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PUBLIC HEARING

before

ASSEMBLY ENVIRONMENTAL QUALITY COMMITTEE

on

ASSEMBLY BILLS 3019, 3020, 3042, 3061 and 3062

(Legislative and Executive response with respect to storage, treatment, and disposal of radium-contaminated soil)

September 12, 1986
Vernon Valley Action Park Tent
Vernon, New Jersey

MEMBERS OF COMMITTEE PRESENT:

- Assemblyman John O. Bennett, Chairman
- Assemblyman Robert W. Singer, Vice Chairman
- Assemblywoman Kathleen A. Donovan
- Assemblyman Frank J. Gargiulo

ALSO PRESENT:

- Mark O. Smith
- Office of Legislative Services
- Aide, Assembly Environmental Quality Committee

* * * * *

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State House Annex
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Trenton, New Jersey 08625

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Assemblyman
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Chairman
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JOHN M. BAER
ROBERT G. SMITH

New Jersey State Legislature
ASSEMBLY ENVIRONMENTAL QUALITY COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 292-7676

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M E M O R A N D U M

September 10, 1986

TO: ASSEMBLY COMMITTEE ON ENVIRONMENTAL QUALITY
FROM: ASSEMBLYMAN JOHN O. BENNETT
SUBJECT: PUBLIC HEARING - Friday,
September 12, 1986

The Assembly Committee on Environmental Quality will hold a public hearing on September 12, 1986 from 5:00 PM to 10:00 PM at the Vernon Valley Action Park Tent, Rt. 94, Vernon, N.J.

The subject of the public hearing will be the Legislative and Executive Response with respect to storage, treatment and disposal of radium contaminated soil. Please be prepared to consider the following bills:

- A-3019
Littel/
Haytaian Requires Department of Environmental Protection to review scientific studies prior to identifying and implementing treatment or disposal of radioactive soil.
- A-3020
Littel/
Haytaian Prohibits storage of radioactive soil except at licensed hazardous waste facilities.
- A-3042
Karcher Prohibits the treatment in disposal of soil contaminated with radium until a feasibility study on radium extraction has been conducted and transmitted to the Legislature.
- A-3061
Karcher Prohibits transport and permanent storage of disposal of radium-contaminated soil by DEP.
- A-3062
Karcher Defines radium contaminated soil as a hazardous waste.

(Persons wishing to testify at the public hearing should contact Mark O. Smith, Committee Aide, at (609) 292-7676.)

ASSEMBLY, No. 3019
STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 8, 1986

By Assemblymen LITTELL, HAYTAIAN and Karcher

AN ACT concerning the treatment and disposal of soil containing industrial waste contaminated with radioactive materials and supplementing Title 13 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The Legislature finds that soil containing industrial waste con-
2 taminated with uranium, radium, or radioactive thorium constitutes
3 a hazardous material with which neither the private sector nor
4 public institutions charged with establishing policy regarding the
5 management of wastes have had any significant experience; that
6 because of the relative novelty of the material, scientific and tech-
7 nological analysis and evaluation of the alternative methods of
8 safely treating, storing, or disposing of this material have been
9 superficial and inconclusive; and that the Department of Environ-
10 mental Protection, in responding to an unprecedented problem
11 fraught with potential peril to the health and safety of the citizens
12 of this State, should defer all efforts to permanently resolve the
13 problem until the technology which assures the maximum safety
14 to the public and the environment can be identified with scientific
15 confidence, and implemented with all appropriate protections.

1 2. a. Notwithstanding the provisions of any other law, rule,
2 regulation, or order to the contrary, no soil containing industrial
3 waste contaminated with uranium, radium, or radioactive thorium
4 may be treated or disposed of until all feasible alternatives for its
5 treatment and ultimate disposal have been subject to full scientific
6 and technological analysis and evaluation and until the commis-
7 sioner, upon a review of such analyses and devaluation, finds, in
8 writing, after public hearing, that a particular treatment and
9 disposal technology may be implemented with assurance that
10 neither the public health or safety nor the environment or natural
11 resources of the State will be jeopardized or compromised thereby.

12 b. No treatment or disposal technology determined by the com-
13 missioner to be safe and environmentally benign pursuant to sub-
14 section a. of this section may be implemented except at a facility
15 permitted as a solid waste disposal facility authorized to accept
16 hazardous waste pursuant to P. L. 1970, c. 39 (C. 13:1E-1 et seq.),
17 a facility designated as a hazardous waste facility pursuant to
18 P. L. 1981, c. 279 (C. 13:1E-49 et seq.), or at a facility authorized
19 by law to accept for disposal low-level radioactive waste.

1 3. This act shall take effect immediately.

STATEMENT

This measure would require the Commissioner of Environmental Protection to review all relevant scientific and technological data relevant to the treatment and disposal of soil contaminated with radioactive industrial waste and to make a finding that a particular treatment or disposal technology can be implemented with assurance that the public health and safety and the environment will be protected prior to taking any action to treat or permanently dispose of such soil.

The measure further precludes the implementation of any such treatment or disposal technology except at licensed and permitted hazardous or low-level radioactive waste facilities.

HAZARDOUS WASTE

Requires DEP to review all scientific studies prior to identifying and implementing a treatment or disposal technology for radioactive soil and requires treatment and disposal at licensed hazardous or low-level waste facilities.

ASSEMBLY, No. 3020
STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 8, 1986

By Assemblymen HAYTAIAN, LITTELL and Karcher

AN ACT concerning the storage of soil contaminated with industrial waste containing radioactive materials and supplementing Title 13 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. The Legislature finds that soil containing industrial waste
2 contaminated with uranium, radium, or radioactive thorium con-
3 stitutes a hazardous material with which neither the private sector
4 nor public institutions charged with policy regarding the manage-
5 ment of wastes have had any significant experience; that because
6 of the relative novelty of the material, scientific and technological
7 analysis and evaluation of the alternative methods of safely treat-
8 ing, storing, or disposing of this material have been superficial and
9 inconclusive; and that the Department of Environmental Protec-
10 tion, in responding to an unprecedented problem fraught with
11 potential peril to the health and safety of the citizens of this State,
12 should, in the interest of safety, store such material only at
13 licensed hazardous waste or low-level radioactive waste facilities
14 until appropriate treatment and disposal methods can be identified
15 and implemented.

1 2. Notwithstanding the provisions of any other law, rule, regula-
2 tion, or order to the contrary, no soil containing industrial waste
3 contaminated with uranium, radium, or radioactive thorium may
4 be stored except at a facility authorized under federal and State law
5 to accept hazardous waste, or at a facility at which low-level radio-
6 active waste is currently being stored or disposed of under federal
7 or State authority.

1 3. This act shall take effect immediately.

STATEMENT

This measure would prohibit the storage of soil containing industrial waste contaminated with certain radioactive materials except at existing authorized hazardous waste facilities, or at facilities presently authorized under federal or State law to store or dispose of low-level radioactive waste.

HAZARDOUS WASTE

Precludes storage of radioactive soil except at licensed hazardous waste facilities or existing low-level radioactive waste storage or disposal facilities.

ASSEMBLY, No. 3042

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 11, 1986

By Assemblymen KARCHER, LITTELL and Haytaian

AN ACT concerning the disposal of soil contaminated with radium
and supplementing P. L. 1970, c. 39 (C. 13:1E-1 et seq.).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Notwithstanding the provisions of any other law, rule or regu-
2 lation to the contrary, the Department of Environmental Protection
3 shall not cause soil containing industrial waste contaminated with
4 radium or its decay products to be treated or disposed of within
5 the territorial limits of the State until such time as the department
6 has completed a comprehensive study of the practicability and
7 feasibility of extracting the radioactive material remaining in the
8 soil. For the purposes of this act, "industrial waste" means waste
9 generated by any processes of industry, manufacture, trade, or
10 business, or from the development of any natural resource.

1 2. Prior to taking any action to treat or dispose of such materials,
2 the Commissioner of the Department of Environmental Protection
3 shall submit to the members of the Senate and General Assembly
4 a summary of the results of the study required pursuant to sec-
5 tion 1 of this act, together with any appropriate conclusions and
6 recommendations for legislative or administrative action to be
7 drawn therefrom.

1 3. This act shall take effect immediately.

STATEMENT

This bill would prohibit the Department of Environmental Protection from treating, storing, or disposing of soil containing industrial waste contaminated with radium or its decay products

anywhere within the territorial limits of the State until such time as the department has completed a comprehensive study of the practicability and feasibility of extracting the radioactive contents remaining in the soil, which study shall be transmitted to the Senate and General Assembly before any action is taken.

HAZARDOUS WASTE

Prohibits the treatment or disposal of soil contaminated with radium until a feasibility study on radium extraction has been conducted and transmitted to the Legislature.

ASSEMBLY, No. 3061

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 11, 1986

By Assemblymen **KARCHER, LITTELL** and **Haytaian**

AN ACT concerning the transport, storage, and disposal of soil contaminated with industrial waste containing radium and supplementing Title 13 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. As used in this act:

2 "Industrial waste" means waste created from any processes of
3 industry, manufacture, trade, or business, or from the development
4 of any natural resource;

5 "Radium" means radium and its decay products, including radon
6 and its progeny.

1 2. The Department of Environmental Protection shall not cause
2 soil contaminated with industrial waste containing radium to be
3 transported for permanent or temporary storage or disposal at a
4 site overlying a source of potable water within this State.

1 3. The department shall not cause soil contaminated with indus-
2 trial waste containing radium to be permanently stored or disposed
3 of at a site overlying a source of potable water within this State.

1 4. Nothing in this act shall be construed to apply to potential
2 storage or disposal sites located upon:

3 a. the property of the United States of America; or

4 b. the premises of a nuclear power generating station.

1 5. This act shall take effect immediately.

STATEMENT

This bill would prohibit the Department of Environmental Protection from causing the transport of soil contaminated with industrial waste containing radium for permanent or temporary storage or disposal at a site overlying a source of potable water within this State. The bill would also prohibit the department from causing the permanent storage or disposal of this radium-contaminated soil at any such site. Sites located upon the property of the United States of America or upon the premises of a nuclear power generating station would be exempt from the provisions of this bill.

HAZARDOUS WASTE

Prohibits transport and permanent storage or disposal of radium-contaminated soil by DEP.

ASSEMBLY, No. 3062

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 11, 1986

By Assemblymen KARCHER, LITTELL and Haytaian

AN ACT concerning hazardous waste and amending P. L. 1976, c. 99.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1976, c. 99 (C. 13:1E-38) is amended to read
2 as follows:

3 1. As used in this act, the following words and phrases shall
4 have the following meanings, unless the context clearly requires
4A another meaning:

5 a. "Bulk liquids" means liquid or semiliquid waste, including
6 petroleum products, which is contained within, or is discharged
7 from, any one vessel, tank or other container which has a capacity
8 of 20 or more gallons;

9 b. "Chemical waste" means a material normally generated by
10 or used in chemical, petrochemical, plastic, pharmaceutical, bio-
11 chemical or microbiological manufacturing processes or petroleum
12 refining processes, which has been selected for waste disposal and
13 which is known to hydrolyze, ionize or decompose, which is soluble,
14 burns or oxidizes, or which may react with any of the waste
15 materials which are introduced into the landfill, or which is buoyant
16 on water, or which has a viscosity less than that of water or which
17 produces a foul odor. Chemical waste may be either hazardous or
18 nonhazardous;

19 c. "Hazardous waste" means any waste or any combination of
20 waste which poses a present or potential threat to human health,
21 living organisms or the environment. "Hazardous waste" shall
22 include, but not be limited to, waste material that is toxic, corrosive,

Matter printed in italics thus is new matter.

23 irritating, sensitizing, radioactive, biologically infectious, explosive
 24 or flammable. "*Hazardous waste*" shall also include solid waste or
 25 soil containing solid waste which has been contaminated with
 26 radium or its decay products regardless of whether it poses a
 27 present or potential threat to human health, living organisms or
 28 the environment;

29 d. "Leachate" is a liquid that has been in contact with solid
 30 waste and contains dissolved or suspended materials from that
 31 solid waste;

32 e. "Pesticide" means and includes any substance or mixture of
 33 substances labeled, designed, intended for or capable of use in
 34 preventing, destroying, repelling, sterilizing or mitigating any
 35 insects, rodents, nematodes, predatory animals, fungi, weeds and
 36 other forms of plant or animal life or viruses, except viruses on or
 37 in living man or other animals. "Pesticide" shall also include any
 38 substance or mixture of substances labeled, designed or intended
 39 for use as a defoliant, desiccant or plant regulator;

40 f. "Commercial solid waste facility" means any solid waste
 41 facility operated for profit which accepts any solid waste generated
 42 from any other source and is subject to the jurisdiction of the
 43 Board of Public Utilities pursuant to the provisions of P. L. 1970,
 44 c. 40 (C. 48:13A-1 et seq.).

1 2. Notwithstanding the provisions of section 5 of P. L. 1970, c. 39
 2 (C. 13:1E-5), the department shall grant no exemption from the
 3 requirement of treating, storing, or disposing hazardous waste at
 4 a solid waste facility authorized to accept this waste for treatment,
 5 storage or disposal.

1 3. This act shall take effect immediately.

STATEMENT

This bill would define soil containing solid waste which is contaminated with radium or its decay products as a hazardous waste regardless of whether it poses a threat to human health, living organisms or the environment. The bill would also prohibit the department from exempting itself or any other person from the requirement of treating, storing or disposing of hazardous waste at any facility but one authorized to accept hazardous waste. This would require that soil so contaminated would have to be treated, stored or disposed of in the same manner as any other hazardous waste.

HAZARDOUS WASTE

Defines radium contaminated soil as a hazardous waste.

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ASSEMBLYMAN JOHN O. BENNETT (Chairman): May I have your attention, please? I would like to call the hearing to order. This is a public hearing before the Assembly Environmental Quality Committee to consider several pieces of legislation which have been introduced, are presently pending in the Legislature, and have been assigned to the Environmental Quality Committee.

I would like to commence the hearing by calling upon the Mayor of Vernon Township, the Honorable Victor Marotta.

MAYOR VICTOR MAROTTA: Residents of Sussex County, Orange County, New York, and Vernon Township: It is good to be with you again this evening. Actually, tonight my job is very easy because all I have to do is welcome you.

I would like to share just one thought with you. The Committee that is with us this evening is interested in the testimony to be given concerning the bills which have been placed on the table. It is pretty unprecedented, actually, to hold a legislative hearing this far away from Trenton, and I would like, on behalf of the people of Vernon, to say thank you very much for the inconvenience you have put upon yourselves. We welcome you. (applause)

There are some very important people here with us this evening, here to help us, people who represent others just like you who live in the State of New Jersey, and they know how to listen. We are fortunate to have here in our area legislative leaders who, indeed, do listen. With us this evening -- and I am sure you will be hearing from them later -- we have Senator Wayne Dumont. Senator? (pause for applause)

In addition, another face that all of you, I'm sure, are very familiar with, someone who, like the Senator, has been working diligently, putting in an unbelievable amount of time helping the residents of Sussex County and Vernon and Warwick, New York, Assemblyman Majority Leader, Chuck Haytaian. (pause for applause)

The next individual I would like to introduce is someone you all know very, very well. This gentleman has been a member of the New Jersey Assembly longer than anyone else, and I must tell you that special thanks much go to Bob Littell. It is through his effort that this Committee is here, and through his effort that the organization of this evening's hearing has been accomplished. I thank him, and I am proud to introduce Bob Littell. (applause)

If the Committee would just bear with me for one more minute, I have a commercial. There is a voter registration booth near the exit in the middle of the tent. If you have not already registered, please take the opportunity tonight to do so. Before turning the hearing back to our Chairman, Mr. Bennett, I would like to share with you that since the eighteenth of June, Vernon Township has registered 1,000 new voters. That registration falls in all the designated parties and is a testimony to the fact that this is a people issue, not a party issue, and together we will solve it. We thank you and welcome you.

ASSEMBLYMAN BENNETT: To begin this evening, I would like to call upon an individual all of you know, an individual whom I have had the opportunity to serve with in the General Assembly for the past seven years, an individual who is more than just another Assemblyman, but is the Dean of all the Assembly people in the State of New Jersey. He is your representative and my friend, Bob Littell.

A S S E M B L Y M A N R O B E R T E. L I T T E L L:
Thank you, Chairman John Bennett, for bringing your Committee -- the Assembly Committee on Environmental Quality -- to Vernon Township in Sussex County to hear firsthand what our serious problem is up here.

Before I describe to you what that problem is, I would like to introduce the members of your Committee who were also kind enough to come and appear here tonight: Assemblyman Frank

Gargiulo, Assemblywoman Kathy Donovan, Vice Chairman and Assemblyman Robert Singer, Chairman Bennett, Majority Leader Chuck Haytaian, and Minority Leader Alan Karcher. (applause)

I don't believe we have ever had a public hearing by a legislative committee in Sussex County on any issue, and I am pleased that they chose to come here to hear this. We have a staff here from the Office of Legislative Services, and they are recording this hearing. If you want to be heard you have to come up here and speak into the microphone, so don't be bashful about doing that when the opportunity arises. But, if you speak from down there, we won't be able to get it on the recorder. We want it on the record, so please bother to come up here, and speak when you do.

When I spoke to Assemblyman Bennett about coming up here and explained the problem to him, I started out by saying, "Let me tell you about the summer of '86." It started on June 18, when Commissioner Dewling -- Commissioner of the Department of Environmental Protection -- called me at home at ten o'clock at night, and said to me, "The people who we hired to do a study of where to place the contaminated soil from Essex County have recommended five sites, four of which are in your district. I am going to the Scientific Committee tomorrow to recommend to them the site in Vernon Township."

When he told me that, I said, "You are not going to do that without coming up to Vernon Township, looking the Mayor and Township Committee in the eye, and telling them before you tell any Scientific Advisory Committee what you are going to do." He flew up here the next morning by helicopter, and when he got here he refused to meet in public in front of the press. Commissioner Dewling had nothing to hide, he said, but he didn't want to talk to the press before he talked to his Scientific Advisory Committee.

I frankly -- along with the other members of the legislative coalition up here -- told him that that was wrong,

that he should speak in front of the press; that he should tell the members of the Township Committee in front of the press, so that they could question him.

We had a meeting. I had stayed on the telephone that night for many hours to get everybody in Sussex County that I could get a hold of to come up to that meeting. From that day on, we have had an ongoing confrontation the likes of which I have never seen. I am very pleased and proud that the Vernon Mayor, Vic Marotta, the Township Committee members, the staff in the Vernon Township municipal building, the citizens of Vernon Township, and the citizens of Sussex County have been united and have had solidarity from day one. That is the reason we are going to win this issue. (applause)

I told the Chairman -- Chairman Bennett -- "You have to understand that the DEP has a very strident attitude with regard to this matter. As far as they are concerned, they have picked a site, and that is where they want to put it. As far as we are concerned, they are never going to put it there."

Senator Dumont, Assemblyman Haytaian, and I met with the Governor on several occasions and pleaded with him to take the steps necessary to stop this action. He told us he would not do that. I can say to you that because of your peaceful demonstrations, because you had the tenacity to follow him wherever he went, I think we are going to win this battle. Senator Dumont, Assemblyman Haytaian, and I met on several occasions with officials from Vernon Township, in particular your Mayor, and with DEP, and we attempted to convince them that they had made a mistake in the way they were going about this.

The way they went about this is a very crucial and important part of this whole argument. They went about it by using an order that was signed by the Governor -- an emergency order that was signed in 1983 -- which they claimed was still valid in 1986. They refused to drop that and go through the

normal process. By doing that, by using what I call the "Governor's War Powers Act," which was adopted in 1942 to protect us against an invasion when the Legislature used to adjourn sine die at the end of May or June, and go home for the rest of the year, the Legislature gave the Governor at that time the power to do whatever he felt, notwithstanding anybody's due process rights. That is a very powerful law.

In 1953, that law was amended because then President Eisenhower was concerned that this nation might be invaded. The Korean War had ended, but we were in a terrible cold war, and he felt that this nation was not prepared for civil defense. As a result of a lot of meetings and commissions, the Legislature responded once again, and amended that law to say that it could be used in the instance that there was a disaster, whether it be natural or man-made. So, we are faced with that law today that was signed to protect us during times of war or times of disaster, but never for siting a solid waste facility or a hazardous waste facility, because in 1942 and 1953, that wasn't even a term that was being discussed in the Legislature.

The fact of the matter is, we were faced with challenging that in the courts. I want to say here and now that Bob Shelton, the attorney for Vernon Township, and Don Kovach, the County Counsel for the Board of Freeholders, worked long and hard and tirelessly to put forth a case on behalf of Vernon Township and the citizens of Sussex County, and they did an outstanding job. I am very proud and pleased to know them. I have known them all my life. They did a great job for us, and it is not over from their end yet.

Let me just give a little credit to another man who is here tonight to help us, the Minority Leader in the State Assembly, a man I have known for 12 years, Alan Karcher, from Middlesex County. (applause) Thank you, Alan, for all of your cooperation. We appreciate it.

Let me talk for a few minutes about the bills. There are five bills that are being discussed here tonight. Alan put another one in on Monday, and I don't know whether it got a number yet or not. We are all co-sponsoring each other's bills. We have all said that whichever is the best bill, or the best package of bills, whether it be our bills or a Committee Substitute, Mr. Chairman, will be what we will get behind and work for and attempt to get passed by the end of September or the first of October. We are hopeful that you will be able to resolve this issue in your Committee and report it out by then.

What makes the problem before us especially difficult is that we have no experience to guide us. While radon is a product of naturally occurring radium and has thus been around us since time immemorial, our awareness of its presence in high concentrations in certain homes and the related health consequences have only been brought to our attention recently. We are here tonight to challenge the Department's plan to combine the contaminated soil with dirt and dispose of it over land in our area. We think such an action would be irresponsible, and would set a grave precedent for our management of radioactive waste in the future.

This is not a problem that calls for trial and error solutions. It is a problem that calls upon us to know exactly what we are doing before we do it. I do not pretend to know what the best way of managing and disposing of those drums is. What I can tell you tonight is that no one else does either. Because it is a new problem, it has not been submitted to any scientific studies. So far, I have been able to learn that there have been no experiments with a proposed management technique, no technological models, and no experience in blending and disposing. Therefore, it seems to be unthinkable to go forward with this plan in a vacuum, in ignorance of its potential consequences.

I therefore introduced, on Monday, legislation -- A-3019 -- to require a full scientific inquiry into the alternatives for treatment and disposal of contaminated material before any final action can be taken. It means collecting all the scientific and technological data relevant to the issue, reviewing it, making recommendations, and submitting those recommendations to the Legislature and the public. If, as I expect, there is presently too little data to draw any conclusions from, then we must opt for safety. The bill further requires that whatever treatment and disposal technologies are determined to be appropriate by the scientific review, should be undertaken only at a facility licensed to accept hazardous or low-level radioactive waste. If this seems overly cautious, it was meant to be. When you walk in the dark, you walk slowly.

I urge the measure's prompt consideration by the Committee, its prompt passage by the Legislature, in a bipartisan effort to stop this insanity which was brought about by the use of Governor Kean's Executive Order. It is wrong. We are not going to take that poison up here. If we have to put 10,000 people in the street, that is what we are going to do. (applause)

ASSEMBLYMAN BENNETT: Thank you very much. The next person is also no stranger to you -- he was introduced to you earlier this evening -- someone who was selected by his colleagues in January to be the Majority Leader of the New Jersey General Assembly, your legislator, Chuck Haytaian.

A S S E M B L Y M A N G A R A B E D H A Y T A I A N: Chairman Bennett, members of the Committee, Assembly Minority Leader Alan Karcher, my colleague Bob Littell, and our good Senator, Senator Dumont, along with the Mayor and Council, and all you wonderful people: I welcome the Committee here on behalf of the legislative delegation, but more importantly, I welcome the people of Vernon in their own Township. You people

have been beautiful; you are doing a great job. You have sent the message that we had to send because now, even with my beard, they are starting to listen.

Chairman Bennett, I am not going to go into the background of what occurred here. You are quite familiar with it -- as are the members of the Committee -- and Bob Littell has covered it very well.

I would like to talk on my bill because I think it is important that all of you people understand what this public hearing is all about. We are proposing a legislative solution to this problem that was caused, quite frankly, by the Executive Branch of government. I think you must understand that. DEP is part of the Executive Branch of our government. The Judicial Branch of the government also got involved because our case in this area went to the Supreme Court. Now the Legislative Branch, the equal branch of government, the co-equal branch of government, has gotten into the area, and at a time that I believe is the correct time to have gotten involved in it.

As a number of you have heard during the summer, Alan and I got into a dialogue in the press as to when would be the proper time -- he in his way, and me in my way. I felt that until we let the people of Vernon speak, until we allowed the Mayor and the Yellow Ribbon Panel to deliberate and go over all of the data that DEP had presented-- We still don't know if we have all the data, but Maryann Riley tells me she is getting it in dribs and drabs, but she is getting it because she is insisting on it. Maryann, who will be introduced later, deserves an awful lot of this credit we are all taking. (applause)

But I also want to thank the Speaker of the Assembly. He was under a lot of pressure, quite frankly, as I was, to call a special session of the Legislature in July, and then in August. And you know, ladies and gentlemen, and I'm sure you

would agree with me, we could have been accused of a knee-jerk reaction at that time. I thought, quite frankly, that I did not want that to happen because I did not want anyone in this State to feel we were looking at this with a "NIMBY" attitude, not in my backyard, because that is not the case. The case is, we don't know for sure what this radium-contaminated dirt will do to our health. Therefore, we are concerned that way.

Now, ladies and gentlemen, to expedite this evening because I'm sure the Committee is going to be here long and they have come long distances -- and I thank them all-- Any time you hear about legislators, remember this hearing. For Assembly people to come up-- Believe me, we are all human beings, and on a Friday night with all the traffic-- I'm glad Alan had to come up in that traffic because maybe now he will understand when we complain about all the traffic problems what we mean. But, for them to come up here on a Friday night to hear our concerns, I truly thank all of them, and I congratulate them for that.

As all of you know, Bob Littell and I have tried to stay on top of this issue since we were first informed of the Department's plan to blend the contaminated soil and dispose of it in this area. We thought the action was precipitative then, and we still think so. The desire to resolve the immediate situation has put a great deal of additional pressure on all concerned, but we cannot allow our anxiety to put the matter behind us to lead us to do things that will haunt us later.

Our efforts thus far have been directed toward guaranteeing that decisions are made on the basis of as much information as we can garner, that each decision is submitted to as full a review process as possible, and most important, that if we err, we err on the side of safety.

Assemblyman Littell has provided some background, as I indicated, on this issue. He has also described the legislation he introduced on Monday to prohibit any final

action until all alternatives have been submitted to full scientific examination and the safest technology has been identified. But I have an additional concern, what to do with the contaminated soil until we can find the most prudent disposal technology. I am fully aware that the present situation, whereby more than 4,500 drums of contaminated soil surround half a dozen homes in Montclair, is intolerable, not only for the people who would like to return to those homes, but to residents of the surrounding area as well. Clearly, something must be done with the waste, and soon.

As you may also be aware, the Supreme Court, cognizant of the potential danger, has authorized -- not directed, but authorized -- the transportation of those drums to Sussex County, pending a determination of any ultimate disposal policy. Though I sharply disagree with the court's opinion in this matter, I know that it was acting more out of practical impulse to relieve a desperate situation than a desire to make policy. For policy it looks to us, the Legislature. That is why Assemblyman Littell and I, and Alan Karcher, have taken the lead in moving legislation through the houses to provide the direction and protections we think are appropriate to the situation.

As I said before, I have an immediate concern about the present disposition of the contaminated material. I think it would be foolhardy to transport the drums to Sussex County. It would be both costly and dangerous to transport any hazardous material. Given the expense and the danger, it makes no sense to move it to any location temporarily, unless at that location there is a facility designed, constructed, and equipped to handle hazardous or radioactive waste. There are, of course, a number of licensed hazardous waste facilities in this State, and radioactive waste, both high- and low-level, is currently being stored on the premises of the operating nuclear power plants at Lacey Township and Salem.

Accordingly, I will be moving my legislation. I introduced on Monday, Assembly Bill 3020, which would authorize the storage of contaminated drums only at such hazardous waste or radioactive waste disposal facilities. This is dictated in the interest of safety because these facilities offer all of the protections we now feel are necessary. Since Assemblyman Littell's legislation mandates that the ultimate treatment and disposal be undertaken only at such facilities, implementation of this measure would minimize the dangerous and expensive transportation of these materials.

I therefore urge the Committee to consider our two measures as promptly as possible, and those of Assemblyman Karcher, and that you report them favorably so that the Legislature can provide the direction necessary to establish appropriate public safety.

The Department of Environmental Protection, the courts, and the people of our State are looking to us for leadership in this matter. Ladies and gentlemen of the Committee, and my good friend Alan Karcher, my colleague the Minority Leader, I say again, as Bob Littell said, and I have been saying it all along, that soil will not come to Sussex County, and we are here to do something about it.

Thank you. (applause)

ASSEMBLYMAN BENNETT: Thank you, Mr. Majority Leader. The third prime sponsor of the package of bills that is presently pending in the Environmental Quality Committee is also no stranger to the Legislature. A veteran legislator from Middlesex County, the next speaker presently serves as the Minority Leader in the New Jersey General Assembly, Alan Karcher.

A S S E M B L Y M A N A L A N J. K A R C H E R: Thank you very much, Chairman Bennett. I have some prepared remarks, which I am going to get into in a moment, but before I do let me join with Bob Littell and Chuck Haytaian in commending you

and the members of your Committee for taking the time and the effort to be here to conduct this hearing where it belongs, here in Vernon Township. You are to be commended for that. Let me also tell you that, yes, I am the Minority Leader now, but once upon a time, when my hair was just a little darker, I had the opportunity to be where Chuck Haytaian is. I was Majority Leader back in the late '70s, early '80s, and I want to say he is doing a good job. He is keeping up the great tradition of that position of Majority Leader. (applause)

ASSEMBLYMAN HAYTAIAN: Thank you.

ASSEMBLYMAN KARCHER: I am glad to see that. With that, let me also tell you that I was very interested in what Chuck said about the proper time for consideration by the Legislature. I am not here for a civics lesson by any means, but let me just comment on what Mr. Haytaian said with regard to the Legislative Branch of government. This problem we are dealing with here has had the focus of all three branches of government at one time or another, and there is something very appropriate about the Legislative Branch of government becoming involved. Whether it should have been earlier or now is not really relevant. The question is, we are now focusing and bringing the entire attention of the Legislative Branch to bear upon this particular issue.

I happen to be very proud; I am the third generation of my family to serve in the Legislature. Going back to the nineteenth century we have had Karchers in the Legislature, so we are rather proud of our participation in the Legislative Branch of government. It is that branch of government, it is the Legislative Branch of government, that is truly closest to the people and most responsive to the people, and I think on this particular issue you are going to find that the Legislative Branch of government is truly the most responsive branch of government. I think that is important to point out.

With regard to that issue, I also want to comment on what Mr. Haytaian said with regard to the commitment that had previously been made by the Executive Branch of government to share with the people of Vernon Township relevant information. I was somewhat pleased to hear Chuck say that some of that information has been forthcoming, but it has been coming in dribs and drabs. So, Mr. Chairman, let me suggest to you and to the members of your Committee that you take the opportunity to discuss in-depth what information has been received and what the attitude of the Department of Environmental Protection has been. If, in your judgment, there has been some foot dragging, I am certain that you could exercise your inherent subpoena powers, or, if you do not feel they are adequate at the moment, I am certain that the Assembly would vote to have this Committee have the requisite subpoena powers, so that if the Department is a little slow in giving the public information, I have an abiding conviction that they would not be slow in giving you the information, if you had the subpoena powers.

I am obviously here tonight because I believe the Department of Environmental Protection's plan to dispose of radioactive waste here in Vernon Township is an impermissibly dangerous proposal jeopardizing the health of the residents of this entire region. When I first learned of the Department's plan early this summer, I literally could not believe it.

Beginning with the first of a series of visits I have made to Vernon-- I have to tell you this is my fourth trip up here, and I like it so much, Chuck, that the roads are not that, you know, congested. I come from a district-- I ought to tell you, you wonder where the Nineteenth District is? Where the Turnpike, the Parkway, and Route 287 meet, that is where I live, so you don't have anything on me with regard to traffic.

Since my first visit to Vernon Township, I have been startled by the patently obvious risks to local public health

which the Department's plan presents. I have been astonished that such a plan was permitted to be developed, much less considered as a serious proposal. The plan is hazardous; it is arbitrary and unreasonable; it is unfair; it just plain doesn't make sense. I think we all share the attitude that we are a little bit dismayed that it was ever allowed to occur at all, that the plan was ever allowed to be developed in the first place.

Equally, I have been deeply impressed during my visits, and gratified, that the people here in this region, the people of Vernon Township and the surrounding communities, will simply not be bullied by an insensitive bureaucracy, bullied into-- (Assemblyman Karcher interrupted by applause)

I have to digress for a moment and tell you that when I was first here -- during my first visit earlier in the summer -- there were a number of you who were nice enough to come out to greet me, and I was surprised that there were so many out because it was, like, 11 o'clock in the morning. I said it then and I will say it again, I enjoy this because I think this is democracy at its best. This is what our founding fathers had in mind. The First Amendment is a wonderful thing, and the right to assemble and the right to speak your mind. It is a wonderful country we live in, just a great, great place, and thank God that we have that right to assemble and speak our minds. (applause)

Let me skip over and talk to you about the specific proposal I have made. There is no necessity to go into the history of how it has been developed. Let me concentrate, Mr. Chairman and members of the Committee, on specifically what it is. Let me preface that by saying, I am enjoying this experience on a whole different level, as well, because I think that not only is it a great experience in democracy and a demonstration of participation, but it is also an effort where people from both sides of the political aisle can join together

and recognize that there are certain problems in this life. There are problems, certainly, where the division between the parties remains very, very strongly drawn and where there is debate, but there are other things such as environment and people's health, where there is just no party. There are no political parties involved. It is then truly a rewarding experience to work with my good friend, your very distinguished Senator, Senator Wayne Dumont, and with Chuck Haytaian and Bob Littell. I am proud to be a co-sponsor of their legislation, and I am proud that Chuck and Bob have chosen to be co-sponsors of my legislation.

With regard to that, Mr. Chairman, there are four specific bills. By the way, we have copies of the legislation for those of you who would like copies to study, to have them for your own consideration. They are on the end of the table over there. I don't think we have provided enough copies, but sufficient for distribution so that many of you who are interested, or those of you who are interested, can have them at your disposal.

The first bill, which has now become Assembly Bill 3061, would prohibit the dumping of radium-contaminated soil over a potable groundwater source. I believe its substance has been incorporated in legislation that has now been introduced in the Senate by the good Senator. When you think about that idea, the idea of what we are really focusing upon is the danger, the danger to the health of the community, and how that danger could be most devastatingly experienced is by radon contamination of the water supply. This bill addresses that. I think it just plain makes good sense. Radon does not belong over a potable water supply. That is the first suggestion we have incorporated in the legislation.

Let me tell you that after that suggestion came forth, we developed others. Also, we have been in touch-- I have to candidly tell you, I have not had the great benefit that Chuck

Haytaian, Bob Littell, and Senator Dumont have had; I don't get to sit down with the Governor one on one. He doesn't invite me in to chat. But I have been in communication with the Governor, and the Governor expressed to me very much what he has expressed to your legislators.

One of the things that developed after I heard back from the Governor with regard to his correspondence is a second idea, and that is something that has been identified by your County counsel in the litigation, something that has been identified by Congressman Florio with regard to our present legislation which is extant here in New Jersey; that is the fact that there exists a loophole, a loophole with regard to the definition of hazardous waste. So, the second proposal, which has been incorporated in Assembly Bill 3062, takes it out of the courts, doesn't leave it for the courts to decide whether or not radon is a hazardous substance and must be dealt with as such, but says to the courts, "We, the Legislature, we, the voice of the people, we, the policy-making body of the State, say that radium, and that radon, are hazardous substances and must be disposed of in the proper way, and, therefore, cannot come to Vernon Township. That is the second proposal we have made.

In addition to those two measures which I have discussed -- and, as I said, I am proud to have as co-sponsors your two Assemblymen -- there are two other possible alternatives, Mr. Chairman, which I have reduced to bill form, and which have been submitted. The first is one that says that radium and radium-contaminated soil should be the subject matter -- and I also know that it is the subject matter -- of a comprehensive academic study which is going on. Until that study is completed, until there has been some conclusive evidence with regard to the other potential matters of disposing of it, nothing should be done. That is the third proposal.

The last one, which was submitted on Monday, and which I think also has a great deal of support, because once again -- and I don't mean to be immodest about it -- it just makes sense-- When we deal with this controversy, once again we are focused in on health considerations. But the concern of the people of this area goes beyond health. Their concern is for the entire environment. There should be-- I don't think it is unreasonable to ask that a comprehensive environmental impact study relative to the Vernon plan be done, and, obviously, that nothing else be done in the interim. Everything should stay where it is until that comprehensive environmental impact study has been completed.

They are the four separate pieces of legislation which I have introduced on a bipartisan basis with your Assembly delegation. Let me also share with you one of the other elements of my concern. Before, I told you a little bit about Middlesex County and about our road traffic patterns. Let me also tell you that I speak from personal experience when I tell you to be vigilant. I come from a town where I know firsthand what it means to have toxic waste in your backyard. I know what it is to be the victim of industrial pollutants. I know what it is to have property values adversely impacted by illegal toxic dumping. But, more importantly, I know what it does to the whole fabric of the community, how it undermines and really erodes, in many ways, the quality of life. I know it from firsthand experience, and I say to you, don't let it happen here. Don't let it happen here.

The second aspect of what you should not let happen here, and perhaps one of the most obnoxious things about the State DEP volunteering Vernon Township, is something, Mr. Chairman, that you know with regard to the siting of low-level nuclear waste disposal areas. If we volunteer the State of New Jersey, and we volunteer at the State level, if somehow someone by administrative fiat says, "Well, we are going to do this in

Vernon," we are just foolishly opening the door not only to have this problem get worse and exacerbate in Vernon with low-level nuclear contaminants from New Jersey, but in our entire region. So, why open the door? Why volunteer? Once again, just don't let it happen to you. Don't fall into that potential trap.

What has been done so far could be used as a textbook for any administrative agency on how not to do things. Your participation here tonight, and the Committee being willing to be here to hear it, and absorb it, and respond to it, I think can set this matter straight. So, what to date has been in many ways an administrative fiasco, I think can be set right by legislative action.

Let me conclude by once again commending you, Mr. Chairman, and all of the members of your Committee, but lastly, once again, let me commend all of you for a wonderful display of participatory democracy at its very best. It's nice to be with you. Thank you.

ASSEMBLYMAN BENNETT: Thank you very much, Mr. Minority Leader. The next speaker is a legislator who perhaps commands more respect amongst his fellow legislators than any other single individual legislator presently serving in the New Jersey Legislature. This individual has served longer than any other person presently in the Senate. He is your Senator, he is no stranger to you, and he is here tonight to speak to you about his concern, the Honorable Wayne Dumont.

SENATOR WAYNE DUMONT, JR.: Thank you very much, Assemblyman John Bennett. First of all, I want to commend this Assembly Committee for being here tonight. The Chairman had to come from Monmouth County. He has a long ride back when he finishes this hearing. The other members came from almost equally long distances. They deserve a lot of credit. They came to the area where the problem exists to consider these bills, and most of the Committee members are

here personally tonight, most of the seven members. I know we all thank them deeply for their courtesy and their kindness in coming here and conducting this hearing. The hearing was arranged, of course, through the auspices of Assemblyman Robert Littell and Assemblyman Garabed "Chuck" Haytaian.

Now, all of us are united in this effort to try to keep the material out of, not only Vernon Township, but also out of Sussex and Warren Counties combined. As you know, we represent in this Twenty-Fourth District all the municipalities of Sussex except Stanhope, and all of the municipalities of Warren except four on the southern end. We are proud to have an opportunity to represent you, and we are particularly proud of you, the people of Vernon Township, because you have conducted yourselves, not only very wisely, but you have also shown a lot of determination and spirit in following the Governor around wherever it was necessary -- to his home in Livingston, to Parsippany, and wherever else you knew he was going to make an appearance. He rather wisely chose not to appear at either the Sussex County Farm and Horse Show or at the Warren County Farmers' Fair.

All three of us in this district have talked to the Governor. I spoke to him back in June, as a matter of fact, before, or right after this announcement was made by Commissioner Dewling. I explained to him that if he had future political ambitions -- and we know he does -- that he better be extremely careful and make sure that he does not let this soil come into Vernon Township, or any other place in this district. (applause)

We respect the office he has, and we know he has a difficult problem because these barrels are stored in Montclair, Glen Ridge, West Orange, and some in Kearny. But the fact remains that if it makes sense, as Commissioner Dewling has said, that this stuff if mixed with good soil would not be detrimental to the health and safety of the people, then keep it in Essex County. Don't move it out here.

We mentioned on June 18 to Commissioner Dewling, "Sure, there is a lot of good soil in Vernon Township, and we don't want to take over the work of the governing body" -- because you have an extremely fine governing body -- "but if there is some soil that Vernon Township can contribute to diluting this material, mixing it, take the soil to Essex County, mix it there, and keep it there."

In addition to that, your Mayor, through his careful digging into this problem, found out by sending a Township engineer to Montclair State College Campus, that there is a quarry on that campus which is plenty large enough to take care -- at least temporarily -- of the barrels that are in Montclair. That was offered to them as an alternative. Assemblyman Bob Littell proposed another alternative, that it could be taken temporarily to a site in Western Pennsylvania, and then eventually to Canada for disposal. Bob Littell also determined that Carmen Orechio -- and he is the past President of the Senate -- when he sponsored legislation in 1985, which became law in 1985, to appropriate \$8 million to the Department of Environmental Protection to remove this soil from the Essex County communities where it now rests in barrels-- The statement attached to that bill very clearly said that that material would be deposited at a federally approved facility outside the State of New Jersey. Consequently, the Department had better follow the dictates of that statement explaining the intent of that legislation on which we voted more than a year ago.

Now, a lot of credit for the work that you have done must go not only to you, of course, but to your Mayor, Victor Marotta. He has worked long and hard and given tremendously of himself in this enterprise, in which we all join, and so has Maryann Riley and Jim Offer. They helped him a great deal along these lines. We have also had a lot of help from New York State because not only are they here at the hearing, but

do you remember back to the rally that you had at Vernon High School on July 7? Congressman Benjamin Gilman was there, State Senator Eugene Levy, and at least three or four of their Assembly persons. They have participated in legal action both in New York State and in New Jersey to stop what could also harm them across the line in Warwick. That is why it seemed to me that I ought to make the trip, which I did on Wednesday night last -- two nights ago -- to Warwick, only to find that their rally was being held several miles outside of Warwick. But I got there finally anyway, to make sure that we expressed our gratitude to them for the help they have given us, which is also in their interest as well.

All of these things have happened along with the great help of the attorneys, your own attorney, former Assemblyman, former colleague of ours, Robert Shelton, who was also a past Superior Court judge, and Don Kovach, who is the attorney for the Sussex County Board of Freeholders. They have been fighting it on the legal front, and they deserve a lot of credit. (applause)

I introduced a bill on Monday last, which will be referred on this coming Monday to the Senate Committee on Energy and Environment -- Senate Bill 2506 -- which was drafted at the request of Mayor Marotta, with a representative from the Office of Legislative Services whom I had contact him. That bill has to do with the question of keeping this material away from any aquifer. You have a very valuable aquifer -- or perhaps more than one -- in Vernon Township. The way the northwestern counties are growing, we cannot afford to waste any water supply. That is extremely precious. We must do all we can to make sure that your water supplies are preserved, not only for you, but for everyone else whom they serve.

Consequently, we are here to make sure that we give you every bit of support possible. If the Assembly Committee that is here tonight moves these bills from the Assembly

quickly, that's fine with me. It is not a matter of personal credit on any legislation. It is a matter of moving the legislation which is important and which is necessary to protect you. Alan Karcher, who was a very fine Assembly Speaker-- He didn't mention that, but he was the Speaker for four years, until January 14, 1986, in fact. He is co-sponsoring bills with Assemblyman Littell and Assemblyman Haytaian, and they are on his bill. If those bills move rapidly out of this Committee, I will be more than happy to move them, or try to move them as quickly as possible through the Senate. The important thing is to get legislation on the books as quickly as possible to protect you, and to do the job. We shall fight and work right with you.

I am not one to recommend -- being an attorney by trade, but getting very little chance to practice my trade -- civil disobedience lightly, but I know full well that if any attempt is going to be made to move this material into Vernon, or anywhere else in this district, there is going to be civil disobedience. I would submit, however, that there must be no criminal disobedience. We have to do this properly. We are prepared to lie down in the road with you, or whatever else is necessary to join with you, to make sure that this stuff does not come in here. (applause)

So, we stand with you. We will work with you. We will do everything we can legislatively, politically, and in any other way, to make sure that this material-- I don't have the same kind of fear that many people do about nuclear power because I have a nuclear-powered pacemaker in my chest, and I wouldn't be alive if I didn't have it. So, I recognize the benefits of nuclear power. But, at the same time, we also have to realize that we cannot afford, and will not tolerate, the movement of any material that would be detrimental to the health and safety of the people in this district.

So, we will work with you, fight with you, and stand

side by side with you. I'm sure that this Committee, to whom we are so grateful for coming here tonight, will do a splendid job, under the chairmanship of John Bennett, in providing the necessary legislation.

Thank you very much, and good luck.

ASSEMBLYMAN BENNETT: Thank you very much, Senator Dumont. As we move from those representatives here tonight who represent you at the State level, we move to the county level and the County Board of Chosen Freeholders. The next individual to speak will be the Honorable Nicholas Masi, Freeholder, Sussex County.

F R E E H O L D E R N I C H O L A S M A S I: Chairman Bennett, ladies and gentlemen of the Committee: Thank you for coming here tonight to help us. I believe there is a fundamental flaw as to where the responsibility lies to prove the danger as to the safety of this material, whether it be toxic or radioactive; in this case, the radioactive material that is proposed to come here.

The State of New Jersey has imposed a budget cap on local governments, county and municipal, and yet we must show cause why we have to protect our families and keep a safe place to live. The costs of this have been excruciating to both the county and the municipal governments here in Vernon. I must applaud the tenacity of the people of Vernon Township, but it is a sad day when we must have rock concerts and flea market sales to support the local government against the State of New Jersey and the DEP.

We have seen what was the safety of asbestos 30 years ago in Manville, New Jersey. It caused thousands of deaths from asbestosis and related ailments. Do we know what will happen here in Vernon in 30 years?

We are the second fastest-growing county in the State of New Jersey. We have experienced serious concern over real estate values. Sussex County -- Vernon Township in particular

-- has recreation as its prime source of income, and we don't want our ski slopes to glow with anything except electric lights. (applause) We cannot continue to grow in Vernon Township and Sussex County with pride and dignity if we are to become a dump site.

Ladies and gentlemen, I ask for your help to keep Sussex County, Vernon Township in particular, a safe and healthy place for the future. Thank you very much.

ASSEMBLYMAN BENNETT: Thank you, Freeholder. Now, I would like to introduce the Chair of the Mayor's Yellow Ribbon Panel, Maryann Riley.

M A R Y A N N R I L E Y: Thank you for the step stool. I would like to take this opportunity to thank you, Mr. Chairman, members of the Committee, for taking this long trip up into God's country to be with us tonight. I would also like to thank Mr. Haytaian, Mr. Littell, and Mr. Karcher, who have done an amazing job in a short period of time. We know how difficult that is. Your bipartisan support of these bills is what is going to help us to win, so we thank you.

What I would like to do is specifically address a few of the bills, express my opinion on some of them, and then explain to you why I feel we are in big trouble.

On A-3061, there is a statement that says that this should not be disposed of over potable water sources. I know the position of this State right now is that the whole State is an aquifer. I am afraid that if a bill like that comes before Governor Kean, he is not going to sign it because you would have to exclude the whole State of New Jersey on that technicality.

What I would like to suggest to you is that possibly we could get a little more specific and state that high-yield aquifers and moderate-yield aquifers are strictly off limits, but that low-yield aquifers would be acceptable as disposal sites if, in fact, they included an aquilude. This would not

be as broad based, and I think a bill coming before Governor Kean like this-- It would be very difficult for him not to sign.

Assembly Bill 3019 is beautiful, it's wonderful, and combined with 3061, I think, would ensure that the environmental safeguards would be implemented in siting in the future.

Assembly Bill 3020 is extremely important. It addresses storage, whether it be permanent or temporary. I have a little bit of a problem with DEP's definition of "temporary." It seems to go on for years and years. Even the storage of this type of waste in barrels-- The barrels it is in now only have a life span of four years, and two years have passed. What we now have is rusting of the drums, causing a secondary chemical reaction with the radium in the soil, and on and on and on. So, I think we have to take a very strong position on storage.

On Assembly Bill 3062, I would like to suggest to you that besides soil that is contaminated with radium, that we include uranium and radioactive thorium in the description. In Section 1, Paragraph c. of 3062, the addition that was suggested by the Assemblyman states: "Hazardous waste shall also include solid waste, or soils containing solid waste, which have been contaminated with radium or its decay products, regardless of whether it poses a present or potential threat to human health, living organisms, or the environment."

What happens with something like this is that it leaves a little bit of discretionary room for DEP. It is our experience that you can't do that. You have to spell out the law very clearly to them; otherwise, they will look for little side-streets and loopholes. What I would suggest to you then is that you take that sentence and possibly change it to, "Hazardous waste shall also mean any waste or soil containing solid waste which has been contaminated with radium, uranium, or radioactive thorium," and just end it there.

I would like to say a few words in support of the designation of these contaminated soils as hazardous waste. We have made the following observations: The EPA knows that this soil is hazardous. They felt so strongly about the fact that the public health risks with this soil are sufficiently similar to those involved in an inactive uranium mill site, and that they probably pose the same health threat, that they are going to apply EPA standard designated as 40CFR192. They feel that it is appropriate, even though it isn't legally required. They recognize their responsibility in dealing with this contaminated soil; they are not looking for a legal loophole, and I give them a lot of credit for that.

The EPA's statements that they will ensure existing uses of groundwater to make sure that they will not be adversely affected say to me that they know more about this soil than DEP is coming clean with.

The people of Montclair know that this soil is hazardous waste. Their neighborhood has been completely disrupted. People have been moved out of their homes. There are lead shields in the basements. People are under tremendous emotional strain and are suffering from adverse health effects. Believe me when I tell you, the people of Vernon know this is hazardous waste. The only people who do not know it are at DEP.

I would like to give you an example of the cavalier attitude they have had throughout the siting process in dealing with this contaminated soil. There is a map here -- and I'm sorry that the people in the back won't be able to see it too well -- and there is a little red triangle -- well, it looks like a rectangle, I guess. That is the original proposed site for the dump. That site is 44 acres. That site was designated by the engineering company, Baker, TSA, using maps dated 1954. That was what they sited in Phase 1. In Phase 2, they came up to Vernon and actually viewed the site and, low and behold,

there was State Highway 94 going right down the middle of it. That is what was left after they discovered Route 94 (demonstrating). That is only 16 acres, and that is on the east side of Route 94.

That really wasn't enough. They need at least 25 acres. Well, they had these 16 acres and they moved into Phase 3. They met with representatives of the Appalachian Trail Conference. The Trail Conference people asked them to please not use the 16 acres for the facility or to blend the soil on. I don't know where the hell it went, but it's gone. (applause)

The engineering report clearly listed 10 criteria when they chose the site, and they used that criteria to eliminate potential sites, proposed sites. One of the criteria was that the project be conducted primarily on State-owned land. They said that the site had to be at least 25 acres. They said that the site couldn't be near -- I'm sorry -- couldn't be in or adjacent to wetlands. Well, even their original site -- over 50% of it was in designated wetlands. We asked them why they didn't know that, and they said that they didn't look at the wetlands maps.

Another one of their criteria was that the site could not be near or draining to major water wells or water supplies. In fact, the site that they are going to use is directly over -- and I will quote their own expert -- "the best aquifer in Sussex County." This aquifer activated a recharge to two other aquifers, and all the water supply for most of Sussex County comes from this aquifer. If they are designating something as a high yield, it doesn't get any higher than this aquifer.

The future water supply of Sussex County will come from this aquifer, and there is no difference of opinion on this. DEP agrees, EPA agrees, and we agree, but they don't care. They just don't care. It seems to me that when there is a question of polluting our environment in any way, shape, or

form, we should act on the side of safety. Instead, DEP has taken this attitude: They have found a legal loophole with the Executive Order signed by Governor Kean, and they grabbed it. They are using that to violate our property.

When we met with Baker Engineering on September 2, along with a representative from DEP, we asked them a lot of questions. We had a list of evaluation parameters that they used to apply to each one of the sites, and we noticed that none of them addressed health concerns. We asked them where the criteria were that addressed health, and they said that the only health concerns they really were concerned with were vehicular accidents and indoor fumes. Those were the only health concerns they were going to address. I asked them if at any time did they take into consideration that what they were siting was contaminated soil? They said, "No, that was never a consideration." They sited this as if it were a shopping mall.

I asked Baker Engineering when they came up and they saw that Route 94 dissected the site, why wasn't it eliminated then? It was a perfect example of their cavalier attitude: "Well, we were considering using a conveyor belt anyway. Putting a conveyor belt over a highway is no big deal."

I would like to advise you, please don't leave any room for them to use any discretion. Please spell out the law clearly and make sure that they cannot use any political tool to open up a back door, because that is their favorite entrance.

In closing, I would like to say to you that this action you are taking today must be done efficiently, and it must be done expeditiously. Take the step that will begin our march to safeguard our environment, and I guarantee you that the people of Montclair, the people of Warwick, and the people of Vernon Township and Sussex County will march with you. Thank you.

ASSEMBLYMAN BENNETT: Thank you very much. You know, I would just like to offer this one comment at this point.

This past summer this Committee has gone from one end of the State to the other end of the State as we have dealt with a very comprehensive package to provide sufficient dollars for hazardous waste cleanup funds in the State of New Jersey. On Thursday, we released a package to provide \$600 million.

Many of the people who came up to tell us about the problems in their areas remarked about the unique experience that was occurring in this State. They referred to it as "people power." Well, let me tell you, you've got to see it to believe it, but you are to be commended.

Being one myself, I think I also have to make sure we have sufficient time for two people who have been working very hard for you, to come forward and address this Committee, two knowledgeable individuals. I would first like to call upon Bob Shelton, the Vernon Township attorney.

R O B E R T C. S H E L T O N, J R.: Like Maryann, I need the foot stool. First, let me applaud the efforts of our legislators in seeking to assist those affected by the proposal of the Department of Environmental Protection to utilize the beautiful farmland of Vernon Township as a dump for radioactive waste. I see merit in each of the bills which are the subject of this hearing, and suggest that a Committee Substitute be molded incorporating the thrust of each of these bills in a single document.

In addition, I suggest that the Committee include in such a bill a provision making its terms applicable to all pending proposals which have not as yet been implemented, in order that the present proposal affecting Vernon Township will be clearly included in the protections offered by these bills.

I also suggest that your Committee address a very practical procedural problem which arises from an enforcement standpoint, and which has created grave difficulties for the affected parties in the present litigation. The problem is the legal requirement that a party seeking a restraining order has

a burden of proof that the proposed handling of the materials is unsafe. The Appellate Division and the Supreme Court of New Jersey have both approved of the proposal of the Department of Environmental Protection to utilize the land in Vernon for storage purposes only, because they considered that we had not established that the proposal was dangerous. I suggest that the proposed legislation provide that whenever an applicant for a restraining order establishes that the materials which are the subject of the restraining order fall within the definition of hazardous, as the proposed legislation would clarify, that the burden of proof would shift to the person or agency handling the hazardous material to establish that the proposed action was, in fact, safe. (applause)

This is a very important distinction. I believe that were it the law when we applied to prevent the movement of this material into Vernon Township, our application would have been granted, pending an evidential hearing at which the Department of Environmental Protection would have been required to prove the safety of its proposal, rather than our having been faced with the task of proving that it was unsafe.

I discussed these concerns with Bob Littell, and today he presented me with what the Office of Legal Services for the Assembly has drafted addressing the concern that I have just made reference to, as well as one further technical problem, which I did not mention in my prepared remarks, involving the question of the standing of a municipality to question the decision of the Department of Environmental Protection. I commend you, Bob, for doing that so quickly. I ask the Committee to consider the draft bill which has been submitted to me today by Bob, which he indicates he intends to introduce as one of the bills that you will consider in your decisions on these pending bills.

I have one other announcement I would like to make and that is-- You know, you have seen Jim Offer pacing up and

down here. He is concerned about how long this will go because he has airplane tickets. He intends to be in China, in Peking, with a sign, to meet the Governor when he arrives. (applause) We understand that with typical organizational ability, he has already arranged and hired 100 citizens of the City of Peking to stand and yell, "Hell, no, we won't glow." (pause for demonstration from audience) I think we have made our point, and the Committee has to hear from a great many others.

Members of the Committee, I thank you for allowing me to address you on this issue, and I again express my appreciation for your efforts.

ASSEMBLYMAN BENNETT: Thank you, Bob. The next individual is the County Counsel to the Sussex County Board of Freeholders, Mr. Donald Kovach.

D O N A L D K O V A C H: Thank you, Chairman Bennett. This is the first time I have been involved in litigation where the results of the case were more than a professional duty. As I listen to your chant, "Hell, no, we won't glow," I have to consider my personal safety. I don't think I can lose this case before the courts, if I want my wife, family, and children to be safe in Sussex County, and I don't intent to, believe me.

Chairman Bennett referred to people power early on this evening, and I have to say that in reference to the enthusiasm you have given me by hearing your chant and just knowing where you are coming from, you have to consider that this problem has not been solved by the Executive. The Governor took a crack at it with his Department, the DEP, through the Executive Order, and it hasn't worked, not yet, and I don't think it will. The courts have had a chance to look at it, and they can only do what the law, as it is written in the statutes, provides for. There is no answer in the law right now, so that is not working.

As Assemblyman Karcher said, "Now it is the Legislature's turn at it." I really believe that there may be

a solution here, but what makes the whole thing work is people power. I have to really commend you because without what you have done up to this point, without the force behind all of this, this hearing would not be here tonight, the litigation would not have occurred, and the drums would be in your backyard. You are to be congratulated.

A great deal -- and I say this for the benefit of the Committee now as well -- of your tax dollars over the past four to five years has been invested in what you have heard about in newspaper articles, what you have heard about from your own representatives here on the Township level, and certainly from your Freeholders, and that is the development of a solid waste management plan. As you know, within that plan there has to be a site for a solid waste management facility. You know about the litigation with Lafayette, and I daresay it has cost the County of Sussex probably about three-quarters of a million dollars in studies and litigation costs to get where they are now in what will ultimately be a resolution for the disposal of our own solid waste.

Now, the reason for that is that the Legislature-- I have criticized the Legislature on litigation many times when they have invited, through the very provisions of the Solid Waste Management Act, the type of litigation that tests to the core what the county seeks to do in establishing its plan, particularly in locating a site within the county. But the Legislature, I have said oftentimes, has, in its infinite wisdom, said that the counties can do it, and the counties should do it. The Executive Branch apparently believes in that because they have never issued an emergency order which has lifted the jurisdiction -- the basic responsibilities -- from the county to handle its own problems with respect to its solid waste.

I submit that hazardous waste can be done likewise, and should be handled where it is generated. It should be

handled in Essex County. If we have hazardous waste in Sussex County that is ours, we will take care of it, but we certainly don't want to be an importer of someone else's problems.

The package of bills which has been proposed by our legislators addresses various facets of the particular problem we have in the radiation-contaminated soil, but the bills are all directed to a cautious, rational approach to a difficult problem, with an understanding that the people themselves -- not a bureaucratic department, and not an executive on his own based upon information that he can't really test, and does not give the people who are going to be affected by it an opportunity to test it-- This legislation, as I see it, as a package, puts it back where it is supposed to be. It puts it back on a "wait and see" attitude, on an investigatory basis, where there will be a scientific evaluation of what this radon-contaminated soil is all about.

Before anything is done, that is definitive. I think probably the most significant portion of the proposed bills that I see is the fact that in 3062, I believe they define, within the description of hazardous waste, the type of soil we are confronted with here. But more important than that, it would give Mr. Shelton from Vernon and myself, and any one of you, through your attorneys and litigation, an opportunity to show the courts that this is, in fact, something that has been looked at by the Legislature; there is a specific piece of legislation on it; and, it would slow them up in the order to show cause process. At the moment, there is nothing. It has not been defined by our laws as being one that ought to be handled under any act. By incorporating it within the Solid Waste Management Act, you vest back into, in my opinion, the jurisdiction of the county in the process of developing a solid waste management plan, the ultimate authority, the ultimate control of the destiny of the citizens that will be affected by that.

So, I urge you to move those, get those out of Committee, and adopt them into law. This would be a great help to us in the litigation, but more importantly, I think it would go a long way towards keeping the problem where it ought to be, and that is a resolution by the people who will be, and are, affected by it.

Thank you very much.

ASSEMBLYMAN BENNETT: Thank you, Don. The next speaker is the Chair of the Citizens No Name Committee who has to leave to go to China. So, we will call on him now, Mr. James Ofper.

J A M E S O F P E R: Thank you. (Mr. Ofper pretends to speak Chinese, causing laughter.) I would like to take this opportunity to welcome the Committee and our friends in the Assembly to Vernon, the town that roars. (applause) I would also like to congratulate you on coming to Vernon when you did -- six o'clock on a Friday. In so doing you fought not only rush hour, but happy hour. But most of all, quite frankly, I would like to thank you for coming to Vernon before you act, which is more than I can say for DEP, for, as Ms. Riley pointed out, it was after they chose this site that they came to Vernon and discovered that State Highway 94 went through the tract.

I would like to congratulate DEP as well. I would like to congratulate them for thus far avoiding receipt of Senator Proxmire's Golden Fleece Award, because they have fleeced the people of this State, and they have fleeced them long enough.

All in all, I can tell you members of the Committee that the people of Vernon, a Township of many lakes -- and I trust that some of you Assemblymen from the shore area can appreciate the water sports we enjoy up here-- We had a rotten summer. We took vacations to such well-known spas as Trenton, Livingston, Parsippany, and Ryetown Hilton and, if we have to, we will go to China. In seriousness, although we may not be

going to China, I understand that the Governor may be going to Cleveland, and that is not quite as far.

As you came to Vernon, you passed through -- if you came on 94 -- the small town of Hamburg, New Jersey, which has as its borders a multi-colored sign saying, "Welcome to Hamburg, the Children's Town." I tell you that Vernon, likewise, is a children's town. It is estimated that there are 4,500 to 5,000 students in our schools, several thousand preschoolers, and many children who have graduated from high school. A full 30% to 40% of our population consists of children.

This summer, the people of Vernon felt that their rights had been disregarded by DEP. That was their gut feeling. As the evidence is brought to bear, it turns out there is no doubt but that we were fleeced and lied to by the morally corrupt and reprehensible DEP in this particular case. As pointed out by Ms. Riley, DEP, in its siting provisions, set certain criteria. It was thereafter discovered that this site should have been eliminated by their very criteria, but they kept this site, which tells me that they could put this anywhere regardless of criteria. They could put it in Lakewood; they could put it in Passaic; they could put it in Bayonne; and, they could put it in your town, as well.

We must set very clear guidelines. This summer has constituted, in truth, a living civics lesson for the people of Vernon, for the middle-class, conservative people of Vernon. We have gone through quite a bit. We have had meetings-- Our first meeting was on Monday night. People who never come out were at that meeting. People who haven't missed "Cagney and Lacey" in three years were at that meeting. But when the citizens intuitively feel that the system is not working, it is not their right to make their concerns known, it is their duty, and we will fulfill our duty.

And you know, at every meeting we have to smile a bit because here, for the most part, are conservative people, quiet people, working people, who come out en masse, on an hour's notice, to make their feelings and their concerns known. We want to let you know that there is nothing more vicious than an angry conservative

Cutting through all of my notes, our major concern, quite frankly, is our water supply. But that is not our only concern. There are many people here who feel that the proposal constitutes a health hazard; there are others who feel there is no immediate personal health hazard; and, quite frankly, there are others who are just burned and miffed at the way DEP brought this to bear. But, in the long run, our water supply will be in jeopardy.

If I may very quickly refer to the four proposed pieces of legislation, which I have, and I will not be so presumptuous as-- I have never been through testimony of this sort before, so please take what I say with a grain of salt. With regard to A-3062, the present law under c. indicates that hazardous waste includes waste which poses present or potential threats, and includes radioactive material. You have added that hazardous waste shall include soil which has been contaminated with radium. The last phrase, "regardless of whether it poses a present or potential threat," should be looked on very carefully so as not to give a hammer to those who would object to this particular proposal. By including radioactive contaminated soil as hazardous waste, the purpose, naturally, is to place it under the RCRA provisions and provide for its disposal only at a licensed site. This naturally is something we would like to see done.

With regard to A-3020, which states that radium constitutes a hazardous material and should be stored only at licensed sites, that provision, I think, goes a long way toward resolving our problem. But I would ask you to take particular

note of the language between "constitutes hazardous material" and "should be in the interests of safety," etc. I think that language might be attacked by certain people. Certain people may disagree with it, and it is perhaps a little vague. You might want to tighten that up.

With regard to A-3061, I believe Paragraphs 2 and 3 might be considered to be joined, and I, with Maryann, would agree that we should limit this to a water supply of moderate or high yield, and not to any water supply. But again, these are items which should be considered by your scientific staff.

Finally, with regard to A-3019, you state, "Radium-contaminated soil is a hazardous waste," and discuss deferring action. Some action, I suppose, is necessary, and deferring action may be a very difficult task for this panel to recommend to the Assembly as a whole. There should be some action, and I would recommend pursuing possible Federal alternatives, in light of the fact that the radium did emanate from the Department of Defense, or at that time, the Department of War Activity, in creating radium dials for gun sights in World War I.

But perhaps the most important singular item set forth in these bills is contained in A-3019, which provides -- and I'll paraphrase, if I may -- that no soil containing uranium will be disposed of until all feasible alternatives are considered upon review and evaluation of the Commissioner, in writing, after public hearings -- after public hearings. I submit to you that if this proposal by DEP had been opened to a public hearing and a spirited cross-examination of the alleged experts of DEP, their plan would have fallen flat on its face, and we would not be here tonight.

In our State Constitution, Article 1, Section 1, it talks about persons being free and independent and having certain inalienable rights. Among those are enjoying life, defending life and liberty, and acquiring, possessing, and protecting property, and we will protect our property.

As I mentioned before, ladies and gentlemen of the Committee, this particular piece of dirty work is done pursuant to the powers of the Governor in the emergency act set forth in App. A:9-30 et. seq., which indicates that the Governor, in the present crisis, has certain powers. In the present crisis refers to World War II. It goes on to state that he shall have the powers during certain disasters. We don't have a disaster up here, at least we didn't before June 18. We do now.

I would ask the Committee -- and this goes beyond the scope of environment -- to consider very carefully whether or not this particular statute authorizing the Governor -- giving him certain powers, was designed to provide for the siting of radium-contaminated soil. I would say it was not so designed. In A:9-31, it calls for public hearings on these matters. Because of the power conferred on the Governor, no public hearings were called, and DEP came into Vernon like a blitzkrieg. But, just as the last blitzkrieg was initially successful, this one failed miserably. We say to DEP that we, like those who defeated the last blitzkrieg, will meet those trucks at the border, will greet them in the roads. We will beat them; we will defeat them; we will win. (applause)

Finally, there has been some question with regard to the resolve of the people of Vernon with regard to their continued dedication in opposition to this plan of the DEP, whether we should sit back and allow a pleasant compromise, or pursue our course and fight on.

I would like to read you a position statement that was drafted by several people who get together every now and then to plan certain social events: "We, the Executive Committee of the Citizens Group of Vernon Township, demand the immediate withdrawal of the proposal by the New Jersey Department of Environmental Protection to locate, temporarily or permanently, radium-contaminated soil in Vernon. We do not support any compromise that would place continued stress on the citizens of

Vernon. Furthermore, we demand the immediate termination of the condemnation proceedings against the Baldwin Property." That is signed by all the members of the Committee.

Although I would not presume to speak on behalf of the people of Vernon Township, I would like to close with something we heard before, and that is, keep the peace, keep the faith, and keep the soil out of Vernon. Thank you very much. (applause)

ASSEMBLYMAN BENNETT: The next speaker is the former Mayor of Franklin, Mr. Daniel Stephens.

D A N I E L S T E P H E N S: Thank you. Senators, Assemblymen, Committeemen, lawyers, Mayor of Vernon, and citizens: I have been in x-ray for 55 years. I was in x-ray before we had lead aprons, lead gloves, or anything else. I am now dying of cancer because of x-ray. What you have coming up here is something that they don't know anything about, as they didn't know anything about x-ray 55 years ago.

You know, this radium is also giving off x-ray, no matter how it is covered up. It is giving off a low-grade x-ray. A low-grade x-ray can go through anything but lead. Mr. Littell -- Bob Littell -- asked me to say a few words, and that is what it is going to be because I am not running for office or anything.

I will conclude by saying that what you have here-- No one knows what is going to happen in 10 or 15 years with your children, the same as it happened to me. Thank you.

ASSEMBLYMAN BENNETT: Thank you. The Deputy Mayor of Sparta Township, Michael LaRose.

D E P U T Y M A Y O R M I C H A E L L a R O S E: With courage like that man's, we can't lose. (applause)

If I may beg your indulgence, I would like to make a few general comments before making some specific comments on the bills themselves. I would first like to respond to the suggestion made by our honored Assemblyman Karcher, in which he

suggested that we not let it happen. I assure you, Alan Karcher, we will not let it happen.

To our beloved Senator, very loved Senator Dumont, who suggested that there are times when civil disobedience is appropriate, I'm sure he means that it would be a demonstration of civil responsibility to do whatever it takes to stop this from happening.

On a light note, I would like to say that the citizens here this evening have viewed what I now have been informed is the first political love-in in New Jersey. It is the first time politicians have turned the other cheek, only to have it kissed. Whether it be a wonderful man, a good leader, and a person who helps us, like Alan Karcher, who lives down in an area, as he said, of the Turnpike and the Garden State Parkway and Route 22, or whether it be our honored Chuck Haytaian, coming all the way over from Warren County, it is obvious that for anyone who loves the environment, somehow, all roads lead to Sussex County.

I would like to make a personal comment about three gentlemen this evening, if I may, two of whom I just met tonight, but who I assure you deserve our cheers and our tears and our pride. I would ask Assemblymen Singer and Bennett to stand up for just a moment. Please stand up. (Assemblymen stand up and acknowledge applause.) I know something about them that you don't know. I know that this hearing was scheduled for next Friday, but they couldn't make it, so they changed all of their schedules to make it this Friday so we would not have to wait. I think that is terrific. (applause)

Would Vic Marotta stand up for just a moment, please? Vic? I don't see Vic. I have a request for the Committee from my wife. A few weeks ago, Vic Marotta honored me by saying that Vernon had adopted me. Well, my wife has a message for Vic and the Committee: "Please get this over with so he can go back to work, or we'll need you to support us, as well as adopt us."

I called, through a certain friend of mine, the Governor's aide last week and asked why the Governor was going to China, was it on business? The aide said, "No, Mike, it's the Great Wall." I said, "What do you mean it's the Great Wall?" He said, "Mike, he's hiding behind the Great Wall." And I also, as Jim Ofper has, learned a little Chinese, which I would like to send to the Governor: "Sooo long." (laughter and applause)

Speaking on the bill, or bills, whichever combination, I believe that any bill, and all bills, should demonstrate a scientific and professional approach to problems. No bill should be allowed whatsoever that takes any other course. This bill should prevent any untried, untested, or unproven concepts from being dumped on the unwilling. The bill should demonstrate a legitimate approach, and it should be above reproach. It should prevent a repeat experience such as ours, which has basically been a form of cruel and unusual punishment to a group of people who have done nothing wrong, but who, in fact, have proven themselves to be extraordinarily decent citizens. We citizens have been outraged by this disgusting and unjustified approach from the onset. I would personally like to be one of the first to applaud you and your Committee for having the decency, the interest, and the courage to come here to rectify someone else's mistake.

The citizens have always known that you work to protect them, and you are evidence that that faith was well-founded. The last time I was here I gave you a flag. Tonight I give you something bigger and more important, my word, and their word, that we will not stop until Vernon wins. Thank you.

ASSEMBLYMAN BENNETT: Well, since we have been going for about two hours, maybe we should take a five-minute recess. Everybody stand up in place and just stretch, and then we will go right on. Take five minutes.

(RECESS)

AFTER RECESS:

ASSEMBLYMAN SINGER: May I ask you to please take your seats so we can reconvene the hearing? The next speaker tonight I would ask to take the podium is Mr. William Richey, Jr., the landowner from where the soil is to be blended. Mr. Richey?

W I L L I A M "J A M I E" R I C H E Y, J R.: Good evening. First I would like to thank the legislative Committee for giving me an opportunity to speak before them. I would like to speak first on behalf of the land. For those who do not know me, our farm is adjacent to the State property, and was named as Phase 2 for this project.

First, to discount the need to reclaim these two quarries, DEP has said they need to reclaim several quarries in Vernon. Speaking for the Richey family, I would like to tell you that our intentions are genuine to improve the grade of our farmland and, of course, gain monetary security. Without this security, I would not have been able to take over the farm. Without this money to keep my father and my grandfather going, the farm would not have been able to support me. I am glad to be back there, and I want to keep on the tradition, me being the fifth generation running and operating a dairy farm here in Vernon Township.

I would like to present to this Committee a folder of photographs which illustrate our past gravel operation on the west side of 94, and our ongoing operation on the east side of 94. When I look to the north, I see the property owned by the State of New Jersey and the property owned by Robert Baldwin. I see the beginnings of the operation which now resides on our land. This land is not abandoned, and anyone who has been in the area knows that this is one operating quarry.

The State land and the Baldwin tracts have the top soil and have the fill, and only await the bulldozers and the

seed to be reclaimed. I also look around and I see thousands of acres around me. Within one mile, I see five operating dairy farms, one operating vegetable farm, and many residential homes; homes and farms which would be subject to unknown consequences. I find no validity in Mr. Dewling's claim that there is a need to restore several quarry sites in Vernon.

I am glad to see our elected representatives striving to upgrade our State standards by making radium a hazardous waste in our State and meeting EPA standards. I am also overwhelmed to see them include thorium in these bills, after seeing the DOE's mismanaged Wayne thorium-contaminated soil pile. If you go down Route 23, you come to the Wayne Circle, and you go down, I think it's Black Oakridge Road, and if you drive to the end, you can't miss it. The DOE has a pile of contaminated thorium sitting there. It, also, has no place to go. There is a pile sitting in Maywood, and it has no place to go. Anyone who goes there can see that the soil has been washed down from the pile, down into the drainage swirl. I do not want to see a Phase 3 added to this plan.

Next, with the number of people in this State, and the present growing water problem, if this and other hazardous and toxic wastes do not belong on top of a water source, and this whole State is a water source, then I draw the conclusion that no toxic or hazardous waste should be sited in New Jersey. I feel this siting should be in the hands of our responsible Federal government.

Next, I would like to share some similarities I found in reading some related information. I would like to take you all back to June in the Municipal Building when two DEP representatives came to explain their process to us. When we asked about the blending plant, or building, they told us it would be a sealed and filtered building with negative air pressure. They told us that inside this building, they would take the dirt out of the Montclair barrels, and that they could

crush and blend this soil, run it over a series of conveyors into piles, reload trucks, and bring it out and spread it on our ground.

In reading about uranium mining, I found that the waste left in (mine) tailings is very similar to this, only that it is slightly higher in radioactivity. Tailings are left in a ratio of about 1,000 to one in relation to the uranium being extracted. The present method of dumping these tailings in New Mexico, where deposits are dwindling, is simply to dump them in a field. The Department of Energy has said that there is a speculative possibility of uranium deposits in Warwick and Monroe, New York, and Governor Kean has proposed to mine uranium in Jefferson Township; however, there is a State ban on uranium mining. This ban for seven years was to allow DEP time to compile a report on the impact to New Jersey. This ban ends in May, 1988, one and a half years away. But this is what struck me: In milling or extracting uranium from mined ore, in order to find an average blend, it must first be crushed and blended in a sealed building. Again I repeat, it is DEP's intention to restore several quarries in Vernon.

These facts may draw some conclusions that need to be addressed in this or some other committee about the mining and milling of uranium and about the deposit of radioactive waste in our State. I leave all this for your consideration and your investigation, and I thank you for your audience. I applaud all of your actions.

ASSEMBLYMAN SINGER: Thank you, Mr. Richey. We would now ask Mr. Pat Rizzuto, President of the Vernon Township Board of Education, to be our next speaker.

P A T R I C K J. R I Z Z U T O: Thank you, members of the Committee, for the opportunity to say a few words on behalf of the Board of Education.

First, I would think that it is an opportunity to express my appreciation on behalf of the community to three

outstanding politicians. Normally when we hear the word "politicians," we say, "Yeah, we know what we are talking about. They are the guys who take it out of one pocket and put it in the other." What we have this evening is what I believe is a true representation of what the word politician means -- a person who works for the people in a legislative sense. We are indeed fortunate to have three very effective legislators who work on your behalf. I have had the opportunity to work with Assemblyman Haytaian, Assemblyman Littell, and Senator Dumont on behalf of the school system on many numerous occasions, especially over the last few years when we have had difficulties regarding transportation funding. They have responded very, very well and very, very quickly.

The situation regarding the radium that DEP intends to bring to Vernon has met with very strong resistance, backed by these three able legislators and I, for one, on behalf of the Board of Education and the School District, thank them for their very strong legislative performance and their stalwart activities on behalf of Vernon Township. Thank you very much, gentlemen.

Last week, Assemblyman Haytaian happened to have a photo taken for the paper growing a new appendage. He has become more hair sooth (sic) since the last time I saw him, and he said that he wasn't going to shave it off until the DEP agreed that they would not bring any radium-contaminated poisonous soil to Vernon. I certainly hope we will not have to call upon him to serve as Santa Claus when we have him visit our schools in December.

ASSEMBLYMAN HAYTAIAN: I hope not; you're right.

MR. RIZZUTO: But I, for one, happen to have maybe the only autographed photograph of Assemblyman Haytaian growing his new appendage.

Thank you very much.

ASSEMBLYMAN HAYTAIAN: Thank you, Pat.

MR. RIZZUTO: Gentlemen, when you go back to your fellow legislators and speak to them, and give them the reasons why you believe your bills should be passed, among those reasons you can list at least 4,250 names. They are the names of the present students of the Vernon Township School District. I, along with my present fellow Board members, have sworn an oath to protect their lives and their welfare before they get an education. We could not stand by idle without saying, "No, it will not happen here. No, you cannot do it to Vernon Township. We will not allow DEP to endanger our children, our students now, or our coming students."

I know some of you may find it very, very irritating in the morning when you go to work to have to drive behind those little yellow vehicles that always seem to stop when you are in a rush, but it's part of growing.

I don't think that DEP should take tonight's crowd size as an indication that the people of Vernon are losing their resolve. I was here in August on a warm Sunday afternoon when people took the time out of a summer vacation to come -- all 6,000 strong -- to register their discontent with this atrocious, foolhardy, ludicrous plan that DEP has decided to perpetrate on the people of Vernon Township. Tonight, there may not be 6,000 people here, but the spirit lingers on. (applause)

I guarantee you that should DEP continue with this insanity, should they decide to press the issue, and should they decide to take the chance and try to bring the trucks into Vernon, you will have 6,000 people in the middle of the road. They may not be here tonight, but they will be here then.

Earlier, Assemblyman Haytaian mentioned the word "NIMBY." It came from an editorial that was published in a newspaper we get here, although it is predominantly a Bergen newspaper, The Record. It was published July 31. It is an acronym for the words, "Not in my backyard." I don't think

anyone in Vernon would be as parochial as to say, "We don't want it in our backyard; put it in someone else's backyard." I think what we are saying is, "The plan is fraud." If a plan has to be brought to the community in the middle of the week without any fanfare, with a prior agreement that the press will not be there, and when our elected representatives have to be notified at 11 o'clock the preceding night, how honest and open can that plan be? All of the legislators are sworn to meet in open assembly except on matters that are very sensitive. Well, I don't believe that bringing contaminated soil to a community, endangering an aquifer, and endangering the lives and welfare of the people here, is something that can be termed, "Sensitive and should be done in closed session."

I feel that if it had to be done in this fashion, the plan had an error to begin with. They were trying to hide something. They were trying to put one over on us, and the people didn't let it happen. When I read that editorial in The Record, I penned a letter. I won't bother reading the letter. I didn't think they would publish it because it was kind of long, but they did edit it. They decided not to print the last line of the letter, whether they felt it was too inciting, or they just didn't like it, or maybe it was because of length. But I did say to them in closing, "Shame on our State; shame on the DEP; and, shame on you, Bergen Record, because your term, the way you applied it to the people of Vernon, was not true." I tell you, I am proud to be a member of the community, and when they come up here, or they try to come up here, they will see a community united.

In closing, I would just like to thank those people who have assumed a leadership role in helping to keep this material out of our Township, helping Vernon to remain green. I am sure that you can count on every member of the community to do his or her part. Please don't let the lack of people here tonight dissuade you. The people understand what you are

going through. I really don't think DEP realizes what the people of Vernon do. Someone said that our primary source of income is recreation. It's not. Most of the people in Vernon travel down below every day. It is a long trek; it starts at 5:30 in the morning, and it doesn't end until eight o'clock at night.

I know what you are going through to have to come out at night. It is very difficult. I think this long, drawn-out process is part of DEP's overall strategy, but I am also sure that when it counts, you will all be there.

Thank you very much.

ASSEMBLYMAN BENNETT: Thank you very much. Next will be the District Manager of the Sussex County Soil Conservation District, Phyllis Anderson.

P H Y L L I S A N D E R S O N: Thank you, Honorable Chairman and members of the Committee, for giving me the opportunity to speak tonight. Chuck and the President of the School Board talked about being NIMBYs. Sussex County worked very hard on the Hazardous Waste Facility Siting Act. I gave many, many summer days, when I could have been swimming, working personally on the writing of that. It wasn't only the people who were involved with agencies. Our Freeholder Director, Edward Zukowski, went to all of the public hearings and asked that aboveground siting be included in the act, and it was. Mr. Michael LaRose from Sparta was there throughout the whole public hearing process.

The reason we were there wasn't just to protect Sussex County. It was because we did not want to see hazardous materials being dumped somewhere that wasn't environmentally sound. We wanted it to go through the legal process, and not be dumped in a helter-skelter way, as has been proposed here for Vernon.

I want to quote a statement from the decision document for the Montclair, Glen Ridge, West Orange radium project filed

by the New Jersey Department of Environmental Protection: "The Wawayanda site emerged a better candidate because the project offers an excellent opportunity to restore the entire quarried out areas both within the State-owned land and all the quarry areas adjacent to the State-owned land. In order to properly restore the publicly owned land which had been quarried and all vistas from this proposed trail, moneys would have to be provided that at this point in time have not been appropriated. Moreover, the adjacent quarry operation would have operated for eight to ten years longer but for this decision by the Department. This would have obviously rendered the site virtually unrestorable in the sense that is currently contemplated, since an additional eight to ten years of soil removal operations would have been conducted." We say to Mr. Dewling, "Where are you coming from. We are the agency that is supposed to be the expert on soil and soil restoration of sand and gravel operations, and we don't see it the way DEP sees it."

I have been out at the site many times. I sort of feel like I am part of the Richey family now. Certainly we have worked with all of our local people trying to get information for him. We want to thank our legislators very much for going to bat for us and getting us the information we needed.

But, I was out at the site with Cluster R. Belcher, who is the certified professional agronomist with the USDA Soil Conservation Service, and George D. Jones, who is the District Conservationist, also with the Soil Conservation Service. The reason we were out there was to determine if native soil located at the site could successfully establish vegetative growth, as recommended by Hermia Lechner, who is the Director of the Green Acres Program here in the State. Mr. Belcher and Mr. Jones evaluated the top soil stored prior to the excavation operation and the sub-soil presently covering the site, and agreed that once the storm water was controlled and recharged

into the underground aquifer at the site, and the site was graded and topsoiled, it would, indeed, be really for a seeding mixture that would successfully meet Mrs. Lechner's requirements.

We then crossed Route 94 and evaluated the land between Route 94 and the railroad, and beyond. It was determined that all the land contained wetlands soil and vegetation, except for 50 feet adjacent to the drainage ditch. The reason for our wetland inspection was to question DEP's suitability criteria that states in Number 6: "The candidate is not to be located adjacent to freshwater wetlands."

We really can't imagine how DEP selected this site. Now, they said they selected the site to restore it and that they needed Essex County soil to restore it. We say, "No way," and the Soil Conservation District would be very happy to continue our work with the State and Vernon Township to restore it without Essex County soil.

Thank you.

ASSEMBLYMAN BENNETT: Thank you very much. Diane Olsen?

D I A N E O L S E N: Members of the Committee and panel: I think I speak for all of us here and the remaining people in the Township -- and our State, probably -- in thanking you for coming to our aid. We have gotten the information from far better experts that I would even presume to have you think I am.

It is our hope that you, as a Committee, will extract the very best parts of all of the bills presented to you. We hope that you will come up with an all-encompassing one that will eliminate this horrendous problem forever. Furthermore, if it is within your power, we would ask that at the end of all of this, if it would be possible, for you to conduct a full and complete study and investigation of the New Jersey Department of Environmental Protection.

ASSEMBLYMAN BENNETT: Thank you very much. Eleanor Mensonides? Was I close? Sorry.

E L E A N O R M E N S O N I D E S: Members of the Committee: I believe that this Committee addresses not only Vernon Township, but the entire State of New Jersey. We have to recognize that there are numerous sites throughout the State that are contaminated with radium and thorium. There is a need to clean up those sites to protect the life and safety of the public.

But, we must also recognize that the cleanup must be done in a manner that does not cause potential problems for any community in the State. DEP claims to have excellent experts and scientists. Why are they not using these men -- these professionals -- to study the depth of the problem and find a true solution that would take into consideration the health and safety of all of the people in New Jersey, and not a solution that appears to be the most convenient for them?

Thank you.

ASSEMBLYMAN BENNETT: Thank you very much. Richard Errico?

R I C H A R D E R R I C O: Ladies and gentlemen of the Committee and concerned residents of our valley: I would like to make two statements tonight. I find it intriguing that the representatives of this Committee saw fit to schedule this hearing up here, that they came to Vernon to see our concerns and to hear our problems, when our Governor turns his back on us and goes to China, and won't even come to Vernon to see what our problems are. I want to thank you ladies and gentlemen for that.

I would like to take issue with one statement that Pat Rizzuto made tonight. As an unofficial count, during the evening we had between 3,000 and 3,500 people here. Wednesday night at the whole valley rally in Warwick, we had 3,500 people. I don't think our resolve has changed one bit. I don't think our numbers have changed one bit.

Ladies and gentlemen, I would like to tell you just a little bit about how I spent my summer. I had planned, at the beginning of June, to have a nice, relaxing, quiet summer. On June 18, that whole thing changed. Richard Dewling and Jim Offer impacted my life more this summer than my wife and child did. My family life has been disrupted so much this summer by the activities going on in this town, that my wife has to call me at the office when she wants to talk to me.

I spent hundreds of hours working with the committee -- the Vernon Citizens' Group -- and hundreds of dollars of my company's resources to fight what I perceive to be, and what this Committee perceives to be, an ill-conceived plan. I have seen the property values of my town level off and, in some cases, go down, while the property values of the communities surrounding Vernon Township and all the rest of New Jersey have been skyrocketing.

I have been told by DEP that if I had kept my mouth shut, my property value would not have been impacted. If I had kept my mouth shut, I would be sitting on top of radioactive soil right now.

As late as today, an article in The New Jersey Herald indicated Jim Staples as saying that the aquifer was a trumped-up issue, and that Vernon Township represented an excellent choice because of the availability of native soil. What DEP is actually saying is, "We don't give a damn for your health and welfare. We want cheap dirt." Well, gentlemen, if DEP sets one foot in Vernon Township with one barrel of radioactive soil, the price they are going to extract for the native soil in Vernon Township will far exceed any monetary value they could ever have placed on it. (applause) Chairman Bennett, you talked about people power. You ain't seen nothing yet!

DEP professed concern for the citizens of Montclair, yet for four years they dragged their feet on this issue. They

lied to the citizens of Montclair 12 months ago when they wrenched them out of their homes and told them they would only be out for four months. Twelve months later they were still out of their homes. Ten months after that, they came with a cockamamie plan -- which was poorly conceived and incompetently researched -- to blend soil in Vernon. Then, to compound that, they came into Vernon Township with the Gestapo-like tactics of a bureaucracy run amuck.

The problem in Montclair isn't radon; it's radium. Radon can be vented; radium must be removed. EPA has said in private conversations that there were some homes in Montclair that were too hot, too radioactive to support a healthy environment. It is not simply just dirt, as DEP continues to say. It is radioactive, highly dangerous material.

Commissioner Dewling continues to tell us that blending has been done throughout the world, yet when Maryann Riley pressed the issue at a meeting we had three months ago -- two and a half months ago -- Commissioner Deieso said, "Blending has never been done." When Commissioner Dewling was pressed further as to where radioactive contaminated soil had ever been blended, he couldn't answer because his thoughts on blending are sand and gravel. When you mix sand and gravel, or dirt and gravel -- he said that is blending. Well, what we are talking about is radioactive contaminated waste.

Ladies and gentlemen, we need your legislation, and we need it now.

I have one other request, which Ms. Olsen has already put to you. What we have seen over the past three months in Vernon, and much longer in Montclair, is abuse of executive power on the part of DEP. When will it stop? (applause) DEP has left a legacy throughout this State -- throughout this State -- of half truths, innuendos, blatant lies, false statements, broken promises, and broken dreams. When will we stop them?

New Jersey State Library

I would like to make an impassioned plea for all the residents of this great State of New Jersey that this never happen again, that the Legislature convene a subcommittee to investigate the abuse of power and the perception of corruption by the leadership of DEP, and call for the removal of the offending parties to justify it.

Further, I would like to ask for legislative controls to control a group -- a governmental group -- which seems to have run amuck in our State. They don't seem to be responsible or responsive to anyone. DEP -- the Department of Environmental Protection -- is an embarrassment to all of New Jersey.

In conclusion I would like to say one further thing. Vernon is my home. It is not the home of Mr. Dewling; it is not the home of Mr. Deieso; it is not the home of Governor Kean, who seems to prefer Fisher Island, New York to Vernon. I, and the rest of the residents of this great valley, will not allow radioactive garbage to be dumped on our homes. (applause)

ASSEMBLYMAN BENNETT: Thank you very much. That concludes the list of speakers that I had presented to me for this evening. I am not going to close the record, however, on this public hearing. There may be some amongst you who desire to submit a statement in writing or, in fact, some who may not have been able to attend tonight's hearing. In order to assure that all parties interested in presenting their views to this Committee can be heard, I intend to leave this record open so that they will have the opportunity to submit any written comments. These should be submitted to the Assembly Environmental Quality Committee, State House Annex. The mailing address is CN 68, Trenton, New Jersey, 08625.

I would like to thank all of you for the courtesy extended to this Committee and for inviting us up here. Also, I thank all of you who have given us this great wealth of knowledge to enable us to now deal with what is obviously a very significant and serious issue.

To speak a few comments on behalf of the Mayor, back by popular demand, Mr. James Ofper.

MR. OFPER: Mayor Marotta had to leave, but he wanted me to say a few words on his behalf at the conclusion of this hearing.

Number one, there will be non-violence training tomorrow at nine o'clock at the Warwick Town Park. Those of you who have not as yet attended, please go there.

Number two, in keeping with our reputation as the clean demonstrators, please clean up after yourselves before you leave.

And finally, he would like to express special thanks to the management of Vernon Valley Action Park for once again allowing us access to this tent. Also, a special thank you to the members of the Committee, Chairman Bennett, and our own representatives for coming to Vernon.

Thank you very much.

(HEARING CONCLUDED)

APPENDIX

STATEMENT

OF

HONORABLE ALAN J. KARCHER

MINORITY LEADER

NEW JERSEY GENERAL ASSEMBLY

BEFORE THE

ASSEMBLY COMMITTEE ON ENVIRONMENTAL QUALITY

VERNON TOWNSHIP

SEPTEMBER 10, 1986

CHAIRMAN BENNETT, SENATOR DUMONT, ASSEMBLYMAN HAYTAIAN, ASSEMBLYMAN
LITTELL, MAYOR MAROTTA, MEMBERS OF THE COMMITTEE, FELLOW CITIZENS,
FRIENDS:

I AM HERE TONIGHT BECAUSE I BELIEVE THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION'S PLAN TO DISPOSE OF RADIOACTIVE WASTE HERE IN VERNON TOWNSHIP
IS AN IMPERMISSIBLY DANGEROUS PROPOSAL JEOPARDIZING THE PERSONAL HEALTH
OF RESIDENTS OF THE ENTIRE REGION.,.

WHEN I FIRST LEARNED OF THE DEPARTMENT'S PLAN EARLY THIS SUMMER, I
LITERALLY COULD NOT BELIEVE MY EARS.

BEGINNING WITH THE FIRST OF A SERIES OF VISITS I HAVE MADE TO VERNON
TO INVESTIGATE THIS MATTER SINCE JULY, I HAVE BEEN STARTLED BY THE
PATENTLY OBVIOUS RISKS TO LOCAL PUBLIC HEALTH WHICH THE DEPARTMENT'S PLAN
PRESENTS. I HAVE BEEN ASTONISHED THAT SUCH A PLAN WAS PERMITTED TO BE
DEVELOPED, MUCH LESS BE CONSIDERED AS A SERIOUS PROPOSAL. THE PLAN IS
HAZARDOUS; IT IS ARBITRARY AND UNREASONABLE; IT IS UNFAIR; IN A WORD, IT
IS INANE. I AM DISMAYED THAT IT HAS BEEN ALLOWED TO OCCUR AT ALL.

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EQUALLY, I HAVE BEEN DEEPLY IMPRESSED AND GRATIFIED THAT THE GOOD PEOPLE OF VERNON TOWNSHIP AND SURROUNDING COMMUNITIES WILL SIMPLY NOT BE BULLIED, BY MISGUIDED BUREAUCRATIC BUNGLING, INTO PASSIVE ACCEPTANCE OF A STUPID AND DANGEROUS NON-SOLUTION TO THIS STATE'S UBIQUITOUS PROBLEM OF PRESERVING AND PROTECTING THE NATURAL AND HUMAN ENVIRONMENT.

ON JULY 31 I WROTE TO THE SPEAKER OF THE NEW JERSEY GENERAL ASSEMBLY AND REQUESTED THAT HE CALL A SPECIAL SESSION FOR THE PURPOSE OF ADOPTING EMERGENCY LEGISLATION PROHIBITING IMPLEMENTATION OF THE DEPARTMENT'S RADIUM-DUMPING PLAN.

ON AUGUST 7 I WROTE AGAIN TO SPEAKER HARDWICK, MAJORITY LEADER HAYTAIAN AND ASSEMBLYMAN LITTELL, TO REITERATE MY CALL FOR A SPECIAL SESSION ON VERNON AND REQUESTING EACH OF THEM TO JOIN ME IN SPONSORING THE FIRST OF SEVERAL LEGISLATIVE PROPOSALS WHICH I HAVE PREPARED TO ADDRESS THE VERNON CRISIS. THIS MEASURE, ASSEMBLY BILL 3061, WOULD PROHIBIT THE DUMPING OF RADIUM-CONTAMINATED SOIL OVER A POTABLE GROUNDWATER SOURCE. I BELIEVE ITS SUBSTANCE IS INCORPORATED IN LEGISLATION RECENTLY INTRODUCED IN THE SENATE BY MY GOOD FRIEND SENATOR DUMONT.

THAT SAME DAY, AUGUST 7, I WROTE TWO OTHER LETTERS MOTIVATED TO AVERT ANY FURTHER CONSIDERATION OF THE VERNON PLAN.

THE FIRST, TO GOVERNOR KEAN, REQUESTED THAT HE INVOKE NECESSARY AND PROPER EXECUTIVE AUTHORITY TO FORESTALL IMPLEMENTATION OF THE DEPARTMENT'S PROPOSAL UNTIL SUCH TIME AS THE LEGISLATURE RECONVENED.

ALSO THAT DAY I WROTE TO THE COUNSEL TO THE NEW JERSEY LEGISLATURE AND POSED FIFTEEN SPECIFIC QUESTIONS GERMAIN TO THE LEGALITY OF THE DEPARTMENT'S VERNON PLAN.

ON AUGUST 21 I RECEIVED A LETTER FROM THE GOVERNOR INDICATING HE WOULD NOT INTERVENE TO CANCEL OR POSTPONE THE DEPARTMENT'S VERNON PLAN.

THAT SAME DAY I WROTE AGAIN TO SPEAKER HARDWICK, IN THE FACE OF HIS SILENCE IN RESPONSE TO MY REPEATED CALLS FOR EMERGENCY ACTION ON VERNON, AND REITERATED THE ONGOING URGENCY OF THE SITUATION AS I PERCEIVED IT.

ON AUGUST 26 I RECEIVED A VOLUMINOUS INITIAL RESPONSE TO MY INQUIRIES MADE TO LEGISLATIVE COUNSEL. THIS RESPONSE INDICATED, AMONG OTHER THINGS, THAT UNDER EXISTING STATE AND FEDERAL LAW, RADIUM OR RADIUM-CONTAMINATED SOIL IS NOT NECESSARILY CONSIDERED TO BE A "HAZARDOUS WASTE." IF IT WERE, BOTH STATE AND FEDERAL LAW WOULD, AS CONGRESSMAN FLORIO HAS POINTED OUT, PROHIBIT THE VERNON DUMPING PLAN. THIS UNCERTAINTY -- WHAT AMOUNTS TO A LEGAL LOOPHOLE -- IS CURED BY A SECOND MEASURE, ASSEMBLY BILL 3062, WHICH I THEREUPON AUTHORED AND HAVE INTRODUCED. UNDER THAT BILL, WHOSE SUBSTANCE WAS SUBSEQUENTLY INCORPORATED IN LEGISLATION PROPOSED BY ASSEMBLYMEN HAYTAIAN AND LITTELL, AS WELL AS SENATOR DUMONT, THE RADIOACTIVE SOIL WOULD HAVE TO GO TO A STATE AND FEDERALLY APPROVED HAZARDOUS WASTE FACILITY. THE DEP'S VERNON SITING PLAN HARDLY COMPORTS WITH THE REQUIREMENTS OF SUCH A FACILITY. BUT FAILING ENACTMENT OF A BILL SUCH AS A-3062, IT WILL BE LEFT FOR THE COURTS TO DECIDE WHETHER RADIUM IS LEGALLY "HAZARDOUS" WITHIN THE CONTEMPLATION OF PREEXISTING STATUTES. HENCE A-3062 IS INTENDED TO LEAVE NO SUCH DOUBTS.

ON SEPTEMBER 3 I WROTE TO ASSEMBLYMEN LITTELL AND HAYTAIAN TO SHARE THIS PROPOSAL WITH THEM, REITERATE MY INVITATION THAT EACH OF THEM JOIN ME IN SPONSORING ANTI-RADIUM DUMPING LEGISLATION ADDRESSING THE VERNON CRISIS, AND ASKING THEM TO JOIN ME IN URGING SPEAKER HARDWICK TO ALLOW EMERGENCY CONSIDERATION OF SUCH LEGISLATION AT THE EARLIEST OPPORTUNITY.

LAST MONDAY, WHEN THE LEGISLATURE RECONVENED IN TRENTON, THE THREE OF US CAUCUSED AND AGREED TO CO-SPONSOR SEVERAL BIPARTISAN MEASURES ADDRESSING THE COMMON OBJECTIVE OF PUTTING TO REST, ON A PERMANENT BASIS, ANY FURTHER EXECUTIVE OR ADMINISTRATIVE CONSIDERATION OF THE VERNON PLAN.

IN ADDITION TO THE TWO MEASURES I HAVE ALREADY DISCUSSED, EITHER OF WHICH WOULD ACCOMPLISH THAT OBJECTIVE, I HAVE INTRODUCED TWO ADDITIONAL MEASURES MOTIVATED TO ADDRESS THE DEP'S MISGUIDED PLAN AND THE INSENSITIVE MANNER IN WHICH THAT PLAN HAS BEEN FOISTED ON LOCAL RESIDENTS.

THE FIRST OF THESE ADDITIONAL MEASURES, A-3042, PROHIBITS TREATMENT OR DISPOSAL OF RADIUM CONTAMINATED SOIL PENDING A COMPREHENSIVE STUDY OF THE PRACTICABILITY AND FEASIBILITY OF EXTRACTING THE RADIUM FROM THE SOIL. IF THAT COULD BE ACHIEVED, ALTERNATIVE DISPOSAL SCENARIOS MIGHT BECOME MORE PRACTICAL.

THE SECOND MEASURE, A-3132, IMPOSES ON DEP THE REQUIREMENT THAT IT CONDUCT A COMPREHENSIVE STUDY OF THE ENVIRONMENTAL IMPACT STUDY RELATIVE TO ITS VERNON PLAN -- INCLUDING, FOR EXAMPLE, IMPACTS ON PUBLIC HEALTH, NATURAL ECOLOGY, AS WELL AS ECONOMIC IMPACTS ON PROPERTY VALUES AND COMMERCIAL AGRICULTURE. UNDER PRESENT LAW SUCH COMPREHENSIVE IMPACT STUDIES ARE REQUIRED ONLY WHERE A PLAN IS PROPOSED BY THE FEDERAL GOVERNMENT.

MR. CHAIRMAN, I HAVE MADE EVERY DOCUMENT AND INITIATIVE REFERRED TO ABOVE AVAILABLE TO LEGISLATIVE COLLEAGUES IN BOTH HOUSES, TO COUNSEL FOR VERNON TOWNSHIP, AND TO THE PUBLIC AT LARGE. I AM TODAY SUBMITTING EACH OF THESE DOCUMENTS TO YOUR COMMITTEE FOR PURPOSES OF THE FORMAL RECORD.

TO MY MIND THE PUBLIC HEALTH CONCERNS OF RESIDENTS OF VERNON TOWNSHIP, IN THE FACE OF DEP'S PENDING PLAN, ARE, TO SAY THE LEAST, UNDERSTANDABLE. INDEED, GOVERNOR KEAN'S 1983 EXECUTIVE ORDER DECLARING A "STATE OF EMERGENCY," IN RESPECT OF THE PRESENCE OF THE VERY SAME RADIUM WASTE SOUGHT TO BE DISPOSED OF, EXPRESSLY RELIES UPON THE FACT THAT "... THE PRESENCE OF RADON AND OTHER RADIOACTIVE DECAY MATERIALS HAS BEEN DETERMINED TO POSE A THREAT TO HUMAN HEALTH."

COMING AS I DO FROM A ONCE-BEAUTIFUL DISTRICT AND A HOME TOWN WHICH WERE FOR DECADES SCOURGED BY THE INDISCRIMINATE DUMPING OF INDUSTRIAL HAZARDOUS WASTE, I KNOW FIRSTHAND WHAT THE IRREPARABLE EFFECTS OF THESE UNCONSCIONABLE PRACTICES ARE. TO ME THE IRONIES OF OFFICIALLY SANCTIONED, SYSTEMATIC RADIOACTIVE CONTAMINATION OF ONE OF THE VERY FEW PRISTINE AREAS LEFT IN THIS STATE ARE OBVIOUS AND MANY.

MOREOVER, AS I TOLD THE GOVERNOR A MONTH AGO, THE POTENTIAL THREAT TO PUBLIC ORDER AND INDIVIDUAL PEACE OF MIND IN THE VICINITY OF THIS LOCATION AS A RESULT OF THE VERNON SITE SELECTION IS ITSELF SUFFICIENT BASIS FOR CANCELLING THE ACTION. A CONSISTENT LACK OF EXECUTIVE LEADERSHIP -- INACTION IN THE FACE OF PUBLIC BUREAUCRACY OVERSTEPPING ITS PROPER BOUNDS AND LITERALLY RUNNING AMOK AT THE PUBLIC'S EXPENSE: WHAT I WOULD CALL "GOVERNMENT BY OMISSION" -- MAY REASONABLY BE CHARACTERIZED IN THIS CASE AS A CERTAIN FORM OF OFFICIAL TERRORISM, ALBEIT UNINTENDED.

BEYOND ALL THIS I AM PERSONALLY CONCERNED THAT THE ARBITRARY PRECEDENT OF A LOW-LEVEL RADIOACTIVE DUMPSITE IN VERNON TOWNSHIP COULD OPEN THE DOOR TO LATER SIMILAR DUMPING OF HAZARDOUS MATERIAL FROM BOTH NEW JERSEY AND OUT-OF-STATE SOURCES THROUGHOUT THE NORTHEAST. I TRUST YOU ARE AWARE THAT NEW JERSEY IS CURRENTLY, ALONG WITH OTHER STATES IN THE REGION, ENGAGED IN AN INTERSTATE COMPACT FOR THE SITING OF LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SOMEWHERE IN THIS PART OF THE COUNTRY. MR. CHAIRMAN, I AM ASTONISHED BY DEP'S STUPIDITY IN UNILATERALLY CREATING SUCH A RADIOACTIVE DUMPSITE HERE IN VERNON AT A TIME WHEN THE VERY ISSUE OF WHICH OF SEVERAL STATES WILL ULTIMATELY HOST SUCH A FACILITY IS PENDING AT THE REGIONAL LEVEL.

THE SITING OF HAZARDOUS SUBSTANCE DISPOSAL FACILITIES IS, AS WE ALL KNOW, GENERALLY A PRIORITY ISSUE OF THE DAY. ACCORDINGLY IT IS MY HOPE TODAY THAT DEP'S VERNON SITING PLAN -- PARTICULARLY THE INSENSITIVE MANNER IN WHICH SUCH AN IDIOTIC PLAN HAS BEEN FOISTED ON LOCAL RESIDENTS -- WILL END UP SERVING AS A CLASSIC TEXTBOOK CASE STUDY OF HOW GOVERNMENT OUGHT NOT GO ABOUT SITING OF HAZARDOUS FACILITIES GENERALLY. TO MY MIND THIS IS THE ONE POTENTIALLY POSITIVE OUTCOME OF THIS OVERALL ADMINISTRATIVE FIASCO.

CALLOUS OFFICIAL DISREGARD FOR THE PEOPLE AFFECTED BY THIS PROPOSAL HAS SIMPLY GONE ON TOO LONG. IT NOT ONLY JEOPARDIZES THE PERSONAL HEALTH, PEACE OF MIND, PROPERTY VALUES AND COMMERCIAL LIVELIHOOD OF THE POPULACE SURROUNDING THE VERNON TOWNSHIP SITE WE ARE VISITING THIS EVENING.

SUCH DISREGARD OFFENDS EQUALLY ALL GOOD PEOPLE THROUGHOUT THIS STATE WHO UNDERSTAND THE DEBT WE OWE FELLOW CITIZENS WHO WOULD NOT BE BULLIED BY ARBITRARY, MISGUIDED BUREAUCRATIC DECISIONMAKING OF THE MOST OFFENSIVE SORT.

MR. CHAIRMAN, I COMMEND YOU FOR HOLDING THIS HEARING HERE TONIGHT. I COMMEND ASSEMBLYMEN LITTELL AND HAYTAIAN, AND SENATOR DUMONT FOR JOINING ME IN SPONSORING A LEGISLATIVE SOLUTION TO THIS CRISIS, AND I AM GRATIFIED BY THEIR SUPPORT OF MY BILLS. LET ME MAKE IT CLEAR, AS I HAVE EVER SINCE I LEARNED OF DEP'S INTENDED PLAN, THAT I WILL SUPPORT ANY MEASURE WHICH ACHIEVES THE PURPOSE OF OUTLAWING THE DUMPING OF RADIUM-CONTAMINATED SOIL IN VERNON TOWNSHIP.

FINALLY AND MOST OF ALL, MR. CHAIRMAN, I SALUTE THE RESIDENTS OF VERNON AND SURROUNDING COMMUNITIES FOR COMPELLING OUR PRESENCE HERE TONIGHT. IN THE FACE OF ADVERSITY, THEIR COURAGE IS AN INSPIRATION TO THOSE OF US WHO BELIEVE THE POWER OF GOVERNMENT RESIDES IN THE PEOPLE.



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

September 3, 1986

Assemblyman Garabed Haytaian
Assemblyman Robert Littell
District 24

BY FEDERAL EXPRESS

Gentlemen:

As you know, the DEP's ill-considered plan to dispose of radium-contaminated soil in Vernon Township continues to be in force, notwithstanding an eleventh-hour hiatus in progress to determine the public health and environmental impacts of such a radioactive dumpsite in one of the most pristine areas left in this State.

On August 7 I wrote to both of you to solicit your co-sponsorship of my bill intended to prohibit the dumping of radium-contaminated soil on land, such as the Vernon site, overlying a potable water source. In all frankness I am utterly dismayed that both of you have failed to date to respond to my letters relative to this matter — much less express support for a legislative remedy to this outrageous administrative siting plan directly jeopardizing the health and tranquility of your own constituents.

On the same day I last wrote to you on this subject, I beseeched Governor Kean to exercise necessary and proper executive authority to forestall implementation of the Vernon radioactive dumpsite plan until such time as the Legislature might reconvene and entertain my legislation to prevent the plan from ever being implemented. Last week I received a letter from the Governor indicating he would not so intervene.

On three separate occasions since July I have written to Speaker Hardwick to request a special summer session of the Assembly relative to this matter, to solicit his support for my anti-radium-dumping bill, and, most recently, to notify the Speaker that I intend to seek emergency consideration of this Vernon bill upon our regular reconvening next Monday, September 8.

Also on August 7, I wrote to Legislative Counsel Albert Porrioni and requested that his office analyze a number of issues germane to the legality of DEP's imminent Vernon dumpsite plan. An initial response from Mr. Porrioni last week has led me to author a second measure designed to prevent DEP from going forward with its plan to systematically contaminate this area of your district.

Assemblyman Garabed Haytaian
Assemblyman Robert Littell
September 3, 1986
Page 2

This second anti-radium-dumping bill, which I enclose for your review, amends the New Jersey Solid Waste Management Act so as to put to rest once and for all any doubts about whether radium or radium-contaminated soil shall be considered "hazardous waste" for purposes of proper disposal anywhere in this State. In this manner the Legislature can resolve what otherwise may be a federal and State legal loophole concerning the hazardous quality of radium; our failure to enact this measure forthwith would leave it to the courts to interpret an at best hazy issue under the preexisting law. Why run the risk that a court may decide that radium is "not hazardous," merely on the basis of a failure of prior federal and State law to so categorize this dangerous substance?

The effect of this second measure is, for present purposes, identical to the anti-radium-dumping bill I sent you on August 7: that is, to prohibit the dumping of radium-contaminated soil in Vernon Township or any other inappropriate location in New Jersey. At our first session of the new legislative season next Monday in Trenton, I shall be appealing to the Speaker to allow emergency consideration of either or both of these bills designed to preempt DEP's purported authority to go through with its Vernon plan.

In my view this ill-conceived plan threatens the physical health of your constituents and the natural environment they inhabit. Further, DEP's plan threatens local property values and commercial agriculture in the vicinity of the site. Moreover, a lack of leadership on this issue has created a prospective local crisis in public order should DEP act to implement the plan based on a failure of the executive, judicial or legislative branch to intervene on behalf of the good people of your district.

Beyond all this I am personally concerned that the arbitrary precedent of a low-level radioactive dumpsite in Vernon Township could open the door to later similar dumping of hazardous material from both New Jersey and out-of-state sources throughout the Northeast region. Perhaps you are aware that New Jersey is currently, along with several other Northeast states, engaged in an interstate compact for the siting of low-level radioactive waste disposal within this region. I am astonished by DEP's stupidity in creating such a radioactive dumpsite here in New Jersey at a time when the very issue of which of several States will ultimately host such a facility is pending at the regional level.

The siting of hazardous substance disposal facilities is, as we all know, generally a priority issue of the day. Hence it is my hope that DEP's Vernon siting plan -- particularly the insensitive manner in which such an idiotic plan has been foisted on local residents -- will end up serving as a classic textbook case study of how Government ought NOT to go about the siting of hazardous facilities generally. To my mind this is the one potentially positive outcome of this overall administrative fiasco.

Assemblyman Garabed Haytaian
Assemblyman Robert Littell
September 3, 1986
Page 3

For all of these reasons I hope both of you will join me next Monday in urging Speaker Hardwick to enable us forthwith to put the Vernon radioactive dumpsite plan permanently to rest by legislative means. In the interim I would welcome your input on either of my specific legislative proposals toward this end, and I want to reiterate my invitation to both of you to join me in sponsoring either measure.

Sincerely,



Alan J. Karcher
Minority Leader
(Assemblyman, District 19)



GENERAL ASSEMBLY OF NEW JERSEY
DEMOCRATIC OFFICE

ROOM 290, STATE HOUSE ANNEX
CN-098
TRENTON, NEW JERSEY 08625
(609) 292-7065

HONORABLE ALAN J. KARCHER
MINORITY LEADER

RICHARD J. COFFEE
EXECUTIVE DIRECTOR
PETER P. GUZZO
DEPUTY DIRECTOR

August 21, 1986

Honorable Chuck Hardwick
Speaker
New Jersey General Assembly
Trenton, New Jersey 08625

Sir:

On July 31 I wrote to you to request that you call a special session of the Assembly for the purpose of addressing emergency matters including an imminent plan for the State to dispose of radium contaminated soil in Vernon Township.

Subsequently, on August 7, I wrote to you again to invite you to join me in sponsoring legislation which would prohibit such a travesty from taking place. As you know, I intend to introduce this legislation immediately upon the reconvening of the Assembly at its first regular session scheduled for September 8.

In all frankness, Mr. Speaker, it is nothing less than amazing to me that you have failed to respond to these letters. (Incredibly, neither has either Majority Leader Haytaian or Assemblyman Littell, in whose legislative district DEP's designated radium dumpsite is located, and both of whom, by letters dated August 7, I also invited to join me in co-sponsoring my anti-radium-dumping bill.)

Although I have tried to reach you by telephone in order to follow up on this matter and impress you with the sense of urgency communicated to me by local residents on my recent visits to Vernon Township to investigate this matter, I must also add for the record that you have not even had the time or otherwise seen fit to return my calls relative to this subject.

Now that you and other key members of the Legislature are back from New Orleans and summer vacation is coming to an end, I trust you will agree it is time to sort out the priorities of business to be undertaken by the Assembly during the coming fall term. Naturally I and my colleagues in the Minority leadership would be eager to sit down with you at any convenient time in an effort to find common cause as to matters of mutual concern. As always, we stand ready to provide our input on a growing list of areas which are crying out for legislative remedy. Unfortunately, I detect a commensurately growing lack of faith on the part of the public that the 202nd Legislature stands ready to address the great environmental, social, and fiscal issues facing this State.

Speaker Chuck Hardwick
August 21, 1986
Page 2

Mr. Speaker, may I suggest that we commence the coming fall term of the Assembly with immediate emergency consideration of a solution to the Vernon Township crisis? The Legislature has a duty to all the citizens of New Jersey to intervene in cases where the unchecked course of bureaucratic decisionmaking has overextended its proper bounds, and run amok, in the absence of coherent policy direction being provided by either the executive or legislative branch.

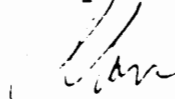
On the same day I last wrote to you relative to the dumping of radium-contaminated soil in Vernon Township, I beseeched the Governor to exercise necessary and proper executive authority to forestall any action pursuant to this administrative plan of DEP's until such time as the Legislature could take action to prohibit same. (Enclosed for your reference is a copy of my August 7 letter to Governor Kean.)

Regrettably, since DEP's first ill-considered announcement of its Vernon siting plan, neither the Governor, yourself, nor Assembly Majority Leader Hayataian has demonstrated an iota of leadership required to abate what has by now become a palpable local crisis. Such callous official disregard has been much to the chagrin not only of the populace surrounding the Vernon Township site -- whose personal health, peace of mind, and residential property values may all be threatened; equally outraged are all good people concerned about the at best arbitrary precedent this ill-thought-out radioactive dumpsite would set, including the insensitive manner in which the site designation process was administered by DEP. Perhaps the one good thing to come out of the overall fiasco is its illustration that ordinary people will not be bullied by what can only be seen as "government by omission."

Bipartisan support for emergency adoption of my anti-radium-dumping bill -- or similar legislation, as you and your Majority colleagues may prefer -- could I believe set a new tone of responsiveness for the Assembly over which you presently have the honor to preside. I can tell you from personal experience that ultimately the people will in any event be heard on this and other pressing matters which legislative leadership might prefer to see resolved by the Administration or the courts.

Based on the continuing emergency which I for one perceive relative to DEP's imminent Vernon Township radium-dumping plan, I shall be introducing my bill and seeking its consideration on an emergency basis on September 8. Needless to say, your support of these efforts will be appreciated.

Very truly yours,



Alan J. Karcher
Minority Leader

cc: Majority Leader Haytaian
Assemblyman Littell

14X



STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
CN-001
TRENTON
08625

THOMAS H. KEAN
GOVERNOR

August 21, 1986

Handwritten signature/initials

Honorable Alan J. Karcher
Assembly Minority Leader
61 Main Street
Sayreville, New Jersey 08872

Dear ~~Assemblyman~~ ^{AL} Karcher:

I have received your recent letter suggesting that I invoke my Executive powers to prohibit the Department of Environmental Protection (DEP) from proceeding with its plan to transport radium-contaminated soil to Vernon Township for blending with clean soil.

As you may know, in recent weeks, the DEP has been engaged in ongoing discussions with Vernon Township officials respecting the merits of its plan. At the same time, the agency has requested that an independent scientific expert be appointed to evaluate the plan so that Vernon Township residents will be given the benefit of an independent, objective opinion as to its public health impact or lack thereof.

In view of the above, it is my opinion that for me to intervene in this matter at the present time would be wholly inappropriate. Be assured, however, that your comments have been carefully considered and noted.

Sincerely,

Thomas H. Kean
Governor

New Jersey State Library



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

August 7, 1986

Honorable Thomas H. Kean
Governor
State House
Trenton

BY HAND

Dear Governor Kean:

No doubt you share my concern about the wisdom of New Jersey's disposing of radium contaminated waste in an untested, unprecedented manner which could result in physical jeopardy to a surrounding populace and natural environment. I trust you are also aware of my recent call for an immediate halt to official plans contemplating permanent disposal of radioactive soil in Vernon Township.

Although I have asked Speaker Hardwick to convene a special session of the General Assembly for the emergency purpose of forestalling such action, my public call for a special session has apparently fallen on deaf ears. Nonetheless, I have prepared legislation, which I intend to introduce at the earliest possible opportunity, prohibiting the disposal, or transport for disposal, of soil bearing industrially generated radioactive waste at sites overlying the potable groundwater resources of New Jersey.

I am today inviting Speaker Hardwick, and Assemblymen Haytaian and Littell of District 24, in which Vernon is situated, to join me in co-sponsoring this measure. I believe my bill addresses fundamental non-partisan concerns about the general manner of handling disposal of hazardous materials in this State.

The public health concerns of residents of Vernon Township in the face of DEP's recent decision in this matter are, to say the least, understandable. Indeed, your 1983 Executive Order declaring a "state of emergency" in respect of the presence of this very same radium waste material -- then discovered present in the Borough of Glen Ridge and the Town of Montclair by virtue of dangerous levels of radon gas found being emitted from the material -- expressly relies upon the fact that "... the presence of radon and other radioactive decay materials has been determined to pose a threat to human health." (Executive Order No. 56, December 2, 1983.)

Governor Thomas H. Kean
August 7, 1986
Page 2

The ironies of situating hazardous radioactive industrial waste at such a pristine site as that which DEP has selected are obvious and many. Moreover, the potential threat to public order in the vicinity of this location as a result of this site selection, and notwithstanding an eleventh-hour administrative hiatus in DEP's Vernon disposal plan, is itself, and increasingly, sufficient basis for reconsideration of such an action. It now appears clear that implementation of DEP's pending disposal plan pursuant to protracted authority granted by your 1983 state of emergency declaration will itself engender public resistance, including civil disobedience, potentially sufficient to require further invocation of extraordinary emergency powers of the most repressive sort.

As you know, Speaker Hardwick's omission to convene the Assembly in a special session on this matter makes it impossible for the Legislature to intervene in DEP's actions until after the announced one-month administrative hiatus has run its course. Hence I feel it imperative that you forthwith invoke such executive authority as may be necessary and proper to preclude any further administrative consideration of the Vernon Township site for disposal of radium contaminated soil, at a minimum pending the outcome of the earliest possible legislative disposition relative to this subject in September.

Certainly it would seem that if the continuing force of your 1983 Executive Order relative to this overall matter provides sufficient ongoing State authority to transport this material to and dispose of it in Vernon or any other location, then it must also enable your personal intervention to abate DEP's imminent disposal plan. Failing your immediate executive intervention, I fear the legitimacy of DEP's plan for disposal of this dangerous material in Vernon Township may become moot before the people's representatives have a chance to prohibit it; engendering severe and unwarranted local risks to public health, public order, and to nature's most precious gifts.

Sincerely,

Alan J. Karcher
Minority Leader
(Assemblyman, District 19)



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

August 7, 1986

Honorable Chuck Hardwick
Speaker of the General Assembly &
Assemblyman, District 21
203 Elm Street
Westfield, New Jersey 07090

Dear Chuck:

My concern about the error of disposing of radium contaminated soil in Vernon Township has prompted my authorship of a proposed Act which I enclose for your review. This legislation would prohibit the disposal, or transport for disposal, of such soil, bearing industrially generated radioactive waste, at sites overlying potable water sources.

I intend to introduce this bill at the earliest possible opportunity and would welcome your support in urging its adoption. Please let me know of any comments, questions or suggestions you may have with respect to the provisions of this measure, which I believe addresses fundamental non-partisan concerns about the general manner of handling disposal of hazardous materials in this State.

Although I am disappointed that you have not seen fit to answer my call for a special session of the Assembly to address this matter, enactment of this legislation would put the issue of radium disposal in Vernon Township to rest on a permanent basis.

Hence I would be delighted if you elected to join me in co-sponsoring this measure.

Sincerely,

Alan J. Karcher
Minority Leader
(Assemblyman, District 19)

enc.



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

MINORITY LEADER
ALAN J. KARCHER
ASSEMBLYMAN, DISTRICT 19 (MIDDLESEX)
61 MAIN STREET
SAYREVILLE, N.J. 08872
—
TEL 201-238-8745
609-292-6411

July 31, 1986

Honorable Chuck Hardwick
Speaker
New Jersey General Assembly
Trenton, NJ 08625

Dear Chuck:

Having stood where you now stand, I know how frustrating it is to have a complex schedule and one's desire for decorum upset by the press of public emergencies that cry out for immediate action by elected officials.

One such emergency, of which I've already spoken about at length, is the urban crisis. In particular, I refer to the need for legislation which fully restores \$30 million to the Municipal Purpose Tax Assistance Fund in order that layoffs of police and firefighters might be averted.

The bill which would accomplish that, (A-2405) sponsored by Mr. Rafferty, already is in place for 3rd reading. I urge you to convene a meeting at the soonest opportunity so we can pass it.

In recent weeks another urgent matter has cropped up which cries out for legislative remedy.

I refer to the situation in the Sussex County community of Vernon Township in which thousands of residents have made their desperation known over the prospect that radium contaminated soil may be dumped in their midst as the result of a hasty DEP decision.

I had an opportunity to meet with many Vernonites yesterday and learned first hand the depth of their fears as well as their high expectation that their elected representatives will act to protect them.

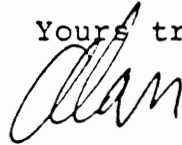
I have therefore requested legislation to be drafted which would prevent the State from using areas above drinking water aquifers as toxic waste disposal sites.

In view of the urgency of this matter and the fact that those affected are constituents of Majority Leader Haytaian, I would hope this measure could also be considered on an emergency basis at the convening of a special session.

We would then have a truly balanced agenda which addresses urban and suburban needs.

Anxiously awaiting your response, I am.

Yours truly,



Alan J. Karcher



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

August 7, 1986

Albert Porroni, Esq.
Legislative Counsel

BY HAND

Dear Albert:

Kindly provide me with your advice and opinion relative to the following inquiries:

1. Governor Kean's Executive Order No. 56, of December 2, 1983, authorizes the cleanup of radium contaminated soil in two New Jersey municipalities. Does that instrument authorize the treatment, storage and/or disposal of such material, or the transport of such material for same, in any New Jersey municipality?

2. Is the radium contaminated soil which is the subject of Executive Order No. 56 a "hazardous substance" within the meaning of the federal Resource Conservation and Recovery Act (RCRA), as amended, and/or the New Jersey Solid Waste Management Act (SWMA), or any other State or federal law?

3. If so (or in any event), may the material be disposed of only in accordance with law(s) requiring, e.g., treatment, storage or disposal at a RCRA-permitted facility?

4. Does RCRA, or specifically the 1984 Hazardous and Solid Waste (HSWA) Amendments thereto, preempt or otherwise limit the ability of a State Legislature to authorize the treatment, storage or disposal of hazardous material (of industrial or other origin) at sites other than RCRA-permitted facilities? (If so, in what respect[s] and to what effect[s]?)

5. If so, is State executive power authorizing same also preempted or limited in a similar fashion?

6. Is the radium contaminated soil which is the subject of Executive Order No. 56 "radioactive" material or "waste" ("low-level" or other) within the meaning of any applicable federal or State law?

Albert Porroni, Esq.
August 7, 1986
Page 2

7. If so, is its handling, treatment, storage or disposal regulated under any such law pertinent to radioactive materials? (Which? In what manner?)

8. Does any such federal or State law pertinent to handling, treatment, storage or disposal of radioactive material or waste preempt or otherwise limit either any aspect of the face of Executive Order No. 56 or any executive action contemplating treatment, storage or disposal of radium contaminated soil whether pursuant to Executive Order No. 56 or otherwise? (If so, which law[s] and in what manner?)

9. Is marine disposal of radium contaminated soil collected pursuant to Executive Order No. 56, within or beyond the boundaries of New Jersey or the territorial sea of the United States, prohibited by any applicable federal or State law?

10. Is treatment, storage or disposal of such material on the premises of a nuclear power generating station located in New Jersey prohibited by any applicable federal or State law?

11. Is treatment, storage or disposal of such material on the property of the United States of America located in New Jersey prohibited by any law?

12. Does the federal Toxic Substances Control Act (TSCA) apply in any respect to radium contaminated soil collected pursuant to Executive Order No. 56, e.g., to treatment, storage or disposal of same? (If so, in which respect and to what effect?)

13. If so, does the applicability of TSCA to this material preempt or otherwise limit State legislative prerogatives relative to same, or State executive authority relative to same, in respect to matters including treatment, storage or disposal of the material?

14. Are you aware of any federal or State law which preempts or limits State legislative or executive prerogatives (including but not limited to Executive Order No. 56) relative to mitigation, treatment, storage or disposal of radium contaminated soil? (Which? In what manner?)

15. Do you think that State involvement in treatment, storage or disposal of radium contaminated soil collected pursuant to Executive Order No. 56 — particularly involvement of the sort now pending as to treatment and disposal in Vernon Township — carries with it the potential for colorable third-party tort claims (personal injury or other) against the State based on the State's conduct relative to this matter? If so, what are the State's potential liabilities?

Albert Porroni, Esq.
August 7, 1986
Page 3

Because of the timeliness of potential executive action to treat, store and/or dispose of radium contaminated soil collected pursuant to Executive Order No. 56, I will appreciate your response to these inquiries within a week of your receipt of this letter. In consideration of the possible complexities of a thorough reply, please feel free to respond partially in the first instance, pointing out areas of uncertainty subject to further research or analysis, and following up at the earliest possible time.

As I trust you know, I intend to introduce legislation relative to this subject matter at the earliest possible opportunity.

Sincerely,

Alan J. Karcher
Minority Leader
(Assemblyman, District 19)



GENERAL ASSEMBLY
OF NEW JERSEY
TRENTON

August 11, 1986

Albert Porroni, Esq.
Legislative Counsel

BY HAND

Dear Albert:

Reference is made to my letter addressed to you, dated August 7, 1986, requesting your advice and opinion in response to some fifteen questions occasioned by the State's impending plan to dispose of radium contaminated soil.

It has come to my attention that, as anticipated by my letter, it will be impossible for your staff to prepare a complete response to all of these inquiries within a week. It is however also my understanding that an initial response is possible within this timeframe with respect to five of the inquiries -- specifically, questions 1, 2, 3, 5 (including reference to question 4, as necessary) and 6.

This letter confirms my agreement that you provide these five responses by the end of this week, to be followed later on by responses to the other questions.

Thank you for your ongoing assistance with this matter.

Very truly yours,

Alan J. Karcher
Minority Leader
(Assemblyman, District 19)

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~~FRANK~~



New Jersey State Legislature
OFFICE OF LEGISLATIVE SERVICES
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625

ALBERT PORRONI
Executive Director
(609) 292-4625

GLENN E. MOORE, III
Director of Central Staff
(609) 984-4811

NORMAN MILLER
Section Chief
(609) 292-7676

August 26, 1986

Honorable Alan J. Karcher
61 Main Street
Sayreville, New Jersey 08872

Dear Assemblyman Karcher:

We are enclosing the first part of what will ultimately be a comprehensive and fully documented response to the legal and technical questions you raise with respect to the present and future disposition of the radium-contaminated soil excavated from beneath certain residential properties in Montclair and now being held in temporary storage by the Department of Environmental Protection. We have reviewed the State and federal statutes and regulations relevant to these issues, and discussed certain aspects of them with staff members of the Nuclear Regulatory Commission, the United States Environmental Protection Agency, and the State Department of Environmental Protection.

The responses to your questions which we are able to provide at this time are, however, necessarily tentative, principally because the material at the root of the quandry and the particular circumstances in question are both special cases, clearly outside the contemplation of the framers of the federal and State laws governing the handling of hazardous substances and the regulatory bodies charged with administering them. While everyone agrees that the situation which the excavation of the soil mitigated did pose a real health threat to the occupants of the homes and constituted an emergency, radium itself is not inherently hazardous. Radium decays into radon gas and, ultimately, into polonium. It is polonium that is the carcinogenic substance. Hence, the radium-contaminated soil is "hazardous" only in a given circumstance, i.e. when the radon gas it becomes is contained for a long enough period to allow it to transform into polonium which may be inhaled by humans. Absent its containment, radium and radon gas are virtually innocuous. Thus, to strictly apply the language of the various laws to this idiosyncratic situation would either yield an anomalous result or, in this case and others for which it may well serve as precedent, create a problem at least as intractable as the present one.

August 26, 1986

The first question, concerning the scope of authority of Executive Order No. 56, issued December 2, 1983, and its continued viability, is plainly a legal issue. Accordingly, Raymond Cantor, Associate Legislative Counsel to the Environment Section, has provided a legal opinion on the matter, which is separately attached to this letter.

The second question, requiring a determination of whether the radium-contaminated soil in question would be classified as "hazardous waste" or "solid waste" under the various applicable State or federal laws (thus requiring special treatment, handling, and disposal) is best approached on a statute-by-statute basis. The pertinent federal statute is the "Resource Conservation and Recovery Act of 1976" (42 U.S.C. § 6901 et seq.) (RCRA). The pertinent State law is the "Solid Waste Management Act" (P.L. 1970, c. 39; N.J.S.A. 13:1E-1 et seq.).

RCRA defines "hazardous waste", in pertinent part, as "a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may ... pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed." (42 U.S.C. § 6903) Strictly applied, this definition would embrace the soil in question because, if it were "disposed" or "managed" as fill upon which any building to be occupied by people were to be built, it would in fact "pose a substantial ... potential hazard to human health." Indeed, this was precisely the circumstance requiring its excavation.

But to strictly apply the definition in this case would produce an anomalous result, for the department's plan to treat and dispose of the soil at a site upon which, by virtue of its being State land, no buildings for human occupation will be built, is specifically designed to preclude the only circumstance under which this material would be "hazardous waste" under RCRA strictures. It might be added, parenthetically, that EPA's criteria for the determination of hazardous wastes under RCRA are ignitability, corrosivity, reactivity, and toxicity, none of which are characteristic of the radium-contaminated soil (See 40 C.F.R. § 261.20-261.24). It would seem, therefore, that only under the most strained interpretation of the statute could the soil in question be regarded as "hazardous waste."

The New Jersey "Solid Waste Management Act" defines solid waste as "garbage, refuse, and other discarded materials resulting from industrial, commercial and agricultural operations, and from domestic and community activities, and shall include all other waste materials including liquids" (N.J.S.A. 13:1E-3). In

regulations adopted by the Department of Environmental Protection to implement the "Solid Waste Management Act" solid waste is further defined, in pertinent part, to include "any solid....material, resulting from industrial, commercial, mining or agricultural operations....which....[is] a manufacturing or mining by-product and sometimes (sic) is discarded...." (N.J.A.C. 7:26-1.6). The radium-contaminated soil was at one time the result of manufacturing operations carried on at the U.S. Radium facility (the alleged source of the contaminated soil), and thus it once was solid waste under the current definition. It would be hard to argue, however, that after use as residential fill for decades the radium-contaminated soil excavated from around the houses in Essex County is still solid waste. Indeed, it would now be impossible to distinguish between the soil which was allegedly trucked from U.S. Radium and the on-site soil with which it was inevitably mixed during the filling and landscaping of the affected building lots. It would thus be hard (although not impossible) to argue convincingly that the barrels of excavated soil are solid waste and thus regulated under the "Solid Waste Management Act." The act does not cover fill or soil, and if the definition of solid waste was stretched to include the radium-contaminated fill from Essex County, then large amounts of the fill freely hauled and exchanged in the New Jersey area of the Reading Prong (which may be more highly radioactive than the Essex County excavated soil) would also logically have to be considered solid waste. This could present clearly unmanageable results.

The third question requires a determination of whether the radium-contaminated soil must be disposed of at a treatment, storage, or disposal facility permitted pursuant to RCRA. Based on our determination that the radium-contaminated soil should not be considered a "hazardous waste" as defined in RCRA, we believe that there is no requirement that it be disposed of at a RCRA facility. The Department of Environmental Protection requested a clarification of this issue from the Environmental Protection Agency, and the department has told us that it received a certification from the EPA that the radium-contaminated soil was not a RCRA waste and did not have to be disposed of at a RCRA facility. We have requested this documentation from the department, and will provide you with it when we receive it.

Questions 4 and 5 require a determination of whether RCRA and the 1984 amendments thereto (the "Hazardous and Solid Waste Amendments of 1984" (42 U.S.C. § 6901 et al.)) preempt or otherwise limit the authority of state governments (both Legislatures and executives) in providing for the treatment, storage, or disposal of hazardous waste. The answer here is that RCRA does impose such a limitation. The intent of RCRA is the establishment of comprehensive and uniform national standards governing the handling of solid and hazardous waste. As with most major federal environmental statutes, RCRA contains a procedure under which a state may apply for and receive "interim authorization" or "final

authorization" to implement the RCRA program. RCRA clearly states, however, that "Upon the effective date of regulations under this subchapter no State or political subdivision may impose any requirements less stringent than those authorized under this subchapter respecting the same matter as governed by such regulations.... Nothing in this chapter shall be construed to prohibit any state or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations." (42 U.S.C. § 6929) RCRA in effect gives states three alternatives for managing solid and hazardous waste. A state may take no action, and RCRA will be implemented by the federal Environmental Protection Agency. A state may apply for and receive authority to implement RCRA regulations with no changes. And, lastly, a state may apply for and receive authority to implement RCRA with state standards which are more stringent than RCRA. What is clearly prohibited, however, is state regulation of solid and hazardous waste in a manner less stringent than provided in RCRA. This, if the Essex County radium-contaminated soil was a RCRA-regulated waste, neither the New Jersey Legislature nor the Governor could legally authorize managing it according to standards less stringent than RCRA. However, because we do not believe the radium-contaminated soil is a RCRA-regulated waste, the issue of RCRA preemption does not apply here.

Question 6 requires a determination of whether the Essex County radium-contaminated soil is a radioactive waste as defined in federal or state law. Unfortunately, this question leads us into an area of definitional vagueness which has existed for the entire thirty year history of the regulation of the commercial use of radioactive materials, and which the federal government and appropriate federal agencies have yet to fully clarify. The core federal statutes here are the "Atomic Energy Act of 1954" (42 U.S.C. § 2011 et seq.), the "Low-Level Radioactive Waste Policy Amendments Act of 1985" (42 U.S.C. § 2021b et seq.), (which superceded the "Low-Level Radioactive Waste Policy Act of 1980"), and the "Nuclear Waste Policy Act of 1982" (42 U.S.C. § 10101 et seq.) These statutes, together with regulations adopted by the Nuclear Regulatory Commission, have established a fundamental bifurcation between "high-level" radioactive waste and "low-level" radioactive waste, but have tautologically defined "low-level" radioactive waste as all radioactive material which is not "high-level" waste. The "Low-Level Radioactive Waste Policy Amendments Act of 1985" and the "Nuclear Waste Policy Act" both define "low-level radioactive waste" as 1) radioactive material which is not high-level radioactive waste, spent nuclear fuel, or by-product material made radioactive in the process of utilizing nuclear material, or, 2) radioactive material which is classified by

the Nuclear Regulatory Commission as low-level radioactive waste. (See, respectively, 42 U.S.C. § 2021b (9) and 42 U.S.C. § 10101 (16) for virtually identical definitions.) While scientists generally agree on what radioactive materials should be classified as high-level radioactive waste (which is produced primarily at commercial nuclear power plants and at nuclear weapons production facilities) there is no consensus as to whether all other "radioactive material" should be considered and treated as low-level radioactive waste by virtue of its not being high-level radioactive waste. The missing link in the federal regulatory framework is a minimum level of radioactivity which a material must possess to be considered low-level radioactive waste. Low-level radioactive waste haulers and disposal facility operators have agreed on some minimum radioactivity threshold levels for use in their industries, but these have no legal or regulatory status. In addition, the Nuclear Regulatory Commission has adopted regulations dividing low-level radioactive waste into three categories for purposes of determining appropriate disposal and treatment technologies (See 10 C.F.R. 61.55). But there is no federal standard which sets forth a minimum level of radioactivity which a material must possess to qualify as a low-level radioactive waste, and it is not clear if as a matter of law any radioactive material which is not high-level radioactive waste must be treated and disposed of as low-level radioactive waste.

The Essex County radium contaminated soil is clearly radioactive material which is not high-level radioactive waste. Thus under the federal definition of low-level radioactive waste the soil technically qualifies to be considered low-level radioactive waste. From a policy standpoint, however, considering and treating the soil as low-level radioactive waste would probably be inadvisable. As we noted earlier, both the DEP and the EPA maintain that the radium-contaminated soil presents a threat to human health only when houses without appropriate ventilation or other engineering precautions are built on it, thus providing the conduit for polonium to be inhaled in a concentration sufficient to present a health risk. Once removed from around the houses, the health threat disappears. The radioactivity of some of the radium-contaminated soil now in barrels is much higher than what is generally accepted as "background" radioactivity. However, the radioactivity of much of the soil in the New Jersey area of the Reading Prong is equal to or greater than the radioactivity of the excavated soil in Essex County. Thus, if the Essex County radium-contaminated soil is considered low-level radioactive waste because it is a radioactive material which is not high-level radioactive waste, so must any soil in the Reading Prong area of equal or greater radioactivity. We think this could produce an environmental management problem which would dwarf the problem now confronted in Essex County.

Honorable Alan J. Karcher
Page 6
August 22, 1986

We hope this information is of use to you in your consideration of this complex environmental issue, and if you require further information on these matters, please let us know.

Sincerely,

Norman Miller
Section Chief

Mark Connelly
Senior Research Associate

Raymond Cantor
Associate Legislative Counsel

Attachments

LEGISLATIVE SERVICES

MISSION

NATOR

HN F. RUSSO

irman

SEMBLYMAN

BERT E. LITTELL

Chairman

NATE

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UCK HARDWICK

NNIS L. RILEY

THONY M. VILLANE, JR.

RL WEIDEL



New Jersey State Legislature

OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625

ALBERT PORRONI
Executive Director

(609) 292-4625

ALBERT PORRONI

Legislative Counsel

(609) 292-4625

LEONARD J. LAWSON

Assistant Legislative Counsel

(609) 292-4625

August 25, 1986

Honorable Alan J. Karcher
61 Main Street
Sayerville, New Jersey 08872

Dear Assemblyman Karcher:

You have asked for our opinion as to whether Governor Kean's Executive Order No. 56 of 1983 (copy enclosed as Exhibit A) supplemented by Executive Order No. 107 of 1985 copy enclosed as Exhibit B) authorizes the treatment, storage, disposal, or transport of the radium contaminated soil which is the subject of the Executive Order. For the reasons set forth below, you are advised that the Executive Order allows for these actions, but a factual question exists as to whether the chosen disposal method is permitted under the Governor's emergency powers.

Executive Order No. 56 is based upon the emergency powers of the Governor set forth in N.J.S.A. App. A:9-33 et seq. In summary, it can be fairly stated that these statutory powers are broad-based in the case of any emergency. "Emergency" is defined by N.J.S.A. App. A:9-33.1 to include "disaster" which is:

. . . any unusual incident resulting from natural or unnatural causes which endangers the health, safety or resources of the residents of one or more municipalities of the State, and which is or may become too large in scope or unusual in type to be handled in its entirety by regular municipal operating services.

Based on the existence and declaration of an emergency, the Governor has further broad-based powers to employ resources under his control and commandeer others to prevent damage to persons and property during the emergency.

Executive Order No. 56 declared an emergency based upon an actual or potential threat or danger which would exist as a result of the presence of

radium, radon or other radioactive decay products in the Borough of Glen Ridge and the Town of Montclair (the Town of West Orange was added by Executive Order No. 107 of 1985). It provided the Commissioner of the Department of Environmental Protection (DEP) with extensive powers to protect the health, safety and welfare of the State's citizens. See sections 2 and 3 of the Order.

The health threat posed by radium occurs when it is located beneath or adjacent to an enclosed structure. Radium emits a gas, radon, which when trapped in a building can accumulate. Radon, itself, naturally breaks down and forms radioactive decay products. The decay products can become trapped in lungs. As these decay products break down further, they release small bursts of energy which can damage lung tissue and lead to lung cancer. In outdoor air, radon is diluted to such low concentrations that it is not a health threat.¹

Pursuant to the Executive Order, the DEP, in 1984, commenced a cleanup of 12 homes. An \$8 million appropriation was provided for the work. (See P.L. 1985, c. 111, a copy of which is enclosed as Exhibit C). Excavation of the soil commenced in June 1985. Excavation at five homesites has been completed. Some excavation was done at four more homes before work was suspended on October 21, 1985. The suspension was due to the unavailability of a disposal site for the contaminated soil. When work was suspended, four families were out of their homes due to construction. These families remain in temporary housing because drums of soil fill their yards and driveways. Until these drums are removed, it is physically impossible either for these residents to return or to complete restoration.² Nine thousand five hundred barrels of contaminated soil are located at a freight yard in Kearny. Over 5,000 barrels remain at the four sites under construction.³ The DEP had originally sought to transport and dispose of the soil in Nevada. This disposal method is being delayed by legal action.⁴ The DEP has proposed to transport the

¹See Environmental Protection Agency, "A Citizen's Guide to Radon: What Is It And What To Do About It" (1986).

²See Department of Environmental Protection, Background Paper, "Montclair/Glen Ridge Site History" (a copy of which is enclosed as Exhibit D).

³Statement of Don Deieso, Director Department of Environmental Protection, Division of Environmental Quality.

⁴See memorandum of Rich Engel, Deputy Attorney General, to Deputy Commissioner Michael Catania, detailing legal action concerning the Nevada disposal litigation, a copy of which is enclosed as Exhibit E. Even if New Jersey is successful in this litigation, recent federal litigation may either prevent or make the transportation and disposal of the soil in Nevada cost prohibitive. See "Low-Level Radioactive Waste Policy Amendments Act of 1985," 42 U.S.C. § 2021b et seq.

soil to Vernon, New Jersey, where it would be blended with other soil at a quarry and used to reconstruct State park lands in Vernon.

Whether the Executive Order empowers the DEP to treat, store or dispose of the soil or transport the soil to Vernon, or any other location, will depend on the extent of the powers delegated to the Governor pursuant to N.J.S.A. App. A:9-33 et seq.; whether the exercise of these powers are rationally related to the protection of the public; whether they are closely related to the magnitude of the emergency; and whether the powers may still be exercised.

A leading case interpreting the Governor's emergency powers pursuant to N.J.S.A. App. A:9-33 et seq. is Worthington v. Fauver, 88 N.J. 183 (1982). In Worthington, Atlantic County challenged the statutory and constitutional validity of an Executive Order in which the Governor invoked his emergency powers to alleviate the overcrowding in State prisons by temporarily requiring the incarceration of State prisoners in county correctional facilities. The court upheld the Governor's actions against a variety of challenges by the county. The county maintained that prison overcrowding was not an emergency since it was not an "unusual incident" in that it was an existing problem for years and was not a "sudden or unforeseen event." Worthington at 194. The court rejected this interpretation holding that an emergency existed whenever "a present crisis prevents local governments from safeguarding the people, property and resources of the State," id. at 195, and that an emergency need not be sudden or unforeseen. The court noted, however, in order for an emergency to exist "[t]here must be a substantial likelihood of occurrence within the immediate future." Id. at 197. The court in Worthington also upheld the Governor's Executive Order against charges that it was too broad in scope, that it conflicted with the general law, that it authorized arbitrary and capricious action, and that it violated the constitutional principle of separation of powers by allowing the Executive Branch to make law.

The radon contamination of the homes in Essex County constitutes an emergency under N.J.S.A. App. A:9-33.1. The presence of the soil under these homes endangers the health and safety of the residents therein. Because of the expertise necessary for the decontamination, the cost of the decontamination procedures, the fact that several municipalities are affected, and that disposal methods may necessitate the use of lands outside the affected municipalities, it appears that action was needed beyond the scope of regular municipal operations.

The scope of the Governor's powers to meet this emergency is broad.

In order to accomplish the purposes of this act, the Governor is empowered to make such orders, rules and regulations as may be necessary adequately to meet the various problems presented by an emergency and from time to time to amend or rescind such orders, rules and regulations, including among others the following subjects

i. On any matter that may be necessary to protect the health, safety and welfare of the people or that will aid in the prevention of loss to and destruction of property.

j. Such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of this act. N.J.S.A. App. A:9-45.

The Governor's powers are elaborated at N.J.S.A. App. A:9-34.

The Governor is authorized to utilize and employ all the available resources of the State Government and of each and every political subdivision of this State, whether of men, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to avail or protect against any emergency subject to the future payment of the reasonable value of such services and privately owned property as hereinafter in this act provided.

The Executive Order delegated these broad powers to the Commissioner of Environmental Protection. The commissioner is authorized to take "emergency measures . . . to fully and adequately protect the health, safety and welfare" of the people affected by the radium contamination. See section 2 of the Order. The DEP has undertaken soil excavation as the emergency measure. Since the excavation alleviated an emergent health threat, it is contemplated under the emergency powers. Because an excavation necessarily results in the need to dispose of soil, the disposal of the soil must also be considered part of the delegated emergency power, even though one could argue in a very narrow sense that the immediate health threat is abated upon the containment of the soil.⁵ The disposal of excavated soil is one of the steps necessary to adequately "meet the various problems presented by any emergency." N.J.S.A. App. A:9-45. The transport and treatment are also necessary components of proper disposal. If the Executive Order were found to

⁵Litigation by Vernon Township and Sussex County has been initiated to stop the disposal of the contaminated soil in Vernon. One of the arguments raised by plaintiffs is that in its present containerized condition the contaminated soil poses no threat to the public or citizens of the communities in which it lies, thus there is no emergency authority to dispose of the soil under the authority of the Executive Order. Plaintiffs argue that because the Executive Order does not apply, the provisions of the "Solid Waste Management Act" N.J.S.A. 13:1E-1 et seq. should govern the disposal of the soil. This issue has not been disposed of in litigation to date.

A procedural analysis and history of current litigation to prevent the disposal of the soil in Vernon Township, excerpted from the Department of Environmental Protection's Brief in Support of A Stay or Dismissal filed with the United States District Court of New Jersey on August 25, 1986, is enclosed as Exhibit F.

allow for the excavation of the soil, but not its removal, it would result in homes free of radon gas but surrounded by barrels of soil - a condition that currently exists at several of the homes. A proper response to a contamination emergency is not only containment of the problem, but the ultimate disposal of the contamination. It is difficult to conceive that the Executive Order could allow the excavation of soil but not permit its placement in barrels or onto a truck for disposal.

The emergency powers also contemplate disposal of the soil in a municipality of the State. "The Governor is authorized to utilize and employ all the available resources of . . . each and every political subdivision of this State." N.J.S.A. App. A:9-45. In Worthington the available resource meant use of county prisons for State inmates. In this context it means land in this State needed for the disposal of the soil.

Having determined that the emergency powers give the Governor the power to excavate and dispose of the soil, the next inquiry is whether the measures prescribed under the Executive Order "are rationally related to the legitimate governmental interest in protecting the public and whether they are closely tailored to the magnitude of the current emergency." Worthington at 201. The excavation of the soil and its disposal are rationally related to protection of the public health and safety. The residents of the homes contaminated with the soil were exposed to a grave health threat. The excavation of the soil alleviated the health threat. The proper disposal of the soil will allow the residents to safely return to their homes and prevent the soil from endangering the public in the future.

There are factual questions as to whether the actions taken and contemplated under the Executive Order are tailored to the magnitude of the emergency. The delegation of emergency powers to the Governor is broad, but not without limit. Worthington at 201. The court in Worthington explained the limitation on the delegation of powers:

Because of the extraordinary nature of that authority, the executive orders must not only bear a rational relationship to the goal of protecting the public, but their scope must not exceed the extent of the emergency. The statutory validity of executive actions pursuant to emergency power will depend on the nature of the emergency and the gravity of the threat to the public. Thus, a more serious emergency must justify greater responsive measures. Id. at 201.

Because of the immediate public health threat posed by the soil, the excavation can be viewed as tailored to the extent of the emergency. A factual issue arises as to whether the movement of the soil to Vernon, its blending, and eventual disposal in a State park is a disposal method sufficiently limited to the extent of the emergency.

If the material to be disposed posed an immediate health threat, the emergency powers may contemplate disposal methods usually considered unwarranted.

Although the contained soil in Essex County does not pose an immediate health threat necessitating extraordinary action, its disposal, as previously discussed, is permitted under the Executive Order. The type of disposal method permitted under the emergency powers of the Executive Order will, however, be limited to the emergent need to dispose of the soil. The failure to dispose of the soil prevents continued excavation, and prevents several people from returning to their homes. The soil may also pose a health threat if improperly disposed. Whether or not the DEP proposal to dispose of the soil in Vernon exceeds the statutory power based on this emergency depends on the danger posed by the soil and a determination as to what is a proper disposal method for the soil. It also depends on what disposal methods are available. If the soil poses a health threat to the citizens of Vernon it would be difficult to view this as a proper disposal method based on the extent of the emergency. If the soil is just that, soil, the disposal method contemplated may be sufficiently tailored to the extent of the emergency.

Finally, it must be determined if the Executive Order is still effective. The court in Worthington recognized that the emergency powers of the Governor do not represent a permanent delegation to continually exercise those powers. Worthington at 203. Although the court took note of the limited time span of the Executive Order, the court rendered no opinion as to how often the Governor could extend the Order. The court did state that in the absence of a legislative response, powers under the Executive Order could continue "as long as the emergency posed a threat to the public." Id. at 203. The emergency condition in the Executive Order still exists. Homes are still contaminated and construction work is still in progress. Emergency action in response to a hazardous contamination is not similar to other emergencies in that the contamination remediation often does not result in a quick solution or a definite end. The excavated soil needs to be disposed. As more soil is excavated, more disposal is needed. People are being prevented from returning to their homes because of the presence of soil on their properties. The soil at the sites and in the freightyards needs to be disposed of properly in order to ensure the public safety. These conditions warrant the continuation of the emergency. This is not a situation where the soil was disposed of and a decision was made to change the disposal site. No soil has been permanently disposed. The delay in the removal of the soil was due to legal proceedings and not to a break in the decontamination process. Because the emergency conditions continue, the powers under the Executive Order continue.

Honorable Alan J. Karcher
Page 7
August 25, 1986

In conclusion, it is our opinion that Executive Order No. 56 of 1983 allows the treatment, storage, disposal, or transportation of the soil. The disposal is rationally related to the emergency and the powers under the Executive order are still in effect. A factual issue exists as to whether the chosen disposal method is sufficiently tailored to the extent of the emergency.

Very truly yours,

Albert Porroni
Legislative Counsel

By: _____

Raymond E. Cantor
Associate Legislative Counsel

AP:C/sl

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 56

WHEREAS, the New Jersey Department of Environmental Protection has undertaken the investigation, sampling and analysis of soil and air samples at certain property located within the Borough of Glen Ridge and the Town of Montclair, both situated in the County of Essex; and

WHEREAS, on the basis of this investigation, the Department of Environmental Protection has reached the preliminary conclusion that certain property in these municipalities may be subject to levels of radon in excess of the standards established for that substance by the United States Environmental Protection Agency and the Nuclear Regulatory Commission; and

WHEREAS, the presence of radon and other radioactive decay materials has been determined to pose a threat to human health; and

WHEREAS, the Department of Environmental Protection, with the cooperation of the United States Environmental Protection Agency, is conducting further investigations, samplings, and analyses in order to obtain definitive information regarding the nature and extent of any danger which may be posed by the presence of radon at the above described area and to determine what actions, if any, will be required to safeguard the public health and welfare; and

WHEREAS, the potential threat indicated by the results of the preliminary investigation described above is of such magnitude that the coordinated efforts of local, regional and State agencies must be taken immediately to ensure the protection of the public health and welfare from this potential hazard; and

WHEREAS, the scope of the efforts necessary to so protect the public health and welfare is beyond the capacity of regular municipal operating services, or of any State agency acting singly;

NOW, THEREFORE, I, THOMAS H. KEAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and laws of the State of New Jersey, do hereby declare a state of emergency and ORDER and DIRECT as follows:

1. I invoke such emergency powers as are conferred upon me by the Laws of 1942, chapter 251 (N.J.S.A. App. A:9-30, et seq.), and all amendments and supplements thereto.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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2. The Commissioner of the Department of Environmental Protection is hereby authorized and directed to take such emergency measures as he may determine to be necessary in order to fully and adequately protect the health, safety and welfare of the citizens of this State from any actual or potential threat or danger which may exist as a result of the presence of radium, radon, or other radioactive decay products present in the Borough of Glen Ridge and the Town of Montclair in the County of Essex. The Commissioner is further authorized to adopt, pursuant to App. A:9-45, such orders, rules and regulations as may be appropriate in order to carry out the purposes and directives contained herein. The Commissioner shall supervise and coordinate all activities of all State, regional and local political bodies and agencies in order to ensure the effective and expeditious implementation of this order, and to this end, may call upon all such agencies and political subdivisions for any assistance necessary. All State agencies, political subdivisions and local and regional agencies are directed to comply with and implement the orders, rules and regulations issued by the Commissioner pursuant hereto and to provide all assistance and cooperation requested by him.

3. The powers granted to the Commissioner of Environmental Protection hereby shall include, but not be limited to, the power to use, seize, impound, quarantine, restrict access to, or require the vacating of, or the making of modifications or improvements, temporary or permanent, to any real or personal property which in his judgment is reasonably required to abate the emergency caused by the possible presence of radium, radon, or other radioactive decay products and the consequent threat to public health and welfare as described above.

4. It shall be the duty of every person who is a resident of this State or who is doing business in this State and of the members of the governing body, and of each and every official, agency or employee of every political subdivision of this State and of each member of all other governmental bodies, agencies and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this emergency. No municipality, county or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance or resolution which might or will in any way

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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conflict with any of the provisions of this order or any of the orders, rules or regulations adopted pursuant to this order, or which will in any way interfere with or impede the achievement of the purposes of this order.

5. There is hereby established an Emergency Advisory Board comprised of the Commissioner of the Department of Environmental Protection as Chairman, the Commissioner of the Department of Health, the Attorney General of the State of New Jersey, or their designated representatives. The Commissioner of the Department of Environmental Protection shall consult with the other members of said Emergency Board prior to taking any action pursuant hereto, unless, in the opinion of the Commissioner of Environmental Protection, the exigencies of time do not permit such consultation.

6. Any person who shall violate any of the provisions of this order or any rules, regulations or orders issued pursuant hereto, or who shall impede or interfere with the implementation of this order, or any rules, regulations or orders issued pursuant hereto, shall be subject to the penalties provided by N.J.S.A. App. A-9:49.

7. This order shall take effect immediately. It shall remain in effect until terminated or amended by action of the Governor.



Given, under my hand and seal this
second day of December,
in the year of Our Lord, one thousand
nine hundred and eighty-three, and of
the independence of the United States,
the two hundred and eighth.

/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards
Chief Counsel

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Exhibit "B"

EXECUTIVE ORDER No. 107

WHEREAS, Executive Order No. 56 was signed on December 2, 1983, to declare an emergency relating to the presence of radium, radon, and other radioactive decay products in the Borough of Glen Ridge and the Township of Montclair in the County of Essex; and

WHEREAS, the New Jersey Department of Environmental Protection has undertaken the investigation, sampling and analysis of soil and air samples at certain properties located within the Township of West Orange, in the County of Essex; and

WHEREAS, on the basis of this investigation, the Department of Environmental Protection has reached the preliminary conclusion that certain properties in the municipality may be subject to levels of radon in excess of the standards established for the substance by the United States Environmental Protection Agency and the Nuclear Regulatory Commission; and

WHEREAS, further investigations, sampling and analyses are necessary in order to obtain definite information as to the nature and extent of the contamination and any danger which may be posed by the presence of radium, radon and other radioactive decay products at certain properties in the Township of West Orange which is needed to determine what action, if any, will be required to safeguard the public health and welfare; and

WHEREAS, this situation warrants an extension of the declaration of emergency as set forth in Executive Order No. 56; and

WHEREAS, the scope of the efforts necessary to protect the public health and welfare is beyond the capacity of regular municipal operating services, or any State agency acting singly.

NOW, THEREFORE, I, THOMAS H. KEAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and statutes of this State, do hereby ORDER and DIRECT:

1. Executive Order No. 56 is amended to include the Township of West Orange in the County of Essex.

2. Executive Order No. 56, and all terms and provisions thereof and amendments thereto, is continued in full force and effect and shall remain in effect until terminated by action of the Governor.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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3. This Order shall take effect immediately.

VEN, under my hand and seal
this 25th day of June ,
in the Year of Our Lord, one
thousand nine hundred and
eighty-five, and of the
United States, the two hundred
and ninth.

/s/ Thomas H. Kean
GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards
Chief Counsel



P. L. 1985, CHAPTER 111, approved April 9, 1985

1984 Senate No. 2403

A SUPPLEMENT to "An act making appropriations for the support of the State Government and the several public purposes for the fiscal year ending June 30, 1985 and regulating the disbursement thereof," approved June 29, 1984 (P. L. 1984, c. 58).

1 BE IT ENACTED by the Senate and General Assembly of the State
2 of New Jersey:

1 1. There is appropriated from the General Fund the following
2 additional amount for the purposes specified:

DIRECT STATE SERVICES

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Community Development and Environmental Management

44 Hazardous and Toxic Pollution Control

3 19-4815 Spill Prevention, Response and Site Cleanup \$8,000,000

4 Special Purpose:

5 To finance the first phase of the clean-
6 up program of radioactive hazard-
7 ous substances in the municipalities
8 of Montclair, West Orange and Glen
9 Ridge in Essex county, New Jersey. (\$8,000,000)

1 2. The moneys appropriated pursuant to section 1 of this act
2 shall be repaid to the General Fund from the New Jersey Spill
3 Compensation Fund established under section 10 of the "Spill Com-
4 pensation and Control Act," P. L. 1976, c. 141 (C. 58:10-23.11i), the
5 Hazardous Discharge Fund established under section 14 of the
6 "Hazardous Discharge Bond Act," P. L. 1981, c. 275, the Hazardous



C 111-2

7 Substance Response Trust Fund established pursuant to section
8 221 of the "Comprehensive Environmental Response, Compensation,
9 tion, and Liability Act of 1980," Pub. L. 96-510 (42 U. S. C. § 9631)
10 or from any other federal source to the extent that the management
11 and cleanup of the radioactive hazardous substances in the municipi-
12 palities of Montclair, West Orange and Glen Ridge in Essex county,
13 New Jersey are eligible for financial support from those sources.

1 3. This act shall take effect immediately.

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.1. MONTCLAIR/GLEN RIDGE SITE HISTORY

Radiation levels approaching, and in some places exceeding, the standards for public exposure have been identified in parts of Montclair, West Orange, Glen Ridge, and East Orange, in Essex County, New Jersey. These radiation exposures are found both as indoor and outdoor gamma radiation levels and as indoor radon concentrations in excess of normal background ranges. The source of these elevated radiation levels has been identified as radium-contaminated soils that were deposited as fill materials in discrete areas in these four towns.

In the first quarter of this century, a private concern operated a plant in Orange, New Jersey, where radium was refined from imported carnotite ores for a variety of commercial uses, including luminous paints. Best available evidence indicates that the wastes and spent ore from this plant were disposed of at nearby sites which also appear to have been used as repositories for coal ash, construction rubble, and other locally produced waste materials. These repository sites originally were quarries for building stone or sand and gravel. Later as the towns of Montclair, West Orange, Glen Ridge, and East Orange grew as residential communities, these quarries were filled with available materials, covered, graded and developed as homesites. The foundations of some of these homes penetrate into the waste layers and some of the wastes were excavated and used as construction and garden fills.

In 1979, the New Jersey Department of Environmental Protection (NJDEP) initiated a program to identify and investigate locations within the state where radium processing facilities formerly existed. Recognizing that the existence of a radium processing plant implied the existence of spent ores and other waste materials, NJDEP asked the United States Environmental Protection Agency (EPA) to conduct an aerial gamma radiation survey in the areas surrounding the former plant site in Orange. In 1981, EPA conducted this survey using a helicopter to overfly an area of twelve square miles of Essex County adjacent to the site of the

mer processing plant. This survey identified a number of areas of elevated gamma radiation. As a result of further investigations, NJDEP and EPA identified three distinct areas where the disposal of radium processing wastes appeared to have taken place. One of these areas covers 45 acres near the border between Montclair and West Orange; the second area is 9 acres wholly within West Orange; the third area involves 50 acres lying on the boundary of Glen Ridge and East Orange.

In July 1983, NJDEP began preliminary field investigation at these three sites to assess the nature and extent of the contamination. NJDEP conducted outdoor gamma surveys on public thoroughfares and, with homeowner permission, performed indoor and outdoor gamma surveys and indoor radon measurements. This investigation identified several areas in both neighborhoods where radium-contaminated materials had been deposited. The indoor measurements identified a number of homes with radon concentrations well above the expected background range. ?

The United States Center^s for Disease Control (CDC) evaluated available exposure data and concluded that the major health threat was from elevated radon concentrations discovered in 22 homes at the sites. CDC determined that the concentrations in some homes were great enough to pose an imminent and substantial endangerment to public health, warranting the initiation of immediate removal action.

In December 1983, state and federal public health and environmental officials met to develop a risk assessment and management plan for the contamination problem in the area. Results of these meeting were summarized by the Center^s for Disease Control (CDC) on December 6, 1983. The document advised EPA to remediate homes having radon gas and radon progeny (daughters) above a defined health risk and endorsed the risk management plan which divided the exposure levels into tiers and set a defined time limit for remedial action for each tier.

Also in December 1983, EPA initiated action to reduce the exposure of resident to the radon gas and radon decay particles. This action involved fitting the 22 homes having the highest concentrations of radon

gas with ventilation systems to introduce fresh air and alleviate the immediate health threat from the radon gas. [^]

In January 1984, EPA began a field investigation to identify the boundary of contamination and to quantify excessive gamma and radon levels in the affected areas of Montclair, West Orange and Glen Ridge. Residents in the three communities who had air sampling conducted in their homes were notified of the sampling results by EPA when the values were determined. Surface gamma survey results were provided to homeowners following the data analysis. The EPA investigation identified 45 additional homes with elevated and excessive levels of radon gas. Fresh air ventilation systems were installed in homes requiring immediate reduction of radon concentrations, as was done for homes identified in the initial study.

EPA initiated a second field investigation in April 1984, to characterize the nature and location of contaminated materials causing the elevated radon and gamma levels. EPA continued to collect data on the contaminated areas through the summer and fall of 1984 to define more fully the extent of the contamination problem. This investigation included outdoor surveys to locate anomalous levels of gamma activity, and borings in the areas of anomalous activity to measure subsurface gamma activity and collect samples for radionuclide analysis. In addition, indoor gamma activity measurements were made to locate contaminated material below or against the foundations of affected homes.

In May 1984, a task force comprised of representatives from EPA and NJDEP proposed a pilot study under the direction of EPA to acquire additional data for the remedial investigation and feasibility study as well as to develop construction estimates for evaluating the cost of various remedial alternatives. Twelve homes in the three communities with varying degrees of contamination and types of construction were selected for this pilot study. After completing the preliminary design, EPA decided to delay the pilot study until the end of the remedial investigation and feasibility study (RI/FS).

NJDEP, using the data developed in earlier studies, decided to continue the pilot study on an expedited basis and to expand that study to include design and execution of contaminant removal of these 12 homesites. The preliminary design program and structural evaluations of the 12 homes were completed in the summer of 1984. NJDEP believed that the cleanup program for the whole of the three sites would benefit from technical feasibility information, cost data, soil volume estimates, and practical experience obtained in completing the pilot study constructions and that this work would assist EPA materially in the design and construction program needed to complete cleanup at all three site.

In November 1984, NJDEP selected a team of firms headed by Baker/TSA, Inc., to conduct final subsurface investigations and to prepare construction, procurement, and operations documents for the contaminant removal of the 12 homesites in the NJDEP pilot study. Under this contract, the engineering team completed the following tasks:

- 1) Review of all existing information on these 12 homesites.
- 2) Additional subsurface exploration for both radiological and geotechnical data.
- 3) Addition surface gamma survey.
- 4) Physical surveys of property lines, building locations, and topography.
- 5) Preparation of construction specifications and design drawings for excavation and restoration.
- 6) Preparation of bid specifications for transportation and disposal.
- 7) Preparation of operations documents for construction including schedules, work plans, health and safety plans, and site monitoring plans.

- 8) Preparation of design reports presenting the design data and methods.
- 9) Assistance on procurement.

The bid and design documents were completed, including extensive NJDEP reviews, on March 15, 1985, and distributed to interested contractors on March 18, 1985. After bidders conferences and a site visit, bids were received on April 12, 1985.

A contract was placed for construction on May 10, 1985, and work in the field began immediately thereafter. During the 1985 construction season, excavation was completed at five homesites and these properties were verified as clean and restored. Some excavation was done at four more homes before work was suspended on October 21, 1985. This suspension was caused by the unavailability of a suitable disposal site for the contaminated material being removed. When work was suspended, four families were out of their homes due to construction. These families remain in temporary housing because drums of contaminated material fill their yards and driveways. Until these obstructing drums are removed, it is physically impossible either for these residents to return or to complete restoration. ?

While the NJDEP pursued the pilot program, EPA continued to conduct studies and preliminary designs of the other properties on the three areas.

The Montclair/West Orange and Glen Ridge Radium Sites were included on the proposed EPA Superfund National Priority List (NPL) in October 1984, and on the final NPL in February 1985.

In November 1984, EPA initiated its remedial investigation and feasibility study (RI/FS) on the two sites. The purpose of the RI/FS was to:

- o Review all previous studies and reports

- o Identify data gaps and conduct additional sampling
- o Assess the alternatives for permanent remedial action at the sites.

The review of previous studies and reports and identification of data gaps were completed in February 1985 and presented as an Interim Report.

EPA completed the remedial investigation of the Radium Sites in April 1985. EPA will release the draft RI/FS reports to the public and will conduct a public comment period so that residents may comment on the draft feasibility study report. EPA will prepare a responsive summary to all verbal and written public comments submitted to the agency throughout the public comment period. The EPA responsiveness summary will be included as part of the Record of Decision on the selected alternative for cleanup of the radium sites. A draft Record of Decision has been prepared by EPA and currently is in the review process within the EPA management structure. 8x

2.2 SEARCH FOR DISPOSAL METHODS

During the first stages of the pilot study for contaminant removal at the Montclair/Glen Ridge sites, disposal of the material to be removed was the subject of intensive study. A wide range of options was examined solely on the basis of legal or regulatory constraints.

As a result of this initial study, ^U for certain options were rejected as _A legally unworkable.

1) United States Department of Energy Sites

Federal law requires that all materials shipped to a U.S. Department of Energy (DOE) site for disposal originate as the result of activities conducted or sponsored by the DOE or a related federal agency. Because the contaminated material deposited at the Montclair/Glen Ridge sites is

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wastes and spent ore from a commercial facility, this material is excluded from DOE disposal sites.

2) United States Department of Defense Sites

The material from Montclair/Glen Ridge is excluded from U.S. Department of Defense (DOD) sites for essentially the same reason as it is excluded from DOE sites. DOD disposal sites are permitted only to accept waste materials from DOD generators and the material from Montclair/Glen Ridge cannot be shown to meet this criteria.

3) Resources Conservation and Recovery Act Sites

Sites established under this federal act (RCRA) are limited to accepting materials meeting one or more of the definitions of hazardous waste given in the act and its enabling regulations. This material does not meet any of the regulatory definitions of hazardous waste and is, therefore, excluded from RCRA sites.

4) Ocean Disposal

Treaty restrictions and statute law make this option impossible to implement in any useful timeframe.

Since the first assessment, all of these options have been reexamined periodically. All of the legal and regulatory obstacles remain in force and both DOE and DOD consistently have refused to consider accepting contaminated material from the Montclair/Glen Ridge sites. Requests directed to the highest management and policy making levels in both departments have obtained only negative responses and these options are not available as solutions to the Montclair/Glen Ridge disposal problem.

There are three licensed facilities in this country permitted to accept low level radioactive waste from commercial or state producers. These

sites are located in Barnwell, South Carolina; Richland, Washington; and Beatty, Nevada. The facility in Barnwell is not permitted to accept wastes which contain radium and is thus excluded from this program.

New Jersey's consultant for the pilot program, Baker/TSA, Inc. advised that the only two licensed facilities which could accept the material from the Montclair/Glen Ridge sites were Richland and Beatty. Therefore, New Jersey sent requests for bids on March 18, 1985, to U.S. Ecology, Inc., the operator of these two sites. Anticipating bids from U.S. Ecology, NJDEP submitted a "user permit application" to the State of Nevada for use of the Beatty site on March 1, 1985. On March 15, 1985, the Nevada Department of Health acknowledging receipt of the application and stated: ". . . all of the papers you submitted are in good order and are accepted." New Jersey was told to contact Nevada Inspection Service, Inc. (NIS) for a pre-licensing audit of New Jersey's packaging procedures and was told: ". . . upon receipt of a satisfactory finding by NIS we will sign and return the purchase order and issue the permit to the State of New Jersey."

Nevada signed and returned the purchase order and, on May 1, 1985, a permit was issued to New Jersey which reportedly was unconditional, and was valid until May 1, 1986. In the meantime, New Jersey had received a bid from U.S. Ecology offering the Beatty site for disposal at a cost of \$2,366,649. U.S. Ecology stated that, if the Beatty facility becomes unavailable, it would provide disposal at U.S. Ecology's, Richland, Washington facility at a cost of \$3,172,608, or about \$800,000 more than the Beatty facility. It should be noted here that, although only two licensed sites were known, bid documents for disposal were sent to all parties requesting them. Sixty copies were sent out, but only one bid (from U.S. Ecology) was received.

Based upon Nevada's representations, and the favorable NIS reports, New Jersey began excavation in June 1985. It was not until July 13, 1985, that New Jersey was told that the City of Las Vegas, the City of North Las Vegas, and Clark County (which contains Las Vegas and North Las Vegas) would try to block shipment of New Jersey's waste through these

jurisdictions. Later that month, New Jersey also was told by telephone that Nevada did not consider the permit to be final, but the caller gave no indication that there would be any significant delay in issuing the needed "final authorization".

On July 31, 1985, Las Vegas, North Vegas and Clark County sued the Union Pacific Railroad, New Jersey's shipper, in Nevada State Court to try to block the shipments. The matter was removed to federal court, New Jersey intervened, and on August 8, 1985, the Court denied the motion for a preliminary injunction.

On August 20, 1985, New Jersey was told by the Union Pacific Railroad that Nevada still was not ready to issue the final authorization. New Jersey also was told that in late August the Nevada Public Service Commission (PSC) issued an emergency order requiring, for the first time, that a rail permit from the PSC to ship radioactive waste into Nevada must be in Union Pacific's possession before shipments began. Therefore, on September 3, 1985, New Jersey sued Nevada, the Nevada PSC, and Nevada officials seeking a court order to permit shipment. Las Vegas was added as a defendant when it passed an ordinance on September 6, 1985, requiring a permit to ship through the city. Parenthetically, it should be noted that the railroad had informed NJDEP that its shipments must go through Las Vegas for safety reasons, and thus the option of rerouting is not available.

On September 11, 1985, the federal court dismissed New Jersey's suit against Nevada and the PSC, and stayed its suit against Las Vegas on the grounds that this suit should have been filed in the United States Supreme Court. On September 19, 1985, New Jersey sued the same parties in the United States Supreme Court asking for an expedited hearing and preliminary injunction. On October 21, 1985, the Supreme Court denied the preliminary injunction, but agreed to accept the case on a non-expedited basis. The United States Supreme Court appointed a Special Master to hear the arguments in this case and the case is now proceeding before that Master.

New Jersey State Library

During the spring of 1986, a second site in the State of Washington was considered. Owners of the Dawn Mine, a closed uranium mine, are working to secure and reclaim a tailings pond containing spent uranium ore. They offered to accept the contaminated material from Montclair/Glen Ridge for use in covering the pond. Because it has much lower activities than the material now in the pond, the Montclair/Glen Ridge material appeared suitable as a buffer and capping material. However, environmental and enforcement official opposed the program and raised the same potentials of litigation and permit denial that removed the Richland site from consideration. The opposition was supported by the Governor of Washington and this effectively ended this option.

NJDEP also investigated using a radium disposal site being built by the Pennsylvania Department of Environmental Resources in Canonsburg, Pennsylvania. This site was eliminated because it does not have the space to receive even a small portion of the material excavated to date in Montclair and Glen Ridge.

Various options for disposal within the State of New Jersey also were considered. The in-state search for a disposal site started in the towns of Montclair, Glen Ridge, East Orange, and West Orange. This search did not find any sites which provided space adequate for either temporary storage or permanent disposal. These are densely populated suburban areas and vacant, undeveloped land is non-existent. Among the sites rejected for size was the U.S. Radium plant site in Orange. (In any case, U.S. Radium's responsibility in this matter has not been proven.) NJDEP also explored the use of DOE and DOD sites inside the State of New Jersey. For the legal reasons cited above, the use of these sites is prohibited.

A citizens' group proposed the use of mothballed cargo ships anchored in New York harbor as a repository for the contaminated material. This approach is a temporary and very costly method which only delays resolution of the issue. Rather than using cargo ships, or any other temporary storage facility, NJDEP seeks a permanent, safe solution to disposal of this material.

On October 29, 1985, the Union Pacific Railroad sued Las Vegas in federal court in Nevada to enjoin enforcement of the Las Vegas ordinance. That suit also awaits ^{final} decision, although a preliminary decision ~~that the ordinance is unconstitutional has been made.~~

Thus, New Jersey still hopes to prevail on the merits of its suits against Nevada and Las Vegas. Meanwhile, on December 5, 1985, the Union Pacific Railroad filed for the PSC permit, which Nevada now claims is the only State bar to shipment. The PSC permit ~~is being withheld~~ ^{application has not yet been} ~~acted on.~~ pending resolution of the case by the United States Supreme Court.

In February 1986, NJDEP applied to the Rocky Mountain Compact-Commission ^{Low-level Radioactive Waste Board} for a user permit ^{for the Beatty site}. This permit application was denied after a hearing before the ~~Commission~~ ^{Board} in ~~April~~ ^{May} of 1986.

The net result of all of these actions is that the Beatty site is not available until legal issues are resolved and experience indicates that cases of this type may take many years to reach final resolution.

As noted above, Richland, Washington, is the other licensed low-level radioactive waste disposal site able to accept this waste. New Jersey's contract with U.S. Ecology allows New Jersey to go to Richland because Beatty is unavailable. Also, New Jersey had a permit to use the Richland facility until May 31, 1986.

However, New Jersey went to U.S. Ecology in late September 1985 to discuss use of the Richland facility, and was told that U.S. Ecology did not want its limited space in Richland used for such very low specific activity wastes. Further, because Washington inspects each load coming to Richland and because Washington apparently also does not want New Jersey's waste, U.S. Ecology believed Washington would reject any loads that were shipped. U.S. Ecology suggested splitting shipments between Nevada and Washington, but Nevada rejected such an option as did Washington for the reasons noted above. ^{New Jersey was subsequently informed by} It seems probable that use of ~~Washington officials that they would also block shipment of the material. Thus,~~ Richland will stir up such problems that Washington will react just as ~~similar litigation will result~~ ^{similar litigation will result} ~~Nevada with a net result of additional litigation, not waste shipment.~~

Thus, the Richland site is not a plausible option.

MEMORANDUM

DATE: June 26, 1986

TO: Michael Catania
Deputy Commissioner
Department of Environmental Protection

FROM: Richard F. Engel
Deputy Attorney General

SUBJECT: Updated History and Status of Legal Actions Resulting
from Radon Cleanup in Montclair, Glen Ridge,
and West Orange

As you requested, I am detailing below all of the legal actions that have been taken as a result of the radon cleanup work. If you have any questions about these please call me at 4-5612.

1. City of Las Vegas, et al. v. Union Pacific Railroad and the State of New Jersey, No. CV-LV-85-683 LDG, Fed. Ct., Nevada. This is a suit filed July 30, 1985 by Las Vegas, North Las Vegas and Clark County (which contains Las Vegas) attempting to stop the railroad from shipping the waste through the plaintiffs' jurisdiction. On August 8, 1985 the Court denied the plaintiffs' motion for a preliminary injunction. The case is now in the discovery phase.

2. State of New Jersey v. State of Nevada, Nevada Public Service Commission, and various State officials, No. CV-R-85-485-HDN, Fed. Ct., Nevada. On September 3, 1985 New Jersey sought a temporary restraining order and preliminary injunction allowing New Jersey to ship the radioactive waste to the Beatty, Nevada dump site. The temporary restraining order was denied, and on September 11, 1985, an order was entered dismissing the suit against the State of Nevada and the Nevada PSC, and holding back on any action against Las Vegas; the Court finding that the matter should be in the United States Supreme Court.

3. State of New Jersey v. State of Nevada, et al., No. 104, Original, United States Supreme Court. On September 19, 1985 New Jersey filed a complaint in the United States Supreme Court and a motion that the Supreme Court hear the complaint and grant New Jersey a preliminary injunction allowing New Jersey to ship the waste to Nevada. On October 21, 1985 the Supreme Court accepted the case but denied the preliminary injunction and gave the defendants until December 21, 1985 to answer. On or before that date Nevada and the PSC answered and Las Vegas moved to dismiss on the grounds that New Jersey was not a proper person to sue Las Vegas, claiming that only the railroad as transporter of the materials could sue Las Vegas. New Jersey on January 7, 1986 filed a reply to that motion. The matter is thus pending before the United States Supreme Court. In February the parties met with a Special Master appointed by the Court to hear testimony on the case. New Jersey amended its complaint in April, and answers were filed in May. Since then, the Rocky Mountain Compact Board denied New Jersey's application to use the Beatty Site. That denial must be added to the Supreme Court Case. New Jersey is prepared to amend its complaint in the next few days. *will be done shortly.*

4. Township of Montclair v. New Jersey Department of Environmental Protection, No. A-3876-84T7, New Jersey Appellate Division. In February, 1985 Montclair submitted to the DEP a proposal to perform a cleanup pursuant to N.J.S.A. 58:10-23.19. This statute gives municipalities the right to seek approval by DEP of a cleanup plan for later reimbursement by DEP of those cleanup costs. On March 22, 1985 DEP gave conditional approval for that plan and requested that Montclair respond by April 15, 1985 indicating whether Montclair could comply with the conditions. Rather than reply, on May 1, 1985 Montclair filed this appeal with the Appellate Division. ~~The matter has been briefed and is awaiting decision before the Appellate Division on various legal issues regarding the funding of such a cleanup.~~ The Appellate Division upheld DEP in April.

5. William and Anna Stephens- v. Richard H. Bryan, Governor, State of Nevada, et al., No. CVR-85-539-ECR, Nevada Federal District Court. On October 1, 1985, the Stephens, one of the families from Montclair who had to move temporarily from their home for the clean up to be performed, sued the Governor of Nevada and various Nevada public officials attempting to get a preliminary injunction allowing the waste to be moved to Nevada. The defendants move to dismissed this case on the grounds that it was identical to the action taking place in the United States Supreme Court. That matter has been briefed and is awaiting decision by the Federal Court in Nevada.

6. Union Pacific Railroad Company v. City of Las Vegas, Nevada, CV-LV-85-932 HDM, Federal District Court for Nevada. On October 28, 1985 the Union Pacific Railroad, New Jersey's shipper, filed a suit seeking to invalidate the ordinance of Las Vegas which requires the railroad to obtain a permit before it may transport New Jersey's waste through the town. The matter has been briefed and is awaiting decision on whether a preliminary injunction against the ordinance should be issued. In April the Court granted the injunction against enforcement of the ordinance.

7. Township of Montclair et al. v. Robert E. Hughey, et al., No. C-5805-85E, Chancery Division, Essex County Superior Court. This is a suit filed November 8, 1985 by Montclair and two residents of Montclair against Commissioner Hughey and the DEP seeking to have the wastes temporary stored in Montclair moved from that location to a location outside of the town. The plaintiffs also sought to have the Court order DEP to provide a listing of what DEP is doing to remove the waste from Montclair and a time table for removal of such waste. On December 19, 1985 the Superior Court judge ordered DEP to provide a report to the plaintiffs and the Court detailing what action New Jersey has taken and the options it is considering to cope with the radon problem in Essex County. West Orange, Glen Ridge and Essex County have now joined with Montclair in that suit. New Jersey supplied the report. Plaintiffs have now moved for summary judgement, which is to be heard July 18, which was denied. DEP has moved to consolidate this case with the Vernon matters in the Appellate Division.

8. Douglas v. Safety Light Corp., State of New Jersey, et. al., No. L-089653-85, Law Division, Essex County Superior Court. On

November 19, 1985 a couple living in Glen Ridge brought suit seeking damages from various companies and towns, and New Jersey as a result of, apparently, their problems due to radon in the area of their home. ~~This case in the the early stages.~~ *OSP was granted summary judgment July 11, 1986. Plaintiff have moved for the right to have an intervenory appeal.*

9. Estate of Alexander F. Masson v. United States Radium, State of New Jersey et al., No. L-055737-86, Law Division, Essex County Superior Court. On May 28, 1986 the executor for Alexander F. Masson brought suit seeking damages from companies, towns and persons and New Jersey as a result of, apparently, exposure and ultimate demise due to dangerous and hazardous substances. This case is in the early stages.

RFE
R. F. E.

The Vernon Township State Court Action and DEP's
Issuance of E056-1

On June 20, 1986, Vernon Township and Sussex County commenced suit in New Jersey Superior Court, Chancery Division, Sussex County, seeking to prevent DEP'S proposed disposal of the excavated soil at the Baldwin tract. Township of Vernon v. DEP, Docket No. C3715-86. (Sa23-Sa25). On June 23, 1986, the Honorable Arnold Stein, J.S.C., heard and orally granted Vernon Township's motion for a temporary restraining order. An order prohibiting DEP from moving any barrels to Vernon was formally entered on July 3, 1986. (Sa26).

On July 8, 1986, DEP Commissioner Richard Dewling issued Administrative Order E056-1, which directed DEP to commence implementation of its plan to store and dispose of the contaminated soil at the Baldwin tract. (Da15-Da20). On July 9, 1986, however, Judge Stein preliminary enjoined DEP from acting on E056-1. Judge

stein also transferred the case to the Appellate Division of the New Jersey Superior Court on the ground that plaintiffs were challenging a final administrative decision of DEP. (Sa27a).

Orange County's State Court Challenge to E056-1

On July 18, 1986, Orange County, New York, and two of its residents, Louis Heimbach and Albert Favino -- who are all plaintiffs herein -- filed a separate appeal in New Jersey Superior Court, Appellate Division, challenging DEP's administrative order E056-1. (Sa28-Sa29). Orange County contemporaneously moved the Appellate Division for a stay of E056-1 pending appeal, consolidation of its appeal with Vernon Township's action, and a remand of the matter to a Superior Court judge for further factfinding. In its brief in support of this motion, Orange County asserted that DEP had violated its own environmental regulations in promulgating its disposal plan. Among the regulations Orange County contended that DEP had violated were N.J.A.C. 7:26-1 et seq., which are the state regulations implementing the federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq. (Sa30-Sa60).

Vernon Township, in its appeal, likewise moved for a stay of E056-1 pending appeal and a remand.

By order dated July 21, 1986, the Appellate Division, in response to Orange County's and Vernon Township's motions, modified the existing restraints on DEP to allow it to transport 4,500 barrels of soil stored at the Montclair site to the Baldwin tract. (Da9-Da10). DEP was specifically prohibited, however, from proceeding with any blending of the contaminated soil before the Appellate Division had passed on the merits of the two appeals before it, which were set down for expedited processing. (Although

the Appellate Division ordered that Orange County's appeal be processed and assigned in the same manner as the Vernon Township matter, it denied Orange County's "emergent motion for consolidation," as well as the "[e]mergent motion for remand.") In framing its order, the Appellate Division specifically stated:

We permit the storage of the soil in sealed containers based on the absence of any evidence in the record that the soil in sealed containers presents a health hazard. [Da10].

Vernon Township and Orange County immediately petitioned the New Jersey Supreme Court for a stay of the Appellate Division's order. By order dated July 24, 1986, the Supreme Court affirmed the Appellate Division's order allowing DEP merely to transport the 4,500 barrels of soil to the Baldwin tract, and directed that the Appellate Division carry out its expressed intent to hear the pending appeals on an expedited basis. (Da1-Da8).

The Federal Actions and the Current State of Affairs

On July 21, 1986 -- the same day that the Appellate Division ruled that DEP could move 4,500 barrels to the Baldwin tract -- the Town of Warwick and a number of New York and New Jersey residents filed a federal complaint in the Southern District of New York seeking to enjoin DEP from implementing its plan to dispose of the soil at the Baldwin tract. Town of Warwick v. DEP, 86 Civ. 5667 (JFK). The gravamen of Warwick's complaint is that DEP violated RCRA and the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1 in promulgating its disposal plan. (Sa61-Sa76.) On July 24, the Town of Warwick moved for a temporary restraining order to prohibit DEP from transporting any barrels of soil to the Baldwin site.

The instant action was commenced on July 25, 1986. Like the Town of Warwick's action and plaintiffs' own state court appeal, the complaint charges that DEP's disposal plan violates RCRA and the New Jersey Environmental Rights Act. Simultaneously with the filing of their complaint, plaintiffs here, as in the Town of Warwick action, moved for a temporary restraining order prohibiting DEP from moving any barrels to the Baldwin tract.

At the July 28 hearing on Warwick's motion, DEP represented that it would not move any barrels to the Baldwin tract until at least late August in order to allow a panel of scientists from the Vernon Township area to evaluate DEP's disposal plan. In light of this representation, neither federal court has issued further preliminary restraints.

In an attempt to reverse the proliferation of separate lawsuits arising out of this dispute, DEP, by notice of motion dated August 5, 1986, moved for consolidation of all the pending state court actions. (Sa77- Sa80). To the same end, on August 12, 1986, DEP filed a motion with the federal court in New York seeking either a transfer of the case pursuant to 28 U.S.C. § 1404(a) to the District of New Jersey, or a stay of that action pending completion of the state court proceedings. (Sa81).

Defendants now, in like fashion, request this Court either to dismiss or stay this action pending completion of the state court proceedings.

STERNS, HERBERT & WEINROTH

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

186 WEST STATE STREET

P.O. BOX 1298

TRENTON, NEW JERSEY 08607-1211

(609) 392-2100

HAND DELIVERED

10 NASSAU STREET
P.O. BOX 1248
PRINCETON, N.J. 08542-1248
(609) 924-2108

SUITE 600
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 296-3432

OF COUNSEL
RICHARD J. HUGHES

JOEL H. STERNS
RICHARD K. WEINROTH
MICHAEL J. HERBERT
FRANK J. PETRINO
WILLIAM J. BIGHAM
W. S. GERALD SKEY
JOHN H. DUMONT
MARK D. SCHORR
MICHAEL M. MATEJEK
SIMON KIMMELMAN
RICHARD M. HLUCHAN
VINCENT J. PALUZZI
PETER A. BUCHSBAUM
DAVID M. ROSKOS
LORAIN OTIS
LAWRENCE F. GILMAN
LINDA KORSEN STERN
PAUL M. O'GARA
MELINDA R. MARTINSON
KATHLEEN K. WESTON
BRIAN J. SEXTON
MICHAEL KAHME
CATHERINE H. SCHAFER

September 12, 1986

Mark O. Smith, Aide
Assembly Environmental Quality Committee
CN-068
State House Annex
Trenton, NJ 08625

RE: Assembly Bill Nos. 3019 & 3020

Dear Mr. Smith:

In connection with the hearing to be conducted this evening in Vernon Township by the Assembly Committee on Environmental Quality on Assembly Bills 3019 and 3020, kindly accept the following comments on behalf of our client, County of Orange, New York, as part of the record.

The Assembly Bills in question essentially do two things:

- 1) They require the Department of Environmental Protection to subject the radium contaminated soil to close scrutiny, including a full Environmental and Health Impact Statement, before the contaminated soil can be transported, stored, and treated to reduce its radioactivity to safe levels; and
- 2) They require that such storage, treatment, and disposal take place only in a licensed hazardous waste facility.

In our view, these Bills accurately reflect the state of the existing law. This position is spelled out in greater detail in the brief which we recently filed in the Superior Court, Appellate Division. A copy of that brief is enclosed herewith, and we ask that

STERNS, HERBERT & WEINROTH

Mark O. Smith, Aide
September 12, 1986
Page Two

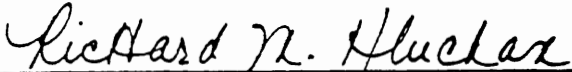
it too be made a part of the record of the Committee's hearing.*

Since the Department of Environmental Protection has seen fit to ignore existing legal requirements, it is absolutely imperative that the Legislature take appropriate action by way of adoption of one of these Bills in order to eliminate any possible doubt that the law requires the radium contaminated soil to be treated in the same manner as any other hazardous waste.

Thank you for the opportunity to present these comments to the Assembly Committee on Environmental Quality.

Very truly yours,

STERNS, HERBERT & WEINROTH, P.A.
Attorneys for County of Orange

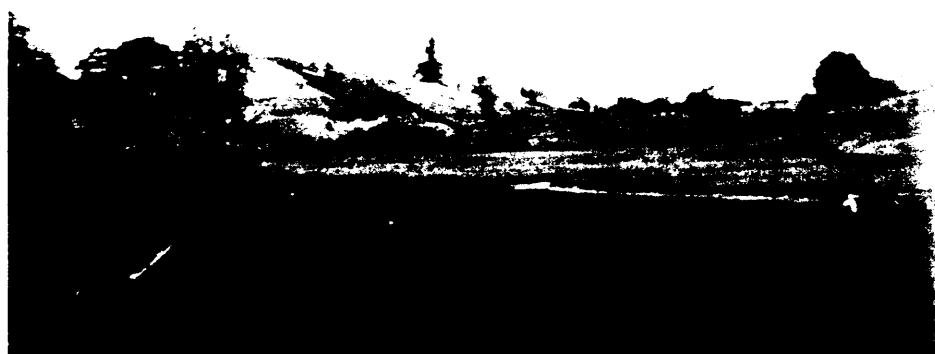

Richard M. Hluchan

Enc.
RMH/brl

* The above referenced document is available in the files of the Assembly Committee on Environmental Quality for review

PHOTOGRAPHS SUBMITTED BY
WILLIAM "JAMIE" RICHEY, JR.





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