharge. This usage would affect saltwater intrusion in the aquifer.

Now, the Department of Hazardous Waste, I believe, hired CH2M Hill to assess the existing plan and recommend data that was missing and improvements that might be necessary. CH2M Hill reviewed all data available, including the Wehran and Converse Reports. In summary, they recommended the following:

(1) The wall should be extended 400 feet to the west and one-third of the distance through Prickett's Brook to enclose the major contaminated areas. In other words, they were making the wall even greater than they were under the Dames & Moore plan.

(2) The brook should run about 100 feet south of the two industries and discharge into the pond past the extended wall.

(3) Maintenance wells pumping at 90 GPM would be needed within the wall to contain the level.

(4) Decontamination wells would not be needed if the wall was extended to enclose all contamination.

(5) Storm-water runoff from the industrial sites must be designed to prevent contaminants from entering the relocated brook.

(6) Dredging of the pond within the revised wall would not be necessary.

(7) They proposed the following: Tests were needed to verify continuity of clay base layer, to determine compatability of the wall, and to determine whether contamination has spread to the southeast or northwest. In addition, they proposed bench testing for treating leachate.

CAC's review and comments on the CH2M Hill report are as follows:

(1) The enlarged wall enclosing the major contamination would be better than the one accepted by the court.

(2) This method is also a containment with little cleanup within the welled area. CH2M Hill realistically reports that the industry will continue to operate and pollute, and that zones below the industry will continue to release contaminants over a long period of time.

(3) The relocated brook seems to be in agreement with the DEP and the New Jersey Bureau of Flood Plain Management. Together with the slurry wall to the south of the sites and an improved storm-water runoff, contaminants should be precluded from entering the brook and bypassing the cleanup site.

(4) It is regrettable that CH2M Hill did not study pretreatment and disposal of contaminants as part of its first task. CH2M Hill was hired to do about five tasks; after they completed the first one, they were told they would no longer have to continue the others.

(5) The contaminated sludge within the wall should be removed physically and discarded. The remaining sludge should be handled per the court plan. Even CH2M Hill claims the sludge should be removed and discarded.

Now, for the Wehran Plan: We looked at it and at the consent order, and because they were very similar -- you could not review one without the other -- the DEP decided to negotiate a plan directly with the two industries, based on the plans developed by Wehran Engineering and Converse for the two industries. A summary follows:

(1) CPS and Madison shall install a decontamination system based on Wehran Engineering's Addendum Number Two.

(2) This plan calls for a crescent-shaped slurry wall of 1,100 feet running one-third of the way through Prickett's Pond. The purpose of this wall is to reduce the volume of water that would have to be pumped. At this point, I would like to say that CH2M Hill also said the wall should go through Prickett's Pond at this location.

(3) CPS and Madison would relocate the brook to the south based on the Converse consultants report.

(4) Three wells would be established to pump a total of 400 GPM of water. One at the pond would pump 300 GPM; two wells located by Madison would pump 50 GPM each.

(5) Water would be pumped through the Old Bridge sewer lines to the MCUA.

(6) The Middlesex County Utilities Authority shall establish whether pretreatment is necessary to allow zinc to meet discharge requirements. MCUA will review plans for discharge and pretreatment.

(7) Secured metering and sampling vaults will be established for the DEP and the MCUA.

(8) Removal of sediments from the pond will not be required; however, CPS and Madison may re-evaluate the need for dredging.

(9) The zinc pile will be moved to an enclosed structure.

(10) CPS and Madison will initiate cleanup, sample the three wells, monitor at 28 sites, and measure the water level at eight locations. Initial sampling will be frequent, then on a quarterly basis.

(11) Sixty days after startup, CPS and Madison will petition the DEP for modification of the system if data indicates the contaminants are not being contained.

(12) The industries will petition the DEP to terminate cleanup if four sampling periods indicate the groundwater quality meets levels of the Safe Drinking Water Act.

(13) Monitoring will extend two years after termination.

(14) CPS and Madison will seek all permits and will submit final design plans and specifications for DEP approval.

(15) CPS and Madison will select one consultant from a DEP list to evaluate the cleanup performance.

(16) The industry will provide a $5-million performance bond with takedown for construction of $2 million. In addition, they will provide an annual operation and maintenance bond.

The CAC has many comments relative to this plan with the major ones presented as follows:

(1) The DEP has given away its responsibility and decision-making rights to the two parties guilty of polluting the environment.

(2) The CAC feels that the DEP should remain responsible for the cleanup operation and should contract out work to either industry or an outside company as required.

(3) The DEP has allowed the two industries to win what they could not win in court. Acceptance of the Wehran Plan and the financial arrangement is an excellent deal for the two industries that caused the pollution originally.

(4) The Wehran Plan is based on a simplistic computer model using unjustified data and boundary conditions that could spread contamination to the well fields of Perth Amboy and Sayreville, if incorrect. Before the plan is accepted, the DEP should employ an independent consultant to verify the model to the satisfaction of the CAC.

(5) The two polluters should not be the primary parties for taking samples, analyzing data, and recommending changes for the cleanup procedure.

(6) The crescent wall will not prevent contamination from flowing south into the brook or toward Perth Amboy's new well fields.

(7) It is the CAC's opinion that the proposed relocation of the brook selected in the COA is apparently the worst choice of all the plans submitted. This was also noted by CH2M Hill.

(8) The cleanup of zone one, the unsaturated zone, is ignored and the cleanup of zone two will be effectively ignored since clean water from outside the region will dilute samples below the level of detectability. Pollutants will continue to leach out from the contaminated zones after the pumping is stopped.

(9) Dredging of sludges in the pond and brook must be removed mechanically as per the court order, since the contaminants have not disappeared overnight. The COA does not provide for this.

(10) Pretreatment of zinc is necessary, according to the MCUA, and cannot be ignored. Any treatment of zinc should also include the removal of other inorganics.

(11) The CAC feels that organics should also be removed by airstripping or some other method approved by the DEP to allow water to be recycled back to the contaminated site.

(12) The DEP must guarantee that the industries will pay the Old Bridge Township Sewerage Authority fees for use of the waters of the sewer system.

(13) The cleanup should be considered complete when the known plume of contaminants has been completely removed. Soil samples, not only water samples, must be analyzed.

(14) Monitoring must continue as long as the two plants continue to be in operation.

ASSEMBLYMAN FLYNN: Blanche, has--

MS. HOFFMAN: I have some more.

ASSEMBLYMAN FLYNN: Oh, you have more? (laughter) We won't have time to hear from the DEP then.

MS. HOFFMAN: Well, not too much more.

ASSEMBLYMAN FLYNN: They are next.

MS. HOFFMAN: Okay. Now, what did I do with it? (searching through written testimony)

ASSEMBLYMAN FLYNN: Have you submitted your various critiques to the DEP, either in the form in which they are now, or in some other form?

MS. HOFFMAN: They do not have a copy of this testimony.

ASSEMBLYMAN FLYNN: No. But, do they have the gist of your critique of the Wehran Plan, for example?

MS. HOFFMAN: Yes. Because we have reviewed the consent order and sent them our comments.

ASSEMBLYMAN FLYNN: So they know these various points you have brought up?

MS. HOFFMAN: Yes.

ASSEMBLYMAN FLYNN: All right.

ASSEMBLYMAN FOY: Let me ask you a question that will, maybe, clarify, to a certain extent, the issue of authority that I am focusing on. Did the DEP independently cite these industries for any specific violations? And could they be entering into the consent order independently of the court order?

MS. HOFFMAN: I don't know. You would have to ask them. I do not have that information.

ASSEMBLYMAN FOY: You are unaware of whether there has been any citation of these companies for violations of pollution statutes or Departmental regulations? You don't have that information?

MS. HOFFMAN: No, I don't have that information.

ASSEMBLYWOMAN WALKER: The CAC has reviewed the various plans and critiqued them. Has the CAC come up with a plan of its own -- one it would like to see instituted?

MS. HOFFMAN: No, because it is not within our jurisdiction.

ASSEMBLYWOMAN WALKER: I am having trouble figuring out how the industries have the authority to come up with a plan. I just figured that since they did it, what is there to stop you from coming up with a plan?

ASSEMBLYMAN FLYNN: It would be a matter of money, isn't that right?

MS. HOFFMAN: We don't have the money.

ASSEMBLYMAN FLYNN: It would take a tremendous amount of money to come up with a comparable plan.

MS. HOFFMAN: We would have to hire a consultant.

ASSEMBLYMAN FLYNN: Did you say you have more, Blanche?

MS. HOFFMAN: Just a little bit more. These are the things the CAC wants:

(1) We want all of the contamination removed.

(2) We want the aquifer restored and the stream protected.

(3) We want a slurry wall around the industries and the heavily contaminated areas as per the CH2M Hill plan.

(4) We want the upper zone -- the unsaturated zone -- cleaned.

(5) The contamination from the soil above the water table must be removed.

(6) Pumping must continue until plumes disappear, whether the companies are operational or not.

(7) The pretreatment of zinc and inorganics should be part of the consent-order agreement, as should the recycling of water to conserve this resource.

(8) The two-year post-recovery monitoring period is unacceptable. The time frame should be open-ended with annual monitoring.

(9) Monitoring must continue as long as the companies are operational.

(10) Dredging, pumping, and disposal of the contaminated sites at Prickett's Pond and parts of the brook must be included in the COA.

(11) A 30-year escrow account must be maintained. This is not far-fetched, because it is the criteria that is used for landfills. This is such a complex problem. We know how long we have been and will be living with this problem of cleanup -- and it is continuing. If you don't have the money, you cannot go in and do the cleanup. So, we feel this is a reasonable request.

(12) We believe there should be unannounced inspections. In the court order, originally, it was said there would be 24-hour notice given to the polluters, and that is unacceptable.

(13) The responsibility for the cleanup should be with the DEP, and not shifted to the industries.

ASSEMBLYWOMAN WALKER: That was precisely what I meant. You do have a plan of action, although not a formal plan.

MS. HOFFMAN: We have a Department of Environmental Protection. And the Department of Environmental Protection works for the people. And the CAC--

ASSEMBLYWOMAN WALKER: (interrupting) You had better tell them that when they come in. (laughter)

MS. HOFFMAN: (continuing) --represents people in this area. We are saying that we want to be informed as to what you are doing, and we want to tell you what is in the area, as well as what we can live with.

ASSEMBLYWOMAN WALKER: And it has been in an adversarial role rather than a supportive role?

MS. HOFFMAN: Exactly. Everything has been like pulling teeth. You get your information at the last minute -- you know, five days to review a complex document that they have been working on for, I am sure, more than five days.

ASSEMBLYWOMAN WALKER: That is one of the questions we will definitely want to ask. I know you have asked me to intercede a number of times, through phone calls, to try to get answers for the CAC. I am not sure why that is so, and why that needs to be so. That will be one of the questions we will definitely ask.

MS. HOFFMAN: It comes from the top down. In our correspondence, we have "cc'd" everyone, from the Governor to the Department of Hazardous Waste, Division of Waste Management, so no one can say that they have not heard from us, or have not gotten our correspondence or conference.

ASSEMBLYMAN FLYNN: Blanche, to focus the attention on what this Committee can accomplish, let me ask you this: Are you unhappy even with the court-ordered plan?

MS. HOFFMAN: No.

ASSEMBLYMAN FLYNN: But, now the thing is this: How can we get a tougher plan than the court-ordered plan without going back to court?

MS. HOFFMAN: I don't know. That's a dilemma.

ASSEMBLYMAN FLYNN: You're not happy with the court-ordered--

MS. HOFFMAN: (interrupting) You have to go to court, no matter what.

ASSEMBLYMAN FLYNN: Not necessarily.

MS. HOFFMAN: Yes, you do.

ASSEMBLYMAN FLYNN: Why would you have to go back to court if you just enforced the court-ordered plan?

MS. HOFFMAN: Oh, I see.

ASSEMBLYMAN FLYNN: In other words, you are not happy with that. Mayor Otlowski is not particularly happy with the court-ordered plan--

MS. HOFFMAN: (interrupting) Well, wait a minute. Okay. You have to go to court because, if you enforce the court-ordered plan, industry will take you to court.

ASSEMBLYMAN FLYNN: If we already had a decision, and an appellate affirmance--

MS. HOFFMAN: (interrupting) Go through the court process.

ASSEMBLYMAN FLYNN: They have already been through the court process. Well, let's go beyond that for a moment. From what I can gather, the costs and scope of what you want to do, over and above the court-ordered plan, would cost a lot more than the original $5 million. Is that a fair comment?

MS. HOFFMAN: Yes. I would agree with that.

ASSEMBLYMAN FLYNN: Now, I don't know if anyone -- the DEP or this Committee -- could go beyond what the court has ordered, and say, "Now you have to do more than the court ordered." This Committee, for example, cannot say, "Do what the Superfund wants." That is my comment to you.

MS. HOFFMAN: There are other funds. This is a Superfund site.

ASSEMBLYMAN FLYNN: And you are saying, perhaps--

MS. HOFFMAN: (interrupting) What I am saying is that if there is a limit of liability, or limited funding, from the industry, and the cost of cleanup is going to exceed this cost, you cannot just say, "Well, okay, we're just going to do this, because this is what we are limited with."

ASSEMBLYMAN FLYNN: I'm not talking about the money, because the judge at the Appellate Division said that it would be all cost. I think it is all cost, however, to cover the things that the judge ordered. In other words, do "A" through "M", for example. You now want to do "N" through "Z." That is what I am concerned about.

MS. HOFFMAN: Well, look, there is bonding for toxic waste. There are moneys there. There is also the New Jersey Spill Compensation Fund, which is analogous to the Superfund. So, there is funding there.

ASSEMBLYMAN FOY: To do the additional things that are beyond the scope of the court order; you are quite right. And that is the authority and responsibility of the DEP. I have no quarrel with them wanting to go beyond. What I have some trouble understanding, and what I hope Mr. Tyler and whoever testifies today will be able to explain, is the genesis of a plan which, apparently, does less than what the court order said.

MS. HOFFMAN: The court-ordered plan, you see, is basically containment; it is not cleanup. The Wehran Plan is basically monitoring. So that aspect of the Wehran Plan is good, and should be included, because that is the only way you are going to get cleanup.

ASSEMBLYMAN FLYNN: For example, when we have the Committee's analysis of the whole question, and a recommendation, what kind of recommendation would you be seeking?

MS. HOFFMAN: A cleanup.

ASSEMBLYMAN FLYNN: That's vague. (laughter) We all want a cleanup. We have before us Plan A, the court-ordered plan; we have Plan B; Plan C is still in someone's mind.

MS. HOFFMAN: Why can't you take the good points from both plans, incorporate them, and come up with Plan C?

ASSEMBLYWOMAN WALKER: We are a different branch of government than the courts, and we don't have the right.

ASSEMBLYMAN FLYNN: We can't force the industries to do more than what they are ordered to do by the court. We can force--

MS. HOFFMAN: (interrupting) Can DEP do that?

ASSEMBLYMAN FLYNN: The DEP can enforce that, and we can ask -- we can instruct -- the DEP to enforce what the court has ordered. But that is "A" to "M." We cannot go beyond that. We cannot do these other things that you want to do. Perhaps there could be a recommendation by the Committee that other moneys be used to do those other things.

MS. HOFFMAN: That sounds good.

ASSEMBLYMAN FLYNN: We can either enforce the court-ordered plan and supplement it with Superfund and other types of moneys, we can go with the Wehran Plan, or we can concoct a Plan C that has been in the minds of people -- but Plan C cannot cost the industries more than they would have had to spend for the court-ordered plan.

MS. HOFFMAN: Let me just say that the DEP has been working with us for a number of years, and they have said that, if they were to go into court today, they would not go along with the court-ordered plan. They have been working on cleanup sites throughout the State of New Jersey--

ASSEMBLYMAN FLYNN: (interrupting) New technologies?

MS. HOFFMAN: Yes. So, they have probably--

ASSEMBLYMAN FLYNN: (interrupting) They're not happy with it either?

MS. HOFFMAN: I don't know.

ASSEMBLYMAN FLYNN: Because of the time factor. The thing has gone on for six or seven years. There's new technology. There is also an additional, as Albert Seaman said, metastasis that has occurred downstream, even more than what occurred before. So, maybe other areas of that general site would have to be addressed.

MS. HOFFMAN: Several areas would have to be addressed. There is pumping now in the Sayreville area. What they are doing is suctioning. Before, that suction line was a source for the pumping of water for Perth Amboy. When that suction line was closed off -- and it kept in balance the pumping from Sayreville and Perth Amboy -- Sayreville was pumping and pulling, so that, actually, perhaps even the plume, as has been identified for the plans, probably should be re-evaluated, because Sayreville is finding pollution in its wells.

ASSEMBLYMAN FLYNN: All right. We are going to take a short break before we go on to the DEP's testimony. We will take a 10-minute break. That will give everyone a chance to get a drink of water, smoke a cigarette, or whatever. At 2:10 we will resume with the DEP.

(Recess)

ASSEMBLYMAN FLYNN: Would everyone please take their seats? The next speaker will be the Chairman of the Sayreville Environmental Commission.

JOAN RYAN: Excuse me, I'm not the Chairman of the Environmental Commission.

ASSEMBLYMAN FLYNN: I'm sorry. You are on the Sayreville Environmental Commission?

MS. RYAN: No, I am not on the Sayreville Environmental Commission.

ASSEMBLYWOMAN WALKER: The former chairman.

MS. RYAN: I am just a member of the general--

ASSEMBLYMAN FLYNN: Come forward. You are going to be the first witness, and then the Department of Environmental Protection will be after you.

MS. RYAN: This is just a statement from me. I appear before you as a concerned citizen and as a resident of Sayreville.

ASSEMBLYWOMAN WALKER: Please give your name.

MS. RYAN: Excuse me. My name is Joan Ryan.

I commend the Oversight Committee for holding this hearing locally for public input. I am concerned with the lack of implementation on the October, 1981, court-ordered cleanup plan of the CPS/Madison Industries' hazardous waste site, which was named fourth on the New Jersey list and twelfth on the national list.

I am disappointed and disillusioned with the Division of Water Resources' lack of initiative regarding the plan implementation and cleanup of a polluted site in a prime watershed area. I am distressed because they never made concerned communities a part of the Wehran Plan discussions until the last minute.

Water is a precious resource. Most people think if it tastes palatable, it is okay. This is an incorrect assumption. Some toxics are most insidious, with no visible smell or taste.

The court-ordered plan utilizes purification and recycling as a means of pumping pollutants. The Wehran Plan would continuously pump potable water as a cleansing mechanism. Adequate pumpage of potable water would have to be maintained to create a negative head on one side of the slurry wall and a positive head on the other to protect our existing groundwaters.

Director John Gaston of the Division of Water Resources stated at a public meeting of the CAC that he would grant CPS and Madison Industries the diversionary rights to this fresh water. This is in direct conflict with studies that have indicated overpumpage of our existing aquifers, and the position of the Division of Water Resources that no additional groundwater diversions should be granted. Such overpumpage causes our water table to drop and the quality to diminish, and encourages additional saltwater intrusion into the system. Communities are being encouraged to seek surface water sources which are far more costly to the consumer. Why should we be penalized financially, as well as environmentally, by two irresponsible companies?

Front-page headlines of the News Tribune of February 18, 1985, stated: "Drinking water found tainted." Director John Gaston indicated 29 of 209 specimens contained contaminants. This represented roughly one-third of the New Jersey public water companies. The remaining samples must be submitted to the Division of Water Resources by March 15, 1985. I urge members of this Committee to obtain specimen results of samplings in the Runyon Watershed to determine if an emergency exists, and, in any event, let the public be informed, through the press, as to the results.

Responsible industry can and does coexist with us within our communities. Government must assume a more assertive role to properly zone and police industry to control the irresponsible operations. Society cannot exist without the economic base of industry. We all have to put food on the table, but we also have to breathe the air and drink the water.

If change is not forthcoming, I would state that the Federal government will find that the problems of funding Social Security and Medicare will diminish in the not too distant future. Irresponsible companies will foul our air, water, and food supply and will shorten our lifespan. If they don't get you in a one-shot catastrophe like Bhopal, India, they will still maim or kill you in the long run.

You must be the watchdogs and regulators. We place our lives and the lives of our children in your hands. Thank you very much.

ASSEMBLYMAN FLYNN: Could you make copies of your testimony available to us? If you don't have it today, perhaps you could mail it to us. We would like to put that in our records.

Commissioner Tyler. You can bring with you whoever you wish. Perhaps you can introduce the people with you for the record.

ASSISTANT COMMISSIONER GEORGE TYLER: Thank you very much, Assemblyman Flynn and Assemblywoman Walker. We would like to thank you for inviting us here today.

ASSEMBLYMAN FLYNN: First, please introduce everybody.

MR. TYLER: I am about to. I am waiting until they all get settled.

Let me begin at my far left with Gerald Burke, who is the Assistant Director of the Department's Office of Regulatory Services. Next to Jerry is Dan Toder from our New Jersey Geologic Survey. Next to Dan is Ronald Heksch, Deputy Attorney General, representing the Department at this time in this case.

ASSEMBLYWOMAN WALKER: This is not a case here. You mean the other case?

MR. TYLER: Oh no, I mean the CPS/Madison case.

To my right is George McCann, Assistant Director for Enforcement, Division of Water Resources. To George's right is Paul Harvey, who is our Case Manager for the CPS/Madison case.

ASSEMBLYMAN FLYNN: Before we get into your presentation, I have one question that seems to be the concern of the area residents. That is, has anything been done, to date, to physically remove anything from the area?

MR. TYLER: I would like to address that in the context of our overall presentation. It has been reported to me that some of the zinc pile, which is one of the particular problems at the site, has been removed, or is in the process of being removed on a carload basis. Beyond that, no, I don't think so.

The source of contamination seems to have been abated in compliance with the court order and Department directives. In other words, the groundwater at the source is not worsening at the source point. However, one of the reasons that we have been working on an alternative plan, and one of the reasons, I guess, that we are here today to present those options to the Committee, is that we want to get on with the cleanup process. At the present time, we have a court order, which you have already heard described by many witnesses, as less than perfect. We agree with that. Although if push comes to shove, that will be the only option available to us, in terms of implementing that court order.

We would prefer to do what I heard the first witness say: clean the problem up, not just contain it. We think we have a plan, which we have almost reached a final agreement on with the industry, that will clean the problem up. Getting on with that plan is one of my purposes in being here today.

ASSEMBLYMAN FLYNN: A couple of times, various people on the Committee have asked this question: What was the genesis of the Wehran Plan? Why did the Wehran Plan come about?

MR. TYLER: The court order that was issued by Judge Furman in 1981 had several problems with it. It was also appealed almost immediately by the industry. During the period of appeal, the Department went ahead and designed a law in accordance with the plan.

ASSEMBLYWOMAN WALKER: Which one? The court-ordered plan?

MR. TYLER: Yes, the court-ordered plan. When the final judgment in the Appellate Division was handed down, and when the court modified its order in compliance with that Appellate Division decision, the industry ceased appealing, so we had a final solution that we could then begin to implement. They then knew it was a real solution the Department was about to implement; at which point, they presented us

with an option for our review. It took some time, in an iterative process, to negotiate that. That is where we are today.

To answer your question specifically, I think the genesis of the plan occurred when we had a final court order that was implementable in 1983, and when the companies took it seriously, at that point, and came up with an option. That is the original source of an optional plan. However, it has been modified in our discussions in substantial fashion. We will be glad to lay that out for you.

ASSEMBLYMAN FLYNN: In looking at the abating, the Appellate Division decision occurred in 1983--

MR. TYLER: That is correct.

ASSEMBLYMAN FLYNN: (continuing) --and the Wehran Plan, apparently, was done in 1983; is that right?

MR. TYLER: That is right. I may be a little off on the dates, but it was presented to us shortly after the Appellate Division decision in a modified court order.

ASSEMBLYMAN FLYNN: So they must have already been under way with that plan in order to have it finalized--

MR. TYLER: It is quite possible they were.

ASSEMBLYMAN FLYNN: (continuing) --so soon after the Appellate Division decision.

MR. TYLER: It is quite possible.

ASSEMBLYWOMAN WALKER: Did the courts agree with this alternative plan? Or was this just done in agreement between the industry and DEP?

MR. TYLER: Neither. There is no agreement between the industry and DEP at this point. And for the record--

ASSEMBLYWOMAN WALKER: What gives this plan any validity at all?

MR. TYLER: What gives this option that we are proposing -- to enter a court order with the company -- is our review of the plan and the negotiated process that has produced a different plan. We are not just talking about taking a pat plan that the industry submitted and just agreeing to it because we think they are nice guys. Let me put that issue totally aside. I don't trust those companies anymore

than any member of this Committee does, or any of the citizens of this area.

ASSEMBLYWOMAN WALKER: I am so glad to hear that.

MR. TYLER: In fact, one of the benefits of the negotiated settlement that we are close to agreeing to with the company -- and we will be glad to go through other advantages -- is the safeguards that are not in the court order that we were able to build in, such as performance bonds and an ability to maintain the system. A cleanup system like this needs to be maintained a lot more than the four years that the court order says the containment must be maintained. We provided for that in our negotiated settlement. So, let me just say that I think there are better safeguards, and that the process that the Department has gone through over the last two years has enhanced the situation. I think you even heard witnesses say that there were aspects to the option, which we were considering entering into a court consent agreement with companies over, that were better than the court order. There is no question that we are talking about a pumping and treatment system versus a containment system.

ASSEMBLYWOMAN WALKER: So this is sanctioned by the court then?

MR. TYLER: It will be.

ASSEMBLYWOMAN WALKER: When you go back and present--

MR. TYLER: (interrupting) That is right.

MR. SEAMAN: (from the audience) Not over my dead body.

MR. TYLER: Sir, I did not interrupt you when you testifed. I would appreciate it if you did not interrupt me when I am testifying.

ASSEMBLYMAN FLYNN: Please don't have any outbursts from the audience. But, perhaps, your attorney can answer a question for me, and that is, would you be able to have a modified court order without the other party, Perth Amboy, also signing the consent order?

RONALD HEKSCH: I don't think I can give you a definitive answer on that, at this point. I think that remains to be seen. But, under the court order, or the modified court order that we would present, it is our position that Perth Amboy's rights, as originally set forth in the

Judge Cohen order, have not been affected. They still have the right to the money they are entitled to.

ASSEMBLYMAN FLYNN: All right. So, basically what you are saying is that the company, when faced with reality, came to you and said, "We have a way to do it that may be even better than the court-ordered plan." Your Department then took a look at it, made changes that you thought would be beneficial to the citizens, and have now come to the conclusion that this plan is a better plan than the court-ordered plan; is that basically your conclusion?

MR. TYLER: There are advantages to the plan we have negotiated; that is correct.

ASSEMBLYMAN FLYNN: There are advantages? As we have heard from the CAC today, there are problems and disadvantages with both plans. So your task has been to attempt to get the best of both worlds; is that a fair statement of your position?

MR. TYLER: That is right.

ASSEMBLYWOMAN WALKER: What do you think is your obligational role in dealing with a group such as the CAC? I have been involved, as you know, since we have been on the phone a number of times, with a breakdown in communications between your Department and your Division and the CAC, and it did take over a year for them to get their hands on the Wehran Plan. Could you comment on your role in relation to them?

MR. TYLER: Yes, I will. I think that the root of that problem is the inherent and instinctive reluctance on the part of enforcement agencies to conduct the enforcement process in the open. That goes to criminal matters; it goes to our civil enforcement proceedings; and it permeates this particular case. We were dealing with less than ready and willing defendants to a lawsuit that we brought and won, and we were attempting to fashion a better solution than the court order. Negotiations often benefit, I guess, from not being conducted at public hearings.

However, as soon as we had arrived at a near-bottom line, I should say, on the technical aspects in September or thereabouts in 1984 -- and I think, in that year, a lot of misunderstanding and a lot of ill will grew because of that position on enforcement proceedings -- we did make public our proposed alternative, and we did discuss it.

And, I think, if I could step back from-- I hope I don't sound offensive; I probably do. I don't mean to be. The process is not a good one. I think it needs to be rethought out. I think we found, for example, in our permitting process, where years ago, government, in all levels, would get information, make a decision, and issue a permit, that in today's world that isn't a good way to proceed. A lot of public input and public participation in the permit process improves the quality of the decision, and, at least, it avoids the kinds of ill will and misunderstandings that can arise.

I sat here listening to the testimony, and in many cases, I heard things I agreed with, but which were slightly distorted by an absence of information. I instructed my staff, during one of our breaks, to reach out, once again, to each of the local communities and to sit down again with their experts. I heard a geologist who represents Old Bridge say he couldn't make a decision on the proposal because he hadn't seen certain data. I heard an expert from Perth Amboy say that there have been less than candid and open negotiations, or I should say communications, during the year. I can understand that. It is hard, as with an attorney representing a client, to negotiate in a public forum.

But, as I said, we have agreed; our technical people have now been satisfied that we have before us a plan that will work to decontaminate the site. We would like to set that plan in motion as quickly as possible, with as many safeguards as we can build into it to watch defendants who we don't trust. I think discussing that plan openly is appropriate. One of the reasons we came here today, in force, is so that you would have the benefit, that I have, of asking questions or of viewing charts, which we will present. I will be glad to do that at this point, if you would like, or any way you would like to proceed.

ASSEMBLYMAN FLYNN: I think what I am going to do is a little extraordinary, but we have an unusual circumstance here. I am going to allow questioning by some members of the public who have been working with this firsthand to see if some of their questions can be satisfactorily answered. And the Committee will ask questions from time to time as well.

MR. TYLER: Can I just offer one possibility, and that is, for us to give you a little background on the two plans first?

ASSEMBLYMAN FLYNN: Yes. Give us your overview, and then, perhaps, Albert Seaman may want to ask some questions; maybe Blanche Hoffman will have some questions also.

MR. TYLER: We might have an objection to that.

ASSEMBLYMAN FLYNN: Well, if you have objections, your attorney can interpose appropriate objections, and I will make the ruling. We will try to do it on a very orderly basis. We are not going to make this a shouting match. Basically, we are here to get information and communication. You have been candid enough to admit that maybe communication could have been better, and that, sometimes, it can solve some of these problems. So, today is the day to have the start of good communication. Perhaps the engineer may want to ask some questions. Those who want to ask a question, just come forward so I know who to recognize.

First, we are going to get an overview.

MR. TYLER: Let me dispense with my prepared remarks. I will give copies of my remarks to you, the staff, and anyone else who would like them. Director Gaston will be at your second hearing on the 28th and will present similar remarks at that time. With that, let me ask George McCann, who is Assistant Director for the Division of Water Resources for Enforcement to explain the two plans.

GEORGE McCANN: I would first like to go through some of the technical aspects and give you an explanation of the two plans we are dealing with. Then I will go back and do some comparisons of the two and point out some of the advantages and disadvantages.

To begin with, the court-ordered plan is one that was specifically detailed in the original court order. There has been some discussion this morning about variations to this, and dollars and so on. What you should know is that this plan, as it is designed here, is specifically called for. There was a cap removed, but this is the plan that was determined by the courts to be implemented to correct the problem.

What you see here (referring to a the first map entitled Court-Ordered Design) are two companies -- CPS and Madison Industries. The brown indicates a slurry wall. A slurry wall has been referred to by many people as a containment wall and, in fact, that is exactly what it is, and that is its design and purpose. The wall is built and keyed into a clay lens below the industries to create a bathtub effect. Any contamination in the groundwater within this bathtub, if you will, would be unable to escape.

In addition to that, there was a relocation of the brook. The blue, running through the map here, (indicates on map) is the original location of the brook. The green represents the proposed relocation. Clearly, the brook contributed, along with the groundwater, to the carrying of contaminants which resulted in Prickett's Pond. This relocation of the brook then sweeps around, out of the contaminated area, and then is reintroduced at this point to the pond.

The pumping that is related to this plan involves wells just outside of the wall, which would be pumped for a specified period of time, through the court order of four years. It also provides for wells within the bathtub, which are referred to as maintenance wells. It is important to note that the primary purpose of maintenance wells is to deal with the level of groundwater within the tub. Again, if you picture it as a bathtub, the purpose of the well is not to have the water overflow the bathtub. That is the purpose of a maintenance well.

There is a secondary by-product from that, and that is, you will achieve some decontamination from the maintenance wells because, clearly, you will be pumping groundwater out as you keep the level down, and it will be contaminated. It has been identified as contaminated water, and it would eventually be transported to the Middlesex County Utilities Authority for treatment.

Before I point to the alternative plan, I want to give you an idea of the results of some of the studies that were done -- subsequent studies and continued monitoring that took place to identify the exact extent and magnitude of the problem. There was much information that

was known at the time of the court decision. There is much more information that is known now.

Basically, this a map which matches the one I have just shown you (referring to second map). You see CPS and Madison Industries here. The black lines that you see running, as such, represent the groundwater gradient. Groundwater gradient defines the direction of the plume; it shows you which way the groundwater is flowing. This is the contaminated groundwater, and this is the direction; it clearly follows the path of the brook and then down onto the pond.

The orange line indicates the Runyon Watershed. Within the Runyon Watershed, on this side of the orange line, are the wells that had been closed, that are part of the Bennett Line, the suction line that was referred to earlier. There are several wells here that are indicated as being contaminated. The entire line was closed down, to the pump that operated this line. I would like to point out that not all of the wells on the line showed contamination. The ones that are of concern here are directly in this area, but it was necessary to close the entire line.

Two industries are responsible for two different parts of the contamination. The metals contamination -- the inorganics, the main focus, of course, being zinc -- is the result of Madison Industries and their operations.

The organic chemicals were contributed by CPS. They are represented here by the pink plume. But, as you can see, both of them, having been contributed by two distinct different sources, have followed the path of the groundwater gradient and have resulted in the composite contamination that we have now found, or had been found in this area, and it has contaminated the wells within the Runyon Watershed.

MR. TYLER: George, excuse me, could you just take a minute and go over how the groundwater gradient is determined. I think that is a key issue.

MR. McCANN: All right. Basically, what happens is that a number of wells are sited. Some of the wells that had previously been there were utilized. The level of the groundwater is measured at each

of the wells, as you go throughout an entire area. Having looked at the levels of water -- and they are measured against sea level -- you develop a pattern that shows decreasing numbers as to what level the water is at, which clearly indicates a flow. Basically, it flows downhill. That is what we are looking at. The numbers will show at lower levels as you move through and examine the different wells. That is how you establish the groundwater gradient.

We will now look at the alternative plan (referring to third map). The alternative plan has been referred to as the Wehran Plan. The Wehran Plan was a proposal that was originally submitted by the companies. As Assistant Commissioner Tyler has stated, the companies, presumably having realized that they had exhausted all the legal avenues in contesting the case, proposed an alternative. Their initial alternative was not acceptable to the Department; it went under a scrutinous review and resulted in two addenda to the original plan before it was to our satisfaction.

The plan has, as one of its components, what we would call the conceptual design, which recognizes that the contamination can be contained, and, in fact, can be captured by a better means that a wall of just containing it. What that means is a number of decontamination wells. What the decontamination wells do is to provide for the capture of the contaminated groundwater by pulling it within the zone of influence of the well. When it is pulled in, it would then be pumped out, and it would be, again, sent to the Middlesex County Utilities Authority for ultimate treatment.

A slurry wall was additionally proposed. This slurry wall would go one-third of the way into Prickett's Pond. The location of this well is based upon the information that has established the most highly contaminated area to be in this portion of the pond. The purpose of the wall, as compared to the other wall, is very significant. This wall is designed to keep out the clean water. It is not designed to stop the contaminated water; rather, it is designed to keep the clean water out. The contaminated water will be dealt with hydraulically by the pumps. That is the purpose of the pumps. The purpose of the wall is for a very different reason; it is to eliminate clean water coming in and mixing with the contaminated water.

Also, you will note, there is a relocation of the brook, which is proposed in the alternative plan. This particular relocation goes much further than the one in the court-ordered plan. It removes the possibility of this infringing on any of what was the contaminated area and moves it much further away.

The program would involve pretreatment; this would be consistent for both plans, as we mentioned earlier today. We have had an issue of pretreatment for some time, and have been dealing with Middlesex County to get a definitive answer as to the levels that they would require prior to the discharge of decontaminated water. We have most recently come to an agreement, as to what the Authority is willing to accept, and that would be combined with the industries, to deal with, not only their contaminated groundwater, but also their process wastes. You should know, that on the pretreatment issue, the process waste, which has continued to be discharged by the companies into the sewer, has a much higher level of zinc, the inorganics, than the groundwater does. So, there is a much greater volume, and, of course, it is of much greater concern to the Middlesex County Utilities Authority.

ASSEMBLYMAN FLYNN: Does the Old Bridge Sewerage Authority have to be involved in that discussion as well?

MR. McCANN: The Old Bridge Sewerage Authority is responsible for the sewers which provide the transport of the material. The ultimate treatment is by the Middlesex County Utilities Authority; they would have jurisdiction over the levels of the waste water.

ASSEMBLYMAN FLYNN: Would there be any danger of harm in the Old Bridge treatment lines?

MR. McCANN: In terms of the contaminated water, there would be, in our opinion, no harm.

MR. TYLER: There could be contamination in sewer lines, as a result of organics, that might be of concern.

MR. McCANN: It would exist as it is being transported, but it would not be of concern to the sewer line.

ASSEMBLYMAN FLYNN: Mainly, my question concerns whether you are communicating with the Old Bridge sewer people, as well as the Middlesex County Utilities Authority people.

MR. McCANN: Well, yes, the Old Bridge--

ASSEMBLYMAN FLYNN: Just so that they are involved and they know what is going on. Again, communication being an answer to a lot of problems.

MR. McCANN: Old Bridge is, of course, represented by the CAC. They have been copied on the most recent proposals that we have come up with, as well as this alternative plan we are proposing and what it would involve. I know a major concern to the Old Bridge Sewerage Authority is the assurance that they will be paid for the discharge and the transport of the waste because there is a fee related to anyone who is tied into this system. That is something that we have built into the agreement to ensure that those moneys will be there.

ASSEMBLYMAN FLYNN: Okay. Continue.

MR. McCANN: What I would like to point out is that the alternative design is based on a considerable amount of information that describes the groundwater plume. In addition to that, what we have factored into the plan is that the operation of this plan is contingent upon the companies, the wells, and the plan satisfactorily meeting the expected results, as dictated by the mathematical model. The mathematical model has gone under a rigorous review by our staff of geologists and the Division of Water Resources, and they are satisfied with the projected results. Should, however, the projected results not be realized, additional pumping is provided for. If necessary, the extension of the slurry wall is also provided for.

Again, the way this is determined is by the use of wells that measure the level of water; this will give you the indication if, in fact, the wells are pulling the water, as we expect they will, in the direction of these decontamination wells. Those same monitoring wells are also used to measure the quality. We will, therefore, not only know the level of the groundwater, the direction of its flow, but we will be able to measure the quality of the water, which will give you the information to determine whether it is actually being cleaned or not.

The current data that we have has shown that there are not any additional contributions coming from the companies, although they

are still active and operating. The reason why we would expect to find that is because the companies have done a number of things at the site to eliminate the additional contamination of the groundwater. Those types of things are the paving of areas where materials were stored; the installation of drains to capture any run-off; and the curbing of the areas, so that no water would flow onto the ground and then ultimately into the groundwater.

I want to give you the comparisons of the two plans. The court-ordered plan, of course, gives you, very quickly, immediate containment of the problem, and that is without question. The disadvantage, however, is that it does not provide the type of active cleanup that we think is necessary for this site. It is, in fact, a rather passive mode of decontamination. There is a fixed amount of time through a court order, as I said, of four years for the main decontamination wells. The resulting cleanup within this bathtub will only come about over some unknown amount of time, as a result of the maintenance wells, because their primary purpose is just holding the level of water; it is not to clean up. It is a by-product, but it is not the primary purpose, so it would be for an unspecified amount of time which that would continue.

The other problem or disadvantage of this containment wall -- since its primary purpose is to contain the contamination, and since it is unknown as to how long it will take for this contamination to be removed -- is that there is the chance of failure of the wall. The maintenance wells would operate based on the rainfall that occurs in the area. Depending on how that goes over the years, the wall will be dependent upon to continue to contain the contaminants. Failures in the wall are possible; if that were to occur, the leaching of the contamination which currently exists could occur. So, that is a major concern.

The other thing that is of concern to us -- and I think this is very important -- is, as this was designed, it was found by the Department to be necessary to have an independent review done by a consultant before we would implement the plan and have it built. The consultant, who you have heard referenced earlier today -- CH2M Hill --

looked at the proposed court-ordered plan and recommended certain modifications. Interestingly enough, the modifications they suggested were to extend the containment wall to the exact location of where the crescent wall is located. Clearly, given the data that they had at the time, which was the basis of this design, it was necessary to ensure that the most heavily contaminated area in this portion of the pond be included in the containment.

ASSEMBLYMAN FLYNN: They didn't want a bathtub?

MR. McCANN: They suggested a bathtub, but enlarged it greatly to move it out to include this.

MR. TYLER: There weren't asked, Assemblyman, to totally reevaluate the site; they were asked to verify our design, since the Department is not a design-engineering firm and we felt that, before construction, that ought to happen. However, the data on that contamination in the third of Prickett's Pond, which George says is inside the wall, was so compelling that they recommended expanding the wall, and they verified our computations for the rest of it. I don't think it is fair to say that they took a fresh look at the whole case to come up with the best option.

ASSEMBLYMAN FLYNN: Okay. In other words, this is not necessarily the best plan?

MR. TYLER: Yes.

MR. McCANN: Right. It is a good point. It is a review of the design as prepared by the Department.

ASSEMBLYMAN FLYNN: Before I forget, I want to ask you a question. What do you think caused CPS/Madison to come up with this particular plan? Is it because it saves them money or because they think they are going to do a better job for the citizens?

MR. TYLER: I think they went to their consultant and said, "Give us an option to this plan, the court-ordered plan, which we don't like." I think the driving force was the economics of the situation -- without question. However, it is not fair to say that this plan is necessarily cheaper. What we did, in terms of perfecting the court order in the Appellate Division, was take the cap off -- the $5 million cap that we had from the original court order.

The second thing is, that in the negotiated settlement, there are provisions for continual reevaluation of this situation, until the Department is satisfied that the site is decontaminated so that in theory, there is no price tag yet on the alternative design.

In terms of initial capital costs, the testimony you have heard is quite correct. The initial capital costs are cheaper, but operation and maintenance of pumping and treatment systems, until sites are decontaminated, is, as you also heard, a new science. It is not something that everyone is comfortable with, such as something well established like building highways or building bridges. Those pumps, wells, and treatment systems could be required to be in place for quite some time. There is no real hard price tag on the alternative design. Capital costs -- you're right, it is cheaper.

ASSEMBLYMAN FLYNN: How long will a maintenance bond be in effect?

MR. TYLER: Until it is no longer necessary to decontaminate the site.

MR. McCANN: Provisions are that it could be maintained for in perpetuity.

MR. TYLER: In other words, the court order has a cutoff of four years on maintenance. One of the items we think is an advantage to the solution, which we have fashioned in the negotiation process, is the perpetual maintenance clause. Now, I have been around long enough; I don't even like to throw the word perpetual out, but the words we have used allow us -- if they are a solvent company that long, and if we are still a Department that long to enforce that issue -- to extend the maintenance.

ASSEMBLYMAN FLYNN: The reason I asked that question is because that seems to be on the minds of a lot of people in the area. They say: "Here is the fox coming up with the fox's own plan; it must save the fox some money, according to their experts, or, otherwise, why wouldn't they take the court plan and go with it?"

MR. TYLER: They believe, as we do, that the decontamination process, by pumping and treating, is a finite one. It is not a perpetual one, and it will, in the end, be cheaper.

Coincidentally, and happily, our experts -- our geologists, our groundwater experts — think it works. So, let's do it. What do we lose? If we monitor the site during the process, then we are talking about a case that has been repeated thousands of times in this State, where the Department, and many departments, in fact, have entered into consent agreements with companies because there is a distrust. And there ought to be a distrust or a watchdog agency; just like you are watching us, we are supposed to watch how they do this. We build safeguards in. Monitoring wells are going to be locked. Samples are going to be split. Inspections are going to be conducted on a regular basis. That is part of the overall environmental process. There are at least 50 cleanups going on in the State right now, under consent agreements, including, for example, in the City of Newark, where a massive dioxin and decontamination agreement was signed between the Department and Diamond Shamrock.

Granted, there is a distrust there, but I don't think, as was suggested, that somehow we have breached our trust under the court order. The court order ordered us to carry out the cleanup. We carry out many cleanups through the vehicle of a court order. The Department never— I shouldn't say never; we do some small cleanups ourselves. Almost all of the cleanups that we do are done through consulting firms, engineering firms, and construction firms. That is precisely what will happen here. We will have the same type of oversight that we have on all of our consent agreements on this case.

ASSEMBLYMAN FLYNN: One of the areas of distrust by the public of this agreement is that they feel that it gives less responsibility to your agency and more responsibility to the affected industries?

MR. TYLER: I think the ability to carry out things in a quicker fashion is an advantage that you get when you deal with a private company versus government; for example, with the procurement process. There are advantages and disadvantages to it. And, on the other side of the coin, there is a distance between us and the company. That distance is very critical, for example, when you are identifying a cleanup problem. And, in fact, my Department has a

policy of not allowing private parties to carry out studies that end up in cleanups. At the point in time when the data could be hidden, when samples would be fraudulently reported, and when things like that could happen, we will not enter into that type of consent agreement, unless we control the people doing the testing and the laboratories reporting the data.

In this case, we are at what we would call a design stage or a construction stage, and consistent with many other orders that we sign, we think we can carry that out either way: publicly funded under our own supervision or with our normal regulatory supervison of a party under a court consent agreement.

ASSEMBLYMAN FLYNN: So then, basically, you are saying that your Department's philosophy is that the private sector can better do the cleanup work and you would prefer to do the monitoring?

MR. TYLER: What I am saying is, that is true in certain cases, and in as many cases, we are comfortable doing the cleanup. There is a twofold process. In fact, I was going to point this out, probably in response to other questions later, but the very laws that provide the funds to us to do cleanups specifically require us to either direct or solicit private parties, or responsible parties as they are called under Federal law, to do the cleanups.

In fact, if we went to EPA with a Superfund grant application for this site, they would tell us to negotiate first. If we refused, as we have on other sites, they would negotiate, and they would probably end up-- I won't comment on what they would probably end up with; it is totally speculative on my part, but they would definitely force us to negotiate or negotiate themselves. It isn't something they do as a matter of policy or whim. Congress directed it. Congress said to the President in the Superfund law: "You cannot spend money for a publicly funded cleanup when you have a responsible party who is ready, willing, and able to carry it out." And, that is analogous to the State's Spill Compensation Act, where we are required to direct someone to do a cleanup before we can tap those funds. So, it is not a whim on our part. It is part of the process that is set up in the law.

ASSEMBLYMAN FLYNN: Excuse me. George, please continue.

MR. McCANN: There are a number of other points I would like to mention. Assistant Commissioner Tyler has already mentioned this, but this alternative plan provides for a very active cleanup. That is what we think is necessary; we think that the common goal of everyone, including us, and those who have been involved with this in the community, is the cleanup of this site. We think that the alternative plan will accomplish that.

I point out to you that on many of the other cleanups that we have underway in the State, through consent agreements, the method of cleaning up is strictly hydraulic. The placement of wells to capture contaminated groundwater, to change the direction, to focus on the most heavily contaminated portions of the plume is the method that is implemented in many cases. This is consistent with that. We have a lot of experience in dealing with those types of cleanups and those types of cleanup plans.

You will also note on here (referring to third map), the red dots, which represent approximately 30 wells that would be in there to measure the performance. This will be constantly monitored, initially to ensure that everything we have projected to take place is, in fact, occurring. At the end of the slurry walls, you will see a number of wells; we want to be sure -- as we expect it will achieve -- that none of the contamination would get around the slurry wall. We want to be certain that the design is appropriate. Based on the mathematical model, we believe it is the right length at this point and that it is the appropriate design. But, these are assurances; these are special assurances that have built into this plan to tell us that this is in fact working.

ASSEMBLYMAN FLYNN: Will the plan have any backup in case it doesn't work to require additional slurry walls?

MR. McCANN: The plan specifically addresses the fact that if it does not work to the satisfaction of the Department -- and in all cases the wording is "to the satisfaction of the Department" -- the company recognizes that they will be or may be required to do such things as extend the wall, put in additional wells, or increase pumping rates. All of that is agreed to in this proposed agreement.

ASSEMBLYMAN FLYNN: Regarding the wells, who will do the monitoring and who will take the samples? And how will you determine whether the samples are valid samples?

MR. McCANN: Okay. First of all, the installation of the wells will be, or have been, initially sited based upon our geologists' opinions of the appropriate places for the siting.

Secondly, the installation of the wells will be witnessed by our geologists who will ensure that they are properly installed to the right levels and that the casings are put in properly. By the way, all of those have to be installed by licensed well drillers of the State of New Jersey under special permits, which would be issued by us.

The monitoring of the wells: There are key wells throughout this plan where we will insist that double locks be installed, so that only when we are there to open the locks can samples be taken from those wells. Additionally, there are other wells which will be monitored for routine maintenance continually by the engineers who will be operating the facility. There will be certain samples collected by the company, which will be routinely submitted, as well as samples collected by an independent consultant, which will be paid for by the companies. The independent consultant will come off a preapproved list of consulting engineering firms which are currently employed for other cleanups by the the State -- other Superfund-type of spill-fund cleanups.

ASSEMBLYMAN FLYNN: Is is standard for you to let the industry select the consultant from your list? Is that a standard thing, or are you doing that just in this case?

MR. McCANN: We have several -- and this has been an experience we are going through -- mechanisms where we have been moving to have independent consultants utilized. One of the methods that we use is what we call the committee approach, where there are representatives of the company, as well as representatives of the Department, who would select an independent consultant, not necessarily on our approved list, but an independent consultant. In this particular case, we have already screened every one of the consulting engineering firms. We would have that list made available. We would

be satisfied with any one of the firms that we would be proposing. The companies will be looking at the firms for purposes of previous conflicts which they may have had, having employed an engineering firm. But, any one of the ones that we would submit, we would be satisfied that they would do the job which we are asking them to do.

MR. TYLER: These are companies which have publicly bid on a services contract for the Department for cleanup programs. There are about 12 engineering firms that have been successful. They are on a list. We will control the funds that reimburse those companies for their efforts. They will report to us and be totally accountable to us, so we have as much control over them as we have over any site of any cleanup.

MR. McCANN: I want to follow up on that. Once the consultant is selected, the moneys will be established up-front by the companies. The payments will be made by the Department to the independent consultant. The independent consultant will act on our request, and our request only. He will be out there when we ask him to be out there, not by his own decision or by request of the company, only when we direct him to be out there. He will supply the information directly to the Department and not to the companies. We will control all of the activities of the independent consultant. He will in no way be answering to the companies.

Samples that will be collected: At the current time we have two alternatives which we can work with. We have the Department's labs and the Department of Health's labs where we can have the samples brought to, or we may use a certified lab within the State to perform the analyses, both for the samples which we direct to be collected, as well as other ones that are collected by the company. Those analyses would be subjected to certain criteria to ensure that the quality of the analyses is acceptable, and we have standards to that effect established by the Department. Basically, it provides the background data to ensure that their equipment is properly calibrated; it has blank samples that are tested so that we can, again, assure the accuracy of the results which we will receive.

ASSEMBLYMAN FLYNN: How do you address the question which has been raised by the CAC, that this crescent wall won't adequately contain the contamination that might flow south into the brook or north into Perth Amboy's new well fields?

MR. McCANN: Again, the crescent wall is not at all designed to contain or capture the contaminants. It is hydraulically controlled. The wells that have been sited and the performance wells -- monitoring wells -- will give us all the readings to ensure that it is doing exactly what we have predicted it to do. That would cover a number of items: One, it would ensure that we do not have movement away from the plume, as it has been indicated; two, we would be ensuring that we are not pulling water from the Sayreville concerns, which are in this area. Those things can all be affected by the rates at which the wells are operated.

Now, if, in fact, any one of those problems begins to occur -- that type of problem doesn't affect someone overnight; it would have to be over an extended period of time to have that impact -- we could correct the situation by reducing the rate, increasing the rate of pumping, installing another well in another location, and ensuring that we have control of the direction of flow of the groundwater. So, it is hydraulically addressed. As I said, we have considerable experience in that area. It is done in a number of other sites.

The other things that I would just like to point out, regarding the advantages and disadvantages, are that we have ensured CAC, regarding a number of their concerns with the plan, that we have such things as around-the-clock 24-hour access to the site. It is written into the agreement that at anytime DEP representatives will be able to go in there; our independent consultant will be given access; that is expressly written into our current agreement.

In addition, we have financial assurances in the establishment of a $5 million performance bond, which will have a schedule for reimbursement based upon the demonstrated effect of operation of this plan. Assuming it is all working, we ultimately have an operation and maintenance bond which will provide for the continued operation of decontamination system.

We, of course, maintain the joint and severally liable clauses which were in the court-ordered plan, so, should Madison Industries or CPS fail to contribute their share, the other company is responsible for paying the entire cost. That is expressly in our most recent agreement.

I mentioned earlier that we have the independent consultant. To ensure that there are no problems with the pretreatment issue, we are now putting together wording that will describe the exact levels of pretreatment which will be required before the contaminated well water will be discharged.

We are also incorporating into the plan, a fixed schedule for the completion of this design and the construction of all this, to give us a final date of operation so that we can get the wells under way.

ASSEMBLYMAN FLYNN: Could you give us some idea -- if you know -- of what your timetable is?

MR. McCANN: There are various segments to this, as I said -- brook relocation is one; installation of wells is another; the slurry wall is a third -- that will be going on simultaneously. The design, the different components each would take approximately four months, I believe, in a four- to five-month range. The wells, of course, being the one that we can accomplish the quickest, would be within approximately four months -- that is, being able to be installed and ready to begin to pump. The slurry, as you might imagine, involves considerable construction. It would take a longer period. The relocation of the brook--

ASSEMBLYMAN FLYNN: (interrupting) How long does that slurry wall take?

MR. McCANN: The slurry wall itself, I think, would take 45 to 60 days.

DANIEL TODER: Very easily. In fact, much less time than that.

MR. SEAMAN: (from audience) Overnight.

MR. McCANN: Certainly not overnight, but--

ASSEMBLYMAN FLYNN: You can do that relatively quickly is what you are saying? The slurry wall itself? You have to design it first, though, don't you?

MR. McCANN: The slurry wall involves continued analysis of the types of soils that are being mixed with the bentonite that would presumably be used to ensure that you have the proper mixture and so on. The portion in the pond involved considerably more construction techniques to accomplish it. But, it would be within approximately the same time frames as the installation of the wells.

ASSEMBLYMAN FLYNN: The slurry wall you are talking about is basically, then, the same type of construction material as the inverted pyramid?

MR. McCANN: Yes, it is, very much so.

ASSEMBLYMAN FLYNN: It is just a matter of your doing a crescent, and the court-ordered plan was a complete circle?

MR. McCANN: Yes. In the court-ordered plan, the wall would be approximately five times in length and would, therefore, take at least five times as long, I believe, to construct.

There are also concerns on the bathtub proposal, that the variations of the depth of the clay lens varies from about, I think, 30 feet to a couple of hundred feet in some places which would be rather difficult to construct.

ASSEMBLYMAN FLYNN: Where are you now with this whole proposition? Do you have what you consider -- what your Department considers -- your final draft of the consent order?

MR. McCANN: I would say that--

MR. TYLER: I am looking at my lawyer.

ASSEMBLYMAN FLYNN: If you don't want to comment on that because of negotiations, I won't pressure you.

MR. HEKSCH: We are very close conceptually on 99% of the substantive issues. Some of the language still has to be worked out, and we do not have a final draft per se. The pretreatment issue was just put to rest a few days ago, and that has to be finalized as to language. We are still waiting for specific language on the performance bonds, not the amount or the type of security, but the language has to be acceptable to both my office and the DEP. There are a few other loose ends, as far as actually getting a written agreement between the DEP, CPS, and Madison. Then you get into the--

ASSEMBLYMAN FLYNN: Then you have Perth Amboy's problem.

MR. HEKSCH: Yes, then you have problems with Perth Amboy.

ASSEMBLYMAN FLYNN: Then you have to deal with Albert Seaman.

MR. HEKSCH: That is right.

MR. TYLER: The Attorney General does that.

MR. HEKSCH: But the other side of the coin is interesting to look at, as well. We have to deal with Perth Amboy if there is a tripartite agreement between the industries and the DEP.

The other thing to consider -- and you have heard it all day -- is that nobody is satisfied with the court-ordered remedy. The court-ordered remedy, by our own consultant, requires some modification, which again means that we have to go back to court to modify that, which gives the industries an opportunity to reopen a lot of the issues, which they tried to do before the Appellate Division. So, there is no quick, easy answer to this. It is not just a simple question of implementing the court order as the City of Perth Amboy would lead us to believe. It is not that simple.

ASSEMBLYMAN FLYNN: Are the modifications that your people want because of changes in the facts or changes in technology?

MR. TYLER: For example, one of the things that was negotiated, and accomplished already, was a sampling program for Prickett's Pond, which indicated that portions of the pond had to be within the cut-off wall. That was a recommendation of our engineer. To effect that, we would have to open the court order.

ASSEMBLYWOMAN WALKER: Without doing that, you would create additional contamination?

MR. TYLER: Well, it would be real silly, yes.

ASSEMBLYWOMAN WALKER: How did this court-ordered plan come out so deficit? You had some part in testifying--

MR. TYLER: Yes, we did, but you heard testimony also that in that case the court had its own expert.

ASSEMBLYMAN FLYNN: The judge picked his own expert. This happens in all kinds of cases, not only this kind. It happens in matrimonial cases, where if the court decides the matrimonial case, neither party is happy.

TOM WILSON: My name is Tom Wilson, and I am Project Coordinator for the Old Bridge Township Sewerage Authority. I have been around this job site since 1970, unfortunately. The CAC does not speak on behalf of the Old Bridge Sewerage Authority.

One of the problems we have -- item number one -- as a sewerage authority, is with all this processed water we are going to receive. Who is going to pay the tab? We ship this through a metered chamber. It goes to the Middlesex County Utilities Authority. It is going to cost us money, and every time we approach this subject of dollars, everyone seems to turn off their hearing aids or turn on their deaf ears.

ASSEMBLYMAN FLYNN: Good question. We will ask Mr. Tyler that question.

MR. WILSON: Another problem we have is--

ASSEMBLYMAN FLYNN: (interrupting) Hold it. One question at a time, Tom. Do you want to address that question, Mr. Tyler?

MR. TYLER: George?

MR. McCANN: Yes. The issue of the cost to the Old Bridge Sewerage Authority is in our latest proposal; the company has agreed that part of what the operation and maintenance bond will include will be not only the continued pumping of the wells but also the costs to the Old Bridge Sewerage Authority for the transport of that waste water.

Given the dollars as established by the Old Bridge Sewerage Authority, they will be incorporated into the bond that would be finalized and has been agreed to by the company. And, as we said earlier, there will be an escrow account to ensure that the bond remains in effect until the site is cleaned.

ASSEMBLYMAN FLYNN: Tom, does that answer your question?

MR. WILSON: Yes. I would like to see it in writing, though.

ASSEMBLYWOMAN WALKER: It also occurs to me that this is the kind of communication that should have been going on all along, and we should not have had to wait for a forum like this to have a question answered.

MR. TYLER: Absolutely. You are right. In fact, I was going to modify my earlier offer to meet with the mayors and representatives of each municipality involved, and go through some more detail to include, of course, the Old Bridge Sewerage Authority. I think we quite properly focused our main attention here on the Middlesex County Utilities Authority, in terms of the pretreatment and discharge issues. We probably neglected to communicate effectively with the Old Bridge Sewerage Authority. You are right. The question should not be asked today, and I do commit to that. We will sit down and go through the whole thing with them.

MR. WILSON: Item number two pertains to the numbers I have heard put forth today, with regard to the number of pumps you are going to have, the gallons you are going to be pumping per day, and everything else. This will be going through 24-inch line in our area. Sometime, when those pumps are all going at the same time, we will have to work out a time frame, because we are going to be running a sewer on top of the ground, instead of in a pipe.

ASSEMBLYMAN FLYNN: So, once again, it is communication.

MR. WILSON: Next is item number three: We have had some thoughts within the Authority itself, and we would like to discuss them with this Committee, and with somebody who would give us some money.

We would like to relocate that sewer line, get it off the property sites of those two industries, and give us an avenue where we can better facilitate the monitoring of their process. Although the Middlesex County Utilities Authority has adopted pretreatment standards, only one industry has even tried to comply with some kind of monitoring program. The other part of the problem is that CPS, at this time, has not been willing to do this.

We would like to sit down with the DEP and seriously consider working out a program, along with Middlesex County, with regard to relocating this line to facilitate a better program for all of us involved, and to further ensure the environmental aspects of this program considering the drinking water.

ASSEMBLYMAN FLYNN: Can that be accomplished, Commissioner? Can you sit down with them and discuss that problem?

MR. TYLER: Absolutely. I think we need to have two separate discussions: one on the idea of the construction of a new sewer line and whatever happens with the CPS/Madison case; then a separate, more immediate discussion on the particulars of the case.

ASSEMBLYMAN FLYNN: Thank you.

MR. WILSON: All right. Thank you.

ASSEMBLYMAN FLYNN: Mr. Robinson, did you have your hand up?

MR. ROBINSON: As I understand it here, there has been virtual agreement reached among yourselves, the DEP, and the industries for this particular plan — the alternate design plan.

MR. TODER: I think that is true. We are very close to a written agreement.

MR. ROBINSON: With regard to the design that is here now, which is called the Wehran Plan: Is this plan going to be modified by your future consultants?

MR. TYLER: If you are referring to George's comment that we would have an independent consultant act as an oversight agency, if you will, for this, no. They are not being called in to design or modify the design; they are being called in to monitor the construction--

MR. WILSON: (interrupting) And verify that it is working properly.

MR. ROBINSON: Then we can assume that, basically, we are going to follow the Wehran design.

MR. TYLER: The alternate design that is on the board there, which was an outgrowth of an initial design done by Wehran Engineering but modified over a year of negotiations with our technical staff, yes.

MR. ROBINSON: Regarding the plant areas themselves, where a lot of contamination has been detected in the past, with this four-year period, or whatever it amounts to: Is all the contamination underneath those plants going to be dissipated, removed, or abated?

MR. TYLER: That's a good point. Under the court order, again, the monitoring and maintenance programs for the bathtub was a finite one, limited to four years. Under the renegotiated proposed court-consent judgment, which we would propose to enter into, there would be, in effect, a perpetual program until such time as the Department is satisfied that the decontamination is complete.

The answer to your question is yes; however, I wanted to amplify on it. We believe that the pumping and treatment program will remove the contamination. If it does not, the order specifically provides for a continuous process of decontamination and invites us, at some future point when we become dissatisfied with the process -- if that should occur -- to effect new solutions.

MR. ROBINSON: What you are saying, then, is that it will be cleaned up, eventually, one way or another?

MR. TYLER: Yes. Absolutely.

MR. ROBINSON: All right. Thank you.

ASSEMBLYMAN FLYNN: We have time for just one more question. Yes, sir? (motioning to man in the back of the room) Would you come forward and put yourself on the record? While he is coming up, I want to announce that on Thursday at 10:30 a.m. in Trenton there will be a continuation of these topics in Room 346 of the State House Annex. Mr. Tyler, if you cannot be present, I hope you will have George McCann there. He has done a very good job explaining what is going on.

MR. TYLER: After the last question I would like to make one brief comment.

ASSEMBLYMAN FLYNN: All right. Fine. Yes, sir?

STU NUSSBAUM: I hope you didn't allow me just one question. Did you say this was to be the last question?

ASSEMBLYMAN FLYNN: We only have three minutes.

MR. NUSSBAUM: Okay. I will be very brief then. The original Wehran Plan, which was before 1983, agreed with the court plan about the sludging. Then, all of a sudden, we have the question of whether or not there was activity in the sludge.

The CAC asked a question, and I don't think we ever received an answer: Was there a change in the assay methodology? In other words, originally, did you measure the solids plus the water, and in the second sampling, did you measure only the water phase?

MR. TYLER: George, do you understand the question?

MR. McCANN: I am not clear on the question.

MR. NUSSBAUM: Was there a difference in the assay technique between the original and the second testings?

PAUL HARVEY: In the sediments in the pond?

MR. NUSSBAUM: Yes, in the sediments. Don't take up my three minutes by not answering us again, Paul.

MR. TYLER: That's not fair. You cannot ask a hard question, and then—

MR. NUSSBAUM: (interrupting) It is a simple question. Did you change your techniques of assaying the site? Because if your assays are different, you may be comparing apples and pears; you may not have assayed or sampled—

MR. TYLER: (interrupting) All right. Let me commit to having an answer for you by February 28.

ASSEMBLYMAN FLYNN: Can you get that answer for us?

MR. TYLER: Yes, Mr. Chairman.

ASSEMBLYMAN FLYNN: Mr. Nussbaum, we will get that answer on February 28 at our hearing. Hopefully, we will get that to you.

MR. TYLER: Okay.

MR. NUSSBAUM: Now, has any testing been done on the stability of the wall using well samples containing the contaminants or on the bentonite-type material? Similarly, has volume displacement been ventured, in any fashion, for this particular site using ground samples taken from the site? The reason the second question was asked is because Dames & Moore used an estimate of 10-30 volume displacements. Of course, the industry used 2-4 volume displacements, but only in the lower layers. This is a key question with regard to the estimated time for cleanup.

MR. TYLER: Again, I am going to commit the Department to answer your question on the record at this hearing when it is continued February 28. I just ask that you stay for a few minutes after the hearing today to go over the questions with my staff, in order that we understand them.

MR. NUSSBAUM: It would be my pleasure.

To continue, what was the logic of this location, and have you decided who actually has that land down there -- as compared to the other methodologies the DEP and the Bureau of Flood Plain Management picked for the relocation of that brook?

MR. TYLER: The location of the cut-off slurry wall was driven by the sampling and analysis program for Prickett's Pond. The further relocation of the brook was a technical decision made to augment, or enhance, the hydraulic pumping regime we have designed for the inner wall.

Again, I am going to defer to my staff to give you more precise answers on that -- later.

MR. NUSSBAUM: Is it policy, or is it acceptable to the DEP, to have a known carcinogen in water that has, perhaps, been diluted below the level of detectability? Or to state that this is now acceptable new water for drinking?

MR. TYLER: Let me tell you that it is not the policy of the Department to have carcinogens in drinking water. In fact, we have recently promulgated Statewide regulations for all public community water supplies. We are the only State in the nation that has those kinds of regulations; and results from the first round of testing, which was referred to in earlier testimony, are just starting to come in. Based on that testing, public community water supplies will be ordered to correct problems and remove contamination.

The technical issue you raised -- what do we do with something that is below the level of detection? -- is an impossible question. If it is below the level of detection, we will not find it; nor could we bring a case to court and base a claim on it without evidence to support that claim. If something is below the level of detection, we are just not going to deal with it. We just cannot.

MR. NUSSBAUM: Then I would just like to finish very quickly because of your time. I appreciate your people coming here.

We still have a problem, because the last word we heard in the Township was that the MCUA said pretreatment is necessary, particularly for zinc.

MR. TYLER: Right.

MR. NUSSBAUM: The DEP has consistently said they were going to leave it to the MCUA. Today they stated that the MCUA has now changed its position. I would like you people to erect--

MR. TYLER: (interrupting) No, no. There will be pretreatment, and that pretreatment is their responsibility. That is what we have been saying. Maybe it came out too bureaucratically over the years. One of the things we have done in New Jersey that I think is pioneering and is going to make pretreatment work in this State -- even though it is not working in any other state -- is to delegate the responsibility for pretreatment permits to those sewerage and utilities authorities that are competent to run pretreatment programs.

Middlesex is such an authority. As a result, it is their call. We can't delegate the program and then take it back every time it's convenient. It was their call whether or not pretreatment was necessary. That was what we probably meant. I can't tell you every statement that was made. It is their call; we have negotiated with them; we have reached agreement; and there will be pretreatment.

ASSEMBLYMAN FLYNN: There will be pretreatment?

MR. TYLER: Yes.

MR. McCANN: May I just add to that quickly? We previously stated to you -- exactly as Commissioner Tyler stated -- that it is the responsibility of the authority, and we did have wording to that effect. It is in the agreement. We have now come to a subsequent agreement with the authority, as well as with the companies, so that we will, in fact, articulate within the agreement that both parties will sign what levels of pretreatment will be required, so there will be no questions or delays in the future. That is the difference.

MR. NUSSBAUM: One last statement. The four-year period that is in the court-ordered plan is based on the estimate of Dames & Moore. And if you read Dames & Moore, it says, "Approximate, approximate, approximate." It does not say, "Absolute, absolute, absolute." Four years is used in the court plan, but it is hedged by all sorts of words. We are hanging on for four years, and then saying, "That's it. Four years and we stop the pumping or the cleanup."

That is not what the court says, in my opinion. The court says that because of the estimates, because of the technology that was available, because Dames & Moore did not do testing, they use an assumption. If the assumption is high, as the industry thinks, then it

will be less high; if the assumption is low, it will be longer. They use the four years only as an approximation. Also, the four years was only for the outside area; it wasn't for the entire cleanup. So, it does not represent what would happen here. It could conceivably be much higher if there are 10-30 volume displacements.

We are worried about effective dilution: when you fellows will cut it off. Now, maybe you have changed this consent order. We are not aware of any of the changes you mentioned today. If you are going to cut this off by measuring water samples, and if the water samples are diluted, then we have a problem. Further, if you are not measuring plume and activity, then we have a real problem. Thank you very much.

MR. TYLER: May I respond to that?

ASSEMBLYMAN FLYNN: Yes. Go ahead. Blanche, are you coming to Trenton on Thursday?

MS. HOFFMAN: Yes. All I wanted to say--

ASSEMBLYMAN FLYNN: (interrupting) I'm not going to call on you. I am just asking because Stu should give some of his questions to you if you are coming. For our last question now, George Lamdreth:

GEORGE B. LAMDRETH: I am George Lamdreth. I live in Old Bridge. This has been going on since 1970. Continually, over and over, the sediment has been going into the ground from the zinc oxide that has been laying out on the pads and so forth. What has been done to stop this process to date, if anything? I have sat there, in front of the area, day after day after day, watching all types of operations. Now, I would like to get some kind of an answer as to what you are doing.

ASSEMBLYMAN FLYNN: About the zinc oxide?

MR. LAMDRETH: Yes.

ASSEMBLYMAN FLYNN: Okay. Does anyone want to address that?

MR. McCANN: Yes. Specifically, the problem with the zinc pile was an issue that was certainly proposed to be addressed in the agreement. Over the last few months, the zinc pile has been in the process of being moved. It has now reached the point where, I believe, only a small quantity remains — if it is not totally gone.

Other things were done at the site. Paved areas with curbing and underdrains were put in to collect any runoff that might come from spillages, leakages from drums, or anything else in the operations of the facility, so that, in fact, none of that could reach the groundwater.

ASSEMBLYMAN FLYNN: I have a copy, Mr. Lamdreth, of the proposed consent order. Actually, it is probably a first or second draft. There is a specific paragraph that addresses the removal of the exposed zinc pile. Is it too soon to let the CAC and other interested parties see copies of this?

MR. TYLER: No, they have it. They have copies.

ASSEMBLYMAN FLYNN: Do you have the latest copy?

MS. HOFFMAN: No, not the latest.

MR. HEKSCH: There is no latest draft that can be disseminated, because it is sort of in a cut and paste--

ASSEMBLYMAN FLYNN: (interrupting) It is still in a state of flux. That is basically the answer, George.

MR. LAMDRETH: Mr. Chairman, I have sat there and watched the zinc oxide pile be removed from the front and placed in the rear. So, what you don't see on the roadway is no longer there. I guess that is the answer to the whole problem: Just shift the pile so nobody sees it, and then we will no longer have the problem. Every time it rains, however, that zinc oxide runs down your concrete pads and into the ground, and you are still contaminating the whole system the way it is.

MR. TYLER: That's right, and that is why we want to enter a consent agreement with the company, and put it under a court order to do the cleanup. Until that court order to cleanup goes forward, or some other cleanup goes forward, he is right: We still have a problem at the site. No question.

ASSEMBLYMAN FLYNN: All right. Thank you. I want to thank everyone for being here, and, again, I am inviting everyone to come to Trenton on Thursday. I am, however, going to give Mr. Tyler a couple of minutes to plead his case. He has done a good job of pleading his case so far.

MR. TYLER: No, thank you. I don't want to. In fact, I want to do two things. First, I really want to thank you sincerely for calling this hearing and establishing a dialogue where one needed to be established. I also want to thank you for your courtesy in dealing with what could easily be labeled a controversial situation. I really appreciate that.

The other thing I want to say is that I get paid to do this, but there are a lot of people on my staff who do not. Some of them are here; some of them are not. The staff in the Department has worked around the clock in the past making extraordinary efforts to bring this case to a head. I want to publicly take this opportunity to muck up your hearing record to commend and thank them for going through this process. That is really all I want to say. And I include the AG's office and Ron.

ASSEMBLYMAN FLYNN: If you want to mention some names, you may do so. If you don't want to, at the risk of offending someone, you don't have to. (laughter)

MR. TYLER: I would rather not. We had a lot of people who participated; however, I thank you very much.

ASSEMBLYMAN FLYNN: Thank you. This meeting is adjourned until next Thursday in Trenton.

(MEETING CONCLUDED)

APPENDIX

I appear before you as a concerned citizen and resident of Say

I commend the Oversight Committee for holding this hearing locally for public input.

I am concerned with the lack of implementation of the October, 1981, Court Ordered Cleanup Plan of C.P.S.-Madison Industries' hazardous waste site, named 4th on the N.J. list, and 12th on the national list.

I am disappointed and disillusioned with the Division of Water Resources' lack of initiative regarding the plan implementation and cleanup of a polluted site in a prime watershed area.

I am distressed because they never made concerned communities a part of Wehran Plan discussions until the last minute.

Water is a precious resource. Most people think if it tastes palatable it is O.K. This is an incorrect assumption. Some toxics are most insidious, with no visible smell or taste.

The Court Ordered Plan utilizes purification and recycling as a means of pumping pollutants. The Wehran Plan would continuously pump potable water as a cleansing mechanism. Adequate pumpage of potable water would have to be maintained to create a negative head on one side of the slurry wall and a positive head on the other to protect our existing groundwaters. Director John Gaston of the Division of Water Resources stated at a public meeting of the C.A.C. that he would grant C.P.S. and Madison Industries the diversionary rights to this fresh water. This is in direct conflict with studies which have indicated overpumpage of our existing aquifers, and the position of the Division of Water Resources that no additional groundwater diversions should be granted. Such overpumpage causes our water table to drop and the quality to diminish and encourages additional salt water intrusion into the system. Communities are being encouraged to seek surface water sources which are far more costly to the consumer. Why should we be penalized financially as well as environmentally by 2 irresponsible companies?

Frontpage headlines in the News Tribune of 2/18/85 stated, "Drinking water found tainted." Director John Gaston indicated 29 of 209 specimens contained contaminants. This represented roughly 1/3 of the N.J. Public Water Companies. The remaining samples must be submitted to the Division of Water Resources by 3/15/85. I urge members of this committee to obtain specimen results of samplings in the Runyon Watershed to determine if an emergency exists. In any event let the public be informed through the press as to the results.

Responsible industry can and does coexist with us within our communities. Government must assume a more assertive role to properly zone and police industry to control the irresponsible operations. Society cannot exist without the economic base of industry. We all have to put food on the

table, but we also have to breathe the air and drink the water.

If change is not forthcoming, I would state that the federal government will find that the problems of funding Social Security and Medicare will diminish in the not too distant future. Irresponsible companies who foul our air, water, and food supply will shorten our lifespan. If they don't get you in a one shot catastrophe like Bhopal, India, they will still maim or kill you in the long run.

You must be the "Watchdogs" and "Regulators". We place our lives and the lives of our children in your hands.

Joan Ryan
Morgan Ave. & South St.
South Amboy, N.J. 08879

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Submitted by DEP

TESTIMONY - CPS/MADISON

Good morning ladies and gentlemen. I would like to thank Assemblyman Flynn for inviting us here today so that we can clear-up any questions there are concerning the handling of the CPS Chemical/Madison Industries case.

Let me start with an overview of this case and explain to you how we got where we are today. In early 1981, the DEP in conjunction with the City of Perth Amboy filed suit against CPS/Madison to determine liability, remedial relief, and damages under the Water Pollution Control Act and the Spill Compensation and Control Act. On October 16, 1981 a Superior Court Judge decided that CPS/Madison were liable for polluting the ground and surface water in the Pricketts Brook watershed. Pricketts Brook is a part of the Runyon watershed which is Perth Amboy's potable water supply. All of Perth Amboy's wells in this vicinity have been closed since the mid 1970's. The court found CPS responsible for organic chemical contamination and Madison responsible for inorganic, heavy metal contamination.

The court mandated a clean-up based on a conceptual plan recommended by the appointed court experts, Dames & Moore. This court ordered plan included the following elements: (1) construction of an all incompassing mile long slurry wall keyed into a continuous clay layer beneath the site which would act as a bathtub to contain the contamination; (2) relocation of Pricketts Brook away from the influence of both Companies; (3) decontamination wells located inside and outside the slurry wall; and (4) the dredging and disposal of sediments in Pricketts Pond. The responsibility for implementing this clean-up was delegated to the Department and the City of Perth

Amboy with the Companies paying a designated amount of money for each aspect of the plan.

Based upon the court order, in February 1982, Department personnel began a year long effort to design plans and specifications for the slurry wall and Brook relocation. This task involved a great deal of field work including a survey of the entire area, the installation and logging of numerous borings and monitoring wells by the Department drill rig which took many months in itself, and the sampling and recording of water levels in numerous monitoring wells. The resulting 68 pages of plans were drawn up by Department personnel. With the rapid evolution of the Superfund program, the Department elected to have its inhouse plans for remediation reviewed and modified by a professional engineering firm. Clearing authorization, bidding, and selections consumed the remainder of 1983 and half of 1984.

In the meantime, CPS/Madison had appealed the remedy ordered by the 1981 Superior Court decision to the Appelate Court. Due to the uncertainty of the outcome of the appeal process, it was appropriate to hold in abeyance any implementation of the court ordered remedy. On April 21, 1983 the Appelate Court upheld the initial decision with two important modifications:

1. The financial ceiling for the cost of clean-up was lifted; and
2. The companies were found joint and severably liable for the clean-up.

Further appeal by CPS/Madison to the Supreme Court was denied.

In May 1983 an alternative plan was submitted by Wehran Engineering on behalf of CPS. This initiated on-going negotiations with CPS/Madison to develop an agreement that would be as good as or better than the court ordered plan. These negotiations led to the submittal of two addenda to the original plan which were in response to the Department's concerns. Also, through these negotiations a very intensive sampling program was completed of the sediments in Pricketts Pond and Brook in March 1984. CPS/Madison paid for this very expensive program and new valuable data was collected. This data defined and delineated the contaminants of Pricketts Pond.

The alternative plan is a modification of the court ordered plan. It includes a 1000 ft. crescent shaped slurry wall located 1/3 of the way into Pricketts Pond, three decontamination wells pumping a total of at least 400 GPM to control and capture the contaminant plumes, discharge of the contaminated ground water to the MCUA, and the relocation of Pricketts Brook.

The Department has taken a dual track approach to initiate a clean-up. As we continue to negotiate with the Companies, we have also moved forward to implement the court ordered plan. In January 1984 a request for proposal was issued and the engineering consulting firm CH_2M Hill was hired to review the Department's clean-up design and all of the accumulated data. On completing task I (design and data review) of the contract in August 1984, CH_2M Hill submitted a report recommending modifications to the Department's design and a proposal to gather other needed field data (task II). Interestingly, the CH_2M Hill slurry wall modifications are consistent with those developed for the proposed alternative plan.

The Department has determined that the alternative plan has advantages over implementation of the court ordered plan including:

1. The alternative plan is a more active approach and will result in faster decontamination compared to the more passive "bathtub" approach.

2. The Companies remain fully liable for successful implementation of the plan.

3. The proposed alternative provides necessary financial assurances to insure the effective remediation of the groundwater.

4. Substantial delays due to additional litigation would be avoided.

5. The location of the slurry wall is in a more effective position in the alternative plan.

6. A third party consultant is provided for to assist the Department in evaluating the performance of the system when it becomes operational.

The process of public involvement was initiated with a meeting at the request of the CAC in July, 1983 with Director Gaston and other Division of Water Resources representatives. Staff members and attorneys attended subsequent meetings scheduled by the CAC during 1984 regarding the details of the case, the status of CH_2M Hill review, and the on-going negotiations with CPS/Madison. The most recent meetings with the CAC and attended by Director Gaston provided a frank exchange of outstanding issues and a copy of the proposed alternative plan for comment.

The Department has solicited comments on the alternative plan and the only negative comments received were from the CAC. In their November 29, 1984 letter the CAC stated that they were against the proposed plan but only very general comments were included. In the Department's December 6, 1984 letter to the CAC, it requested that they submit more specific comments and concerns which could be considered in our decision making process. In a February 4 letter from the CAC, they reiterated their objections, which to date remain unresolved.

Submitted by -
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GRASS ROOTS ENVIRONMENTAL ORGANIZATION

March 8, 1985

Written testimony for the Assembly Legislative Oversight Committee
Re: CPS Madison, Old Bridge, New Jersey
Clean of up toxic waste sites

My name is Madelyn Hoffman and I'm the coordinator of the Grass Roots Environmental Organization, a coalition of grass roots citizen action groups from communities directly affected by a toxic pollution problem. Many of our members live near Superfund sites, sites listed in New Jersey's plans for clean up of toxic waste sites, sites that may soon receive Superfund designation, and other sites that need to be cleaned up. Residents from all over New Jersey are very concerned and very active in working for clean up because to date, almost no clean up of toxic waste sites has occurred.

Out of 546 sites listed on the national superfund list, only 6 have received any funds for clean up. Not a single site in New Jersey has been completely cleaned up with Superfund dollars. Currently, there are 95 sites listed on Superfund and some 2,000 to 5,000 additional sites potentially elgible. New Jersey residents recognized the need for clean up of toxic waste sites in 1976 and helped push legislators to pass the New Jersey Spill Fund to enable the state to pursue its own clean up efforts. In the last five years, only $35 million has been spent from the Fund on clean up of toxic waste sites. $26 million was spent on Chemical Control alone, and the clean up is not yet complete. $5 million was spent on Goose Farm and the rest was spent on minor clean up efforts.

The New Jersey Department of Environmental Protection is not using the money from this fund for clean up. In addition, they are not taking advantage of the provision which enables them to recover three times the cost of clean up from the responsible parties. They have hidden behind an Attorney General opinion which claims that once a site is listed on Superfund, no New Jersey Spill Fund money can be used. This opinion has not been upheld by the courts. In fact, just recently the New Jersey Supreme court ruled that there was no grounds for making such a claim. Still, the money has not been used.

Lastly, by refusing to spend the New Jersey Spill Fund money, they have been unable to spend any of the $100 million Hazardous Waste Bond Act, passed overwhelmingly by voters in 1981. And while the DEP drags its feet and spends no money on clean up, the toxic chemical pollution problems persist and get worse.

Residents have had to act to get much needed clean up. In some communities they have held rallies, press conferences, demonstrations. In addition, one recourse for communities has been the courts.

The case of Perth Amboy, Sayreville and Old Bridge against CPS Madison is an example of where residents used the courts to try to obtain a clean up that was not occuring under normal procedures. The court-ordered clean up was obtained by communities that were fighting for their lives. While the court-ordered plan did not completely address the community's concerns, it addressed some of the issues of concern to the community and established a framework in which the clean up was to occur.

It is absolutely unconscionable that the DEP can then "negotiate" an agreement with those industries responsible for the pollution that severely undercuts the program recommended by the court. What good is having a judicial system if the DEP can get away with ignoring, modifying, weakening and rendering useless whatever the court has ordered? Are the DEP and the polluting industries somehow above the law?

There have been numerous other examples in the state where court rulings have been ignored. One example is in regard to the High Point Landfill, in Warren County. When, finally, residents were able to obtain the closing of the landfill because of pollution problems, the court ordered the DEP to take charge of clean up. To date, nothing has happened.

In Newark, while the DEP was in charge of clean up at the Thomas Street warehouse, deadline after deadline for clean up passed, without the DEP imposing any fine on the companies involved.

It is a typical tactic of the DEP to take residents real concerns for complete and proper clean up and turn around and blame the community for delaying the clean up, for hindering their efforts at "clean up." But it is clear that the real barriers to clean up are the DEP and the industry itself. Communities are trying to insure their health and safety. They are trying to prevent and eliminate pollution problems. In fact, many people throughout New Jersey want clean ups to be done immediately, without

regard to cost. They are not interested in finding ways for the industry to "cut corners," just to save a few bucks.

GREO supports the Citizens Advisory Committee of Sayreville, Old Bridge, and Perth Amboy in their efforts to obtain:

* real clean up, not containment of the pollution at CPS Madison
* prevention of any new pollution at CPS Madison
* removal of contaminated waters, sludges, etc.
* taking the monitoring role for the clean up out of the hands of the responsible parties - the polluting industries
* full participation in the development of <u>all</u> clean up plans
* the prevention of out-of-court, in the back room, sweetheart deals with the polluters, which let them off the hook - and enable them to get away with creating a health threatening situation without having to pay for it.