JOINT PUBLIC HEARING

before

SENATE ENVIRONMENTAL QUALITY COMMITTEE

AND

ASSEMBLY ENVIRONMENTAL QUALITY AND ENERGY COMMITTEE

The January 1-2, 1990 oil pipeline leak in the Arthur Kill

January 23, 1990
Council Chambers
Woodbridge Municipal Building
Woodbridge, New Jersey

MEMBERS OF SENATE COMMITTEE PRESENT:
Senator Richard Van Wagner, Chairman

MEMBERS OF ASSEMBLY COMMITTEE PRESENT:
Assemblyman Robert G. Smith, Chairman
Assemblyman Neil M. Cohen, Vice Chairman
Assemblyman Arthur R. Albohn

ALSO PRESENT:

Mark T. Connelly
Patricia Cane
Office of Legislative Services
Aides, Senate Environmental Quality Committee

Spiros J. Caramalis
Raymond E. Cantor
Office of Legislative Services
Aides, Assembly Environmental Quality
and Energy Committee

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Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

1989

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

NOTICE OF A JOINT PUBLIC HEARING

The Senate Environmental Quality Committee and the Assembly Environmental Quality and Energy Committee will hold a joint public hearing on the following topic:

The January 1-2, 1990 oil pipeline leak in the Arthur Kill

The hearing will be held on *Tuesday, January 23, 1990 at 10:00 a.m. in the Woodbridge Municipal Building, Council Chambers, Woodbridge, New Jersey.*

The public may address comments and questions to Patricia Cane, Aide to the Senate Environmental Quality Committee, and persons wishing to testify should contact Carol Hendryx, secretary at (609) 292-7676.

Issued 1/11/90

(Directions: New Jersey Turnpike exit No. 11 to Route 9 North or Garden State Parkway exit No. 129 to Route 9 North. Pass Forge Restaurant, bear right and turn right at sign for Main Street, Woodbridge. Immediately turn left. At end of street turn right. Pass Quick Check. Driveway entrance to municipal parking lot will be on right. Municipal Building is 1 Main Street, Woodbridge. The phone number is (201) 634-4500). Council Chamber is on main floor.)

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SENATOR RICHARD VAN WAGNER (Co-Chairman): Could you find a way to get yourself situated, so we can begin the hearing today? I will just outline, briefly, the manner in which we're going to proceed, but before I do that, I would like to first introduce the people who are seated with me here at the hearing table. On my immediate right is the Co-Chairman of this joint hearing, the Chairman of the Assembly Environmental Committee, Assemblyman Robert Smith from Middlesex County, and to his right is his Vice Chairman, the Vice Chairman of the Assembly Environmental Quality Committee, Assemblyman Neil Cohen of Union County. And to his right is a member of the Assembly Environmental Committee, Assemblyman Art Albohn. I'm Senator Richard Van Wagner. I'm the Chairman of the Senate Environmental Quality Committee.

We will be proceeding today through a witness list which will include Exxon Corporation, the United States Coast Guard, the United States Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the Clean Harbors Cooperative, who were charged with the responsibility of the cleanup, and members of various environmental groups in our State.

I might also add, just for the record, that we will continue this hearing later, either in February or in March. We have some members of the New Jersey Department of Environmental Protection and the Attorney General's Office who are here, however they will not be testifying at this hearing. Obviously, with the transitional stage that the government is in, the Governor, who I understand will be, himself, touring the site during this week, has asked that we continue these hearings so that when the information that his departments -- his newly appointed department heads -- have developed is complete, they can submit it to this Committee.

Today we will begin the -- today's hearing. Both Mr. Smith and I have some opening statements which I would like to read, with your indulgence.

The subject of today's joint public hearing, the Exxon oil pipeline spill of January 1 and 2, has added one more sad chapter to New Jersey's long history of environmental degradation. Most of the time -- and I think I can speak for members of both Committees -- legislators look forward to public hearings on important issues. This is not the case today, however. I am sure most of us wish that this public hearing was not necessary. For today we must try to fathom why what should never have happened, did, in fact, happen.

The Committees today face a complex issue involving the operations of a huge multinational corporation and the relationships between a maze of government and regulatory agencies. But amid all this complexity, I believe that the questions to which we seek answers, are relatively few. And they may be stated plainly in words that all may understand.

Today we are going to try to find out why more than one half million gallons of home heating oil was unknowingly or recklessly pumped into the waters of the Arthur Kill during the night and early morning hours of January 1 and 2 -- adding insult to injury to a body of water and an ecosystem which for too long has been regarded as a free industrial sewer by some members of the New Jersey petrochemical industry.

We're going to try to find out why a company, which spends millions and millions of dollars to tout the excellence of its products and its post Valdez environmental sensitivity, operates a pipeline equipped with a leak detection system which, in technological terms, is still in the horse and buggy era.

We're going to try to find out if once the spill occurred, the cleanup response by Exxon, the Clean Harbors Cooperative, and the Coast Guard was timely and adequate. And we are going to try to find out what impact the pipeline leak had on the ecology of the Arthur Kill and surrounding waters, which as we all are aware, has recently shown some signs of improvement after decades of abuse and neglect.

In order to make this public hearing as fruitful as possible for the Committee members and the public, Chairman Smith and I have decided that we will start the public hearing by calling Exxon to make a statement and answer questions which I am sure the Committee members will want to ask.

After Exxon, we will take a short break and then return to hear statements by elected officials before breaking for lunch. After lunch we will take testimonies from other groups who want to speak. I might also add that we have decided to continue through lunch. The members will continue the hearing, and we will just take small breaks to replenish our energy.

I look forward to a positive and eventful hearing, and I will now ask Assemblyman Smith to make some opening remarks.

ASSEMBLYMAN ROBERT G. SMITH (Co-Chairman): Thank you, Chairman Van Wagner. Unfortunately, in America today, every year since 1982 we've had between 2000 and 3000 oil spills or leaks in this country. What's happened here at Arthur Kill is a tragedy, but it's only a symptom of a much bigger problem here in New Jersey and the United States of America. And when we look at those problems-- An early review of those problems indicates that they're at least in three different areas.

First, we have a Federal government that has not committed the resources to properly monitor the petroleum industry in the area of oil spill and leak prevention. Secondly, New Jersey State government, while it's preempted from regulating interstate pipelines, has not reviewed or monitored the spill prevention control and containment plans that are currently required under New Jersey law.

And in my opinion, in the 1990s, this incident here at Arthur Kill, when we look back on it, unless we do something positive in the next year in the way of legislation, we're unfortunately going to see a lot more of these types of incidents here in New Jersey.

And then lastly, in the third area of the problem, with respect to oil spills and prevention: What is the corporate commitment to prevent oil spills and leaks from occurring?

Mr. Chairman, I'm hopeful that our joint Committees will be putting forward legislation that our Legislature and Governor will enact which will hopefully prevent this kind of situation from ever occurring ever again. And in that context, I'd like to submit for the record, correspondence from former Commissioner Dewling and former Commissioner Daggett indicating the tremendous scope of this problem here in New Jersey and the need for an overall review of the entire oil spill prevention, oil leak prevention program. Thank you, Mr. Chairman.

SENATOR VAN WAGNER: Thank you, Chairman Smith. And I'd just like to acknowledge the presence at the Committee table of Senator Larry Weiss, who represents this district. Senator Weiss, I appreciate your attendance at the hearing. I should also acknowledge that there are other legislators in the room who we'll be hearing from or will be submitting testimony in writing. During the early afternoon, they will be testifying.

I'd like to first call to the witness table, if I might, Mr. Edward T. DiCorcia, who is the Vice President of Refining for Exxon Company, USA. Is that correct, sir?

E D W A R D T. D i C O R C I A: Yes.

SENATOR VAN WAGNER: Mr. DiCorcia has submitted an eight page written testimony. I would ask you, sir, if possible, so that we could proceed with the questioning as quickly as possible, if you could just sort of summarize those remarks.

MR. DiCORCIA: I certainly will.

SENATOR VAN WAGNER: Thank you.

MR. DiCORCIA: Which are the microphones that you can hear best? Is this the microphone?

SENATOR VAN WAGNER: You're going to have to test them, Mr. DiCorcia.

MR. DiCORCIA: Okay. Can you hear me?

SENATOR VAN WAGNER: Okay. Yes, we can.

MR. DiCORCIA: Chairman Van Wagner, my name is Edward DiCorcia. I'm the Vice President of Refining for Exxon Company, USA. My office is in Houston, Texas. My responsibilities include the oversight of Exxon's domestic refineries which include the refinery here at Bayway, in New Jersey. I think you have a written statement from me, which as you suggest, I won't read, but I'll try to respond to your questions and your concerns.

I think I would just say that Exxon regrets this accident, this leak. We are concerned, as you are, about the circumstances surrounding it. I think, based on most accounts, we did a reasonably good job in promptly getting after the leak and cleaning it up; at least getting the oil off the water. There are discussions underway now with the scientists and experts from the various agencies and natural resource trustees regarding any post spill studies that need to be made.

We certainly want to learn all that we can from this incident and take actions to prevent a recurrence. And I'd be happy now to try to respond to your questions.

SENATOR VAN WAGNER: Thank you, Mr. DiCorcia. I appreciate the brevity of your statement. I would like to ask you, if I might, if you could outline for me, in detail, what took place on the evening of January 1 -- according to my record -- beginning at approximately 4:10 p.m.? And if you could outline that step-by-step--

MR. DiCORCIA: Okay.

SENATOR VAN WAGNER: --in terms of times and the other details of what took place?

MR. DiCORCIA: I'll refer to the information that was disclosed to the investigating agencies on January 10, I

believe, which had the preliminary results of the investigation, and I'll draw from that material. If you'll turn to page four of your written statement, it might be easier for you to follow.

Beginning at the time you referred to, a pipeline transferring heating oil from the Bayway Refinery to the Bayonne terminal was begun at 4:00 p.m. on that Monday, January 1. Now, I'll mention the chronology of events. Not all of these events may or may not be exactly relevant to the issue, but I just mention them so we'll have a complete chronology.

A barge of heating oil was loaded from that same system at the Bayway dock between 7:38 p.m. and 9:13 p.m. that evening. At 10:30 p.m. the automatic shutdown on this pipeline activated. I know I described, very briefly, that there is-- Between the two plants, on the pipelines that connect them, there are actually three pipelines, but just one was in use. On each one of those lines there are meters at each plant, flow meters. And instrumentation is set up so that if there is a deviation of as much as 10 barrels in an hour, between the amount leaving one plant or arriving in the other -- and this could go in either direction, and the deviation could either be more or less-- If the deviation is that much, then, by a system of telephone transmission of digital signals, there is a system to automatically close valves at both locations; should a deviation of as much as 10 barrels occur in an hour. That automatic shutdown activated at 10:30 p.m.

Now a customary procedure had developed, and this is what was said and disclosed by the people involved.

SENATOR VAN WAGNER: Excuse me, sir?

MR. DiCORCIA: Yes?

SENATOR VAN WAGNER: When you say a customary procedure, is this a procedure that is sort of an unwritten procedure, or is it something by which the corporation has adopted a certain procedure?

MR. DiCORCIA: No, it's an unwritten procedure. And the operator-- What the operator did is-- This is based on experience. They would reset the deviation -- this is a digital readout -- to zero, to see if the deviation would repeat. And in this case it did not repeat.

SENATOR VAN WAGNER: Excuse me, sir?

MR. DiCORCIA: Yes?

SENATOR VAN WAGNER: Before the reset of the deviation takes place, is there any monitoring process used to determine whether or not, in fact, some disruption in the pipeline may have occurred?

MR. DiCORCIA: There was none followed at that time.

SENATOR VAN WAGNER: So, that's not part of the customary procedure?

MR. DiCORCIA: The customary procedure was to check the deviation to see if it would repeat, and that was -- did not repeat.

So the transfer was continued. At midnight, the transfer was shut down for a routine inventory check. Apparently at midnight all the gauges are read by the computer, and that's done for inventory reporting. And after some other duties were taken care of, the pipeline transfer was resumed 40 minutes later.

At 2:28 a.m. the operator noted a higher than expected flow rate and stopped the transfer to Bayonne to investigate the system. As I heard the comments, I believe the thought was that maybe a valve was open to a wrong tank, and therefore there was more flow moving than there should be. The computer did the check and came back and indicated that all valves in the system were correctly set, and on that basis, the transfer was resumed at 2:32 a.m.

At 3:00 a.m. the system did automatically shut down the transfer by, again, closing the motor operated valves. At 3:40 the Bayway operator did the same thing he had done

earlier. He restarted the transfer by zeroing out the deviation to see if the shutdown signal would be repeated. It was not.

Now, separate and apart from what was going on in the control room, between 3:50 and 4:00 a.m. the Linden Fire Department and the New Jersey Marine Police inquired at the plant regarding reports that they had received apparently by telephone, of an oil spill in the barge dock area. The State Marine Police and Bayway personnel investigated the dock area until 4:30 a.m., but no oil was observed.

Now, during the interval that the visual search for oil, at 4:10 a.m.-- During that interval, at 4:10 a.m., the pipeline automatic shutdown repeated a closure of the motor operated valves on the transfer to Bayonne. This was the third time now. The operator, at that point, at Bayway concluded that there was an instrumentation problem and didn't try to resume the transfer, and he called the Bayonne operator by telephone and informed him of the shutdown and said it should remain down until the instrumentation system could be checked out. That would normally be done when the day folks came into the plant between 7:00 and 8:00 a.m.

Now also, at the same time, again -- separate and apart from what was going on in the control room -- about the same time, 4:20 a.m., another Bayway operator responded to a Coast Guard report of a spill near the barge docks. This operator entered the Arthur Kill on a boat, and during his search on the water, he observed floating oil surrounding a ship moored at a terminal on the Staten Island side. I think that's the GATX terminal of the Arthur Kill. And then, he also did some more investigating along the Staten Island side. He said he noticed some oil in what he described as a cove near the Staten Island shore. He also observed Coast Guard personnel on the scene. It's not in the statement, but I recall his saying to the investigating people that there was

also either a police boat or a fireboat on the scene that was investigating.

On recrossing to the Bayway side, the operator detected only slight amounts of oil near the Bayway docks, and he didn't draw any conclusions from that. That boat search lasted until about 5:45 a.m., and if I could read the mind of those personnel at the time, it was concluded by those personnel that Exxon was not the source of the spill.

At 7:20 a.m. -- and this is now when the day people and the management people are arriving at the plant -- this would be the first day after New Year's -- a team from Bayonne was dispatched to investigate the inter-refinery pipeline in the vicinity of the Arthur Kill -- and you'll recognize, the pipeline runs under the Arthur Kill, across Staten Island, under the Kill Van Kull, and then across Bayonne to our plant on New York Harbor.

And also near the same time, during the morning operator's meeting in the refinery at Bayway which commenced at 7:45, there was a discussion that ensued, and the Bayway operations manager directed personnel, also, to check the inter-refinery pipeline. And both plants began talking to each other and decided to arrange for a pressure test of the line.

This is a six-mile long pipeline. Those preparations began at 8:15 a.m., and this involves a fair amount of logistics and also getting personnel out all along the route of the pipeline to observe the test. The test physically began at 10:15 a.m. After only a few minutes, there were indications of a leak in the pipeline, and that was noted as a loss of pressure in the pressure test and also people on the water in boats in the Arthur Kill who were observing the pipeline from the surface could see what they described as some bubbling up, and it was concluded as that was the source of the spill.

Exxon personnel called the Coast Guard at 10:25 a.m. to report this as the source of the spill. At 10:55 a.m. the

city fire department was notified, and then there was a series of other notifications including other agencies that continued through 11:05 a.m.

Coincidentally, at about-- Concurrently, at about the same time, the Exxon Oil Spill Response Team wasmobilized and all of the actions to get a rather large effort on the water to clean up the spill were initiated.

I might just mention one other thing, Chairman Wagner, and then I'll answer questions.

SENATOR VAN WAGNER: It's Van Wagner.

MR. DiCORCIA: Excuse me -- Van Wagner. Also, at that time, there were estimates made of the size of the spill by a number of parties including Exxon. Initial estimates, based on what was observed, were in the 5000 to 7000 gallon range, and that was talked about both among the people involved and the media. That was what people thought they saw in the water, and, of course, what was on the water is what people were going after. Later, though, after an inventory check, a more detailed accounting type check-- Inside of these two plants which have quite a large amount of storage in both locations -- I think, maybe two or three dozen tanks involved, and if you just count the capacity, about 4 million barrels of tank capacity at Bayway and about 2 million barrels of tank capacity at Bayonne, plus systems for multiple deliveries that could load barges and trucks at Bayway and the same at Bayonne-- Reconciling all of the movements of oil as well as the production of heating oil at Bayway, getting all of that reconciled from an accounting standpoint took about a day to do. And that reconciliation showed an unaccounted for amount of oil in the system of from 10,000 to 13,000 barrels. That would convert into about 500,000 gallons of heating oil.

That was reported to the Coast Guard as soon as that number was arrived at, and then ultimately that got into the media. Even though there were the eyewitness reports -- and I

don't think the eyewitness reports ever got that high as to what amount was on the water -- nevertheless, that amount was unaccounted for in our system, and that was what was reported.

SENATOR VAN WAGNER: Mr. DiCorcia, assuming that the rupture in the pipeline occurred at 10:30 p.m. when the leak detection system activated for the first time, oil began escaping, I assume, from the pipeline during three time intervals that totaled almost four-and-a-half hours, during which time, approximately, as you point out from your accounting system, 567,000 gallons of oil escaped. This would equal a rate of escape of approximately 2200 gallons per minute.

The leak detection system, according to your records, is designed to shut down any transfer if a leak of only seven gallons per minute is detected. My question is, very simply, if you have a leak detection system, why did not -- or a deviation-- If you had a deviation shown at that point, why did that not indicate a leak?

MR. DiCORCIA: Chairman Van Wagner, I wish I had the answer to that question conclusively. What the investigation of the facilities and what was done have revealed so far -- and what I've heard -- is that that system if it were functioning properly, should have been saying, very loud and clear and very promptly, that a large leak was occurring. And the experts are still tracing through all of the electronics and diagnostics, but they point to, at least, one malfunction that they've identified so far. That is a switch which they believe is mechanically malfunctioning and had the effect of preventing the true leak signal from repeating or even initiating a shutdown.

Now, you might ask, and I certainly--

SENATOR VAN WAGNER: When was the leak detection system first installed?

MR. DiCORCIA: This particular system was installed in 1978. And as I understand it, it replaced an earlier system that had been installed in 1973.

SENATOR VAN WAGNER: Did it function properly?

MR. DiCORCIA: I would have to say, not perfectly; not as good as we would like. And it was the subject of a fair amount of troubleshooting. You may have heard that the system would, frequently, automatically shut down even though there was not a leak.

What the experts and all of the people who are familiar with this in the past have said, is that for one or more causes, but probably a lot of it due to what they described as erratic signals that are received on the telephone line between the two plants, it would, in fact, trigger an automatic shutdown even when a leak didn't occur.

And the folks involved said that under questioning, when asked, "Well, how often did that happen?" they said, "Well, you know, for some time." As far as I'm concerned, that could be really from the day the system was installed, although I'm not sure. And they said, "Well, how often would this happen?" And they would say, "Well, it could happen once a month. It could happen once a week; it might happen even once a day; and it was very unusual but not unprecedented, for it to happen more than once a day."

In fact, there was a fair amount of troubleshooting with outside contractors, as well as in-house instrument people, and also some involvement of the telephone company, to reduce the amount of these, what I would call, erroneous errant signals that would cause an automatic shutdown.

Now, you've also heard me say that -- and I think this is a fair statement and certainly subject to criticism though -- and that is, that if you have a system, you do want it to be sensitive. I think the system could have been set for a wider deviation, but a rather small deviation was set and I think that that's proper. And, if it erred on the side of giving false alarms even when there was not a leakii Iif there has to be something that's not perfect, I think, that's the preferable side to err on.

Now, that's kind of a hindsight observation, but I think, that if you then would say, "Does that mean the system was not functioning properly?" I would have to say, "Not the way we would like, and we were trying to get it to operate without those errant signals, but they were never completely eliminated."

SENATOR VAN WAGNER: Sir, from an environmental management point of view -- considering the sensitivity of the situation -- certainly after the Valdez incident, would it have not been prudent on the part of the corporation knowing that they had a leak detection system that was not functioning properly, to monitor that system more closely based on the fact that they knew that it had been a problem, an operational problem, and perhaps when the reset was indicated, perhaps monitor that system? And I realize your answer might be with the vision of hindsight now.

MR. DiCORCIA: Chairman Van Wagner, I wish I knew that that system were operating the way it was, but I didn't. I don't think that you should presume that people at the corporate level had prior knowledge of this and specifically countenanced this particular mode of operation, because I don't believe that's true. I think that there are always -- with computer systems, with automatic instrumentation, with a wide variety of mechanical equipment we deal with -- mechanical problems are a way of life; debugging those are a way of life, repairing those are a way of life. I wish that enough people with the vision that we have now, were aware of it, but these things are much clearer, and they're visible to more people now, unfortunately, in hindsight.

SENATOR VAN WAGNER: But, you see, sir, the point here is that oil spills are becoming a way of life, and given that kind of situation, certainly I would think that more attention would have been paid to a faulty leak detection system.

MR. DiCORCIA: Yes. First, let me agree with you, that an accident like this or, Chairman Van Wagner, really any accident should be considered preventable. We should have that mind-set, and I'll let the record speak for itself, on whether we do have that mind-set in the context of the scope of our operations.

I should also point out in that particular mind-set, maybe not with the time frame that we would like to see now but in the normal course of events, in the normal course of improving these kinds of things -- debugging, improving, replacing -- there is a project on the drawing boards that was initiated some time ago to replace this system. And the replacement was scheduled to take place sometime in 1990. I'm not sure of the date, but it was sort of towards the middle of 1990. And that would represent a natural evolution on these kinds of things, Chairman Van Wagner.

SENATOR VAN WAGNER: Why--

ASSEMBLYMAN ALBOHN: Mr. Chairman?

SENATOR VAN WAGNER: Yes.

ASSEMBLYMAN ALBOHN: May I ask a question or two?

SENATOR VAN WAGNER: I just want to pursue one more question, and I'm going to turn it over to Assemblyman Smith.

ASSEMBLYMAN ALBOHN: Fine.

ASSEMBLYMAN SMITH: We're going down the line.

SENATOR VAN WAGNER: We're going to go right down the line.

ASSEMBLYMAN ALBOHN: Oh, I see.

SENATOR VAN WAGNER: In the procedure that you described, the customary procedure that you described, did the deviation ever indicate to anyone that there was a leak?

MR. DiCORCIA: There was no person, as hard as it is to believe, who had sufficiently positive indication in his mind, that there was a leak on this pipeline. Could I explain, just briefly, why, as you look back at the events, why that took place?

SENATOR VAN WAGNER: Yes. Please do.

MR. DiCORCIA: First, you had the operator in the control room who experienced an automatic shutdown, which he didn't ignore -- which he attempted, at least in his mind, to verify by resetting to see if the deviation would repeat. So, he didn't get the repeat. Twice he tried it. The third time he didn't try it again. He said he thought there was something wrong with the instrumentation.

So it's apparent, in his mind he never connected what he was observing with the leak. It's important to recognize that this pipeline system between Bayway and Bayonne has been a very reliable system for transporting oil for many years, and, in fact, a pipeline system of this type-- Really one of the main purposes of it is to reduce the amount of marine traffic: barges, tankers, and also road traffic, trucks, which statistically would represent an even greater risk of spill, at least, the frequency risk would be greater.

So, he did not connect in his mind that he had a spill. Then you had the reports coming from the people outside the plant, from the New Jersey Marine Police. Well, the response there was to go look with the police. The report was there was a spill down near our docks. Now, that would be the first place you would look. Most frequently, if there were going to be a spill in the Arthur Kill, it would be with regard to our very busy docks.

Crude oil and feed stocks come into the refinery by tanker. There was a tanker that had discharged that day. This is the heating oil season. A lot of barges of heating oil are moving at the docks and when there's marine traffic, there's the hooking up of hoses; there's the uncoupling of hoses. There's always the chance of an overfill of a compartment. So, that's the first place that was looked at. They didn't find anything.

Then you have another hard to explain circumstance: The Coast Guard report where another operator went into a boat. Now, this is still-- You know, it's dark, it's at night, but we have a boat for that purpose. He went into the boat and he did an investigation along the Bayway side. He didn't see anything on the Bayway side and then crossed the Kill. He crossed the Kill and then observed what he described as oil surrounding a tanker tied up at the GATX terminal. He saw activity around it. He saw the Coast Guard on the scene. He saw, what he described-- He wasn't sure whether it was a police boat or a fireboat, but he remembers seeing a shield on the stack of the boat.

So, if I could read his mind, Chairman Van Wagner, he, too concluded that there was oil on the water. Most probably it was related to that tanker that he saw tied up to the other side. No one ever connected that the pipeline was a problem. It was only until the day people came in and these meetings occurred -- operations type meetings at both plants where what happened over the previous night or days was discussed -- did a kind of a broader view of the situation get taken. And for whatever line of thinking, I'm glad to think that both at Bayonne and Bayway from a result of those discussions, each plant decided to investigate the pipeline as a possible source of the leak. Even then, Chairman Van Wagner, they didn't know it was a leak, but they said, "Listen, let's check that out," and the pressure test, then, did show that the pipeline was the source of the leak.

And you're absolutely correct in pointing out it was a very large leak. It's very difficult to understand or expect that there shouldn't have been a very immediate showing of a leak like that, but, believe it or not, the showing was really along the shore on the Staten Island side and was a factor in kind of not getting all the light bulbs off that the pipeline under the Kill was the problem.

SENATOR VAN WAGNER: You're familiar with DPCC?

MR. DiCORCIA: Would this be a control plan that the New Jersey Department--

SENATOR VAN WAGNER: Spill Prevention, Containment, and Countermeasure Plan.

MR. DiCORCIA: Right, right. I'm not familiar with it in its detail.

SENATOR VAN WAGNER: You're familiar with the nomenclature?

MR. DiCORCIA: Yes.

SENATOR VAN WAGNER: Major facilities were required to submit these plans to the Department of Environmental Protection beginning sometime shortly after 1976. To your knowledge, has Exxon ever submitted an update to the plan originally submitted to the Department?

MR. DiCORCIA: What I know about that, Chairman Van Wagner, is that whatever the regulatory requirements were, we met or should have met.

SENATOR VAN WAGNER: So, I assume your answer to that question is, "Yes"?

MR. DiCORCIA: Well, I don't know what the regulatory requirements are, but whatever was required for that plan, I'm fairly certain we submitted what was required.

SENATOR VAN WAGNER: I'm going to turn the questioning, if you will, over to Assemblyman Smith now. But, I reserve the--

ASSEMBLYMAN SMITH: Sure.

SENATOR VAN WAGNER: --hopefully, the opportunity to come back.

ASSEMBLYMAN SMITH: Is Mr. Racz (Co-Chairman mispronounces name) in the audience? (no response) Mr. DiCorcia, he's your plant manager.

MR. DiCORCIA: Oh, John Racz. No. The refinery manager, no.

ASSEMBLYMAN SMITH: Is there any operations person from the plant here?

MR. DiCORCIA: No.

ASSEMBLYMAN SMITH: That might have been somewhat helpful in terms of answering some of the questions.

MR. DiCORCIA: Could I comment on that, Mr. Smith?

ASSEMBLYMAN SMITH: Sure.

MR. DiCORCIA: There are several investigations of this incident that are underway by responsible government agencies, including two agencies of the State of New Jersey. Now all of the people who are involved and have knowledge of this incident are being questioned in those investigations, and those investigations are current and ongoing.

ASSEMBLYMAN SMITH: Are they being questioned right at this moment?

MR. DiCORCIA: The processes are very current.

ASSEMBLYMAN SMITH: Right.

MR. DiCORCIA: I think--

ASSEMBLYMAN SMITH: They are independent of this hearing and, it would have been helpful to have had an operations person here so that if we had asked a specific question about operations, we could get an answer like that. Unless you're telling me that you are intimately aware of the operations of the systems of this plant.

MR. DiCORCIA: No, I'm aware of what was reported to all of the investigating agencies.

ASSEMBLYMAN SMITH: All right. Well, what that means is that there are certain kinds of information that you cannot be helpful with, and if you can have an-- If you can call the plant and have an operations person over here today, that would be very helpful. Would you do that?

MR. DiCORCIA: I really don't think I can respond to that request for a couple of reasons. If you're asking for Mr. Racz, Mr. Racz is probably in a helicopter right now and has

commitments. I thought we were responding appropriately to the wishes of the Committee by having me come. We certainly can follow up with the Committee as appropriate--

ASSEMBLYMAN SMITH: Well certainly you're being helpful, but unfortunately, you're not being as helpful as you could be. For example, if I said to you-- On our witness list we have Mr. Racz as the plant manager. Our Committee had been told that he would be present here today, and I'm very disappointed that he's not here. For example, when I say to you, "Tell me on how many occasions during these 12 years that this leak detection system had been in place, how many times it's malfunctioned or given inappropriate readings," can you, with specificity, give me an answer like that?

MR. DiCORCIA: Yeah. I heard the preliminary report of the investigation. Actually, Mr. Racz didn't hear that report. You may recall, we had a meeting of all of the agencies who have oversight of this incident -- two states, Federal -- and made people who were directly involved available, and had the chairman of the investigating committee also present. He gave a report which I heard, and from that information is the basis of the narrative I just gave. What the people who spoke to the investigating agency said was that, these shutdowns, even when there was no leak, had been occurring for a long time.

ASSEMBLYMAN SMITH: All right. My understanding, from our staff work, is that they've been occurring ever since installation in 1978.

MR. DiCORCIA: I don't think that's an unreasonable conclusion. They didn't say that, but I would guess that that's probably right.

ASSEMBLYMAN SMITH: I understand that Exxon's ordered a new leak detection system for this pipeline. Is that true?

MR. DiCORCIA: Yes.

ASSEMBLYMAN SMITH: Okay, and that was ordered back in October of '89, and it's supposed to be delivered in 1990. Can you give us some idea of what the cost of the new leak detection system will be?

MR. DiCORCIA: I think it's in the league of a half a million dollars.

ASSEMBLYMAN SMITH: Half a million dollars, all right. Any guess as to the preliminary estimate on the cost of cleanup?

MR. DiCORCIA: No, but it's high.

ASSEMBLYMAN SMITH: On the order of millions?

MR. DiCORCIA: Oh, yes, certainly.

ASSEMBLYMAN SMITH: Who in the Exxon facility and on your management team has responsibility for oil spill prevention and leak detection and prevention?

MR. DiCORCIA: Well, I believe, that that's a basic-- All environmental compliance is a basic responsibility of the refinery management, you know, right from the top.

ASSEMBLYMAN SMITH: You're saying every member of management is responsible?

MR. DiCORCIA: From the top, right on down. Environmental compliance is certainly, you know, a basic responsibility. Now--

ASSEMBLYMAN SMITH: All right. A little earlier in your comments you mention that you, unfortunately, were not aware of the fact that the system was malfunctioning so badly. Now, the question in my mind is, if it's everyone's responsibility, why is that not communicated to upper management?

MR. DiCORCIA: Because of the amount of information that's involved. If you look at our operations, this is not the only place where there is a potential for environmental discharge. The control of the environmental issues in an oil refinery is a very, very substantial activity, both air and

water, toxic materials. I think that it's a very, very intensive activity and there are exposures in a lot of places so that the amount of information that's involved, obviously, had -- that one person can handle, obviously, has some proportion to his attention span. And that's why this--

See, in hindsight you can pinpoint this particular pipeline, this particular system, but there are many operations, Mr. Smith, involving very substantial amounts of petroleum, dealing with enormous physical and chemical forces, and many, many systems and procedures, and people are involved in controlling them.

ASSEMBLYMAN SMITH: I understand that. But how can you, as an upper management person -- Vice President, as a matter of fact -- make a decision about the necessary capital expenditures to install appropriate monitoring equipment or spill containment or cleanup equipment, if you're not getting that information?

MR. DiCORCIA: Well, the approval schedule for a project of that size would provide for approval authority that wouldn't have to reach my level.

ASSEMBLYMAN SMITH: It wouldn't have to reach your level?

MR. DiCORCIA: No, no.

ASSEMBLYMAN SMITH: All right. So, not everyone is responsible for oil spill control and containment.

MR. DiCORCIA: To the extent that they have an attention span and to the extent that they can deal with that; when I say that everyone in management is involved in proportion to what they can deal with, Mr. Smith.

ASSEMBLYMAN SMITH: If the leak detection system has been malfunctioning for 12 years, why has it taken until 1989 to order a new system to replace it?

MR. DiCORCIA: Well, because the defects in it were not considered really vital or crucial. Every time you buy new

equipment-- And by the way, the new system, if it's ever installed and if these lines are operated again, you know, will have to go through a debugging period, too, I would expect. There's always--

ASSEMBLYMAN SMITH: Not 12 years, though.

MR. DiCORCIA: No, no. But there's always some process of that type that's involved. Now, the flaws, though, in the system -- I'd have to read minds and hindsight -- were not considered fatal flaws. Yes, there were certainly signals that caused the thing to shut down, but the immediate response to that, Chairman Smith, is, "Well, let's figure out what's wrong and fix it."

ASSEMBLYMAN SMITH: Well, let me ask you a question: With hindsight, would you now agree that they were fatal flaws?

MR. DiCORCIA: Well, I would say that I would like to have seen a different mind-set surrounding them. I don't think that automatic shutdowns even when there is a leak, really inconvenience anybody other than Exxon. That was sort of an interruption of our business. It didn't affect anyone. But I would worry that we would get too used to that so that when for some other reason a problem did occur, we wouldn't necessarily attribute it, this new situation, to our past experience; that we'd always have an open mind to say that each situation has to be looked at as a potentially new one, not just what we know in the past.

ASSEMBLYMAN SMITH: At the local level of government we've seen the same problem with railroad crossing gates. The gate goes down, it malfunctions, and people get so used to it malfunctioning that they just cross the tracks and then, of course, they get killed. The train runs over them.

It would appear from the description that you gave us and from the background information from the staff, that the same kind of an attitude occurred at Exxon; which is, this thing trips off routinely. It's just another routine trip; not to worry.

The problem, of course, with that attitude is that we now have a half a million gallons of oil that have been discharged into the Arthur Kill.

During the 12 years, from 1970 to the current year--

SENATOR VAN WAGNER: That mike is not working.

ASSEMBLYMAN SMITH: Yeah, this mike is not terrific. Do we have a--

SENATOR VAN WAGNER: Try to do it without the--

ASSEMBLYMAN SMITH: All right. During the 12 years, can you tell me whether the management staff responsible for these activities -- for monitoring these activities -- during the course of that 12 years, ever made a recommendation to replace the detection system?

MR. DiCORCIA: There must have been, Chairman Smith, because there is a capital project.

ASSEMBLYMAN SMITH: Do you know at what point in time?

MR. DiCORCIA: No, I don't know the exact evolution of that.

ASSEMBLYMAN SMITH: Would you be willing to forward to this Committee internal memoranda indicating a recommendation for that system to be replaced?

MR. DiCORCIA: I'll be happy to follow up, Mr. Chairman.

ASSEMBLYMAN SMITH: Is there some reconsideration at this point in your analysis of the situation, that perhaps this kind of information should be going to top management?

MR. DiCORCIA: I think that information should flow freely in both directions, upward and downward. But you have to accept, I think, Chairman Smith, even in your own capacity, as you oversee government activities, and as we oversee our large activities, you also have an obligation to see the forest as well as the trees. I think that it's important that everyone try to know what he or she should know in order to discharge their responsibilities in the most effective way.

I don't think that necessarily means you should attempt to know every detail, because if you're in a large enough activity, you will not get through a complete cycle of knowing all the details.

ASSEMBLYMAN SMITH: Right.

MR. DiCORCIA: You can begin--

ASSEMBLYMAN SMITH: Isn't it clear to you that there is a short circuit in the decision-making process? You have a leak detection system that's been malfunctioning for 12 years, and yet upper level management doesn't authorize replacement of the system until 12 years after continuous malfunctions.

MR. DiCORCIA: No, Chairman Smith. I really wouldn't characterize it that way. Obviously, the situation speaks for your view of it because we had an accident, and I have to admit that. And we should take an attitude that any accident should not occur. So, I have to concede that. Even though we have the realization that in spite of best efforts some will occur, that should not deter us, though, from taking the attitude that accidents-- If it happens, we should take the attitude it should not occur.

But if you would, please, also consider the possibility that there was a system-- There was a period of time when there was no such system on this pipeline. There was a period of time when there was an earlier system on the pipeline. There was a period of time when that system was replaced, and this system was installed. There was a period in time when that system was debugged actively, and I think that can be shown or will be shown. And then, there was a period of time when a judgment was reached to replace it.

Now all of those could be done better, but I don't think they would add up to ignoring a problem for 10 years, or knowing something that should have been done. I really don't feel that.

ASSEMBLYMAN SMITH: Well, see, I don't know that.

MR. DiCORCIA: Yeah.

ASSEMBLYMAN SMITH: I don't know that based on what's been presented to the Committee.

Our background material indicates that Exxon, on a quarterly basis, does a stress capacity test of -- or had done a stress capacity test of this pipeline. Is that correct?

MR. DiCORCIA: A pressure test, that's right.

ASSEMBLYMAN SMITH: Who requires that you do that?

MR. DiCORCIA: The New York City Fire Department, is my understanding.

ASSEMBLYMAN SMITH: Not the Federal government?

MR. DiCORCIA: No.

ASSEMBLYMAN SMITH: Not the State government?

MR. DiCORCIA: Not to my knowledge, no.

ASSEMBLYMAN SMITH: When you operate this pipeline at certain limits, you, in effect, exempt yourself from Federal regulation. Is that correct?

MR. DiCORCIA: It's my understanding that there is a provision in the Department of Transportation, Office of Pipeline Safety and Regulation, that would apply nationwide, that has to do with that particular agency's oversight; that if a pipeline is operated below a certain percentage of its strength, that that particular regulation does not apply to it.

ASSEMBLYMAN SMITH: Right. I believe the figure is 20%. If it's operated at less than 20% of the maximum, it's exempted from Federal regulation. And I guess there's a couple of questions that flow from that. First, how many pipelines at the Exxon facility fall into that category?

MR. DiCORCIA: The only pipelines-- You mean, here in New Jersey?

ASSEMBLYMAN SMITH: Yes.

MR. DiCORCIA: The only pipelines that go between the plants are these three pipelines that I've talked about.

ASSEMBLYMAN SMITH: Are they exempted, or are they regulated by the Federal government?

MR. DiCORCIA: All three of those would be.

ASSEMBLYMAN SMITH: All three are exempted?

MR. DiCORCIA: Yes.

ASSEMBLYMAN SMITH: Okay. What is the nature of the leak detection on the other two pipelines?

MR. DiCORCIA: The same as this one.

ASSEMBLYMAN SMITH: The same as this one?

MR. DiCORCIA: Yes.

ASSEMBLYMAN SMITH: Are they being replaced?

MR. DiCORCIA: That system is being replaced on all three pipelines.

ASSEMBLYMAN SMITH: On all three?

MR. DiCORCIA: Yes.

ASSEMBLYMAN SMITH: That's already been ordered as of October?

MR. DiCORCIA: Yes, yes.

ASSEMBLYMAN SMITH: Do you think there should be Federal standards on pipelines like this?

MR. DiCORCIA: Well, you know, I certainly think that this is an area for enlightened regulation. I'm not a pipeline expert, Chairman Smith.

ASSEMBLYMAN SMITH: A little bit louder, please.

MR. DiCORCIA: I say--

SENATOR VAN WAGNER: Excuse me, would you describe "enlightened regulation"?

MR. DiCORCIA: Well, to help-- I think in areas of regulation, and over business that performs a vital service, we're talking here about a very important contribution to the economy and to the welfare of a lot of consumers. I mean, they're depending on us to produce the gasoline and the heating oil that people need.

Now, given a responsibility like that and also given the legitimate need for various levels of regulation of those kinds of activities, I would hope that a cooperative approach

is developed, because my experience indicates that when there's a good dialogue between government and a private sector, expertise is provided, and it flows back and forth, and that government sets the objectives and the private sector then tries to carry out and implement those objectives in the most efficient way; that we get the best result. That's what I mean, Chairman Van Wagner.

ASSEMBLYMAN SMITH: On the regulated pipelines, are there leak detection system performance standards?

MR. DiCORCIA: I don't know.

ASSEMBLYMAN SMITH: Federal standards?

MR. DiCORCIA: I don't know. And I was about to say, I'm not a pipeline expert, but I've been around the--

ASSEMBLYMAN SMITH: Another reason why the operations people would be helpful.

MR. DiCORCIA: Well, I don't think they would be pipeline experts, either.

ASSEMBLYMAN SMITH: Who would be the appropriate person at your plant to talk to? Who has that knowledge?

MR. DiCORCIA: Well, the Exxon Pipeline Company operates in our company the pipelines that travel over distances. I've been around long enough to know that there are a lot of pipelines in the country, and I don't know how many of those are regulated or how many of those have systems like this one. I'm going to make a guess, though, if you'll allow me to just guess.

ASSEMBLYMAN SMITH: Yeah, but don't you think Exxon should know that?

MR. DiCORCIA: I'm sure we can find that out. By the way, in terms of a detailed inventory of all of these facilities, I'm not sure that there is the level of understanding that there should be.

ASSEMBLYMAN SMITH: Don't you think there should be?

MR. DiCORCIA: Certainly, certainly.

SENATOR VAN WAGNER: There is going to be.

MR. DiCORCIA: And that there's going to be. But I don't think that this is any kind of a cheap or second-rate system at all. It's my impression, that after you get the inventory, I'm going to guess that this is a pretty -- at the high end--

ASSEMBLYMAN SMITH: It's a guess. It's a guess. That's the problem.

MR. DiCORCIA: At the high end--

ASSEMBLYMAN SMITH: The person that we really need from Exxon is the person that can tell us that with specificity, in a factual way.

MR. DiCORCIA: With regard to pipelines in New Jersey or nationally?

ASSEMBLYMAN SMITH: Well, with regard to New Jersey. That's the focus of our attention. And the question, if you remember-- I had two questions for you. One was, who's the person at the plant who knows the standards with regard to pipelines and has the management responsibility to see to it that Exxon is operating within those standards?

MR. DiCORCIA: I believe the main -- or the only regulatory-- And I could be wrong on this, but I believe the regulatory oversight of this pipeline was with the New York City Fire Department.

ASSEMBLYMAN SMITH: Who at the plant has responsibility for seeing to it that you live within whatever Federal, State, or local regulation applies?

MR. DiCORCIA: Chairman Smith, I don't, unless I'm wrong-- I don't think there have been any Federal or State requirements.

ASSEMBLYMAN SMITH: Who is the person at the plant that has that responsibility?

MR. DiCORCIA: Now, this pipeline, in terms of meeting the requirements of the New York City Fire Department and all of the permit related issues--

ASSEMBLYMAN SMITH: Mr. DiCorcia, why are you not answering my question?

MR. DiCORCIA: Well, I'm trying to. Those personnel--

ASSEMBLYMAN SMITH: No, you're not. Give me the name of the person who has responsibility to see to it that you're operating within the laws of the Federal government, the law of the State government, and the laws of New York City. There has to be a person responsible, isn't there?

MR. DiCORCIA: Well, in terms of the New York City Fire Department, those relations are conducted by our plant at Bayonne.

ASSEMBLYMAN SMITH: Who is the person at the plant? What's the name of the person?

MR. DiCORCIA: The manager of the Bayonne plant is Katherine Cochrane--

ASSEMBLYMAN SMITH: All right, and how about at the Exxon Linden plant?

MR. DiCORCIA: --and then she has a staff that reports to her.

ASSEMBLYMAN SMITH: Right.

MR. DiCORCIA: With regard to State and Federal regulations which I don't believe there was any -- if there were, it would either be there, or here at our Bayway refinery, and that would begin with our refinery manager, John Racz. And that would include, certainly, our regulatory affairs person, William Taetsch, who, I believe, some of you may know, who deals primarily with the environmental agencies in New Jersey. But then, of course, they would rely on other people, other experts -- technical and then operating people who are directly involved.

ASSEMBLYMAN SMITH: All right. They would be very helpful people to have here.

MR. DiCORCIA: Well, Mr. Taetsch is in a meeting with the Environmental Protection Agency in New York, also with the

states discussing the environmental studies that need to be done for the post spill impacts. These are people who do have contacts with the State and would continue to have them. We do want to follow up on your points, Mr. Smith, and I'm sure that we will.

ASSEMBLYMAN SMITH: Well, one question I'd like you to refer to, and then answer back to this Committee, would be whether or not there are Federal standards for leak detection system performance? It would seem to me that whether-- If the Federal government is foolish enough to, first, preempt State government from regulating in this area, and then foolish enough to provide a loophole that allows these pipelines to be unregulated, at a minimum, they should set performance standards for leak detection systems so that you know that the fail-safe system is operating properly.

MR. DiCORCIA: Yes.

ASSEMBLYMAN SMITH: If you're saying the switch didn't work, or if you're saying that the operators made a judgment, or this is a routine, the normal and customary procedure, it's clear that that is a major area where Exxon and possibly all oil facilities could make serious improvement. If leak detection systems were regulated by the Federal government, perhaps this kind of thing wouldn't have occurred.

Is it safe to say that there are no Federal -- there are no pipelines at the Exxon Linden facility that are regulated by Federal regulations?

MR. DiCORCIA: Not to my knowledge.

ASSEMBLYMAN SMITH: Was that a conscious decision on the part of management to operate under that limit so that there would not be Federal regulation?

MR. DiCORCIA: No, no, not to my knowledge. I have some knowledge going way, way back, and I never heard that consideration, Chairman Smith.

ASSEMBLYMAN SMITH: Has an inspector from the Office of Pipeline Safety ever visited your site?

MR. DiCORCIA: I don't know if they have or not.

ASSEMBLYMAN SMITH: Would you get that answer from Mr. Racz?

MR. DiCORCIA: Certainly.

ASSEMBLYMAN SMITH: During his tenure?

MR. DiCORCIA: Certainly. I would say this: I've heard of discussions recently in the aftermath of this spill, between the Office of Pipeline Safety and our people; and Senator Lautenberg and I did a television appearance the other day on New Jersey Network News, in which that subject was discussed, and based on his perception of the regulatory situation, I would say your perception of it, Chairman Smith, is right.

ASSEMBLYMAN SMITH: The "Exxon Issue" bulletins, while this event was occurring, indicating the number of contractors and employees that were devoted to spill cleanup-- At one point that number exceeded over 600. Were all of the contractors and employees listed on your oil spill cleanup bulletins utilized specifically and only for oil cleanup purposes?

MR. DiCORCIA: It's my understanding that those were the people directly involved in all phases of it. Now, the management people involved were not included in that.

ASSEMBLYMAN SMITH: Of the people listed on those bulletins, none were utilized for routine maintenance?

MR. DiCORCIA: No. It's my understanding that was all phases of the oil spill cleanup.

ASSEMBLYMAN SMITH: Okay. Mr. Chairman, that concludes my questions. Should we go down the line?

SENATOR VAN WAGNER: Yeah. I just want to ask you a question on the deviation. Our records indicate that the deviation that is collaborated into the present detection system is seven gallons a minute. You mentioned four gallons a minute. In the briefing that was given to the Office of

Legislative Services by your staff, we were told seven gallons a minute.

MR. DiCORCIA: Could I clarify that?

SENATOR VAN WAGNER: I wish you would, yes.

MR. DiCORCIA: My figure was 10 barrels per hour, which I think is the same as seven gallons per minute, because there's 42 gallons in a barrel so that would be--

SENATOR VAN WAGNER: All right, so you're correcting the four gallons a minute.

MR. DiCORCIA: I never said four gallons a minute.

SENATOR VAN WAGNER: Okay, fine. I would like to move now to Assemblyman Cohen for the purpose of questioning.

ASSEMBLYMAN COHEN: What is the estimated cost which will be incurred by Exxon for cleanup, minimization of damage to the shore areas?

UNIDENTIFIED MEMBER OF AUDIENCE: Can you speak a little louder? We can't hear you back here.

ASSEMBLYMAN COHEN: What is the estimated cost to Exxon for the purposes of--

SENATOR VAN WAGNER: Neil, try your mike. It might work better than this one.

ASSEMBLYMAN COHEN: There are more mikes than--

SENATOR VAN WAGNER: One is for the record. You need both.

ASSEMBLYMAN COHEN: Can you hear me now?

UNIDENTIFIED MEMBERS OF AUDIENCE: No.

ASSEMBLYMAN COHEN: Is this part of your detection system?

SENATOR VAN WAGNER: This is normal hearing procedure for the Legislature. The mikes don't work.

ASSEMBLYMAN COHEN: Microphone detection system by Exxon. (laughter) What is the estimated cost to Exxon for purposes of cleanup and subsequent minimization to--

MR. DiCORCIA: I don't have an estimate, but as I indicated to Chairman Smith, the cost is in the millions. If

you said, "Come on, bracket it," of course this would be subject to SEC disclosure so all people, you know, would have access to the information, and I wouldn't want any of us to become insiders. But since I don't have an estimate, I would just guess it's on a scale between 1 million and 100 million. But that's just a guess.

ASSEMBLYMAN COHEN: One problem, is the cost going to be passed on to the consumer, ultimately?

MR. DiCORCIA: The costs of the cleanup, I would think, are ordinary expenses. What the tax treatment of that would be, would be subject to the tax regulations. What the consumer pays, as you know, is determined by market forces.

ASSEMBLYMAN COHEN: You mentioned ordinary business expenses. You get to write off the cost of the cleanup for corporate tax purposes. I'm speaking about whether or not as was indicated in the Valdez incident, that this cost is going to be passed on to the consumer; and that's troubling.

MR. DiCORCIA: It should be troubling. That was an allegation, but there is-- I don't think any person, given market conditions where they are, Assemblyman Cohen, could say, "If I have a cost, I could or couldn't pass it on to the consumer," because what the consumer pays is in the hands of the consumer. It's market forces that are determining the prices of the products.

ASSEMBLYMAN COHEN: Perhaps. One thing that continues to remain a mystery: You have 2200 gallons spilling out, rather rapidly permitted, and no one is able to detect anything except Linden residents. And there is intonation that visual contact by operators-- Basically, the impression that's coming to me is that there is a very minimal amount of oil that anyone could detect, yet 2200 are spilling out by the minute. Linden residents apparently are calling the Linden Fire Department, and sophisticated systems aren't producing -- and visual observations by members of your corporate entity are not

producing anything. That's disturbing. There's a piece that's missing here. That's disturbing.

MR. DiCORCIA: It is disturbing. And we should be disturbed. I could just tell you, though, what has been reported. And you need to check the recounting of events, not just with Exxon, but with the other personnel that were involved. I never heard who called the Linden Fire Department, whether that was a call that came from Staten Island or from where it came. In the meeting I was in, there was no one there who knew who called. But the truth is just what you said. Both the Linden Fire Department and the New Jersey Marine Police called at the plant in response to a call and that was investigated. And no oil was found where people presumed there might be a spill.

Then there was a Coast Guard report, and I don't know where the Coast Guard had gotten-- Maybe it was the same call or it might be a different call -- I don't know from where -- and an investigation was made, as I indicated, on the water. And there were Coast Guard personnel in the area. There was, undoubtedly, Assemblyman Cohen, in the wee hours of that morning, confusion. There was activity. There was oil seen around this tanker.

SENATOR VAN WAGNER: Excuse me, sir, if I might interrupt you for a minute. We've been asked if you would-- The microphone system is not working as you can see, and we've been asked by people in the back if you could just simply speak up.

MR. DiCORCIA: Okay.

SENATOR VAN WAGNER: Okay, so that they can hear what you're saying.

MR. DiCORCIA: And you had the situation where -- I'll just repeat -- where the response to the New Jersey Marine Police coming to the plant was inspection of one place in the plant where they thought there might be oil. It didn't show

anything. Then they went to the docks where, again, from experience, you would think that's the most likely place where there would be oil, and that search didn't reveal anything. This is in the wee hours of the morning.

Then the Coast Guard got a call. Again, I don't know from whom. It could have been the same call, but they certainly contacted us, and in response to that, another search was made; this time in a boat. And you may recall again, nothing was found on the Bayway side, or nothing significant enough to indicate that there was an oil spill. But on the other side, the Staten Island side, they observed this tanker tied up at terminal's docks and a pool of oil surrounding that tanker. Coast Guard personnel were on the scene, and either a fireboat or policeboat, also were on the scene.

That somehow, Assemblyman Cohen, you would have to presume, that the leak which was occurring near the Bayway side of the Arthur Kill, but in a portion of the pipeline which was discovered later by divers -- that is just about where the line enters the riverbed. It's on a slope coming down. It's well away from the channel. But it's on a slope coming down. It's in about seven or eight feet of water, and it's just entering the riverbed. Then it goes down about seven feet further and goes across, as I understand it, about seven feet below the riverbed. There is a break in the pipeline there, and it must have been gushing out at a very rapid rate.

Now, apparently, it either came to the surface and moved across due to wind or tidal action or maybe, more probably, somehow got moved in a direction towards Staten Island and maybe didn't surface until it got over there. I don't think we know. But the people on the surface who were looking did not-- Nobody had sufficiently positive indications to make a connection in their mind that there was a pipeline break.

ASSEMBLYMAN COHEN: Do you have any other facilities in New Jersey where you have underwater pipelines other than the facility that we're talking about today?

MR. DiCORCIA: I'm thinking about the Paulsboro terminal which I think was changing hands. I'm thinking about service stations. I'm thinking about the Buckeye pipeline, which I don't believe Exxon owns. Not to my knowledge, Assemblyman Cohen. This is it.

ASSEMBLYMAN COHEN: This leak detection system, is this the type of system that is in existence in Jersey? Is it also in existence in the other states where you have facilities?

MR. DiCORCIA: I don't think this system is on every pipeline, by any stretch of the-- This kind of automatic shutdown, with metering at two locations, I--

ASSEMBLYMAN COHEN: You're replacing this twelve-year-old system.

MR. DiCORCIA: Yes.

ASSEMBLYMAN COHEN: You've ordered it in October. It's supposed to be--

MR. DiCORCIA: Yes, yes, yes. I don't believe systems that sophisticated are, by any stretch of the imagination, on all pipelines. I do think that other systems of instrumentation do exist, and I think, like, the major pipelines probably rely more on a sequence of pressure indications.

ASSEMBLYMAN COHEN: What I'd like to know is whether in other states-- The system that you are now disbanding, whether this system existed at other facilities, in other states, and whether you had problems with it at those facilities, and whether you have made corrections at those other facilities?

MR. DiCORCIA: Yes, I'm going to answer-- I don't know for sure, but I think all the answers are, "No."

ASSEMBLYMAN COHEN: I'm sorry. I didn't hear you.

MR. DiCORCIA: I said, I don't know for sure, but I think all the answers, though, are, "No." I don't think this kind of a system is at all typical. And I don't think, since they haven't -- they don't exist, I don't think that there was any general experience with it. It is, at least to my knowledge, Assemblyman Cohen, a kind of -- at least, intention-wise, design-wise -- intended to be a very good system with very rigorous control.

ASSEMBLYMAN COHEN: What steps are being taken to deal with any ecological damage?

MR. DiCORCIA: Well, this is the subject, as you know, of discussions among the experts. And they're in the U.S. EPA right now: the New Jersey Department of Environmental Protection; the New York Department of Environmental Conservation in New York City; the EPA; the Fish and Wildlife Service; the NOAH, the National Oceanographic and Atmospheric Administration; and possibly, the Coast Guard, I'm not sure. Those discussions involving the experts are ongoing, and they're trying to reach an agreement on studies which Exxon would fund, assessing both any short-term impacts and long-term impacts.

ASSEMBLYMAN COHEN: How long do you think that will take--

MR. DiCORCIA: I don't know.

ASSEMBLYMAN COHEN: --because the damage is ongoing, and I don't know how long the study process is going to be. I may be moved at that point.

MR. DiCORCIA: Well, we already have gotten advice from the experts involved as to what we should be doing, and that is being done; that is, we've been asked not to walk or operated on the marshy areas. We've been asked to place sorbent booms and other kinds of barriers on the water, in the event that with rain and snow, any oil is washed off of the sensitive grasses or the sensitive mud flats, would be absorbed

on the water and would not return with the tide. Or oil from any source, from whatever source might come from the seaward side or the river side, would also be stopped.

ASSEMBLYMAN COHEN: How long will the equipment stay there?

MR. DiCORCIA: I expect it will stay there until birds return. And that has to be constantly tended.

ASSEMBLYMAN COHEN: I would like, if you can, to provide some information to staff concerning whether or not these costs are going to be passed along? You talked in generalities, and costs can be hidden in terms of business expenses. It's a sad commentary when every time a major catastrophe occurs, whether there is negligence or no negligence, that ultimately that is borne by our environment, and it's ultimately borne by our consumer. That seems to be patently unfair.

MR. DiCORCIA: I agree with the concerns, but could I address just a couple of them? One, with regard to damages-- I'm not certain of how the tax code treats damages. That's one category. With regard to the expenses of cleaning up the oil, I'm fairly certain that that's a business expense and the tax code would treat that another way.

But with regard to your question on pricing, Assemblyman Cohen, I think we can get back to you with a more official answer, but I think the answer has to be -- and certainly I would think it would be -- that the prices are being set in the marketplace.

ASSEMBLYMAN COHEN: No, that's a probably a hearing for another day. But, I appreciate your responses. Thank you.

ASSEMBLYMAN SMITH: Assemblyman Albohn.

ASSEMBLYMAN ALBOHN: I have a rather limited number of questions. They revolve around two things. First of all, I think we have a strong interest in the cause of the problem. That has not yet been determined. I think once we know the

cause, we'll know a lot better what should or should not have been done. The leak detection system is simply a means of determining that a problem exists, and I think the more serious problems is how that pipeline was damaged so that it could spill oil at the rate that it was apparently spilled at.

Now, to the best of my knowledge, it was not a pipeline failure, per se. This is a 12-inch diameter pipe of what wall thickness, for example?

MR. DiCORCIA: In the vicinity of a half an inch.

ASSEMBLYMAN ALBOHN: Okay.

MR. DiCORCIA: Plus or minus.

ASSEMBLYMAN ALBOHN: So, it would take a rather substantial blow or earth movement or whatever before that pipe could possibly fail of itself. So, you know, that is the real source of the problem, because we have pipelines all over the world of this size or larger -- much larger, and pipeline leakages, as such, are not known to be a serious environmental problem. The problem we have here, I think, is a technical problem, an engineering of the kind of leak detection system that was used.

Now, there's no system that I know of, that detects leaks, per se. This probably detects differences in flow. So, therefore, it amounts to two flow meters reading differentially as to the rate of flow passing between each of two points.

The capacity of this 12-inch pipeline is normally what, in terms of gallons per minutes flowing, or barrels per minute flowing?

MR. DiCORCIA: The flow rates can range upwards of 4000 barrels an hour.

ASSEMBLYMAN ALBOHN: Four thousand barrels per hour and upwards.

MR. DiCORCIA: Well, up to about that much.

ASSEMBLYMAN ALBOHN: Up to, up to.

MR. DiCORCIA: The flows could be less than that depending upon what other shipments are coming off the same system. If a barge is being loaded at the same time the transfer is going to one plant or the other, why that, of course, would be diverted and the flow would be less through the pipelines.

But with both pumps on, as I understand, a main pump and a booster pump, and the transfer going to one pump or the other, it could be 4000 or a little more than 4000 barrels an hour.

ASSEMBLYMAN ALBOHN: The leak detection system that was used, did that read only in terms of differences, or did it read in rates of flow at each of the two points?

MR. DiCORCIA: They're displacement meters, so they're actually measuring the flow. But the system is geared just as you've describe it, to operate on a differential. So that there is some kind of a digital counting that's going on at each meter. Now, these meters are not sufficiently precise to be used for custody transfer, but they're both-- They're identical meters, and it's the differential between them that is-- The signals are transmitted on a telephone line, and then, through a comparitor -- a digital comparitor -- if the deviation is in either direction, positive or negative, accumulates to as much as ten barrels in an hour the system automatically shuts down valves -- motor operated valves at each end of the pipeline.

You're entirely correct. Probably it's better described as an automatic shutdown system than a leak detection system, because a leak is something that could cause it to shut down, but other things could cause it to shut down. If for some reason we had a diversion of flow that shouldn't have occurred, why it would totalize some difference and tell us something has gone wrong.

It's just as you've described: two meters measuring flow rate, and then a comparison of the two flows through some kind of a comparitor, signals transmitted on this telephone line. And then the deviation, if it accumulates positive or negative, when it reaches ten, signals are then sent to shut down both motor operated valves in both plants.

ASSEMBLYMAN ALBOHN: These meters, I think you've described them, essentially, as positive displacement types of meters?

MR. DiCORCIA: Yes. That's my understanding. But they're not custody transfer meters.

ASSEMBLYMAN ALBOHN: Are they vein types of meters with veins inserted in the lines? Are they orifice meters?

MR. DiCORCIA: No, I believe they're vein, as you described.

ASSEMBLYMAN ALBOHN: Okay, and those veins then are transmitting an electronic signal. The velocity of the vein depends upon the velocity of the fluid and so on. So, in any of these systems you can usually adjust the sensitivity of the reading.

MR. DiCORCIA: Yes, that's correct.

ASSEMBLYMAN ALBOHN: Was the sensitivity settings of these meters normally set so high that it really exceeded the readability of the meters?

MR. DiCORCIA: The history on that is that, at one time they operated with a deviation threshold -- if you'll allow me to use that word -- of 20 barrels an hour. At some time during the life of this system a decision was made to make that deviation less, recognizing, the smaller the deviation, you know, the more we're going to try to find out if something is wrong, and it was operated at 10 barrels an hour for some time.

ASSEMBLYMAN ALBOHN: Now, the rate of leakage that actually occurred was something like -- someone calculated around 2000 gallons a minute?

MR. DiCORCIA: Oh, it could have been 1000 to 2000 barrels an hour, that much. Yeah, right, off and on.

ASSEMBLYMAN ALBOHN: Yeah. So this far exceeded the signal problems. Now, was that sensitivity adjustable by the operators of the meters?

MR. DiCORCIA: No, no. That would require an instrument technician kind of adjustment. That was not something that you could adjust on the board.

ASSEMBLYMAN ALBOHN: Okay. So then it was deliberately set so high. My concern is that the sensitivity was set so high that it was bound to give spurious readings periodically from external sources.

MR. DiCORCIA: Well, it's a judgment. I guess, if it were set at 20 or 30, there certainly could be concern that we could have leaks of 15 and 20 that wouldn't be detected by that system. So I think it was the judgment of measurement, relative measurement, tolerances, Assemblyman. And I think that this is where you're getting into, you know, beyond my technical capability. But I think, if you make-- If you're looking at tolerances, you try to make a judgment as to what's the minimum deviation that you can operate for, you know, reasonable lengths of time, to where the deviations are not always being exceeded. At one time, they had that at 20, and apparently that was reduced to 10 for some considerable period of time.

Now they would have these shutdowns occur, but as I indicated, they could be as infrequently as once a month, the operator said, or they could be once a week. And he said, when asked, "Well, kind of tell me an average, if you have to say an average?" He'd say, "Well, if I had to say an average," he said, "well, maybe once a week."

Well, you know, that kind of inconvenience was sort of internalized. It was automatic shutdown. There were not evidences of leaks and the system was continued to be used.

Now, you could say that, "Well, that's not a satisfactory operation," but it's not real bad either, in the sense that it was erring on the side of giving us an indication even when there's not a leak. Hopefully, it would have given us a very good indication if there were a leak.

So, I think the intent there, the larger pattern that was used, is what I call a system. And the system is defined as sort of an orderly arrangement of components and workings. That was good. Where the thing glitches and where we have egg on our face and all of this regret and problem and harm, is that when there was a leak, the system, as you observed, should have been very rapid in: a) shutting down, or b) reshutting down when questioned. When 10 barrels was zero to zero, we should have gotten a 10-barrel deviation in a very short period of time.

There's at least one malfunction, and I'm going to guess that if they keep studying they'll find even others, because the system should have been screaming. The operator, by the way, doesn't have to intervene. He doesn't have to press a button. The valves close automatically. It should have made that thing come down very promptly and stay down.

And now, in hindsight, we can see that switch. Okay, did anybody know that switch was defective? Not to my knowledge. We can see in hindsight with diagnostics now there's zeroed in that there's a defective switch, and if they keep studying it long enough, they might find other problems in the electronics or in the telemetry.

But they can see that right now and they-- The preliminary investigation said that they can see where that mechanical malfunction in that switch -- and that's a reset switch -- could keep the deviation, in effect, reset so that when a deviation was coming in, it didn't come through.

ASSEMBLYMAN ALBOHN: My problem is that the very small deviations might be normal because of leakage through valves

into other segments of the piping system, and therefore, because of those normal leakages -- you might say, into other segments of the system that branch off the main line -- perhaps the deviation should not be set so low as not to allow for such leakages. Because the deviation you have it set for amounts to the kind of flow you would get through, perhaps, one quarter-inch hole in the pipe.

MR. DiCORCIA: I'd have to--

ASSEMBLYMAN ALBOHN: Or, one quarter-inch hole in a valve connected to the pipe.

MR. DiCORCIA: Well, which of course we'd want to know about if it occurred. I'd have to let the experts answer that. Certainly the experts felt by their actions that this was a reasonable tolerance. You know, regulatory oversight could say, "Why was it ten barrels? You know, you could have had a five barrel leak, and not detected it." And I'd have to say, "That's right." We would have reached the limitation of the system. So, I think that there's obviously a trade-off and a compromise as to trying to get it as low as possible to be sure that we know what's going on, and not so high -- but not so low, so close to zero, that it was a meaningless signal.

ASSEMBLYMAN ALBOHN: It sounds to me as though the signals were, essentially, meaningless because it was set too low, and then when you had a really catastrophic occurrence, no one believed the results anyway because of the previous, not necessarily malfunctions, but interruptions caused by other types of leakage.

MR. DiCORCIA: Had we not had the malfunctions, we would not have had that mind-set, because it would have repeated very promptly.

ASSEMBLYMAN ALBOHN: And the question remains as to what exactly that malfunction was, in meter A or meter B or--

MR. DiCORCIA: Where it comes to the control panel at Bayway, there's a panel that has these deviation counters, one

for positive, one for negative on each of the three pipelines. Then there are reset switches on those, and then there are some other switches down below. They can see on the pipeline in question, one of the reset switches is not mechanically functioning properly to the point where they believe it's keeping the deviation counter in a reset position.

ASSEMBLYMAN ALBOHN: In other words, it sounds very much as though it was operator error as much as it was instrument malfunction.

MR. DiCORCIA: Well, I think, that in hindsight all of us can see things, starting with me and right on down. We can all see things that we can do better, perhaps should have done better, and want to do better.

I think, though, in the minds of the people who were working, they certainly would have wanted to respond to anything like a leak. They just didn't make the connection.

SENATOR VAN WAGNER: Could I ask you--

MR. DiCORCIA: Another problem is the reliability on this system. You know, we went for--

SENATOR VAN WAGNER: Excuse me, I--

MR. DiCORCIA: --just many, many years without any problems.

SENATOR VAN WAGNER: Excuse me. Assemblyman, could I just, based on some of the questions that Mr. Albohn has asked you-- Do you maintain a written record on the maintenance operation of the pipeline that might show malfunction, changes in sensitivity deviations, reports on defective switches, etc.?

MR. DiCORCIA: Yes, there would be some written records of problems of a mechanical nature on this or any system.

SENATOR VAN WAGNER: Would that record also reflect requests for a new system?

MR. DiCORCIA: I don't think it's that kind of a record, no.

SENATOR VAN WAGNER: Thank you.

ASSEMBLYMAN ALBOHN: I have nothing further.

SENATOR VAN WAGNER: We have a couple of follow-up questions. I'd like to just, if I might, introduce also, at my far left, Senator Raymond Lesniak in whose district the Bayway Refinery is located, and Assemblywoman Joann Smith, who is sitting in the back of the room, is also here. I believe Assemblyman Kyrillos is somewhere here also.

A follow-up question: The flow meters are at each end of the pipe, is that correct?

MR. DiCORCIA: Yes, sir.

SENATOR VAN WAGNER: Once the leak detection system shuts down the transfer of the product, does the procedure, at all, state that the manager at Bayway and Linden talk to the manager in Bayonne to confirm what the flow is before it's reset?

MR. DiCORCIA: To my knowledge, there was no such written procedure.

SENATOR VAN WAGNER: There is no such written procedure?

MR. DiCORCIA: No.

SENATOR VAN WAGNER: So I would assume since there is no written procedure to confirm the flow before reset, there is no further contact after reset in order to check the accuracy?

MR. DiCORCIA: There are routine telephone calls, as I understand it, but I'm not aware of a written procedure on that kind of a check that you're referring to at both plants in the event of an automatic shutdown.

SENATOR VAN WAGNER: Has there ever been any discussion to your knowledge as to whether or not, given the defective leak detection of this system, that flow meters should be relocated at a location other than where they are located now, so that actual flows could be compared -- so that, perhaps, even given the fact that you had a defective system,

you would have some jerry-rigged manner, let's say, of finding out whether or not it was a cry wolf situation or real?

MR. DiCORCIA: Senator, I don't think the location of the meters is a problem or is something that would be changed. I think it would be appropriate for the meters to be as close to the place where the oil is leaving and as close to where the oil is arriving so as to have as much of the pipeline subjected to this kind of scrutiny. I don't think it would be very good to have them very close together, because then the rest of the pipeline wouldn't be subjected to the scrutiny.

SENATOR VAN WAGNER: Well, I wasn't suggesting that they be closer together or further apart. I'm just asking whether or not, given the fact that over a 12-year period you've already acknowledged that you have a defective leak detection system, whether any discussion at all at any level of management took place regarding a system that was obviously defective, and some recommendations were made other than replacement?

MR. DiCORCIA: Yes. There was, as I indicated, troubleshooting discussions with the telephone company, I believe--

SENATOR VAN WAGNER: Is there record of this?

MR. DiCORCIA: Yes, I believe so. Yes.

SENATOR VAN WAGNER: Would you supply the Committee with a record of it?

MR. DiCORCIA: Yes, because this has been furnished to the agencies, but we certainly could furnish it to the Committee also.

SENATOR VAN WAGNER: To your knowledge, the pipeline system that you described, do you regard that as a company -- or do you, personally, regard that as interstate or intrastate pipeline?

MR. DiCORCIA: I have to give kind of long, convoluted answer to that, and a lawyer would have to give you the final

confirmation. The pipeline, obviously, runs between two states. It does it twice. So that, that would make you think that it is an interstate pipeline. But the question that Chairman Smith was getting at was that the regulatory regime of that pipeline, apparently is not one that has it in interstate commerce. Apparently, the laws and regulations provide for that in some fashion, and I--

It's been explained to me, that where there is a pipeline between two facilities of the same operator and there's no common carriage between, in effect, it's an extension of the same plant; that somehow, that is not considered to be an interstate commerce and subject to the Federal Energy Regulatory Commission.

SENATOR VAN WAGNER: Mr. DiCorcia, from what I read in the paper concerning the actions of the company after this leak, one of the statements I read indicated that the company hired a Vice President in Charge of Environmental Management. Could you tell us who that person is?

MR. DiCORCIA: That's Edwin J. Hess. H-E-S-S. I believe he assumed his duties on January 15.

SENATOR VAN WAGNER: Was that in response to the situation that took place?

MR. DiCORCIA: I don't know. I think something like that would involve considerations at the highest corporate level, and I'm sure they had a lot of considerations in mind when they did that, but I don't know what the specific thought process was.

SENATOR VAN WAGNER: Is he still operating in the capacity of Environmental Management, Vice President in Charge?

MR. DiCORCIA: Yes. He just assumed his duties on January 15.

SENATOR VAN WAGNER: My understanding -- and correct me if I'm wrong -- is this man is about to retire. Is that true?

MR. DiCORCIA: No, no, no. No, I'm -- DiCorcia--

SENATOR VAN WAGNER: Oh, you're about to retire?

MR. DiCORCIA: I'm the Vice President of Refining. My retirement was a personal decision of mine late last year. And my replacement was announced on January 3. It just was picked up in the news media here more recently.

SENATOR VAN WAGNER: Okay. I'm glad you cleared that up. So, that was a coincidence rather than a-- Okay. I believe Assemblyman Smith has a couple of follow-up questions. After he completes those questions, we're going to take a short 15-minute break. We would appreciate it if you stay, sir, in case there are other questions, and then we will resume the hearing with the witnesses that have asked to testify. Mr. Smith?

ASSEMBLYMAN SMITH: Three brief questions concerning corporate attitudes and motivation. Number one, in the Alaska situation, the Governor and the local officials, at least according the news reports, were not satisfied with the degree of cleanup of the spill. Do we have a pledge from Exxon, today, that they will clean up this spill to the satisfaction of the State of New Jersey?

MR. DiCORCIA: This spill?

ASSEMBLYMAN SMITH: This spill, yes.

MR. DiCORCIA: I believe this spill, in terms of the oil on the water, has been cleaned up and we are working with the State of New Jersey and New York regarding any of the longer term work that needs to be done.

ASSEMBLYMAN SMITH: Yeah. That's not a yes or a no.

MR. DiCORCIA: Well, it's pretty good, though, Chairman Smith because I think--

ASSEMBLYMAN SMITH: Well, it's not really. It's not the kind of answer I'm looking for.

MR. DiCORCIA: No. Well, could I ask you this?

ASSEMBLYMAN SMITH: Are you telling me that you will clean it up to the desires of the State of New Jersey, at least on the New Jersey side? I can't speak for the State of New York, but I'd hope you'd treat them the same way.

MR. DiCORCIA: Chairman Smith, now try to be a little bit fair to me on this.

ASSEMBLYMAN SMITH: I try to be fair at all times.

MR. DiCORCIA: Does the State of New Jersey know what its requirements are?

ASSEMBLYMAN SMITH: I would think the Department of Environmental Protection could give you very strong guidelines as to what is desired.

MR. DiCORCIA: And we're in direct contact with that Department. That's certainly our desire. Now, you understand, whenever a person like me is subjected to a question that has a tone of an open ended commitment to it, the person is always going to have to try to close off some little bit of the end. The bulk--

ASSEMBLYMAN SMITH: So the answer is, "No."

MR. DiCORCIA: No, the answer is, "Probably yes," and I cite this as an indication, one, what we've accomplished so far, Chairman Smith. What is the independent assessment of what we've done? Is it good or bad?

ASSEMBLYMAN SMITH: Let me stop you there, because I know that Chairman Van Wagner would like to take a break very shortly. It is true that there are no objective Federal standards with regard to oil spill cleanups in terms of the degree to which the environment has to be left. Is that true?

MR. DiCORCIA: I'm not aware of them.

ASSEMBLYMAN SMITH: All right. I'm not aware of them as well, and the staff is not. It appears that that is the law, that there is no objective standard as to how clean the environment should be after the spill cleanup has occurred. Do you think that that is something we should recommend to the

Federal government; that national objective standards should be adopted for oil spill cleanups, so that a company, like yourself, knows that at the end of this cleanup process what is or is not acceptable?

MR. DiCORCIA: Yes.

ASSEMBLYMAN SMITH: Thank you. That's good.

SENATOR VAN WAGNER: Very good. (laughter)

ASSEMBLYMAN SMITH: Perfect.

MR. DiCORCIA: I would like to add something, but I know we don't have time.

ASSEMBLYMAN SMITH: Secondary, on motivation: Assemblyman Cohen asked the question about the cost of the cleanup, how that's treated for tax purposes.

MR. DiCORCIA: Yes.

ASSEMBLYMAN SMITH: And I believe your answer was that that is a cost of doing business. So in other words--

MR. DiCORCIA: The cost of the clean-up, I believe, is treated that way.

ASSEMBLYMAN SMITH: Okay. In other words, it's an above the line. Your adjusted--

MR. DiCORCIA: Yes, that's my understanding. Right.

ASSEMBLYMAN SMITH: It's above the line, your adjusted gross income, upon which you pay taxes. This is a deduction for those people who do their own returns.

MR. DiCORCIA: Right. Sure. The money went out. The money went out.

ASSEMBLYMAN SMITH: Well, this is deductible.

MR. DiCORCIA: It went out.

ASSEMBLYMAN SMITH: Do you think there would be greater motivation on the part of corporate America if this was not deductible?

MR. DiCORCIA: Yeah, you-- I think that--

ASSEMBLYMAN SMITH: If the costs of the cleanup were not deductible--

MR. DiCORCIA: Sure.

ASSEMBLYMAN SMITH: --and resulted in a net decrease in corporate property.

MR. DiCORCIA: Sure, there would be incentives. The financial incentives would be greater.

ASSEMBLYMAN SMITH: Do you think we should make that recommendation to the Federal government?

MR. DiCORCIA: No.

ASSEMBLYMAN SMITH: Why not?

MR. DiCORCIA: Because I don't think the tax code should be used that way. You know, you asked my opinion and I'm giving it to you.

ASSEMBLYMAN SMITH: Sure.

MR. DiCORCIA: Yes, the tax code can be used to double or triple the incentive to do anything, and it's a perfectly legitimate area of public policy, and if it were done, it would probably have some of the effect that you indicate. I think, though, that we want to be careful that in our justifiable displeasure, outrage at these incidents, that we don't lose sight of what we're doing. I don't think their objective is to destroy our manufacturing infrastructure, which is not a risk activity.

ASSEMBLYMAN SMITH: It's to prevent oil spills.

MR. DiCORCIA: To the extent that is humanly technologically feasible, we share that objective.

ASSEMBLYMAN SMITH: Well, I think, personally-- You gave your opinion.

MR. DiCORCIA: Yes.

ASSEMBLYMAN SMITH: Personally, I think, that we should provide that financial disincentive for corporations to use this as a deduction, but rather to make it a net decrease in profits. I think that would radically change the way in which corporations in this country treat oil spill prevention, protection, and cleanups.

Lastly, recently The Wall Street Journal had an article about what's called "corporate deniability." The article, in effect -- in 25 words or less -- said that corporate lawyers are now telling top management that you want to have within your corporate structure a way in which you are not told of problems at lower levels because if you are told and you don't do something about it, you may be incurring criminal liability or civil liability for your lack of action.

Number one, has there ever been that kind of a discussion at Exxon? Is there an unwritten corporate policy to follow that particular suggestion within the Exxon corporate structure?

MR. DiCORCIA: That advice has never been given to me, and I've been with Exxon for over 33 years.

ASSEMBLYMAN SMITH: Okay. Thank you.

SENATOR VAN WAGNER: The Committee will take a short 10- to 15-minute break. Mr. DiCorcia, I would ask if you would please remain, in the event that we have some further questions.

MR. DiCORCIA: Yes.

SENATOR VAN WAGNER: Thank you.

(RECESS)

AFTER RECESS:

SENATOR VAN WAGNER: The Committee is back in session. If you would all please take your seats, we'd appreciate it. Everyone please sit, so we can get started -- resume, I should say.

Could we ask everyone to please be seated? We will now move to the elected officials who are here today to testify. I'd like to call first -- if he's still present --

the Senator from this district, Senator Larry Weiss. Is Senator Weiss still here? (no response) Not seeing Senator Weiss in the room -- he was here earlier -- I'll ask now for Senator Raymond Lesniak, in whose district the Bayway Refinery is located. Would you please take the witness chair? Mr. DiCorcia would you relinquish the witness chair to Senator Lesniak?

MR. DiCORCIA: Yes.

S E N A T O R R A Y M O N D L E S N I A K: I need more room. Do you want a copy of my prepared report?

SENATOR VAN WAGNER: Yes, thank you.

SENATOR LESNIAK: Thank you, Mr. Chairman. Senators and Assemblymen: I can't say that I enjoy being here. Unfortunately, I'm a veteran of hazardous substances discharges occurring in my district, and every single time we have one of these, it seems like it results in additional legislation that we have to sponsor to ensure corporate responsibility. It's something that we shouldn't have to do, but it's obvious that we do.

It seems like there has been a moratorium in terms of my district, but this latest incident, hopefully, is not a revision of the scenes that we've seen in the past.

I just want to make one general comment before I get into some specific legislative proposals. That is, I still think, today, after sitting here listening to the testimony from Mr. DiCorcia of Exxon, that Exxon is missing the boat. That they still don't get the point. I heard Mr. DiCorcia say that there wasn't sufficient positive information that there was a leak. There wasn't sufficient positive information that there was a leak. I think his approach is all wrong. The approach should be whether there's sufficient positive information that there's no leak. Instead of presuming -- it seems like the systems in place presume that there was no leak -- that there was a false activation of the system, there should have been a presumption that there was a leak.

If you start with a presumption that there is a leak, then your actions subsequent to that are certainly more careful and more thorough than if you start with the presumption that it's another false alarm. The customary procedures that Exxon followed throughout in terms of this system were grossly inaccurate. It seemed, again, that they're designed to check false alarms, rather than to detect whether, in fact, there was a leak.

When I was in college studying chemical engineering, I interviewed for a job at a research chemical company, doing research. I was told by the CEO that the company allowed a certain number of mistakes. That number is zero. Now that was a long time ago. It seemed like Exxon, in this case, allowed three mistakes. I mean, the system gave three warnings within a matter of hours. The second warning -- if not the first -- should have triggered a complete shutdown and a thorough procedure to check out the entire system; not just a restarting of the system to determine whether, in fact, there was a leak.

My legislative proposal will be -- and that we're working on right now -- is that: number one, these leak detection systems have to be certified by the State. We can't rely on corporate responsibility to be entrusted with such a serious responsibility. The procedures to be followed upon activation of the system, have to be certified by the State for the same reasons. We have to require reporting of activation, so that when you have a system that is constantly going haywire, the State is going to be notified that there is a problem here. We're going to have to have a penalty procedure that may, in fact, have to be criminal in nature for a failure to follow these procedures.

It appears to me that while we may be somewhat inhibited by Federal preemption -- on a Federal preemption that is just horrible in its nature -- we certainly must-- Mr. Chairman, I'm sure you and your Committee will call on Congress to do what's necessary in that regard.

It seems like we have enough information that this is arguably an intrastate system. For these types of systems, we take action, and should take action. Again, unfortunately, it seems that the State is going to have to come in and ensure that these systems are in place, that they are appropriate, and that they are administered correctly. If they're not, sufficient enough penalties, including criminal penalties, are involved.

SENATOR VAN WAGNER: Thank you, Senator. Are there any questions from the Committee? (no response) Senator, I just wanted-- I don't know whether it's a question or an editorial comment. You're obviously familiar with the Clean Water Enforcement Act, that we in the Senate, passed last session. In your view -- and I ask you this hypothetically -- would that Act contain the type of criminal penalties that you're referring to in your comments?

SENATOR LESNIAK: In nature, yes. I mean, that's exactly what I'm talking about. I'm not sure whether in terms of specifics it's specific enough to apply to the specific circumstances that we have here right now, in terms of failure to follow certain procedures that should be in place. But in general -- and that's, of course, as you know as the sponsor of that Act -- that provision of your Act was fiercely opposed and probably was one of the reasons why it never got through the other house in a manner that it should have. But those are exactly the types of penalties that we need in all of these areas dealing with hazardous substances. Absolutely.

SENATOR VAN WAGNER: Thank you.

SENATOR LESNIAK: Thank you, Mr. Chairman.

SENATOR VAN WAGNER: Thank you, Senator. I think Senator Weiss has now returned. We called you earlier. I would like to call on now, Senator Laurence Weiss of this district, for any remarks that he might want to make.

Senator, you'll have to excuse me, I'm going to ask Mr. Cohen if he would just conduct the hearing. I have an urgent phone call which I have to take.

S E N A T O R L A U R E N C E S. W E I S S: Oh, okay. Thank you, Mr. Chairman.

SENATOR VAN WAGNER: I'm sorry, Senator.

ASSEMBLYMAN COHEN: Senator Weiss?

SENATOR WEISS: Thank you very much. Linden is just north if this area, as all of us know. It's not in my district particularly, but it does affect my district. It affects all of Kill Van Kull. I'll tell you, I've lived in this area all of my life, and I swam in that river when it was much more contaminated than it is today. I suppose it was a health hazard, but somehow the people of my generation survived it and we're here.

In the last 10 years or so, the river itself has become somewhat acceptable from an environmental point of view. I don't really know how much damage the Exxon spill contributed to the downgrading of that river as far as the environmental parameters are concerned. So, I'm going to talk about this thing in just a little different manner.

It occurred to me while I listened to the testimony of Mr. DiCorcia, that, maybe the problem was between -- the problem was-- Let me strike the word "maybe"; that the problem was between that point in Linden or Bayway, and that point in Bayonne, the other end of the pipeline.

Somewhere along that pipeline-- I think it has been acknowledged that it was not too far from shore on the New Jersey side -- in seven feet of water -- that there is this crack in the pipe. If you look at it-- I think Mr. Albohn started to address it earlier today. If you look at it, you have to wonder what the people who were on duty that night -- I think it was January 1 -- were really doing? It would seem to me, from a practical point of view, that if the system did trip

and shut off accidentally once a week, once a month, as been testified to here, or maybe at sometime more distant than that-- If it did happen three times in four hours, that someone was, perhaps, not thinking, not doing his duty, or, maybe, not even present in an area where he should have been present.

Again, as a practical point of view, or a point of view of experience, if you're in an area such as that pump house -- I think it was a pump house where all of the controls are -- that certainly, someone would have a keen enough ear to hear that there's less pressure on the pump; they're not working as hard. There must be just something wrong with the system where you ought to take just another look at it instead of just arbitrarily tripping the switch. Or you get on the telephone and call Bayonne, and say, "Hey fellas, what's happening to your inventory up there?"

There may be many branches to this pipeline, but I doubt if they were all working at the same time. So they should be-- Maybe we'll have to pursue that. But there should be some way of detecting-- There should have been some way for the person who was operating the switch at the Linden end, to detect, by only his native knowledge if nothing else, that there was a difference in the system. A 10-foot gash in a pipe putting out 2200 gallons a minute would certainly not indicate that everything is all right. He's losing 220 gallons per minute. If he went to pressure that line, somewhere in that area there should have been an indication to him; whether it's just an experience indication, a sound indication or perhaps, even a call from the other end of the line saying, "Hey, we're not getting oil here. The pump sounds different. Let me go out and check the inventory. Let me go out and check the sending inventory." All of these pieces, at least to my mind, are missing in this situation.

I think that someone may have been, that evening or that night, somewhat negligent. I think it's a matter of training and responsibility. I do feel that, certainly, somewhere in there-- I'm not really sure where; I haven't seen the pipeline-- I do know of its existence and the existence of many others in the area, but I haven't seen it. It bothers me in that a company that hires responsible people -- and I know that they do -- would have this occur without the proper supervision being around, or be available that night. The thing that bothers me most about this thing is, why no one seemed to check the volume production at one end and the volume depletion at the other.

In 12 years of experience -- and I'll go back to that -- I think that I will have said that I want to say at the moment. In 12 years of experience with that control being so sensitive as to be able to detect a drop of -- is it seven gallons a minute; I think that's what I understood -- certainly someone, somewhere along the line, should have recognized that, maybe, maybe, the setting on that indicator was just too fine. Then if they, perhaps, would have set it at 20, maybe, the thing wouldn't have tripped. Maybe if they had set it at 20, instead of seven gallons, perhaps, if it did trip, they would then have been better able to recognize that there is something wrong, and this tragedy would not have occurred.

As someone mentioned before, and I would just like to add to that-- Someone mentioned about the tax code. Will this be a business write-off? Will it be above the line? Will it be below the line? Whatever the indication is; yes, it will be above the line.

I don't think that the tax code should enter into it at this point. I think that's a matter of fines. I think that's the part that ought to be pursued. There are too many things -- too many parameters -- involved in changing a tax code. But the fine situation makes up for the difference. I

think that may be a difference in, possibly doing business here or somewhere else.

ASSEMBLYMAN COHEN: Senator, just in that regard, they can still pass the fines along. It's almost a never-- I don't expect--

SENATOR WEISS: Well, they can write it off too. But at least with fines-- I'm not really sure if they can pass the fines along. I'm not sure.

ASSEMBLYMAN COHEN: I would imagine that Mr. DiCorcia can explain--

SENATOR WEISS: In many instances they can't write the fines off.

ASSEMBLYMAN COHEN: But they can increase-- What they'll do is increase all of the product cost.

SENATOR WEISS: They could do anything they want over a long period of time. I agree with you. Sure, that's the way we do business in this country. I don't know of a better way of doing it -- I don't mean by passing the fines along -- I mean about generally doing business. But certainly, maybe the fines ought to be increased.

Companies such as Exxon and other companies of that magnitude, do have problems. They have a lot of stockholders. The stockholders don't get too happy about these things. As a matter of fact, most of them get very unhappy. A lot of them are environmentalists, other business people with varied lifestyles, and so on. But, I can't think of a single stockholder in any company that would be overly fond of having to see his dividend being paid out in a fine. So, I'm sure that Exxon has heard from many of their stockholders. I'm sure there's going to be a never ending thing, at least until all of these situations are cleared up.

If you have any other questions for me?

SENATOR VAN WAGNER: Thank you, Senator. No, I just wanted to note, though, that I concur with your concern about

what appears to be a lack of supervision over this whole incident. But I thank you for coming today and giving us the benefit of your--

SENATOR WEISS: I thank you, sir, for the invitation.

SENATOR VAN WAGNER: Thank you, Senator. I'd like to call now, also from the district that we're conducting this hearing in, Assemblyman James McGreevey. I should also mention that Assemblyman Otlowski is giving his address as Mayor of the City of Perth Amboy at this moment, but has submitted for the record, his comments. I'd just like the record to note that. Assemblyman McGreevey?

A S S E M B L Y M A N J A M E S E. M c G R E E V E Y: Thanks, Senator. On behalf of Assemblyman Otlowski and myself, I would just like to thank yourself, Assemblyman Smith, and all of the members of the Committee for taking the time to address this important issue.

On behalf of Mayor DeMarino and the Woodbridge Council, we would all like to thank you for taking the time to come to Woodbridge today.

Just succinctly, over the last decade we're well aware of the fact of the Clean Water Act and what that has attempted to do, and the relatively slight improvement of the ecology of the Arthur Kill. I don't feel there's a need to reiterate the problems of the integrity of the Exxon pipeline leak detection system. Clearly, it bordered on being nonexistent. I think, clearly, the significant failure of the Exxon pipeline leak detection system was a critical factor in the leaks on January 1 and 2.

What I would like to address now -- if I could, succinctly -- is a couple of points that I think are necessary that the State exhibit in the wake of this failure, greater responsibility for.

Initially, I would like to address the question-- Obviously, we are aware of the fact that the Hazardous Liquid

Pipeline Safety Act of 19[illegible] is preemptive in nature, but I think it points to the fact in this particular instance-- We're well aware of the fact that this particular pipeline begins in New Jersey while it transverses through New York and ends up in New Jersey. I think there would be an argument that could be made that New Jersey obviously has a degree of heightened interest in this. Arguably, we would say this is an intrastate pipeline, and therefore, merits New Jersey's closest scrutiny.

There are a couple of points that I think are important that I think New Jersey should embark upon -- if at all possible, as soon as you see fit, Mr. Chairman.

What is particularly disturbing is there seems to be no accurate measure of the number of petroleum and other hazardous substance pipelines that are presently located within New Jersey's boundaries. It doesn't seem that the Office of Pipeline Safety, under the auspices of the United States Department of Transportation, has a firm grasp, nor does the State of New Jersey have a comprehensive listing of the number and location of such pipelines.

As Senator Lesniak alluded to, I think one of the first measures that has to be undertaken is that New Jersey embark upon, quickly, and attempt, first, to undertake a systematic scrutiny and accounting of all petroleum pipelines; secondly, an accounting; and thirdly, a certification of such detection systems.

The second major point that I think is of great concern was under the Liquid Pipeline Safety Act of 1979. There were amendments to that Federal legislation in October, 1989 -- excuse me, they were 1988 amendments -- to adopt regulations that would implement a registration program. As noted by OLS, to date it seemingly that these regulations have yet to be adopted. As such, there is no comprehensive master list indicating location, use, and/or important information concerning the pipelines.

The third major point that I think we have to be concerned with -- I think this has been alluded to by Senator Lesniak -- is under the Spill Compensation Control Act, certain facilities are required to submit discharge prevention containment and countermeasure plans. They include pipelines. But we're also concerned, obviously, in instances where the State can identify pipelines that run outside property lines of a facility. I think also the State should also embark -- or the State should require -- DPCC plans for such facilities and such pipelines.

Just succinctly, Mr. Chairman, I would appreciate if the Committee and the Committee leadership could undertake scrutiny of those three general proposals.

I appreciate the opportunity to appear before you today. Why I think it is so important is, clearly, in this particular instance the detection system not only failed, but I think it points to the fact that we not only have a full accounting of all hazardous substance pipelines located in this State; we not only do not have an accounting of all such detection systems, and how well they're being operated; lastly, I think it is important and critical that the DPCC plans be extended to include all our pipelines that run outside of property boundary lines.

Again, I would like to thank yourself, and Assemblyman Smith, and the entire Committee -- both Committees -- for taking the time to come here to Woodbridge. On behalf of Assemblyman Otlowski, Senator Weiss, and the Woodbridge Mayor and Council, thank you once again.

SENATOR VAN WAGNER: Thank you, Mr. McGreevey. Just to note your remarks. Both myself and Mrs. Smith have proposed that legislation that you mentioned, and we'll soon have it under draft.

ASSEMBLYMAN McGREEVEY: Thank you, Senator.

SENATOR VAN WAGNER: Thank you. I'd like to call now, Assemblywoman Joann Smith from the 13th District. Mrs. Smith?

A S S E M B L Y W O M A N J O A N N H. S M I T H: Good afternoon, colleagues. First I want to thank my Senator, from my district, Senator Van Wagner, and my other colleagues for bringing this particular hearing to Woodbridge.

This is a calamity, occurring on the very first day of a new decade. Indicative of how we will treat the environment of the 1990s, I hope we will do better than what we have in the past. Something is very wrong with the system that we have in place. We hope that very shortly we can turn it around. What's happened is no accident. An accident occurs only when you have done everything reasonable in your power to ensure that spills do not occur, but they occur anyway. This was not an accident. The company knew its monitoring systems were faulty and gambled anyway. They gambled, and we lost. The environment lost.

I know I'm not alone in these particular feelings. My colleagues and I are working together to help solve some of the problems for the future. We must ensure that these disasters don't happen again. Unfortunately, we tend to respond to disaster rather than to prevent it. Hopefully, we can, from here on in, go on a responsible road to work towards prevention.

Last week, Joe Kryillos and I from my district, along with the Sierra Club and Littoral Society, held a press conference relative to this particular event. Because of our outrage that a spill of this significance could occur so soon after the devastating Valdez spill, we are here today to reiterate our commitment to protect our environment and our wildlife from these all too common assaults. We're proposing legislation which we believe will help ensure that disasters such as this spill, do not happen again. We've introduced legislation in the Assembly -- along with Senator Joe Palaia in the Senate -- a bill which directs the New Jersey Division of Investment and the State Investment Council, to give preference to investments to those firms which have adopted what we call,

the Valdez Principles, or corporation environmental responsibility.

Developed by the Coalition of Environmentally Responsible Economies of the Social Investment Forum, a group which includes the Sierra Club, the National Wildlife Federation, the National Audubon Society, and others, the principles require that corporations minimize or eliminate pollutants that might damage the environment, or conserve and renew natural resources, reduce hazardous waste, market safe products and services, and accept responsibility for environmental damage that they cause.

If this bill is enacted, then the State's some 20-and-a-half billion dollar pension portfolio of investments -- a great deal of money by anyone's standards -- will represent an incentive to corporations to be a good neighbor. Currently, the State pension system owns about $350 million in Exxon stock. This is according to the Department of Treasury.

We're also introducing legislation which establishes monetary penalties for wildlife deaths caused by polluters. While there is no price to equate to a life, where there is no death, we must try to make amends; where there is death, to restore that which is lost. Fines from the penalties imposed would be used to establish a New Jersey Animal Restoration Fund to protect, preserve, and enhance wildlife in our State.

The Exxon Arthur Kill spill has thus far killed about 500 birds. There should be a price to pay for this slaughter of creatures who are just fine until mankind sets death traps for them.

The third measure we are proposing is a resolution urging the U.S. Department of Transportation to place all pipelines regardless of operating capacity under the review of the Office of Pipeline Safety.

As we've all read, Exxon's pipeline did not fall into this jurisdiction and the Department of Transportation is not

required to conduct safety monitoring on pipelines carrying less than 350,000 gallons per hour. This alone is enough to cause devastation on any amount of gallons, and to hurt the wildlife. It should be monitored.

We've written letters to Secretary Skinner requesting this particular action be taken. We've written to Acting Commissioner Yaskin in the Department of Environmental Protection in the State for assistance in monitoring from that avenue. We've expressed our concerns to the Commissioner about Exxon's statement that they may run oil back through the same lines prior to their new system being installed in the fall of this year. This frightens us, and it really should cause all of us more concern. We hope that it will not happen. We've asked the DEP to inform us as to the extent of Exxon's responsibility in this matter, and what are their short-term and long-term obligations; and about the contaminated marshes and wetlands that impact on the food chains for the creatures that exist in the area. We are aware of, and we've worked together with Senator Bradley and Congressman Pallone from our district and other representatives on the Federal level who are going to call for hearings and who are looking for other guidelines and congressional action from the Federal level.

Senator Van Wagner, you've got your own spill compensation bill, related to plugging the loopholes in that particular act, to prevent something like this from happening again. Working together in conjunction with the people of this area and across the State on the Federal level, we hope that we will no longer have to react to a disaster; that we can act ahead of time and prevent other things from happening.

I grew up in Perth Amboy with George Otlowski, and many of my colleagues here who are now representing other municipalities in the area. There are other oil companies along the waterways, not just Exxon. Those waterways are all tributary to the Raritan Bay and out to the district that we

represent. It seems that water flows pretty freely wherever it chooses to go. It cannot be stopped. The only thing that we can do is to become guardians for a safer environment. I know the technology exists. I'm not an engineer like my colleague, Mr. Albohn, but all the same, we learn a great deal from each other. Sometimes you wish you were an engineer, or a scientist, or a biologist. Unfortunately, we are not those things. But we are legislators responsible for the well being, not only of the people that we represent, but the land, and the animals, and the environment, for future generations.

I want to thank you again, for letting me appear. Assemblyman Kyrillos unfortunately had to leave. He had other business. Thank you for coming here.

SENATOR VAN WAGNER: Thank you, Mrs. Smith. We have-- Just entering the room is the Mayor of this community, and a gentleman who has been our host today, Mayor DeMarino. Did you have any comments to make, Mayor?

M A Y O R J O S E P H D e M A R I N O: Please, yes, I do.

SENATOR VAN WAGNER: Following Mayor DeMarino will be Mayor Werkmeister from Linden, who is here now, I see. Following Mayor Werkmeister will be Susan Molinari from Staten Island, if she is here. Is she here? (no response) No? Okay.

MAYOR DeMARINO: Thank you, Mr. Chairman.

SENATOR VAN WAGNER: Whenever you're ready, Mayor. First, let me, on behalf of the Committee, thank you for affording us this meeting hall today, and welcoming us to this town.

MAYOR DeMARINO: It's a pleasure having both groups here.

Chairman Van Wagner, Chairman Smith, and members of the Committee. As the Mayor of the Township of Woodbridge, I would like to welcome you to our town for this meeting. I only wish it could have been under better circumstances. The tragedy that has befallen the waters only a few miles away from

us will serve as an example of the misuse and abuse of nature, for what according to the experts will be years to come.

In recent years, we have grown accustomed to watching the nightly news on television and seeing and hearing the horrible effects of pollution. We sat and watched the acts of devastation upon the land, the sea, the air, and worst of all, the wildlife. However, we were always able to put these pictures out of our minds by simply pressing a button. Now, we have been affected, and there is no way to turn it off. Therefore, we must go on from here, learn from the mistakes, and see that this does not happen again.

As Mayor of Woodbridge, my worry has to do with two concerns. My first concern has to do with hazards that occur upstream of the Township. An incident there would have an effect not only on the Kill itself, but also the tidal and flood areas of Woodbridge Township, depending on weather conditions at the time.

My second concern has to do with those accidents which occur within the community, and thus, affect land and water quality downstream. Those accidents depend upon our response, our response time, and the ability to contain, in order to prevent substantial damage.

In any case, the threat to the Arthur Kill comes from three general types of activity:

1) surface transportation across the Kill's drainage ways;

2) fluid transit ways, pipelines within drainage ways of the Kill or its branches;

3) The surface handling of hazardous waste and toxic materials on any of our roadways.

It would seem to me that our environmental well-being would require the consideration of these three groups of threat. By analyzing these three groups, we get an idea of the work that lies ahead of us:

1) an inventory and location of the kinds of threats that exist;

2) based upon an assessment of the threat, there should be a coordination of national, State, and local legislation to provide regulations -- regulations that work in conjunction with one another, not contrary;

3) we must look at the reports of the regulations in order to prevent accidents before they occur;

4) we must utilize the talent and equipment available to efficiently and effectively respond to accidents when they do occur.

The effect that comes out of these hearings can have a serious consequence for the Township of Woodbridge as well as the State of New Jersey. Putting these four elements together, I can foresee a large demand for fiscal resources. That demand worries me in terms of the burden regulations can place not only upon the municipality, but on the private industry as well.

Both you, as State legislators, and I as Mayor, are responsible for the environmental condition of the places we represent. But we also have to be aware of the effects of what may occur as a result of regulations which may be proposed in the future, as well as their economic ramifications.

In his inaugural address, Governor Florio talked about the need for an environmental prosecutor. The State obligations lie in:

1) funding;

2) the manpower for the enforcement and monitoring in order to prevent such accidents before they occur;

3) coordination between State agencies in order to prevent overlapping of jurisdictions and duplications of effort.

I hope that your legislative branch will join with the Chief Executive in seeing this become a reality.

I thank you for your time, Mr. Chairman. I have with me here, Mr. Dellomo. I'm certain he will have some brief

remarks. He is our health and our hazardous waste man for the Township of Woodbridge. Mr. Dellomo, do you want to make your presentation?

L O U I S D E L L O M O: The only thing I would like to say, Mr. Mayor, is reiterate what most everybody else here said this morning.

As a health official, we're usually called upon as an afterthought, after the fact. Our big problem is trying to find out where these things are, where they cross, what shape they're in. There doesn't seem to be any official body that knows just where everything is at one time so we can react. I recommend, along with the Mayor and other people up here, that there should be some facility put in place that has hands-on knowledge where these pipes are, where they cross, what they carry, and their safety precautions. That should filter down to the locals so we could be on top of these matters at all times.

SENATOR VAN WAGNER: Thank you, sir. Are there any questions from the Committee? (no response) Mayor?

MAYOR DeMARINO: Mr. Van Wagner, if I could, I would like to read a brief statement from my Public Works Director. For the sake of saving some time-- It was a program we instituted. I think this body ought to listen to it and see that this program is reinstituted. It deals with our shorelines. The letter is dated today. It's written to the Honorable Joseph A. Palaia, New Jersey Senate -- New Jersey Senate and Assembly -- Joint Environmental Quality Committee. It's, of course, written by my Public Works Director, Mr. Molnar:

"Woodbridge Township is pleased with the concern of the Senate and the Assembly with regard to--"

SENATOR VAN WAGNER: Excuse me. Is he writing it to the Committee?

MAYOR DeMARINO: Yes, he is, to this Committee.

SENATOR VAN WAGNER: I think he has the wrong person on the letter.

MAYOR DeMARINO: I'm sorry, I realize he did that. You're right. He probably wasn't aware as to who the Chairman was at the time.

SENATOR VAN WAGNER: I would tell him that he would be wise to address that immediately.

MAYOR DeMARINO: We'll readdress it to you before we leave the room, okay? I saw that after I read it. I realized it, but I didn't want to draw attention to it. But thanks, you did. (laughter)

If we can-- It reads: "Woodbridge Township is pleased with the concern of the Senate and the Assembly with regard to water pollution in New Jersey waters. While everyone is distressed with the recent oil spill by the Exxon Corporation and the possible impact it would have on the environment, we also have another major problem in the Arthur Kill, and that's floating debris.

"For years, towns which forded this waterway have endured tremendous amounts of garbage and debris being deposited on their beaches with each high tide. The cost associated with moving this material can be astronomical. Most communities can't afford to keep up with the constant flow of debris.

"During the calendar year of 1989, the State Department of Environmental Protection and the New Jersey Department of Corrections, along with this community, instituted a program called, Operation Clean Shores. This program provided manpower and financial assistance for disposal of debris collected from the beaches throughout the State of New Jersey.

"Woodbridge Township was the first community in the State to participate. By using prison inmates for labor and the DEP paying for the disposal, the Township was able to keep

the beaches along the Arthur Kill relatively clean. Unfortunately, this program was terminated. We feel that this is a great loss to the environment of New Jersey. Debris that last year was cleaned up, now is left there where it floats up. This makes the shores along the river appear shabby. Unfortunately, we cannot afford to clean up these beaches; and that, too, has an impact on our wildlife.

"In our opinion, the Operation Clean Shores Program was a worthwhile project benefiting communities throughout New Jersey. We hope that the money appropriated for this program will be continued in the future."

Mr. Van Wagner, I wish you would see that this program is reinstituted, and get this Committee to think about it. Look at the minimal cost that it was to the State and the fact that we are starting to get some use out of our inmates rather than allowing them to rot in jail with no rehabilitation impact or no help to the communities.

SENATOR VAN WAGNER: Thank you, Mayor. Would you provide the Committee with a copy of that letter?

MAYOR DeMARINO: I will, as soon as we get the correction made.

SENATOR VAN WAGNER: Thank you.

MAYOR DeMARINO: You'll have it before you leave.

SENATOR VAN WAGNER: Mayor Werkmeister, Mayor of the City of Linden.

Thank you Mayor. Again, thank you for your hospitality.

M A Y O R P A U L W E R K M E I S T E R: Mr. Chairman, and members of your Committee--

SENATOR VAN WAGNER: Mayor Workmeister.

MAYOR WERKMEISTER: First, of course, I'd like to thank you for holding these hearings. I certainly wish they were conducted in the City of Linden, where--

SENATOR VAN WAGNER: They're going to be.

MAYOR WERKMEISTER: Good. They'll be continued then?

SENATOR VAN WAGNER: Yes.

MAYOR WERKMEISTER: Very good. I think we are all aware that an environmental tragedy occurred. From what I've heard, there's very little I could add to it, except that certainly it is obvious that it's an enormous irresponsibility and gross neglect to have this amount of oil -- which is the shocker to me -- to escape into the Kill Van Kull. I cannot understand why would such a tenuous situation and an environmental hazard potential, that there wasn't a backup system to the warning system in existence.

As I understand it, if a reduction of 10 pounds occurs in the pipeline, there's an automatic shutoff. Certainly, there should be one for 20-pound reduction in pressure -- pipeline pressure. I can't understand either, why the inventory was not checked on either side of the Kill Van Kull in Bayonne and in Linden.

But having said all of that, I would ask this Committee to pursue a complete and total environmental investigation of the Kill Van Kull, and to report back to the individual communities, or have the assessment reported back to our cities, so that we can, at least, be advised of what has occurred -- the damage that has occurred.

It seems to me that we always take action after the fact. I cannot help but think of the hazardous waste incinerator that's being proposed for the City of Linden; that an action should be taken now, not after, when it's constructed, and something happens of this nature which will be a far worse tragedy. We have a serious situation. The criteria established by the State Legislature is being bastardized. It's being moderated. It's making the site fit the criteria, or the criteria fit the site, rather than requiring the site to fit the criteria as was established intelligently and wisely, eight years ago. I know what we're

talking about. We're talking about this hearing on Exxon, but I feel compelled to bring this to your attention because we have one battle with the Hazardous Waste Siting Commission, and no one else seems to care about us in Linden. We are concerned as every community in Union County should be concerned.

But aside from that and relative to this situation, I was asked previously -- and I support a complete study of all underground pipelines, inventory, an inspection, and an investigation as to the circumstances surrounding these pipelines and the conditions that exist. I would also ask that a standard inspection procedure be set up. There's no question about it. It has to be. In every emergency or potential for disaster, there's always a backup system. There doesn't appear to have been one established for underground pipelines, which should be.

I think that out of all of this, we should learn that we must prepare ourselves in advance, and not wait for something to happen secondarily.

Mr. Chairman, I would certainly like to be kept advised of any inspections or investigations. I understand the Governor is going to be there tomorrow. I've been invited to attend, and I certainly will be in attendance. I've been in close contact with the DEP. They're finishing up phase two, which is an evaluation of the beaches, boats, docks, and all critical bird sanctuaries. When that's completed, they will conduct an investigation. They have been kind enough -- and you should know this -- to allow me to accompany them on the inspection of the entire Kill. I think you are to be commended for having these hearings.

SENATOR VAN WAGNER: Thank you, Mayor.

MAYOR WERKMEISTER: Thank you, sir.

SENATOR VAN WAGNER: Are there any questions from the Committee? (no response) Thank you very much, Mayor. We appreciate you being here. I just wanted to advise you that

the Committee intends to have at least two more meetings, one of which will be in Linden.

MAYOR WERKMEISTER: Very good. We are checking the Rahway River. People should know that Linden's own property -- property owned by the City, is three miles from the Kill Van Kull on the Rahway River. We now, today, have our engineers doing a second inspection of that river, taking samples, etc.

SENATOR VAN WAGNER: Well, just informationally, Mayor, I wanted to tell you this in my own regard. You know, basically in many cases, when we focus on the environment, oftentimes, even legislators sometimes look at areas that are not developed -- that are outside of the urban population. I hope that with the action of the Senate Environmental Quality Committee and the Assembly Environmental Quality Committee, we will focus on the totality of the environment and recognize that our urban dwellers -- people who live in our urban areas -- are just as concerned with the environment as anyone else is. I appreciate you being here today.

MAYOR WERKMEISTER: Thank you on behalf of my Council and the people of the City of Linden.

SENATOR VAN WAGNER: Thank you. We'll move now to the United States Coast Guard. We have, today, Lieutenant Commander Larry Brooks. Larry, it seems this is not the first hearing I've seen you at.

LT. COMMANDER LAWRENCE BROOKS: No, sir.

SENATOR VAN WAGNER: Commander Brooks, do you have a statement for the Committee?

LT. COMMANDER BROOKS: No sir, Senator. I did not have an opportunity to prepare a statement. I'm here representing Captain North, who is the Coast Guard Captain of the Port for the New York-New Jersey Harbor area. He is the designated Federal on-scene coordinator for oil spills. He could not be here today, so he asked me to attend and answer

any questions that the Committee had regarding Coast Guard response during this oil spill.

I should tell you that there is a combined task force that has been formed to investigate the incident that includes representatives from New Jersey State, New York State, the Coast Guard, and the Department of Justice. We have our first district legal officer on that task force. They're investigating a lot of the different finer points regarding what actually occurred with the pipeline. There's also a task force of scientists regarding the remediation to the area. In fact, there's a follow-up meeting today up at EPA that Captain North is attending.

SENATOR VAN WAGNER: So you have no objections then-- Well, whether or not you have objections, I guess, we're going to pursue you with some questioning.

LT. COMMANDER BROOKS: All right, sir.

SENATOR VAN WAGNER: I'd like to ask first-- Assuming that the spill began at 10:30 p.m. on January 1, 1990, when the leak detection system first shut down during the pipeline transfer of the product-- I'm making an assumption that the spill began at that point. I realize that technically it could have begun at any point after that, or even possibly before it, but assuming that it began at that point, cleanup activities were actually not initiated until 10:30 a.m. of the following day, which would be January 2, after Exxon had been identified as the source of the spill, or the leak. Why was there a 12-hour wait before cleanup began, or at least, containment was initiated?

LT. COMMANDER BROOKS: All right, sir. Based on our chronology of events, we were notified of an oil spill at 03:00 approximately, on 2 January. We sent an investigation team to respond and find out what was out there on the water. The team initiated the investigation at GATX Gulf Port on Staten Island. That was the company that called us at 3:00 a.m. The

GATX Company did hire vat trucks and had equipment on the scene at 06:30. At that time, we did not know the entire extent of the oil spill, other than the product at GATX. As the investigative team worked their way along the Arthur Kill, it was still dark. They went from GATX over to Exxon Bayway. They went down into Linden and Carteret, into different facilities. They checked each vessel that was transferring a type of No. 2 oil which, for the amount of product that was seen at GATX, we would have expected a vessel or facility-related type incident.

SENATOR VAN WAGNER: The amount of product that was seen at GATX-- Was this product seen at 3:30 a.m.?

LT. COMMANDER BROOKS: My personnel arrived at GATX at 05:00, sir.

SENATOR VAN WAGNER: When GATX notified you at 3:30 a.m., did they notify you that they observed -- already observed -- a large amount of product in the Kill?

LT. COMMANDER BROOKS: I'm not sure what the exact report said, but they said, "We have oil around the ship here, and at our facility."

SENATOR VAN WAGNER: So, it was a large amount of oil -- or a substantial amount of oil had been observed?

LT. COMMANDER BROOKS: I'm not sure, Senator, of the exact--

SENATOR VAN WAGNER: All right, when you arrived at 5:00 a.m. was there a large amount of oil observed by your personnel?

LT. COMMANDER BROOKS: They observed oil around the ship. It was dark; they were 15 feet from the water -- you know, looking down off of the pier. They say, "Yes, there's oil down there. Let's see if we can find out where it's coming from. We want the ship gauged, we want the facility gauged, to see if we can determine a source."

SENATOR VAN WAGNER: To your knowledge, when you talked to the personnel who were at the location at that time, did they give you any assessment of the size or the degree of the product they observed?

LT. COMMANDER BROOKS: No, sir.

SENATOR VAN WAGNER: They did not?

LT. COMMANDER BROOKS: No. The first time that we had information was -- you know, coming back into my office -- at about 10:00, 10:15 time frame, when the overflight was complete. The Petty Officer came back with a full summary of the amount of area that had been covered by the oil spill. That was the first idea that we had of the size of it as far as how much area had been covered.

SENATOR VAN WAGNER: So, from either 3:30 a.m., when you were first notified by GATX or from 5:00 a.m., when your personnel arrived, until 10:15 the next morning, there was no one who had been able to make an observable assessment of the size of this disaster?

LT. COMMANDER BROOKS: That's correct, sir.

SENATOR VAN WAGNER: When you arrived at the scene at 3:30 a.m. or at 5:00 a.m., were there Exxon officials present at that time?

LT. COMMANDER BROOKS: At GATX? No, sir.

SENATOR VAN WAGNER: Yes, at that site.

LT. COMMANDER BROOKS: Not that I'm aware of.

SENATOR VAN WAGNER: Not at their site?

LT. COMMANDER BROOKS: They did not talk to my investigators on the GATX facility.

SENATOR VAN WAGNER: Did anyone from your command inquire to GATX personnel -- who I assume were there -- as to the size or the extent of that spill, or the source?

LT. COMMANDER BROOKS: Well, GATX already called us and said, "We don't know where it's coming from."

SENATOR VAN WAGNER: "But it's not us"?

LT. COMMANDER BROOKS: Well, they didn't say. They didn't think it was the facility side.

SENATOR VAN WAGNER: I see.

LT. COMMANDER BROOKS: They don't normally speak for the vessel.

SENATOR VAN WAGNER: So, in other words they said, "There's a spill. There's oil in the Kill. We've seen it, and we're letting you know it's there, but we don't know how big it is, or to what extent, or where it's coming from"?

LT. COMMANDER BROOKS: Correct, sir.

SENATOR VAN WAGNER: Basically, is that it?

LT. COMMANDER BROOKS: Yes, sir.

SENATOR VAN WAGNER: After your personnel observed the spill -- went to the site -- what was the next step at that point?

LT. COMMANDER BROOKS: Well, they met with the New Jersey State Police that were there, and the New York City Fire Department.

SENATOR VAN WAGNER: They were on the scene?

LT. COMMANDER BROOKS: Yes, sir. They boarded the vessel. I asked if they had any quantifiable loss of product. It's dark, so they can't see any range of product on the water, you know, looking up or down the river.

SENATOR VAN WAGNER: There are no lights-- A flood light-type variety of light that would scan across the water to give you some idea, or is it just impossible in the dark?

LT. COMMANDER BROOKS: It's normally not. I mean to the south of the Gulf Port Pier, you don't have much lighting on the Staten Island side, and to the north the next terminal is Holland Hook. There might have been some lighting up there, but they just-- You know, right around the ship they obviously saw in the water, but the lights tend to be turned down onto the working decks and pier spaces. They don't tend to shine out over the water for the most part.

SENATOR VAN WAGNER: What about the lights that are on the vessels that are in the water at that time; for example, the vessels of the State Police? Did anyone say, "Well, let's get on--" They have a 50 footer. I was on it last week. Did anyone say, "Let's, perhaps, get on this vessel, and maybe go out a little way from shore to see if this is spreading at all"?

LT. COMMANDER BROOKS: Well, not at that particular time. We had a vessel right at GATX, Senator, that was off-loading No. 2 oil. That was the product--

SENATOR VAN WAGNER: I mean your vessel -- a Coast Guard vessel, or Marine Division vessel.

LT. COMMANDER BROOKS: We had the New Jersey State Police there. They were talking to my personnel. They said, "We've come from Exxon Bayway. There's not much product over there." You know, we're in the major portion of the product.

SENATOR VAN WAGNER: Okay, I understand.

LT. COMMANDER BROOKS: We had a vessel sitting there that was transferring No. 2 oil, so our personnel shut them down, and asked both the facility and the vessel to initiate gaugings.

SENATOR VAN WAGNER: Okay. At 5:00 a.m. then, the observation had taken place, but no one was able to make an assessment as to the extent of the spill. What then took place?

LT. COMMANDER BROOKS: Well, the investigators departed from GATX. They checked the Exxon piers, talked to dock personnel over there, asked which vessels had been loading No. 2 oil or which were currently loading No. 2 oil. There were none at Exxon Bayway at that particular time.

SENATOR VAN WAGNER: Did anyone at Exxon, or did anyone anywhere, say at that point that, perhaps, "Given the quantity that we've observed and the fact that it does not appear to be coming from either Bayway" -- that side -- "or from a ship, that perhaps, there is a faulty pipeline"?

LT. COMMANDER BROOKS: No, sir. They were talking to the dockman.

SENATOR VAN WAGNER: Just only to the dock personnel?

LT. COMMANDER BROOKS: Well, as I understood it, they went down to the dock area. From there they proceeded south along the New Jersey side to the other major facilities.

SENATOR VAN WAGNER: Did anyone from Exxon say, "You know, we have a pipeline that runs across to Staten Island and down toward Shooters Island and back over--" I have the map here -- "where it runs. We've had an alarm already," -- by that time, 5:00 a.m., two alarms and two shutdowns, "maybe that's the problem; maybe it's not a cry wolf situation; maybe it's real at this point." Did anyone say that, or imply that, or recommend it?

LT. COMMANDER BROOKS: Once again, Senator, I'm not definitely sure. But I would say that no one, at least the dockman, who would be the primary person my team would contact, made mention of a pipeline problem.

SENATOR VAN WAGNER: So we have a situation that we have-- It's 5:00 a.m. or so, in the morning. All of the enforcement personnel have arrived. We know that there is oil in the Kill. We don't know what quantity, and at this point, we don't where it came from.

LT. COMMANDER BROOKS: Correct.

SENATOR VAN WAGNER: Is that correct?

LT. COMMANDER BROOKS: Yes, sir.

SENATOR VAN WAGNER: What then occurred?

LT. COMMANDER BROOKS: Well, the team, after checking with the Carteret and Linden areas, stopping at a few facilities, checking vessels that were transferring No. 2 oil -- mostly barges -- found there was minimal product, if any, in those areas. They called back and recommended that we get a small boat out there at first light, to survey the water area and get a Coast Guard helicopter to overflight and get a total picture of what we have.

SENATOR VAN WAGNER: Okay. First light arrives.

LT. COMMANDER BROOKS: Yes sir.

SENATOR VAN WAGNER: You now are conducting a flyover. What did you, in fact, observe at that point?

LT. COMMANDER BROOKS: Okay. A small boat proceeding in that area was feeding back reports that they had, you know, some sheen into the Kills. This is about 08:00 now, 08:30. They arrived and met up with my team, then picked them up for a waterside survey. They started to get an idea of the area that was being covered along the Staten Island shoreline. The report came back at about 10:00 that they had gone back to Exxon. They were approaching that area. Then at 10:15, I believe it was, they observed a pipeline bubbling in the area of Morris Creek. They recognized that they had a potential source of the problem.

SENATOR VAN WAGNER: So, it was actually at approximately 10:15 a.m., or 10:05 a.m.?

LT. COMMANDER BROOKS: About 10:15 or 10:20, when the small boat spotted oil bubbling up in the area of Morris Creek.

SENATOR VAN WAGNER: And that, would you say-- In your own judgment, was that the first time that anyone who was on the scene -- beginning early in the wee hours of the morning -- had any knowledge at all that it was a pipeline rupture?

LT. COMMANDER BROOKS: From any of the law enforcement agencies, yes, sir.

SENATOR VAN WAGNER: Right. Did you carry out any inquiry prior to the flyover and prior to the dispatching of the boat to the scene, with officials of the Exxon Corporation?

LT. COMMANDER BROOKS: I believe my Operations Center made phone calls to the different facilities along the Arthur Kill, asking them if they had oil in the vicinity of their piers.

SENATOR VAN WAGNER: At any time during that period of time, did anyone from Exxon advise you that that evening at all-- Let me rephrase it. Did anyone at all advise you or

volunteer to you the fact that the leak detection system, during that time, had been triggered?

LT. COMMANDER BROOKS: No, sir.

SENATOR VAN WAGNER: So you were never made aware of the fact that the leak detection system had triggered at 10:30 p.m., at 2:28 p.m., or, I'm sorry, at 10:30 p.m., at 3:00 a.m., and at 4:10 a.m.?

LT. COMMANDER BROOKS: No, sir.

SENATOR VAN WAGNER: You were not advised?

LT. COMMANDER BROOKS: We were not notified, no.

SENATOR VAN WAGNER: By anybody?

LT. COMMANDER BROOKS: No, sir.

SENATOR VAN WAGNER: Were you aware, at all, that there was a leak detection system in any of the underwater pipeline systems?

LT. COMMANDER BROOKS: No, sir, I was not.

SENATOR VAN WAGNER: So, you were never made aware of that. Is the Coast Guard, at all, ever advised by the U.S. Department of Transportation concerning any kind of pipeline systems that may, in fact, traverse navigable waters, and may, in fact, be potentially subject to a disruption or rupture, so that you might be pre-warned that this type of spill could occur? In other words, a spill other than from a ship colliding, or a ship getting a hole in the hull, or something like that, could occur?

LT. COMMANDER BROOKS: No, sir. We have not received any information on pipelines in the Port area.

SENATOR VAN WAGNER: So, in other words, the U.S. DOT since 1979 has never said to the Coast Guard or to any other agency that's involved in patrolling waterways in the area, of the fact that they should be cognizant of the fact that if there's a spill, it may not always be from a ship?

LT. COMMANDER BROOKS: I can only speak for the Captain of the Port of New York's Office.

SENATOR VAN WAGNER: Right.

LT. COMMANDER BROOKS: I'm not sure what other discussions may have--

SENATOR VAN WAGNER: No, I don't want you to speak for the universe, just from your own experience.

LT. COMMANDER BROOKS: From our office, no sir. We have not been notified. We do review Army Corps permits for any activity that's ongoing now in the waters, whether it's new construction or pipeline laying. So, during my three-and-a-half years with this unit, I reviewed a number of different pipeline laying plans.

SENATOR VAN WAGNER: In your view, if you had had available to you an inventory of the system that the various companies located in this area used -- pipeline systems that they used, and I know this is conjectural on your part -- but would that have been more helpful to you once you determined, perhaps, that the oil was not discharged from either the GATX terminal, or the Bayway Refinery, that it might possibly be one of those pipeline systems? Would that have been helpful to you, if you had an inventory available to you so that you could at least place yourself in the location of where those systems crisscross or where they were terminated?

LT. COMMANDER BROOKS: I think, to be perfectly honest with you, sir, my investigators would have probably approached the investigation that morning the same way that they did. However, a listing such as the one you mention would be useful in that we do a lot of phone call investigations. It wouldn't -- since we would be calling the facilities anyway, which we did that morning-- Some of these facilities are so large that you call one particular section of the facility and talk to, like, the dock personnel. Then you need a different listing for the pipeline people. It certainly could have been done.

SENATOR VAN WAGNER: Were you engaged in any other activities that night, that evening? We have been told that a

ship was off course, and perhaps, in distress. Do you have any record of that?

LT. COMMANDER BROOKS: That would be a different division. I'm head of the Port Safety Division. Search and rescue cases I don't normally become involved with until there are issues that may involve pollution prevention aspects or some resources that I have in my Division.

SENATOR VAN WAGNER: What type of equipment do you have in your Division to respond to a situation such as occurred on the evening of January 1?

LT. COMMANDER BROOKS: Mostly personnel.

SENATOR VAN WAGNER: Personnel?

LT. COMMANDER BROOKS: Yes, sir.

SENATOR VAN WAGNER: Do you have launches of any type, or do you rely on the State Police?

LT. COMMANDER BROOKS: The group has small boats.

SENATOR VAN WAGNER: Small boats?

LT. COMMANDER BROOKS: Normally, depending on location of the spill, if it's out in the anchorage from a vessel, we will definitely send a small boat. Otherwise, we use our vehicles for the most part.

SENATOR VAN WAGNER: I'm trying to get at, you know, a sequence of events here that are disturbing to me, both in terms of response and observation. A spill of this size, to have escaped detection for 12 hours is, I guess, hard for me to fathom at this point. I realize it was dark. I realize it was not an easy job to be out on the water on a winter evening. Did you receive any calls at all from local officials or citizens regarding the odor or smell, or anything like that?

LT. COMMANDER BROOKS: Most of the calls we received started to come in into the daytime hours regarding odors. The following night, the log from our Operation Center didn't mention anything from the early morning of 2 January, sir.

SENATOR VAN WAGNER: Was there any suggestion at any point prior to 10:15 in the morning -- at any time -- that perhaps, the spill may be of a more serious nature, and that containment procedures might be implemented?

LT. COMMANDER BROOKS: No, sir, I don't recall any. Actually, the first discussions that we had were in the time frame of right after the overflight when my Petty Officer came back with a chartlet showing just the area covered by the oil at that point. That was mostly up to -- from about Shooters Island at the north end -- down closing on Tufts Point on the south end, mostly up against the Staten Island shoreline.

SENATOR VAN WAGNER: And that you didn't observe? That was not observed until 10:15?

LT. COMMANDER BROOKS: That's when the Petty Officer who had gone on the overflight came back into the office, yes, sir. He had been on the helicopter.

SENATOR VAN WAGNER: Let me just recap. So, at 3:30 a.m. the morning of January 2, your station received a call from the GATX terminal saying there was oil in the Kill; that it was in the vicinity of one of their barges?

LT. COMMANDER BROOKS: It was a ship at their terminal.

SENATOR VAN WAGNER: A ship that was at their terminal. Was the ship discharging product at that time?

LT. COMMANDER BROOKS: Yes, sir, it was.

SENATOR VAN WAGNER: Okay, did they say at that point that, "We don't believe that this is our ship," or did they just say, "There's oil in the Kill. We have a ship here discharging"?

LT. COMMANDER BROOKS: GATX was very helpful. They said that, "We have oil, here alongside our terminal. We have a ship here discharging product. It seems to be No. 2 oil in the water."

SENATOR VAN WAGNER: Is that what they were discharging, No. 2 oil?

LT. COMMANDER BROOKS: Yes, sir.

SENATOR VAN WAGNER: Okay.

LT. COMMANDER BROOKS: They were very helpful. In fact they -- at 06:30 had the first equipment on the scene, starting to clean up. The GATX terminal had brought in vat trucks.

SENATOR VAN WAGNER: So at 6:30 in the morning, GATX -- which had not at all -- who no one had determined was responsible for this, had already commenced their cleanup at 6:30 a.m.?

LT. COMMANDER BROOKS: Yes, sir.

SENATOR VAN WAGNER: Do you know why? Did it strike you that here was a company that may not have been responsible -- who had sounded the alarm, and who was involved in the cleanup of this event -- yet, from what you say at least, no one else seemed to be responding?

LT. COMMANDER BROOKS: I don't know why they called in the equipment, Senator.

SENATOR VAN WAGNER: They called in the equipment?

LT. COMMANDER BROOKS: Yes, sir.

SENATOR VAN WAGNER: You don't know why?

LT. COMMANDER BROOKS: No, sir.

SENATOR VAN WAGNER: Let me just switch the line of questioning for a minute. Once the cleanup began, what was your assessment of the cleanup -- the effectiveness of the cleanup?

LT. COMMANDER BROOKS: Well, once Exxon accepted the responsibility, they got equipment moving.

SENATOR VAN WAGNER: At what time did Exxon accept responsibility?

LT. COMMANDER BROOKS: According to our log, 11:05.

SENATOR VAN WAGNER: 11:05.

LT. COMMANDER BROOKS: On 2 January.

SENATOR VAN WAGNER: So at 6:30 a.m., GATX, who had not accepted responsibility, was involved in the cleanup. At 11:05, Exxon accepted responsibility, then began the cleanup?

LT. COMMANDER BROOKS: Yes, sir.

SENATOR VAN WAGNER: The general cleanup?

LT. COMMANDER BROOKS: Yes, sir.

SENATOR VAN WAGNER: Okay. What was your view of the effectiveness of that operation?

LT. COMMANDER BROOKS: Well, they started applying a boom, some of it certainly in our direction, to cut off -- to start collecting as much of the oil as possible, as it moved with the tides. They blocked off creeks that had not been impacted yet by oil.

SENATOR VAN WAGNER: With containment booms?

LT. COMMANDER BROOKS: With containment booms. The first day we already had a command post set up at Exxon. They just had equipment being deployed all day long. It's certainly difficult on the first day, to say, you know, how the project is going, but there was a lot of equipment moving into the field.

SENATOR VAN WAGNER: I assume this equipment was from the organization known as the Clean Harbors Cooperative?

LT. COMMANDER BROOKS: Clean Harbors Cooperative, yes, sir.

SENATOR VAN WAGNER: Was that who GATX called in to clean up at 6:30 a.m.--

LT. COMMANDER BROOKS: No, sir.

SENATOR VAN WAGNER: --or were they doing that on their own?

LT. COMMANDER BROOKS: They had called a company named Clean Venture.

SENATOR VAN WAGNER: Clean Venture, okay. I think I saw them out there on-- Didn't we see them? (referring to Assemblyman Smith who nods affirmatively) They were still out there as of a week ago, tomorrow.

In terms of your role in the cleanup, what specifically is your role as Coast Guard in the cleanup itself? When it began, what was your role?

LT. COMMANDER BROOKS: The Federal launching coordinator basically ensures that the cleanup activity is being conducted properly; to that extent, brings issues and concerns -- whether from State agencies or what we observe ourselves -- to the attention of Exxon and basically tell them that they need to react to one thing or another; provide in some cases, support on issues. On the second day we decided the Arthur Kill needed to be closed. The Coast Guard Captain of the Port has the authority to do that.

But -- very quickly -- there were a lot of discussions with New Jersey State, New York State, New York City DEP, of different concerns that they had. We tried to focus all of that and keep giving it to Exxon, as far as here are issues that need to be addressed; things that need to be done.

SENATOR VAN WAGNER: Did you sense a kind of jurisdictional confusion at all over who was responsible to do what?

LT. COMMANDER BROOKS: I guess it would depend at different times during, you know-- There's a certain amount of, I guess, confusion as you put together a coordination or command post effort like this and determine who the different players are, and just getting to know each other. But, no sir, there didn't seem to be that much confusion.

SENATOR VAN WAGNER: So everything seemed to be conducted in a rather efficient and cooperative manner once the spill was detected?

LT. COMMANDER BROOKS: Once Exxon accepted the responsibility for it, yes, sir.

SENATOR VAN WAGNER: Once they accepted responsibility for it. Okay, Commander, I'm going to stop here. I know the other members of the Committee and Assemblyman Smith will

probably have some questions. I'd like to, if I can, come back with some other questions.

ASSEMBLYMAN SMITH: Sure.

SENATOR VAN WAGNER: So Assemblyman Smith--

ASSEMBLYMAN SMITH: Okay. Commander, how long have you been with the Coast Guard?

LT. COMMANDER BROOKS: Almost 15 years.

ASSEMBLYMAN SMITH: And of that time period, how long have you been involved in spill cleanup related activities?

LT. COMMANDER BROOKS: Thirteen years.

ASSEMBLYMAN SMITH: Thirteen years. All right, if you would, give me the lay of the land with regard to Federal support for this program over the course of the last decade.

LT. COMMANDER BROOKS: Basically, the Federal Water Pollution Control Act was passed in 1972. That established what they call the 311K Fund. The Coast Guard was designated as the supervisor of that fund for cleaning up oil in the event there was no responsible party to do it. In 1978 there were some amendments. Basically, that's been pretty much it, as far as oil pollution recovery--

ASSEMBLYMAN SMITH: How about manpower personnel?

LT. COMMANDER BROOKS: Well, the Coast Guard certainly has had some good years and bad years with regard to both budget and manpower.

ASSEMBLYMAN SMITH: Okay. How have we been doing in the last 10 years?

LT. COMMANDER BROOKS: In the Port of New York we seem to have held our own. The Captain of the Port's Office is certainly busy, with one of the largest ports in the U.S. We compare in activity with, probably, New Orleans. We have, in many cases, more manpower than units on the West Coast.

ASSEMBLYMAN SMITH: Okay. Do you feel you have sufficient person power to do the oil spill area?

LT. COMMANDER BROOKS: There are always issues that come up that an individual or supervisor feels he could have more people. You know, it depends. The last two years we've become involved in the Marine Debris Program, Floatable Program, working with the states, EPA, and the Army Corps.

ASSEMBLYMAN SMITH: Right. But with regard to oil spills, do you feel that you are adequately staffed?

LT. COMMANDER BROOKS: Like I said, there's always things you could be doing. We've been able to respond and investigate every oil spill reported to us, sir.

ASSEMBLYMAN SMITH: Am I correct in my understanding of your role with regard to the cleanup, that you -- not you individually, but you, generically -- the Coast Guard, have responsibility to review the cleanup plan, to check that the cleanup is being done properly, and not necessarily to do on-site supervision, but in general, to have some supervisory role in the cleanup?

LT. COMMANDER BROOKS: The term when we have a responsible party that initiates cleanup--

ASSEMBLYMAN SMITH: Right.

LT. COMMANDER BROOKS: --then the Coast Guard monitors the cleanup, that's the term that we use. That means many different things depending on the size and type of oil. We may visit that particular site once a day.

ASSEMBLYMAN SMITH: Right. I understand. Who determines when the cleanup is complete?

LT. COMMANDER BROOKS: The Coast Guard, sir.

ASSEMBLYMAN SMITH: In a private cleanup?

LT. COMMANDER BROOKS: Normally. We consult with the states.

ASSEMBLYMAN SMITH: All right. I thought -- and I'm subject to correction here, because you get these-- Unfortunately, some information is by sound byte. I thought in the Alaskan spill situation, the Coast Guard was not

particularly happy with the extent of the cleanup, or am I incorrect in that understanding?

LT. COMMANDER BROOKS: Well, I wasn't up in Alaska, sir. But I understand one of the problems with the Alaskan cleanup was that the oil was so saturated down into the different ground levels because of the type of beaches they had, with boulders, that you could say a beach was clean one day, and then go out there and it could be dirty the next. You could also dig down and find oil about six or eight inches below the surface. So, the issue comes up, do you plan to remove the entire beachhead, clean it, and lay it back down?

ASSEMBLYMAN SMITH: Right.

LT. COMMANDER BROOKS: So, we basically reached a point where, as I understood it, you couldn't say that it was clean. It was clean for appearance sake. It was as clean as it could be for that particular time.

ASSEMBLYMAN SMITH: Right.

LT. COMMANDER BROOKS: What they started saying was that particular area has been treated, as well as we can do it for the time being. Let's move on, and get more important areas done.

ASSEMBLYMAN SMITH: So the Coast Guard is keeping jurisdiction there, on that cleanup? Or is it essentially over?

LT. COMMANDER BROOKS: Yes sir. It's not over yet, no sir.

ASSEMBLYMAN SMITH: How clean will the Coast Guard require this area be at the end of the cleanup?

LT. COMMANDER BROOKS: Captain North is at a meeting with the EPA today to discuss those issues along with the states about specifically how clean it's going to have to be, sir.

ASSEMBLYMAN SMITH: Right. Do you have standards?

LT. COMMANDER BROOKS: Well, the basic standard in policy is when all of the oil is removed from the water and the tidal zone.

ASSEMBLYMAN SMITH: All right.

LT. COMMANDER BROOKS: Normally what we use, at high water, if you don't see a sheen or, you know, as the tide goes out, there's no remaining oil that's drawing a sheen from the oil--

ASSEMBLYMAN SMITH: Well, that would be a removal from the water portion, but what about the oil that's washed up on the land? There are two habitats that there is some concern about here. What would be the Coast Guard's standards for cleanup with respect to those habitats?

LT. COMMANDER BROOKS: When there's no more sheen coming out of those areas. You see, one of the issues here with the marsh areas is--

ASSEMBLYMAN SMITH: How do you go in and clean up a marsh area?

LT. COMMANDER BROOKS: There's been different discussions. Certainly different organizations, different agencies have had different approaches to it. But the bottom line is that for the time being, it was agreed to leave the marshes the way they are. They're going to probably have to be flushed out -- whether mother nature does it -- in lieu of having people walk through there, and potentially do more damage. So, there's a sorbent boom set up across the mouths of the marsh areas. Exxon is renewing that boom as it gets oil soaked.

ASSEMBLYMAN SMITH: Right. Is that actually a standard that's in Federal law, no more sheen coming off of the marsh?

LT. COMMANDER BROOKS: No, sir. It's not.

ASSEMBLYMAN SMITH: It's more of a common sense kind of approach to the problem. Would it be helpful to the Coast Guard if there were objective standards with respect to cleanup adopted by the Federal government?

LT. COMMANDER BROOKS: Like most things, it would have to be a very-- It would become very complex in itself, I think, if someone tried to develop those standards.

ASSEMBLYMAN SMITH: Oh, no question about it. This is not an easy area. With regard to this cleanup, how many times has the facility been visited by the Coast Guard during the cleanup operation?

LT. COMMANDER BROOKS: Exxon? Exxon Bayway?

ASSEMBLYMAN SMITH: Yeah.

LT. COMMANDER BROOKS: They had both a field command post down on the pier for a number of agencies including the Coast Guard.

ASSEMBLYMAN SMITH: Right.

LT. COMMANDER BROOKS: They had a coordination center, or large command post, up in their administration building for everyone -- all of the agencies -- to work on the different issues. We've had people initially manning those spaces 24 hours a day for about the first two weeks. Then we stood down just daylight hours.

ASSEMBLYMAN SMITH: Okay. You've done a number of oil spills or oil leaks in your career?

LT. COMMANDER BROOKS: Yes, sir.

ASSEMBLYMAN SMITH: A couple of hypotheticals: Suppose the leak detection system had worked, part of the system tripping and being checked, and tripping again, showing that there was a leak. If Exxon had taken action right at that point, what would probably be the extent of the spill?

LT. COMMANDER BROOKS: Well, if you talk about the second trip-- Let's say it was 2:30 in the morning that Exxon calls us and says, "Our pipelines have been leaking. We don't know how much, but we're going to take responsibility." Then we proceed, pretty much along the same basis as far as normally-- They probably would have said, "We're ready to move equipment."

ASSEMBLYMAN SMITH: Right.

LT. COMMANDER BROOKS: I mean, you would have started some activity, I guess, earlier.

ASSEMBLYMAN SMITH: Right.

LT. COMMANDER BROOKS: You still would have had the problem with the dark. I think the area of Pralls Island, with the wind moving out to the west, would have still been impacted because we're still not sure what time the oil started discharging.

ASSEMBLYMAN SMITH: But isn't the general rule that the sooner you get to the spill, the greater the chance of containing the oil, the greater the percentage of recovering the oil, and so on?

LT. COMMANDER BROOKS: Yes, sir.

ASSEMBLYMAN SMITH: So there's no question, had the cleanup started sooner, that we wouldn't be talking about either a spill of this size, or if it was of this size, much more of it would have been contained, and there would have been a lesser impact?

LT. COMMANDER BROOKS: I think that, yes, sir.

ASSEMBLYMAN SMITH: That's pretty obvious, okay. The Coast Guard chose not to federalize this cleanup.

LT. COMMANDER BROOKS: That's correct.

ASSEMBLYMAN SMITH: Okay. What's the fiscal impact on the Coast Guard if you do?

LT. COMMANDER BROOKS: Well, to clean up an oil spill-- If the Coast Guard federalizes an oil spill and we take it over, we draw funds from the 311K revolving fund, which doesn't come from Coast Guard OG30 funds, no.

ASSEMBLYMAN SMITH: It doesn't come out of your budget. It comes out of a trust fund?

LT. COMMANDER BROOKS: That's correct, sir.

ASSEMBLYMAN SMITH: What kind of condition is the trust fund in?

LT. COMMANDER BROOKS: From what I understand, it's down to, I believe, about a million-and-a-half.

ASSEMBLYMAN SMITH: Not a lot of money, is it?

LT. COMMANDER BROOKS: No, sir.

ASSEMBLYMAN SMITH: Is that nationally?

LT. COMMANDER BROOKS: Yes, sir.

ASSEMBLYMAN SMITH: So there's a million-and-a-half dollars in this trust fund that the Coast Guard can use in the event it federalizes a spill. All right. A spill of this magnitude, unquestionably, would cost a lot more than a million-and-a-half dollars.

LT. COMMANDER BROOKS: I believe it would have, sir.

ASSEMBLYMAN SMITH: Okay. Isn't there a disincentive for the Coast Guard to federalize a cleanup, because you don't have the money in the fund?

LT. COMMANDER BROOKS: Well, actually we faced the same issue with the Valdez oil spill. That became an item of discussion.

ASSEMBLYMAN SMITH: Right.

LT. COMMANDER BROOKS: Certainly, the Commandant made note of that before Congress. But he also turned around and said that, you know, we could have federalized it and paid it later. We would have worried about the money later.

ASSEMBLYMAN SMITH: Yeah. Let's talk about that. Suppose you do that. Suppose you federalize it, do the cleanup, and you worry about it later. Do the companies that are ultimately assigned responsibility -- when there's a federalized cleanup -- willingly throw the money into the hat for the cleanup purposes?

LT. COMMANDER BROOKS: You mean when we go back on reimbursement?

ASSEMBLYMAN SMITH: Right.

LT. COMMANDER BROOKS: Okay, after we've cleaned up an oil spill and go back on reimbursement, I believe the recovery

rate traditionally was in the neighborhood of about 25%.

ASSEMBLYMAN SMITH: So you know going in if you--

LT. COMMANDER BROOKS: If we federalize it--

ASSEMBLYMAN SMITH: I mean you're not guaranteed, but the law of averages are that if you federalize a spill, whatever money you put out, you -- the Coast Guard -- out of this trust fund -- which now only has a million-and-a-half dollars, for which you would obviously have to seek reimbursement -- will only get one dollar in four back. That's pretty awful economics.

LT. COMMANDER BROOKS: Yes, sir.

ASSEMBLYMAN SMITH: Isn't that a disincentive for the Coast Guard to federalize spill cleanups?

LT. COMMANDER BROOKS: Well, I don't believe so. Personally, the money is there to do that, and that's what we do.

ASSEMBLYMAN SMITH: Well, did I hear earlier that the Coast Guard was aware of the spill as of 6:00 a.m. or 4:00 a.m? What was the time?

LT. COMMANDER BROOKS: We were notified that there was oil at GATX at 03:07.

ASSEMBLYMAN SMITH: So, at 3:00 a.m.?

LT. COMMANDER BROOKS: Yes, sir.

ASSEMBLYMAN SMITH: Seven minutes after three?

LT. COMMANDER BROOKS: Yes.

ASSEMBLYMAN SMITH: Okay. Certainly you began to call and take action, and do whatever, but the spill wasn't federalized and no responsible party raised its hand until 11:00 a.m. the next morning which is eight hours later? Okay. If the Coast Guard had made the decision to federalize it because you couldn't find someone, say by 4:00 in the morning or 5:00 in the morning -- based on our earlier discussion -- isn't it true that the impact would be much less than what we're facing today?

LT. COMMANDER BROOKS: There's a possibility, yes, sir.

ASSEMBLYMAN SMITH: Okay. I'm not picking on the Coast Guard. Your Coast Guard does a fine job. But when Federal legislators are looking for suggestions about what they can be doing in this area, it seems to me that there's at least two things we can make recommendations about: number one, we could say, "Let's get that fund up to par."

What was the source of money for the trust fund, for the spill trust fund?

LT. COMMANDER BROOKS: It was just initial funding. Every few years Congress has allocated another $10 million or so, into it.

ASSEMBLYMAN SMITH: Well maybe we should put some kind of a levy on the oil industry to get that fund back up to par, right? Maybe we should have, well, more aggressive seeking of reimbursement. I mean, what appears to me is that while we didn't have the responsible corporate conduct or there's some question about that, it's also true that the Coast Guard has a terrible disincentive in this area to not take immediate and aggressive action because if you do, you're going to be terribly, financially penalized for doing it. It sounds to me like those Federal laws are just not properly constructed, and they need some revisions.

I appreciate your testimony on this matter. That concludes my questions. We have the former Mayor of Garfield and the Chair of the Conservation and Natural Resources Committee with us at this moment. (referring to Assemblyman Duch) Did you want to ask a question at this point, or do you want me to pass on to Assemblyman Albohn?

ASSEMBLYMAN DUCH: I'd like you to pass on to Assemblyman Albohn. I would just like to comment that I appreciate the frankness of the Coast Guard officer who is here today.

ASSEMBLYMAN SMITH: Assemblyman Albohn.

ASSEMBLYMAN ALBOHN: Just a few questions. Where is GATX relative to the pipeline crossing?

LT. COMMANDER BROOKS: I believe it's to the south -- just south of the pipeline crossing area.

ASSEMBLYMAN ALBOHN: On which side of the Arthur Kill?

LT. COMMANDER BROOKS: The Staten Island side.

ASSEMBLYMAN ALBOHN: So it's across the way from the Bayway Refinery.

LT. COMMANDER BROOKS: It's directly opposite Bayway.

ASSEMBLYMAN ALBOHN: I see, and south. The movement of the water in the Arthur Kill, at that time -- that's tidal movement, I presume -- would have been to the south, also?

LT. COMMANDER BROOKS: I'm not particularly aware of the tides myself during that morning hour, or which way the current was heading.

ASSEMBLYMAN ALBOHN: The question arises, you know-- Someone must have been thinking at that time, "Where the dickens did this stuff come from?" A lot would depend on, I guess, wind as well as tidal movement, as to what you might surmise. On top of that, you might wonder, well, what are the possible sources of this? I'm wondering if you have any idea of how many tank farms, for example, or boat-type sources -- barges, tankers, whatever -- there might be along that stretch of the Arthur Kill, or might have been, along that stretch of the Arthur Kill at that time?

LT. COMMANDER BROOKS: Going into it, you know, we are certainly aware of the facilities. We have a complete listing of the facilities.

ASSEMBLYMAN ALBOHN: I mean, are there 10, 100, several hundred?

LT. COMMANDER BROOKS: Oh, boat facilities along the Arthur Kill that engage in water-side transfers? There's probably at least 25.

ASSEMBLYMAN ALBOHN: And they would each have multiple tanks?

LT. COMMANDER BROOKS: Oh yes, sir.

ASSEMBLYMAN ALBOHN: So it's not very clear-cut as to the source of the oil. In other words, there's been a great deal of questioning regarding the source of the oil that was seen. No one knows how much was seen, at least not until daylight. No one knows the source, either. So, this was really a sort of a spontaneous action on the part of GATX then, in the middle of the night to start a cleanup of oil that as far as they knew was probably not from their operation. Is that a reasonable statement?

LT. COMMANDER BROOKS: Well, from all of the checking they did, they stopped their shutdown, they did gaugings in their facility, they did gaugings on the ship, and they could not find any source in their area. So yes, I think it was a spontaneous action to start cleaning up their terminal area.

ASSEMBLYMAN ALBOHN: They had no reason to think of any other particular source as being the source that should have been contacted to be advised that there was a leak, other than to announce to everybody up and down the river, "Hey, fellas, there's a leak."

LT. COMMANDER BROOKS: There had been a barge at their facility earlier that had left. I believe, at about 1:00 a.m. they had departed. We were doing some work with them on the information, tracking it down, where it had gone. We were starting to track vessel movement that had departed from any of the piers along the Arthur Kill, or had transited through.

So my team on the scene was feeding that information back to the Operation Center. They were working through the dispatchers of the different tug companies to make sure that there wasn't a barge moving somewhere else that didn't have oil leaking out. But the normal source for when you have a spill out ther, is going to be from a vessel, or one of these facilities, during the number of transfers that occur or something else. So, we also checked with the local police to see if there'd been any highway accidents.

ASSEMBLYMAN ALBOHN: I think what the thrust of my questioning is, is this: That no one had any idea where this oil came from until at 11:05 a.m. when Exxon said, "It's ours"?

LT. COMMANDER BROOKS: Well, actually when our small boat, at 10:25, saw the oil bubbling up in the water--

ASSEMBLYMAN ALBOHN: Okay, 10:20 a.m. In other words, a half an hour before Exxon accepted responsibility.

LT. COMMANDER BROOKS: Yes, sir. They called us at 10:45 and said, "We have a damaged pipeline." Then somebody else from the corporation called back at 11:00, 11:05 and said, "We'll take responsibility for the spill."

ASSEMBLYMAN ALBOHN: So then Exxon really did respond within a matter of 30 minutes?

LT. COMMANDER BROOKS: Yes, sir.

ASSEMBLYMAN ALBOHN: That's all I want to know.

ASSEMBLYMAN SMITH: Commander Brooks, let me thank you for coming in today. You were terrific, and we appreciate the information.

LT. COMMANDER BROOKS: Thank you, sir.

ASSEMBLYMAN SMITH: Is Mr. Michael Torrusio, Associate Regional Administrator for the U.S. EPA, Region II, present?

M I C H A E L T O R R U S I O: Yes, sir.

ASSEMBLYMAN SMITH: Mr. Torrusio, would you please take a seat.

If I might, let me ask Commander Brooks if he would talk to the press outside, so we could continue on with Mr. Torrusio.

LT. COMMANDER BROOKS: Sorry.

ASSEMBLYMAN SMITH: That's okay.

MR. TORRUSIO: Good afternoon. I am Michael Torrusio, the Associate Regional Administrator for Region II, of the United States Environmental Protection Agency. I am pleased to be here to discuss EPA's role in the Exxon oil spill, and to give you an overview of the emergency response systems that

exist and provide you with a perspective on our role in addressing oil spills and hazardous materials emergencies.

First, the overview, if you will: In response to major oil spills in the 1960s, several Federal agencies developed the National Oil and Hazardous Substances Pollution Contingency Plan, which we all now know as the National Contingency Plan. That's to coordinate preparedness and response activities during an oil spill or hazardous substances incident.

This National Contingency Plan, promulgated under the Clean Water Act and under what we call Superfund -- the Comprehensive Environmental Response Compensation and Liability Act -- established a national response system which lists the mechanisms for responding to these situations. As a result we have a tier: a national response team, a regional response team, and on-scene coordinators. Now let me further discuss each.

The national response team is a unique organization of 14 Federal agencies, each having broad responsibilities in environmental areas. It has served the public in minimizing the effect of environmental incidents for 20 years. However, it is a national planning, policy, and coordinating body and it does not normally respond directly to incidents. The national response team is chaired by EPA and vice chaired by the Coast Guard.

Next we have the regional response team which works with state governments to provide guidance and assistance so as to assure that in an emergency appropriate Federal assistance will reach the scene quickly when the on-scene coordinator requests it.

There are 13 regional response teams nationwide, one for each of the 10 standard Federal regions, plus one each for Alaska, the Caribbean, and the Pacific basin. Our regional response team covers New York and New Jersey, and EPA and Coast Guard representatives also co-chair this team.

The regional response teams are also planning, policy, and coordinating bodies. The do however, provide to the on-scene coordinators in the regional plan prior to, and provide assistance during, an incident. Furthermore, if assistance is requested by an on-scene coordinator and it exceeds the regional response team capability, it is the regional team that requests assistance from the national response team.

Depending on the location of the spill, either an EPA or a Coast Guard official assumes the role of on-scene coordinator. The Coast Guard has jurisdiction over spills in the coastal zone -- as in the current Exxon spill -- and tidal waters and also over the Great Lakes and major river ports, while EPA's jurisdiction is generally over spills which affect waters above the tidal zone. It is the on-scene coordinator's responsibility to monitor the cleanup if performed by the potentially responsible party -- again as in the case of the Exxon spill -- or actually conduct the cleanup action when the responsible party is not capable of responding or is not performing adequately.

The on-scene coordinator -- as Lieutenant Commander Brooks spoke -- has complete Federal responsibility for on-scene actions to: prevent, contain, assure clean up of, or otherwise mitigate spills of oil or hazardous substances. An on-scene coordinator's authority on oil spills includes the ability to access the Section 311K Oil Spill Pollution Fund, which is also established under the Clean Water Act. In short, the on-scene coordinator is the action taker and the person in charge.

Along with the National Contingency Plan and the Regional Contingency Plan, there are local area Federal Contingency Plans which were prepared by on-scene coordinators. The New Jersey State agency responsible for oil spill response and contingency planning activities is the New

Jersey Department of Environmental Protection. In this case, at the local level, the Local Emergency Planning Committee of the City of Linden would be involved in a major oil spill incident.

Now I'd like to discuss the EPA's role in the response. Since the Exxon oil spill occurred in coastal waters, the Coast Guard is the on-scene coordinator. However, EPA's role in the cleanup efforts has been rather extensive considering our status as a support agency. We have provided technical advice and recommendations to the Coast Guard, the New York State Department of Environmental Conservation, and the New Jersey Department of Environmental Protection. In addition, because of the value of the wetlands and the potential for disaster the spill poses, we have also provided the expertise of our own wildlife biologist.

At this point, let me present you with a description of the specific actions we have taken. EPA was notified of the spill by the Coast Guard on Tuesday, January 2. At that time the spill was still believed to be about 5000 gallons. On Wednesday, January 3, when the seriousness of the spill became evident and it was reclassified as major, EPA's coordinator went to the scene to obtain all necessary information about the spill. In addition, in order to better assess the situation, our coordinator also took a helicopter overflight of the spill later on Wednesday, and then attended briefings on the spill with Exxon and the Coast Guard. And as I mentioned earlier, we also dispatched a wildlife biologist from our Marine and Wetlands branch to the spill on Thursday, January 4, to assess potential damages to wetlands and bird nesting areas.

In summary, both our own on-scene coordinator, and wildlife biologist were at the spill site from January 3, and on subsequent days observing the cleanup, assessing damage to the wetlands, and offering technical assistance to the Coast Guard.

Now as to actions: In the short term, it is our intention to monitor water quality and wetlands conditions in the Arthur Kill, and to continue in our support role to offer our technical assistance to Federal, State, and local government agencies to ensure that cleanup and remediation efforts are as effective as possible.

We also have a role to play in the long term. As part of the Water Quality Act of 1987, a National Estuary Program was established, and the New York-New Jersey Harbor was designated as an estuary of national significance. The overall goal of the program is to establish and maintain a healthy productive harbor ecosystem with full beneficial uses. An important part of this study will concern itself with the health and preservation of the wetlands of the Arthur Kill. In this regard we have been engaged in a planning process with Federal, State, and local agencies, and environmental and citizen groups to develop long-term strategies to ensure that this portion of the New York-New Jersey Harbor natural resources remain protected.

In addition, since EPA has enforcement authorities under the Clean Water Act, on January 5, 1990 we notified Exxon under Sections 308 and 311 of the Clean Water Act to provide us by January 18 detailed information on the nature and extent of the spill. Late on January 17, 1990, we received information from Exxon responding to our request. We are now in the process of evaluating this information.

I thank you for the opportunity to appear, and I'll be pleased to answer any questions you may have.

ASSEMBLYMAN SMITH: Mr. Torrusio, how long have you been with the EPA?

MR. TORRUSIO: I have been with the EPA as Associate Regional Administrator since September of 1989.

ASSEMBLYMAN SMITH: And before that, were you with the EPA?

MR. TORRUSIO: Before that I spent 10 years as Special Assistant on Energy and the Environment to Congressman Guy Molinari--

ASSEMBLYMAN SMITH: Okay.

MR. TORRUSIO: --and before that I spent four years as a biological analyst and legal liaison for the New York City General Counsel, Department of Environmental Protection.

ASSEMBLYMAN SMITH: Okay. Well, I don't know if you will be able to answer the question, but I will ask it anyway. Can you tell me the status of the allocation of Federal resources to the EPA for oil spill prevention and control during the course of the last decade; what's been the trend?

MR. TORRUSIO: No. I couldn't answer that, sir.

ASSEMBLYMAN SMITH: All right. My understanding -- I'm not going to give testimony -- but my understanding is that there has been a tremendous decrease of resources in this area.

Are you familiar with the General Accounting Office Report to Arlen Specter, dated February 1989, on "Inland Oil Spills, Stronger Regulation and Enforcement Needed to Avoid Future Incidents"?

MR. TORRUSIO: Only in a cursory fashion.

ASSEMBLYMAN SMITH: Okay, well-- And by the way, I think the 25 words or less summary of your testimony is, jurisdiction for this is with the Coast Guard.

MR. TORRUSIO: That's correct, sir.

ASSEMBLYMAN SMITH: I don't know whether you were here for the opening remarks, but in my opening remarks I pointed out that I thought that the pipeline -- this pipeline problem -- is merely a symptom of a massive danger that the State of New Jersey faces. I've given some evidence by way of correspondence from the two prior DEP Commissioners that we, in the State of New Jersey, are not properly monitoring the oil industry with regard to storage and transportation of petroleum products.

In the General Accounting Office Report, they point out as follows: "EPA regulations do not contain mandatory specific design and operating practices to avoid spills like the Ashland spill. Although regulations recommend safety practices, they do not require that: 1) tanks be constructed and tested to meet industry or other specified standards, 2) oil storage facilities plan how to react to an oil spill that overflows facility boundaries, 3) tank storm water drainage systems be controlled to prevent oil from escaping through them."

Has the EPA adopted mandatory regulations since the publication of this report?

MR. TORRUSIO: I don't know if they have adopted it, but I can make some comments on what you have just read. I think that first and most importantly, you have to segment the various issues. The pipelines, as such, and especially those that travel interstate, are definitely completely under the regulatory and statutory authority of the United States Department of Transportation.

ASSEMBLYMAN SMITH: Right. Not us. I understand.

MR. TORRUSIO: I'm sure that you do. As is the building of many of the storage facilities. What our role is in terms of upland oil spills is to ensure that a facility has a plan of action in case there is a spill upland on their site; basically, the barriers around the various tanks.

ASSEMBLYMAN SMITH: Right, right. And do you feel that EPA is properly and adequately performing that function?

MR. TORRUSIO: I believe that we have run sufficient number of reviews to believe that we are.

ASSEMBLYMAN SMITH: Let me tell you what this General Accounting Office Report said. It says, "EPA does not have information regarding the number, age, location of oil storage facilities, and the construction and operation of tanks because of inadequate data. EPA's inspection program does not ensure

that those posing the greatest threat to the environment are inspected first. Further, EPA has not given inspectors sufficient training and guidance. Finally, most EPA regions have not fined facilities that violated EPA regulations."

So, the question to you, are your inspectors given sufficient training and guidance in Region II?

MR. TORRUSIO: Well Region II has in Edison, New Jersey, the emergency response team--

ASSEMBLYMAN SMITH: So, your opinion is--

MR. TORRUSIO: --which is a nationwide team and has received kudos beyond anyone's imagination for responding to any type of emergency, and certainly--

ASSEMBLYMAN SMITH: What's our record with regard to fining facilities that have violated EPA regulations in Region II?

MR. TORRUSIO: That, I couldn't tell you.

ASSEMBLYMAN SMITH: Okay.

MR. TORRUSIO: I'm not sure that I could even if I were working here for longer than since September because that would be something that's day-to-day, and were you to ask, I'm sure that we could find out.

ASSEMBLYMAN SMITH: All right, well, they sent you into the valley of the shadow of death. (laughter) I would appreciate if you would take back the GAO Report--

MR. TORRUSIO: I'm sure we have it.

ASSEMBLYMAN SMITH: --and get us a written response from the Region II Administrator of the adequacy of EPA's inland oil spill prevention program, and respond directly to the criticism of the GAO. Would you please do that?

MR. TORRUSIO: I'll be more than happy to.

ASSEMBLYMAN SMITH: Assemblyman Duch, any questions from you, sir?

ASSEMBLYMAN DUCH: Yes. Mr. Torrusio, you made a comment earlier regarding responding quickly enough and

that spill was, frankly, something less than desired. Neither the Coast Guard, government agencies, the companies individually, contractors singly or collectively, were able to effectively and efficiently handle that spill.

As a result of that unfortunate situation-- And I might add, there was not equipment available on the market to handle oil spills in those days -- they were actually fabricating equipment in their shops trying to devise it as the spill occurred. As a result of that negative experience, two companies who operate in New York Harbor, namely Exxon and Chevron, initiated some questions to themselves and the oil industry and said, "If that spill should occur here, are we able to handle it any better than they were there?"

As a result of that initial question, that was the start and the formation of Clean Harbors Cooperative, which was back around 1974. A consultant was hired and a preliminary study was made. His conclusions were pretty much as they expected. Small, incidental spills were able to be handled rather effectively by company people or local contractors, but the conclusion was that neither the companies nor contractors nor government agencies were able to handle a major spill.

Based on that, the two companies solicited the cooperation of the other companies in the area. Originally there were eight major companies that consisted of Exxon, Mobil, Chevron, Texaco, Shell, Sun, BP, and Gulf, at that time. There may have been one or two others. Since then, a number of other companies have joined our cooperative.

Under the joint auspices of the New Jersey Petroleum Council, a committee was formed and a manager was hired in order to determine how could we better prepare ourselves in the event a major spill did occur.

Their principles were primarily, the best way to handle a spill was to prevent it in the first place. Prevention has always been number one; the second thing has

been stoppage; the third is containment, and the fourth is cleanup. That's principally how we operate.

Now the committee-- I was lent from Chevron to chair the Equipment and Engineering Committee, so I was in it from its inception back in the mid 1970s. We first determined what size ships traveled in New York Harbor areas, what size compartments, what was a likely spill, where would it occur, and so on. We determined with the help of marine experts and others, that the probability of a spill occurring in New York was-- A maximum size that might occur would probably be due to a ship collision and/or grounding. We concluded that we would design a spill for 40,000 barrels or -- 40 times 42 is about 1,600,000 gallons--

ASSEMBLYMAN SMITH: Ed, could I ask you to focus a little bit on the events of this spill?

MR. WIRKOWSKI: All right, I'll get into that very quickly.

ASSEMBLYMAN SMITH: Please.

MR. WIRKOWSKI: I would like to say without minimizing the spill that we are talking about here, a couple of comments in general. One is, in my 40-plus years in this business, I have never found anybody who didn't respect the environment, from any of the companies I worked for, including myself. They have been very concerned about it in all aspects.

In the particular spill that occurred-- I would just like to add that we purchased a large volume of equipment based on the size of spills. We had 40,000 feet of boom. We bought 15 boats to deploy boom, six workboats, six self-propelled skimming vessels. We spent about $4 million. We had more equipment--

ASSEMBLYMAN SMITH: That's on this spill, you're saying?

MR. WIRKOWSKI: We bought it for the Cooperative's purposes.

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ASSEMBLYMAN SMITH: Who ultimately did call you to come out?

MR. WIRKOWSKI: Exxon did.

ASSEMBLYMAN SMITH: And at what time?

MR. WIRKOWSKI: I don't remember the time, but it was before noon and it was shortly thereafter and such. I would tell you that our members -- and I can speak generally for the members-- They have always responded to spills that occur around their facilities.

ASSEMBLYMAN SMITH: What are the financial arrangements of the Co-op? Who pays for a cleanup?

MR. WIRKOWSKI: The spiller. He is totally responsible for the spill. Totally. They do not share that cost.

ASSEMBLYMAN SMITH: What if the spiller is unknown?

MR. WIRKOWSKI: If the spiller is unknown, then the Coast Guard will call us.

ASSEMBLYMAN SMITH: You mean they will federalize it?

MR. WIRKOWSKI: Yes.

ASSEMBLYMAN SMITH: Okay, in which case they will then pay you, and they will seek reimbursement.

MR. WIRKOWSKI: Non-members have to pay a rental fee for our equipment.

ASSEMBLYMAN SMITH: Why wouldn't any of your members call you if there was oil in the Kill, and they weren't sure whether it was theirs or someone elses?

MR. WIRKOWSKI: If it was around their facilities they generally would.

ASSEMBLYMAN SMITH: Yeah, but why-- I mean, obviously people were noticing this, calls were coming in. Why wouldn't any of your 10 members call you to say, prior to noon-- Why wouldn't they call you and say, "Come out and take a look at this thing," or, "We think there's a spill out here"? Why wouldn't they call you up?

MR. WIRKOWSKI: I keep telling you that if it was around their facilities, they would.

ASSEMBLYMAN SMITH: All right, let me phrase the question another way. Isn't it true that whoever calls you out, pays?

MR. WIRKOWSKI: That's one of the obligations I have as manager; to determine who is going to pay a rental fee, if it's a non-member.

ASSEMBLYMAN SMITH: All right. Well, suppose it's a member -- one of the 10. Suppose one of the 10 calls you up and they say, "There's oil in the Kill. We're not sure whose it is, but it's pretty big. You better get out here." What would happen in that case? Who would pay for it?

MR. WIRKOWSKI: Frankly, I would call the Coast Guard before I responded.

ASSEMBLYMAN SMITH: All right, isn't it true that if any of the 10 members call you to come out and take action, they are going to pay for it?

MR. WIRKOWSKI: Normally they do, even when they know it's not their responsibility, and they then try to collect the funds -- the finances, later on.

ASSEMBLYMAN SMITH: All right, so what you are saying is that for the 10 members that are in this Co-op, they know that if they call you, number one, they are getting the bill?

MR. WIRKOWSKI: Yes.

ASSEMBLYMAN SMITH: And they may have to seek reimbursement from somebody else, but they are getting the bill. Isn't that a definite disincentive to call you, even if they see oil in the Kill? I mean, they are in effect paying for the cost of cleanup, whether or not they are responsible.

MR. WIRKOWSKI: They have spent-- Well, when I was with Chevron they had spent large amounts of money, over and above the Clean Harbors Cooperative.

ASSEMBLYMAN SMITH: Who ultimately did call you to come out?

MR. WIRKOWSKI: Exxon did.

ASSEMBLYMAN SMITH: And at what time?

MR. WIRKOWSKI: I don't remember the time, but it was before noon and it was shortly thereafter and such. I would tell you that our members -- and I can speak generally for the members-- They have always responded to spills that occur around their facilities.

ASSEMBLYMAN SMITH: What are the financial arrangements of the Co-op? Who pays for a cleanup?

MR. WIRKOWSKI: The spiller. He is totally responsible for the spill. Totally. They do not share that cost.

ASSEMBLYMAN SMITH: What if the spiller is unknown?

MR. WIRKOWSKI: If the spiller is unknown, then the Coast Guard will call us.

ASSEMBLYMAN SMITH: You mean they will federalize it?

MR. WIRKOWSKI: Yes.

ASSEMBLYMAN SMITH: Okay, in which case they will then pay you, and they will seek reimbursement.

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MR. WIRKOWSKI: We have a formula that is based on a risk factor.

ASSEMBLYMAN SMITH: Give me some facts, some rough guess, as to by what factor Exxon will pay more than the other members, for this particular incident. Will they pay most of it?

MR. WIRKOWSKI: For the use of equipment they don't pay any more. They don't pay anything extra.

ASSEMBLYMAN SMITH: For the existing equipment, right?

MR. WIRKOWSKI: Yes. They will pay for the labor involved.

ASSEMBLYMAN SMITH: And any equipment you brought in special for this spill?

MR. WIRKOWSKI: And any equipment that they, or we brought in, in addition.

ASSEMBLYMAN SMITH: All right, so the bulk of the spill is going to be paid for by Exxon?

MR. WIRKOWSKI: That's correct. They are the spiller.

ASSEMBLYMAN SMITH: If one of the other members-- Suppose they were mistaken. They thought it was them but it wasn't, and they called you up and said, "You've got to get out here and do something about this spill." Who would pay?

MR. WIRKOWSKI: Generally, in that case, I would go to the responsible company that had the spill, to collect.

ASSEMBLYMAN SMITH: And they would pay you?

MR. WIRKOWSKI: I've always been paid to date. I've never--

ASSEMBLYMAN SMITH: Is that what your agreement says, among the Co-op members?

MR. WIRKOWSKI: Yes, yes. We have never had nonpayment. Wait six months, nine months for insurance companies to act, but with the Coast Guard you wait six months to get paid, nine months. Typically, the contractors have that problem on late payments.

ASSEMBLYMAN SMITH: All right, well, Ed, we're obviously-- We may be misinformed. I'll tell you what would be very helpful, and that would be a copy of your agreement and procedures. Can we get that from you?

MR. WIRKOWSKI: I'll review that and get back to you on that.

ASSEMBLYMAN SMITH: All right.

MR. WIRKOWSKI: I manage it, but I don't make the policy rules as such.

ASSEMBLYMAN SMITH: All right, that would be very helpful to us.

MR. WIRKOWSKI: All right.

ASSEMBLYMAN SMITH: Is there anything you want to add specifically with respect to this spill and the activities of the Co-op?

MR. WIRKOWSKI: Yes. I would like to say a couple of things. One is, in regard to this spill, as a result, really, of the Valdez spill, Exxon initiated a training program with our assistance in both managing and operating equipment. They ran two simulated training exercises in November or December, with an organization of approximately 80 people.

ASSEMBLYMAN SMITH: Ed, I'm not trying to be rude, but we have a list of witnesses that need to testify. Is there anything specifically more on this spill that you want to comment about in your opening comments?

MR. WIRKOWSKI: Yes, I did, and that is that I wanted to just say that this training led to what I thought was one of the best executed spill efforts that I have seen in my 30 years in this business.

ASSEMBLYMAN SMITH: That may be so. I don't know that that is necessarily the gripe of the citizens of the State. I think the late response and the monitoring system are major gripes. But the cleanup itself--

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know who owns them, where they start and where they end as they cross the waterways, what's in them, how long have they been in existence, who inspects them-- And in fact, the New York City Fire Department, whether under a tenuous franchise agreement back in 1919 or 1920 did do some pressure testing of this very line that ruptured, evidently. But nonetheless, there is no coordinated, cohesive manner in getting at the problem of all these pipelines.

It seems to me it needs to be done on a coordinated basis. Maybe it ought to be the Federal government. If the states want to do it, either the states, by themselves or through our Commission, could do it, but it needs to be looked at. At the very minimum, what needs to be done within the next little while is certainly to plot out on a chart -- or a map if you wish, but a chart since we are talking about waters -- of who owns them, where they go, how much is pumped through, etc. and kept in one location so that if anything happens, all government entities in a region can get ahold of it and see what's happening. That's item number one.

Item number two: The pipelines need to be inspected. My understanding of testimony I heard in other places concerning the same incident was that this pipeline had been inspected in October, November, December -- whatever it was? -- in 1989, pressure tested at least, and reports were made to the New York City Fire Department.

That brings up an issue, I guess, of run to failure, which is a syndrome, I guess, of the country as a whole. You can either run something to failure, or you can take it out of service before it fails. Running to failure in the short term may appear to be less expensive than another way. However, if in fact, this pipeline did not break because of a ship hitting it or an anchor hitting it or whatever -- it just failed -- and if a pressure test had been done on it, let's say last fall sometime, how do you prevent something from failing? The

pipeline itself was approximately 20 years old. It was roughly -- using some of the testimony that I'll tell you -- approximately a half inch thick when it was installed, running at relatively low pressures. But it seems to me there has to be a way, and it needs to be inspected from time to time to see whether corrosion, for instance, has eaten away at the pipeline. Even though it's cathodically protected, it's still in a very corrosive environment. The bottom of the Arthur Kill is not one of the better bottoms in the world. It is anoxic. I'm talking about the bottoms now, not necessarily the water column, but the bottoms itself are pretty much anoxic, and certainly is a condition in which corrosion could take place.

So there needs to be some means of assuring, better than a pressure test, that at least periodically you are going to have some integrity to the thickness of the pipeline that is there. Otherwise, it is always going to be subject to a rupture at one time or another, unexpectedly.

I guess the last item I would bring up today because time is short is -- ironically, because of penny-wise and pound-foolish on the part of government, and I'll be more specific in a minute -- the reporting of the spill could have gone further towards lessening its impact. For instance, if we had had the funding we needed, because we routinely used to operate an office on Staten Island, and particularly on evenings and on holidays where a lot of these events seem to occur, more so than nine to five type of things we had an answering service there, mainly because people from Staten Island and some people from Jersey would complain about odors emanating in large part from industries that are on the New Jersey side of the Arthur Kill which blow across to New York.

Last year, through the action in fact of one of my Commissioners trying to get us put out of business, our budget was severely limited. The Legislature in New York put a good portion of it back, but not enough. New Jersey, because of New

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In general, one of the things I think I would like to talk about is the apparent response of all the responsible agencies to the spill itself no matter what the time sequence seemed to be. The overall impression was that they technically carried out their duties, but that they did not consider the ecological ramifications of the spill in technically carrying out their duties. This goes back to the Coast Guard Contingency Plan which was updated in light of the Valdez spill.

What one of our concerns was was that there were no ornithologists, estuarine biologists, or marine biologists included in the discussions outside of the agencies for the preparation of this Contingency Plan. One of the suggestions that we are going to make is that in light of that, we feel that public scrutiny of the Coast Guard Contingency Plan, the State Contingency Plans, the Exxon Internal Contingency Plans, and other potential polluters contingency plans, should be open to that public scrutiny, and in fact, those people as I mentioned before, estuarine biologists and ornithologists should also be included on any response team from the states and from the Federal government.

I'd like to see, also in response to this particular spill, a bistate or tristate commission set up that would assess current legislation covering oil spills, because we all know there was a major loophole that enabled Exxon to pump less oil than it could have through that pipe and be exempt from certain Federal legislation. Therefore, I think that it would be most beneficial if a multistate or bistate organization was set up to review that particular loophole and make recommendations so it can be closed.

Again, I'd like to indicate that we would like to see public review of the Coast Guard Contingency Plan. One of the most important things that we can do as a group of citizens is to impress upon our legislators and the oil companies how important it is, too, and how productive these wetland areas

are. Research has shown that they are more productive than the rain forests of South America which have had so much press lately. Since we've lost over 60% of our wetlands in the New York-New Jersey Harbor since colonial time, I think it's probably time to put a stop to that. We are recommending zero loss of wetlands, not net loss of wetlands, as a policy.

There is no one map available to Federal agencies or to State agencies, or for that matter to any citizen, that indicates seasonal sensitivity of these wetlands. In other words, had the Coast Guard had at its disposal a map that indicated that this was a wintering area for wildfowl and that it was a nesting area for migratory waterfowl, they possibly would have manned the booms in a different manner.

The on-site and anecdotal reports indicate that they did exactly what they were supposed to do. They tried to contain the oil. Unfortunately, because I think they didn't have this information, they used certain sensitive areas as catchment basins for the oil, as opposed to booming them and protecting them. I think had they been given the proper information, they may have avoided that error.

SENATOR VAN WAGNER: Excuse me. In other words you feel that, for example Pralls Island, directly across from the Bayway Refinery almost, was regarded as a convenient catchment area?

MR. WILNER: I don't think they regarded it as a convenient catchment area. Remember the chronology of this was that there was a very late response, so that by that time, the wind had pushed most of the product to the Staten Island side, so that--

SENATOR VAN WAGNER: Because it was westerly?

MR. WILNER: Right. By the time the cleanup crews actually got on the site, a lot of damage had been done. Had they had this information and had the response been timely, they could have boomed off Pralls Island to protect it from the

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MR. WILNER: Yes, sir. I understand that. If you'll indulge me, I'd like to just give -- say a few more things, and then I'll quit, and you can ask questions.

SENATOR VAN WAGNER: Go ahead.

MR. WILNER: I was hired by the American Littoral Society, and I'm sponsored by them and the Hudson River Keeper Fund, on a special project. The project that I am working on is called the Bay Keeper Project, and what it would do is emulate already ongoing programs like this in the Hudson River, and in the Long Island Sound, the Delaware River, and San Francisco Bay. These are citizen advocacy and monitoring groups that augment the work of the existing State and Federal agencies. We would react to citizen complaints; we would forward the information to the appropriate-- These are complaints of pollution. We would forward that information to the appropriate State or Federal agency, and we would monitor that through the process. If we felt as though they were not carrying out the proper investigation, at that time we would use our litigation rights under the Clean Water Act and other State and Federal actions.

There's no way of saying whether or not an organization like this would have protected our environment from a spill of this magnitude, but it certainly would have kept on the front burner that there are illegal activities that are going on; that there are potentials for disaster that are not being monitored sufficiently by the State and Federal agencies. I think that you get the point. That there may have been-- Unfortunately we all have the benefit of hindsight, but there may have been some opportunity to prevent an accident like this.

I'll be happy to answer any of your questions.

SENATOR VAN WAGNER: Will you describe for me, from your final few remarks, what type of criminal activity that you are talking about?

MR. WILNER: This is anecdotal, but overhearing conversations on the site from Exxon employees and contractors, the tenor was that this always happens; this thing always malfunctions. In fact, had the operator not been done with delivering product and had to wait until he got his next order, the pipeline would not have been shut down.

In other words, they were in the process of delivering however many gallons of oil to Bayonne, and no matter how many times that alarm went off during the night -- granted it had malfunctioned previously-- It is anecdotal information that they shut down because they were done delivering product and for no other reason.

SENATOR VAN WAGNER: So the resets that took place during the evening were really only momentary pauses in the delivery process--

MR. WILNER: And also seemed to be--

SENATOR VAN WAGNER: --and had nothing to do with the alarm, in your view?

MR. WILNER: Well, I'm sure it had something to do with the alarm, but they had a certain amount of product to deliver, and had there been more, they would have run past the time at which they shut down the pipeline.

SENATOR VAN WAGNER: Are you saying that in your view -- at least in your own opinion, from anecdotal reports that you've heard, or hearsay, perhaps -- that had more oil been scheduled for delivery, that despite the fact that this leak was occurring, that it would have continued to flow through that ruptured pipeline?

MR. WILNER: I believe so from the anecdotal information that I've overheard. But I have no way-- Obviously, the State -- the Attorney General has subpoenaed

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MR. WILNER: Well, I'm sure it had something to do with the alarm, but they had a certain amount of product to deliver, and had there been more, they would have run past the time at which they shut down the pipeline.

SENATOR VAN WAGNER: Are you saying that in your view -- at least in your own opinion, from anecdotal reports that you've heard, or hearsay, perhaps -- that had more oil been scheduled for delivery, that despite the fact that this leak was occurring, that it would have continued to flow through that ruptured pipeline?

MR. WILNER: I believe so from the anecdotal information that I've overheard. But I have no way-- Obviously, the State -- the Attorney General has subpoenaed

We are characterizing the estuary, which means we are determining the extent and severity of some of the pollution sources that are currently affecting it. This planning, by extension, hopes to prevent some of these incidents that have occurred such as the spill in the Arthur Kill.

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The Citizens Advisory Committee of the Harbor Estuary Program is also meeting tomorrow in New York City at EPA headquarters at 26 Federal Plaza and will be discussing at that particular meeting some of the impacts of the oil spill on the heron rookery that exists on Pralls Island.

Thank you for the opportunity to testify.

SENATOR VAN WAGNER: Thank you, Mr. Olohan. I would only ask that whatever material you develop you would please submit to our Committee, so we can be advised of your activity.

MR. OLOHAN: Okay, thank you.

SENATOR VAN WAGNER: Thank you. Mr. Robert Beck? Is that pronounced correctly, sir?

R O B E R T B E C K: Yeah. Hi, my name is Bob Beck, and I'm with the OCAW, and I'm also an oil worker with Amarada Hess for 20 years. We have companies in our local that represent Amoco, GATX, Citgo, Hess, BP, and Royal Oil Terminals.

I just wanted to make a couple of comments on what I've heard today. As to the wherewithal of an oil transfer, it doesn't sound like any I've ever heard of. Where you have a shipping tank, and that tank is gauged -- physically gauged -- before the transfer, you also have a receiving tank which is gauged. During this process, it's not by meters, really. It's by gauging -- physical gauging -- either a side gauge or a guy will climb the tank and take a physical inventory of that tank. So if you're transferring 4000 barrels an hour and you get an alarm, it's inconceivable to me why they wouldn't just call up Bayonne and see if they are getting the product.

SENATOR VAN WAGNER: I asked that question.

MR. BECK: I mean, you know, that doesn't cost a hell of a lot of money.

SENATOR VAN WAGNER: Twenty cents, now.

MR. BECK: I mean, that's routine in every oil company, so I'm sure it is with theirs. I'd also like to talk about the response time.

Now Clean Harbors-- That's been a joke for us for about 12 years. The guys in the oil terminals consider it a joke, because they have no employees beside Mr. Wirkowski. They have all this equipment, and it sits in trailers -- at a site in Amboy, and a site, I believe, near Staten Island. Now, there's no tractors under these trailers where the booms are in. They have to call up-- Somebody has to call him. He has to call somebody, who has to call somebody to get a truck to just get that equipment moving.

And response time-- One hour. That's bull. No way. Three hours minimum they have in their contracts with their contractors to respond. And believe me, with an oil spill, the most important part of it is the response. If you don't get it within the first couple of hours, you might as well get up and walk away.

SENATOR VAN WAGNER: Let me understand what you just said. You're saying to me that the contractor, in this case-

MR. BECK: Clean Harbors.

SENATOR VAN WAGNER: --Clean Harbors Cooperative is not, in fact, a real company with employees?

MR. BECK: They're a paper company, with equipment.

SENATOR VAN WAGNER: They are a paper company with equipment -- has no direct employees?

MR. BECK: Beside him? I have no knowledge of any.

SENATOR VAN WAGNER: Do you mind a minute? Is Mr. Wirkowski here?

MR. WIRKOWSKI: (from audience) Yes, I am.

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SENATOR VAN WAGNER: Do you mind a minute? Is Mr. Wirkowski here?

MR. WIRKOWSKI: (from audience) Yes, I am.

SENATOR VAN WAGNER: I'm assuming a terminal operator, his main function is to receive and store product?

MR. BECK: Right, receive and discharge product; to handle the movement.

SENATOR VAN WAGNER: In that regard he would be a person focused on it.

MR. BECK: I think the conception here is something like a gas station, and it's not, because you're moving huge volumes of oil. You could be moving-- Some of our pumps, do 10,000 to 12,000 barrels an hour. You're talking half-a-million gallons an hour or better. So when something happens, it really happens big. That's why it's monitored so close, not only by a computer which would give an alarm, but by physical gauges. Somebody goes out and physically checks the tank.

SENATOR VAN WAGNER: To see if you actually got what you were supposed to get?

MR. BECK: Right. To see if the transfer is proceeding the way it is supposed to be going.

SENATOR VAN WAGNER: So in other words, the only real way that you know that oil is getting where it is supposed to go, is by physically going to that tank--

MR. BECK: Right. And this conception that it could be going anywhere, that's really inconceivable, because most of the line is isolated for the move. Usually there is what they call double blocks; there's more than one valve in the way. You can't just go to another tank by accident unless someone physically goes over there and opens it. It's not where it could inadvertently leak in. That's why they maintain daily inventories, just in case something like that would happen.

SENATOR VAN WAGNER: Thank you Mr. Beck. I appreciate your coming here today.

MR. BECK: You're welcome.

SENATOR VAN WAGNER: Mr. Beck, you left your--

MR. BECK: No, I didn't leave my address.

SENATOR VAN WAGNER: Would you leave that? I think we are going to want to communicate with you again, if you would.

Mr. Andy -- is it Cappon, sir? Is that the right pronunciation?

A N D R E W C A P P O N: That's it, Cappon.

SENATOR VAN WAGNER: C-A-P-P-O-N. We also have Elizabeth Kleban.

MS. KLEBAN: Yes. (from audience)

SENATOR VAN WAGNER: Is that right, ma'am?

MS. KLEBAN: Yes.

MR. CAPPON: Mr. Chairman, distinguished members of the State Senate and Assembly Committees on the Environment. My name is Andy Cappon. I live at 95 Orchard Street in the City of Newark. I speak to you as a former Exxon employee.

I am here to suggest to you that Exxon should be regulated, regulated in its operations similar to, for example, the airline industry. A Federal agency with powers equivalent to the FAA that supervises at all levels, down to the smallest valve in the system, is needed. It's needed to change the atrocious safety record of this company.

The Exxon Company has inflicted a series of disasters on us over the past 20 years. To name the worst that I recall, the following: About 20 years ago a catalytic cracking unit blew up in the Linden refinery. The explosion carried for 10 miles. The workers in the refinery had taken shelter since they had plenty of warning. The company, however, failed to warn the surrounding community, so that explosion and fire could have been an unbelievable disaster to the surrounding community.

Afterward, the company lied and stated that they did not know the cause -- though I had inside information that the pieces were on the bench at Florham Park the next morning -- even suggesting that radicals might have dropped a bomb from an airplane.

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MR. CAPPON: You have to compare it.

SENATOR VAN WAGNER: Kept by the company?

MR. CAPPON: Yes. By the company or any other company.

SENATOR VAN WAGNER: It's all right, they don't work anyway. (referring to microphone that was knocked over by the witness)

MR. CAPPON: What?

SENATOR VAN WAGNER: They don't work anyway, so don't worry about it. I thank you for your testimony today and for taking the time to come here, and I would only ask that you make sure our staff has your name and address so that we can continue to communicate with you.

MR. CAPPON: Thank you.

SENATOR VAN WAGNER: Thank you, sir. I'd like to ask now Elizabeth--

MS. KLEBAN: Kleban.

SENATOR VAN WAGNER: Kleban, Sewaren Civic Association. She'll be followed by Julian Capik. Is he still here? He'll be the anchor person.

MS. KLEBAN: I am Elizabeth Kleban of 420 Broad Street, Sewaren. As you can tell by looking at me, I've been walking around this planet for quite a few years. I've lived in Sewaren since 1946, and before that, I lived in a neighboring town as a teenager from 1930. I spent a good part of my youth, my middle age, and now my old age in this area.

I've always been interested in my neighborhood and in civics, joined the Woman's Club, did my little things, and then finally one day, I saw a sign on every tree coming home. "Save your child, save your home. Be at the barge at so and so time, on such and such a date." The barge was launched in the Arthur Kill in Sewaren.

When I moved to Sewaren, you swam there. We had a boat, and there was a dancing pavilion, and I played in a band when I was in high school. It was a good spot.

Okay, after this sign, I did go to the barge, and I haven't slept well ever since that night. I got introduced to the Sewaren Civic Association which was organized in 1911. At that particular time they needed someone to help in the research about LNG, liquid natural gas. I was teaching school at the time, but I was so upset about the signs that I saw-- My forte is research, so I volunteered, and during this course of research-- And all of these things that I am going to tell you now, physically happened.

The Arthur Kill was on fire from the New Jersey coast to the Staten Island coast because of an oil spill. Something happened. The oil caught on fire, and it actually knocked out an electric power plant on Staten Island. The EPA was relatively new and at that particular time they had a boat, a large boat, and they were going to use this boat for educational purposes and introducing people to the waterways of their neighborhood.

The research showed that New Jersey has no fireboat. I corresponded with an Assemblyman from New Jersey and he returned some correspondence. New York City had a fireboat, and if we needed one, they said it would take them at least an hour to get here. Somewhere along the line, for one reason or another, the issue of the fireboat just died, and it's been dead to this day. New Jersey still does not have a fireboat. I assume they would need one on the Delaware River as well as on the Arthur Kill.

We have a situation here where there is-- If there were a catastrophe, say at Exxon, if the place blew up and something happened, you have to have an inventory of all the places that are on this Arthur Kill-- It would be devastating. It would blow half of New Jersey and all of Staten Island to kingdom come.

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SENATOR VAN WAGNER: I want to thank you very much for coming here and taking your time today. Your remarks were concise, they were to the point, and I just want to tell you, on behalf of our Committee and at least on behalf of myself, as Chairman of this Committee, that we intend to keep going. We're not going to stop at this hearing.

MS. KLEBAN: I'm going to haunt you.

SENATOR VAN WAGNER: Haunt us.

MS. KLEBAN: I will. Okay, thank you very much.

SENATOR VAN WAGNER: You're welcome.

Julian Capik? Is that the right pronunciation, sir?

J U L I A N C A P I K: No, it's Capik. (corrects pronunciation)

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MR. CAPIK: Thank you, Mr. Chairman. My name is Julian Capik, I reside at 76 Roosevelt Boulevard in Parlin, New Jersey. I am a member of the Middlesex County Environmental Coalition, and I am a retired operator of the Chevron Oil Company with 30 years of operating experience.

On March 23, 1989 the Exxon Valdez tanker ran aground in Alaska and caused the worst oil spill in American history. According to the prosecutors regarding the spill, the captain was the only authorized person to navigate through Prince William Sound. The question arises: Why would Exxon have only one person aboard that vessel with authority to navigate the vessel through the Sound?

On December 24, 1989, Christmas eve, an Exxon Refinery in Louisiana had a devastating explosion and fire, which was suspected of being caused by a gas leak. That incident

resulted in the death of one man and the hospitalization of two others.

On January 2, 1990, a ruptured pipeline under the Arthur Kill River, which is owned and operated by Exxon, caused the largest oil spill in the New York-New Jersey area.

I would like to impress upon this Committee that the Valdez tanker, the Louisiana refinery, and the Exxon pipeline, were controlled and monitored by state-of-the-art technology. In spite of the fact that the system was 12 years old, in the Exxon Refinery here, it was still state-of-the-art technology. State-of-the-art-technology alone does not prevent pollution.

In view of published reports that Exxon's management ignored what they termed false alarms of the pipeline instruments, it is understandable why their operators would overlook the alarm system and keep pumping.

Some questions which come to mind now are: Were the false alarms in fact false alarms, prior to the spill? When these alarms did occur, was the Coast Guard out looking for unknown spill violators? If a toggle switch was at fault, was the company penny-wise and million dollar-foolish in not having it repaired? Was the operator required to work in an area away from the flow monitors while the transfer was taking place? What procedure is followed after an automatic shutdown? In view of the fact the monitoring instruments showed an erratic flow and kept shutting off automatically, what procedure was followed this time? Was there any surveillance of the pipeline after the third time the line was automatically shut? When the line is tested, how much pressure would be on a pressure gauge?

There seemed to be an unreasonable response time lag between the time of the first alarm and the discovery of the spill. The first alarm went in at Exxon at 10:30 p.m. Bayonne was notified by the Coast Guard of a spill at 2:30 a.m. Exxon shut down at 4:14 a.m. and did not alert the Coast Guard until 10:15 a.m., not until after Exxon engineers confirmed the alarm

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P H Y L L I S R. E L S T O N: Thank you Mr. Chairman, Senator Van Wagner. I can't add anything to what you have heard today, really. I wouldn't even bother to come here except I have to say to you, weren't the people wonderful, and isn't it a shame that unfortunately so many of the Committee members had to leave, because it's been a long meeting? But the trip here and all of the hours-- I think the last three people who testified made it worthwhile. They were really wonderful.

SENATOR VAN WAGNER: We always save the best for last.

MS. ELSTON: Really? You know, the creatures are dead, the marshes are foul, the water is vile. Nobody knows who, nobody knows why, nobody knows how much, and all of that terrible stuff aside, it's an awesome job that you have to do.

What I had planned to say, obviously, is that the Sierra Club is very supportive of the legislation that came forward last week, that Assemblywoman Smith discussed earlier. I think the adoption of the Valdez Principles only deals with human decency, translated to corporate decency. We are very concerned about restoration of wildlife, and if the word "habitat" is missing from the legislation, it won't work.

As someone pointed out earlier, it would seem a simple thing that there should be a seasonal map of those wetlands, because when the oil is allowed to flow in places where there are no creatures right now, it overlooks the fact that those places may indeed be very important as far as migration and breeding habits are concerned. So that was such a wonderful thing to be pointed out, that everybody involved in this problem should be supplied immediately with a map that addresses itself to the seasonal qualifications of those marshes and wetlands.

Yes, we agree that action has to be taken right away to be sure that all the pipelines are not only properly mapped, but properly monitored, no matter how much is going through

them at what velocity. Because the fact that it is in the pipes at all means that it may, indeed, be in the waters and on the lands, and you and we have to know what's going through.

I want to align myself with the testimony you heard from the Mayor of Woodbridge. As you know, I was a mayor myself for ten years, and the municipal governing bodies have to deal with the expense of this. And so one of the most painful processes that we are going to face this year is the usual budgetary hassle that you have, made worse by virtue of the deficit. It's very important that the Legislature and the administration and the DEP work together, I think, to concentrate on enforcement.

If Larry Weiss were here he would get the face on that I have learned to translate with his frustration with the bureaucracy of DEP, and that's absolutely true, but I think we have to thin out one type of bureaucracy from another. There is not necessarily bureaucracy within the manning of the enforcement for our environmental regulations because there aren't enough people there to cause a bureaucracy. There just never are. And that's a problem that has in the past -- and I hope will stop, right now -- emanating from the Governor's Office of Management and Budget.

With the regulations we have on the books, you cannot escape the fact that it is very expensive to make those regulations work, and that means that you have the responsibility of making all of us in the State pay for that enforcement.

The cost of that enforcement is not small, because we have excellent regulations, so I beg you-- The chore that I hate most about my job is lobbying the budget. We have to do it every year, and I hope when we are doing it this year, that at the top of the list there will be maybe some kind of a chart that lays out the regulations that we have, and what it is that we need in dollars and people to make those regulations work.

P H Y L L I S R. E L S T O N: Thank you Mr. Chairman, Senator Van Wagner. I can't add anything to what you have heard today, really. I wouldn't even bother to come here except I have to say to you, weren't the people wonderful, and isn't it a shame that unfortunately so many of the Committee members had to leave, because it's been a long meeting? But the trip here and all of the hours-- I think the last three people who testified made it worthwhile. They were really wonderful.

SENATOR VAN WAGNER: We always save the best for last.

MS. ELSTON: Really? You know, the creatures are dead, the marshes are foul, the water is vile. Nobody knows who, nobody knows why, nobody knows how much, and all of that terrible stuff aside, it's an awesome job that you have to do.

What I had planned to say, obviously, is that the Sierra Club is very supportive of the legislation that came forward last week, that Assemblywoman Smith discussed earlier. I think the adoption of the Valdez Principles only deals with human decency, translated to corporate decency. We are very concerned about restoration of wildlife, and if the word "habitat" is missing from the legislation, it won't work.

As someone pointed out earlier, it would seem a simple thing that there should be a seasonal map of those wetlands, because when the oil is allowed to flow in places where there are no creatures right now, it overlooks the fact that those places may indeed be very important as far as migration and breeding habits are concerned. So that was such a wonderful thing to be pointed out, that everybody involved in this problem should be supplied immediately with a map that addresses itself to the seasonal qualifications of those marshes and wetlands.

Yes, we agree that action has to be taken right away to be sure that all the pipelines are not only properly mapped, but properly monitored, no matter how much is going through

them at what velocity. Because the fact that it is in the pipes at all means that it may, indeed, be in the waters and on the lands, and you and we have to know what's going through.

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MR. DiCORCIA: Yes

SENATOR VAN WAGNER: That was the question that I had. Did you have anything? (no response)

Mr. Dicorcia I would like to tell you-- I like to be direct. I would like to tell you that I appreciate your being here today, but I have to ask you to do something for me, if you would? I don't know who you report to, or what the corporate ladder is at Exxon, or for that matter in most other corporations, but I would like you to take back if you would, the fact that the Chairman of this Committee was not satisfied today: Not because of you personally, I want you to understand that; I think you tried to do the best job that you could on behalf of your corporation. But I think there needs to be more answers that were not gained here today, and I realize that part of it is because your own knowledge of these operations is limited. I would like you to tell them that until this Committee, and this Chairman, has the answers to what occurred on the evening of January 1, I am going to continue to have hearings. If need be, I will get subpoena power to make sure that those people who should appear are here. And we are going to find out what, in fact, happened, and how we can correct it, no matter how long it takes us to do it. Would you do that for me?

MR. DiCORCIA: I think you've conveyed the message, and I'll convey it in the same spirit that you just did. I'll also add my own personal feeling, that we share those objectives, Chairman Van Wagner.

SENATOR VAN WAGNER: Thank you, sir.

Is there anyone else who would like to make a statement? Yes, sir?

M A U R I C E S C H E R B: My name is Maurice Scherb. I'm a consulting engineer in risk management. I'm here in New Jersey on the hazardous truck transport-- That's a problem that's of great concern to the public, too, with hazardous materials, and

we're bringing the total systems approach with high technology-- But I've looked at pipelines for 17 years now, and we've had accidents in Minnesota. Senator Durenberger-- In California. And they passed legislation.

We knew that these aging pipelines which are leaking all over the country, that these scatter systems as we call them are not good enough for small leaks.

What we decided to do is-- First the State of New Jersey pioneered in the risk management, under Assemblyman Byron Baer, for chemical plants. That legislation has been on the books for three years, and they have held hearings-- There are about 300 risk management plans.

What I would suggest is, you already have a model, and you apply that then to the refineries, and the unloading, and the tank farms, and the whole-- Ships are in the news now: What else is new? We've been all through that, but the Congress has not acted upon it. They are now considering this week, the All Spill bill and the Clean Air Act. Title 5 deals with toxic pollutants.

Has it been mentioned Senator Bradley and Senator Lautenberg, who is very concerned with railroad safety etc. are trying to introduce some legislation? But it's always piecemeal, and it's after the fact. And EPA has not acted and when we talk about OPSA, we are talking about an agency that hasn't really done anything in systems safety.

SENATOR VAN WAGNER: They haven't even adopted regulations.

MR. SCHERB: They have this hydro test pressure-- I don't want to get into the details. In fact, when I heard about this case, I was aghast that 12 years went-- That's unbelievable by any standard.

So risk management-- I would suggest that the group here in Trenton might well take this on through legislation to apply it to refineries, tank farms, and even pipelines. On an intrastate basis, I think you have a strong case.

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SENATOR VAN WAGNER: Indefinite?

MR. DiCORCIA: The plan has to be approved by several agencies.

SENATOR VAN WAGNER: I understand.

MR. DiCORCIA: The pipeline still has oil in it, so it's a fairly elaborate procedure to evacuate the oil to ensure that the removal will not spill more oil.

SENATOR VAN WAGNER: Okay.

MR. SCHERB: That's merely a detail. They'll get the pipe out, as they do in refineries. They mentioned the Baton Rouge--

SENATOR VAN WAGNER: I just wanted to know for my own information when they were pulling the pipe.

MR. SCHERB: Right, we take it out and they do a metallurgical analysis, and then some agency will come out with a report six months to a year from now, just like NTSB, National Transportation Safety Board, on transportation accidents. This bill in Congress is talking about a National Chemical Accident Board.

SENATOR VAN WAGNER: Right.

MR. SCHERB: I would forget that. New Jersey is in a unique position with this risk management law, and in talking to New York, they are considering one now. Bob Abrams, over there, has been pushing it in the Legislature in Albany. You have a unique opportunity to extend this to other hazardous materials, whether it's crude oil, gasoline, or gas byproducts, whatever.

In fact, there is a report in Santa Barbara County, California -- which is the heaven of environmentalists, as we say -- just done on oil pipeline problems. They have an offshore oil field there, and they have a big pipeline with hydrogen sulfide in it, and they examined all the methods,

state-of-the-art. They couldn't put in acoustics because they have what we call two-phase flow, so they put in a plastic pipe, which, if the gas got out it would give them the early warning. Before, they had the big rupture, and people had to flee for their lives. So that report would be very, very--

They've done all your homework for you in the state-of-the-art in pipelines. I'd be happy to give you the right reference to that, and you could contact the State of Minnesota, the Fire Marshal Office in California on their pipeline legislation, or Assemblyman Dave Elder from Long Beach who has been pioneering that. But we've had all these accidents, and they are going to continue, because we have an aging system of pipelines.

SENATOR VAN WAGNER: What is your name, sir?

MR. SCHERB: My last name is Scherb, S-C-H-E-R-B. I'm here right now in Teaneck, because I'm bicoastal.

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MR. SCHERB: Yeah, I happen to be working on this oil spill report -- I'm sorry, on this truck report, which is hot stuff, too. Representative Luken has a bill in Congress now on that, on transportation of hazardous materials. Senator Lautenberg got real mad after the Chase, Maryland accident if you remember, and he got some rail legislation passed which is beginning to pay dividends.

But we have a lot of technology unknown to the public or even to the legislatures, which can be applied right now. If we can do that for the railroad system-- I just came from a Transportation Research Board meeting in Washington about the mind-boggling controls they have for railroads coming up, like Burlington Northern, Conrail, and others. There is no reason in the world we can't apply that to pipelines.

Now everyone comes up with the cost-benefit ratio. You see what I am saying? But the cost-- I'm sure the public would bear that added cost for a nondestructive testing

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by the collapse of the tank resulted in a wave of oil spilling over the containment walls.

Above ground tanks are also required to be periodically tested for integrity on a Department approved schedule. Additionally, it is normal industry practice to pre-test tanks prior to putting them into use. Under New Jersey rules, hydrostatic testing, which involves filling a tank with water, is an acceptable method for testing tank integrity. This test was not performed on the tank in Pennsylvania. In regards to your question as to whether owner-conducted testing, in the absence of state agency personnel, is sufficient, the Department intends to carefully review this matter prior to revision of the DPCC regulations.

As stated in your letter there is a required three year review period for DPCC plans. Since facility owners are required to report any changes in design, construction, operation and maintenance and amend the DPCC/DCR Plans to reflect such changes, we find that the three year owner review and evaluation is sufficient.

Regarding discharge clean up equipment, each owner or operator of a major facility has to provide, in their Discharge Clean-up and Removal Plan, a list of containment and removal equipment to which the facility has access. The Department has on file a list of 120 discharge clean-up organizations that are capable of providing this service. Contractor equipment to handle spills in New Jersey is both available and appropriate. The Department has a minimal amount of booms and sorbent material for emergency response but would have to depend upon clean up contractors in the event of a major spill.

Due to the extreme importance of this issue of spill prevention on the health and safety of the people of our state and surrounding states, and for the protection of the environment, the Department intends to re-evalute the DPCC regulations.

3x

If you should have any further questions, please contact Administrator Arnold Schiffman, Water Quality Management at (609) 292-5262.

Sincerely,

Richard T. Dewling

c: Deputy Commissioner Michael F. Catania
Assistant Commissioner Donald A. Deieso
Assistant Commissioner Arthur Kondrup
Director George G. McCann, Div. of Water Resources
Administrator Arnold Schiffman, Water Quality Mgt. Element
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STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CHRISTOPHER J. DAGGETT, COMMISSIONER
CN 402
TRENTON, N.J. 08625
609 292-2885

file with Oil Spill file

June 13, 1989

Honorable Robert G. Smith
Assemblyman 17th District
44 Stelton Road Suite 250
Piscataway, NJ 08854

Dear Assemblyman Smith:

This is in response to your request of April 25, 1989 for an update on our re-evaluation of the Department of Environmental Protection's (Department) regulations governing the "Discharges of Petroleum and Other Hazardous Substances."

Enclosed is information from a recent report by the United States General Accounting Office on oil spills. This report states that the Federal Environmental Protection Agency (EPA) needs to upgrade existing federal regulations governing Oil Pollution Prevention. EPA is now drafting amendments to these regulations and the Department will amend its regulations accordingly.

At present, we intend to administratively focus more attention on compliance with current regulations by requiring that a New Jersey licensed Professional Engineer not only prepare the Discharge Prevention Containment and Countermeasure Plans and Discharge Cleanup and Removal Plans (DPCC/DCR) but also certify to the Department that said plans will meet applicable requirements of our regulations. In addition, we are taking a closer look at above-ground petroleum storage tanks as a potentially significant source of ground-water pollution pursuant to the existing authority of the New Jersey Water Pollution Control Act.

If you should have any further questions, please contact Jorge Berkowitz, Acting Director of the Division of Water Resources at (609) 292-1637.

JUN 14 1989

Sincerely,

Michael F. Catania for
Christopher J. Daggett
Commissioner

Enclosure
c: Deputy Commissioner Michael F. Catania
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United States General Accounting Office

GAO

Report to the Honorable
Arlen Specter, U.S. Senate

February 1989

INLAND OIL SPILLS

Stronger Regulation and Enforcement Needed to Avoid Future Incidents

GAO/RCED-89-65

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Because of inadequate data, EPA's inspection program does not ensure that those posing the greatest threat to the environment are inspected first. Further, EPA has not given inspectors sufficient training and guidance. Inspections were not thorough and well documented in the four EPA regions GAO visited. Finally, most EPA regions have not fined facilities that violated EPA regulations.

Only about one-fifth of the oil spilled into the Monongahela River from the Ashland facility was recovered with available equipment and methods. EPA needs to see if inland oil spill recovery technology can be improved. In addition, EPA and the Coast Guard do not recover costs of monitoring a spiller's cleanup although these costs can be substantial.

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EPA's regulations do not require that operators of oil storage facilities construct and test tanks using industry standards. The Ashland tank was not constructed of materials meeting current industry standards and was not tested for integrity as required by these standards. The tank ripped apart when it was first filled to capacity. Subsequent metallurgical analysis showed that it was not tough enough for the cold temperatures and stress to which it was subjected.

Also, because the regulations do not require that facility owners and operators plan a response to the discharge of oil onto adjacent property, they may be unprepared to deal with this contingency. Before workers realized it, oil from the collapsed Ashland tank reached the Monongahela River through a storm drain outside the Ashland facility.

Equipment and operational deficiencies caused the Shell tank to discharge oil from a storm water drainage system. EPA's regulations do not mandate specific design and operating requirements for this type of system.

Enforcing the Regulations

EPA has not established management controls for its inspection program to ensure that the right facilities are inspected, inspections are well performed, and violations are deterred by appropriate sanctions. A need for

better enforcement is indicated by the large number of oil spills occurring annually—from 2,000 to 3,000 each year since 1982—and by widespread violations of the regulations in the 4 EPA regions GAO visited. In these regions, 41 to 94 percent of inspections found noncompliance with the regulations.

EPA needs more information to decide which tanks to regulate most strictly and inspect most often. For example, because of the threat they may pose, EPA should identify tanks constructed of substandard materials which are located near drinking water. According to EPA officials, because of limited funds, EPA often inspects oil facilities near sites being inspected under other EPA programs.

Inspections were sometimes superficial and poorly documented. In an effort to stretch resources, one region did "windshield" inspections. That is, inspectors observed facilities from the roadway without any examination on-site. GAO also found inspection reports that did not indicate what inspectors checked or what specific violations they found.

The act authorizes fines of up to $5,000 per violation of the oil pollution prevention regulations. Despite numerous oil spills and other violations, 7 of the 10 EPA regions have not levied fines.

Oil Spill Response Capabilities

Ashland's cleanup operations only recovered about one-fifth of the oil it spilled into the Monongahela River. EPA and Coast Guard officials believe that the spill response was about as effective as was possible, given weather and river conditions and the technology available. However, some officials told GAO that currently available equipment is not well suited for spills on fast flowing rivers. EPA's spill response research program was eliminated in 1987 because of budget pressure.

Recovering Monitoring Costs

The act gives federal agencies the right to recover from the responsible party the costs of cleaning up an oil spill. However, the act does not clearly indicate that agencies can recoup their costs of monitoring a cleanup conducted by a private party. These costs can be large and disrupt normal agency operations. For example, EPA spent about $370,000 monitoring Ashland's cleanup in the first month and a half following the spill.

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EPA needs more information to decide which tanks to regulate most strictly and inspect most often. For example, because of the threat they may pose, EPA should identify tanks constructed of substandard materials which are located near drinking water. According to EPA officials, because of limited funds, EPA often inspects oil facilities near sites being inspected under other EPA programs.

Inspections were sometimes superficial and poorly documented. In an effort to stretch resources, one region did "windshield" inspections. That is, inspectors observed facilities from the roadway without any examination on-site. GAO also found inspection reports that did not indicate what inspectors checked or what specific violations they found.

The act authorizes fines of up to $5,000 per violation of the oil pollution prevention regulations. Despite numerous oil spills and other violations, 7 of the 10 EPA regions have not levied fines.

Oil Spill Response Capabilities

Ashland's cleanup operations only recovered about one-fifth of the oil it spilled into the Monongahela River. EPA and Coast Guard officials believe that the spill response was about as effective as was possible, given weather and river conditions and the technology available. However, some officials told GAO that currently available equipment is not well suited for spills on fast flowing rivers. EPA's spill response research program was eliminated in 1987 because of budget pressure.

Recovering Monitoring Costs

The act gives federal agencies the right to recover from the responsible party the costs of cleaning up an oil spill. However, the act does not clearly indicate that agencies can recoup their costs of monitoring a cleanup conducted by a private party. These costs can be large and disrupt normal agency operations. For example, EPA spent about $370,000 monitoring Ashland's cleanup in the first month and a half following the spill.

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learnings with others in the industry, so that all operators can benefit from what we will learn.

Because of excellent efforts by our employees and contractors, and cooperation from the involved federal, state and local governmental agencies, cleanup of the oil has progressed efficiently. Among the contractors is the Clean Harbors Cooperative which was voluntarily formed in 1977 by the oil industry to assure prompt availability of the specialized equipment necessary to successfully handle oil spills.

The initial phase of the cleanup, which was containment and recovery of oil floating on the water, has been completed. Helicopter and boat inspection tours confirm that virtually all floating oil has either been contained, collected, or has evaporated from the Arthur Kill, Kill Van Kull, and Newark Bay. To date, over 139,000 gallons of oil have been recovered.

The cleanup effort is now focused on assessing and treating shorelines including marshes and tidal areas. The cleanup work force, which peaked at over 600 people, is phased down in line with the work which is continuing.

From the beginning, Exxon took responsibility for the cleanup of the heating oil and damages from the spill for which it is liable. We are actively pursuing the settlement of all

reasonable and valid claims and are contacting property owners, public and private, to facilitate this process.

Exxon has proposed a cooperative effort to assess potential impacts to natural resources. These cooperative assessments should include potential trustees from the States of New York and New Jersey, as well as the federal government. Exxon is prepared to participate in these assessments and fund appropriate studies. Discussions are underway and we intend to work toward agreement on these points as quickly as possible.

SUMMARY OF EVENTS

Now let me turn to a discussion of the leak itself and the events surrounding it.

Underwater examination by divers indicate the source of the leak is a crack or break in the 12 inch pipeline running from Exxon's Bayway, New Jersey refinery to the Bayonne, New Jersey terminal. Preliminary investigations have also pointed to mechanical malfunctions in the system of instrumentation which prevented the automatic shut down of the pipeline when the leak occurred. These investigations of the pipe and the instrumentation are continuing.

Calculations indicate that the oil lost was approximately 13,500 barrels, which is 567,000 gallons. This estimate was reported to

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surrounding a ship moored at a terminal on the Staten Island side of the Arthur Kill, as well as oil near the Staten Island shore. He also observed Coast Guard personnel at the scene. On recrossing to the Bayway side, the operator detected only slight amounts of oil near the Exxon docks. This boat search lasted until about 5:45 AM and it was concluded by those personnel that Exxon was not the source of the spill.

At 7:20 AM, a team from Bayonne was dispatched to investigate the inter-refinery pipeline in the vicinity of the Arthur Kill. During the operators meeting at Bayway, which commenced at 7:45 AM, the Bayway operations manager directed personnel to check out the inter-refinery pipeline. Bayway and Bayonne personnel began arrangements to pressure-test the six mile-long pipeline at 8:15 AM. The test physically began at 10:15 AM. After several minutes, indications of a leak near the Bayway docks were observed. Exxon personnel called the Coast Guard at 10:25 AM to report this as the source of the spill.

At 10:55 AM the New York City Fire Department was notified. At 10:58 AM, a call was made to the National Response Center. At 11:02 AM, the New Jersey Department of Environmental Protection and the Linden Fire Department were notified, and a duplicate report was made to the National Response Center. At 11:05 AM, the U.S. Environmental Protection Agency was notified. Concurrently the cleanup was initiated by Exxon personnel with

support from the Clean Harbors Cooperative and contractors. A bird rescue effort was mobilized on January 2 with Tri-State Bird Rescue and Research beginning on-site operations on January 3.

CONCLUSIONS

In conclusion:

The information we have presented is based on the preliminary results of the Exxon investigation which is continuing. We are cooperating with a number of governmental agencies to facilitate their own independent investigations.

The automatic shutdown system on this pipeline was designed to activate on a deviation of as little as 10 barrels/hour versus a flow capacity of up to 4000 barrels/hour. While there were a variety of reasons that would cause the system to shut down even if there were no actual leak, this type of deviation acted in the "fail-safe" direction. The leak on Jan. 2 initially went unnoticed because of a different condition, most probably, due to one or more mechanical malfunctions. How this large leak could occur and the automatic shut down not repeat rapidly is a subject of continuing analysis.

Exxon personnel and others began looking at our facilities immediately when advised that there was oil on the water. This search continued through the night and early morning but was not

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While recognizing the federal preemption question raised by "Hazardous Liquid Pipeline Safety Act of 1979", the federal legislation provides that a State may adopt more stringent thresholds for intrastate pipelines. The fact that the Exxon pipeline begins in New Jersey enters New York and renters New Jersey argues for a heightened interest on behalf of the State in the pipeline's regulation. This particular line has no connection point in New Jersey and arguably does not impact interstate commerce.

There can be no greater responsibility for a State than to protect the health and welfare of its citizenry. In addition to the general need for the United State Department of Transportation to exercise greater scrutiny of pipeline safety; New Jersey ought to:

1) undertake a systematic scrutiny and accounting of petroleum pipelines and detection systems,

2) press Congress for the adoption of regulations requiring the registration of pipelines pursuant to 1988 Amendments to the "Pipeline Safety Act".

3) amend the "Spill Compensation and Control Act" to require facility plans identifying pipelines that run outside the property lines of a facility.

Thank you for the opportunity to appear before you today. Your vigilance in reviewing this incident will hopefully avert other such tragedies in New Jersey's future.

Sierra Club
NEW JERSEY CHAPTER

Legislative Agent
395 West State Street
Trenton, NJ 08618
(609) 393-9232

TESTIMONY BY PHYLLIS R. ELSTON BEFORE THE JOINT COMMITTEE -- Sen. Richard Van Wagoner/ Assemblyman Robert Smith. RE: EXXON SPILL into the ARTHUR KILL
Hearing Date: January 23, 1990

The Exxon oil spill into the Arthur Kill on January 2, 1990, was an environmental insult of major proportions to New Jersey's waters and wildlife. Contaminated marshes threaten habitat and the food chain is at risk. Dozens of creatures are dead. Clarity of explanation has been lacking with regard to amount of spill and cause of spill. None of these unfortunate facts can be changed. We must concentrate now on how to recuperate from this disaster and prevent future catastrophe.

Sierra Club New Jersey Chapter supports legislation introduced last week by Assembly members Joann Smith and Joseph Kyrillos and Sen. Joseph Palaia and hope these bills will receive vigorous bipartisan support for:

The adoption of the "Valdez Principles" throughout New Jersey. This would direct NJ Division of Investment and the State Investment Council to give preference to investments in firms who embrace and adopt the Valdez Principles; and,

Monetary penalties for wildlife destruction due to pollution and responsibility for habitat restoration; and,

Action to insure that the US Dept. of Transportation monitors all pipelines regardless of capacity.

There is another ingredient necessary for such legislation to succeed. Increased environmental regulation requires a commitment for increased budgetary provisions. Passing laws meant to avoid environmental disaster is useless unless there is a true budgetary commitment from the Administration's Office of Management & Budget -- even in the face of current deficit. The position of the NJ Dept. of Environmental Protection must be strong and clear and in concert with environmental groups working to gain realistic budget allocations for this and other necessary enforcement of our laws.

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STATEMENT SUBMITTED BY COUNCILWOMAN SUSAN MOLINARI AT PUBLIC HEARING RE EXXON SPILLAGE ON TUESDAY, JANUARY 23, 1990 - 10 AM.

Thank you for the opportunity to address you this morning. It is a welcome acknowledgement that New York and New Jersey legislators must work together to protect and oversee our adjacent boundaries. The pollution resulting from our respective industrial negligence - be it from the Fresh Kills dump or petrochemical companies - have caused irreversible ecological and personal harm. I suggest that legislators from New York, with emphasis on Staten Island and New Jersey, - with emphasis on Linden, Perth Amboy, Elizabeth and Bayonne meet annually at an environmental forum to discuss obvious problems and explore not-so-obvious solutions. A united front and neighborly perspective could insure strong and immediate reaction to spills such as the Exxon recent disaster.

Hearings held by the New York City Council clearly revealed a gap in Federal oversight for low pressure pipelines such as Exxon's. I have requested Secretary of Transportation Skinner to revise DOT regulations to include all pipelines under their jurisdiction of inspection.

Information was not available however as to what agency, if any, in New Jersey holds jurisdiction over alarm inspections. Exxon representatives have admitted problems with their alarm for 12 years and yet no remedial action occurred. Oil was allowed to spill for 7 hours after an initial warning shut the system down. This could have been instantly mitigated if an adequate and reliable warning system was in place. I also believe that notification procedures should be in place if a warning system is problematic. Here again perhaps Federal DOT should take the lead. Economics should not play a roll toward deciding a system shutdown.

According to Exxon testimony operators did finally abide by the system shut down and chose not to override at approximately 4AM, January 2nd. It was not until 10:30 AM however that Exxon contacted the Coast Guard and claimed culpability for the spill. This delay clearly evidences a disregard for possible environmental damage. I hope this committee will help us obtain a clear explanation and accounting for the reporting delay.

While the spill occurred closer to the New Jersey Shoreline, the prevailing westerly winds brought the majority impact to Staten Island. We have great concerns over the respiratory effects the evaporation of Home Heating Fuel #2 has had on Staten Island residents. The majority of our residents share in an unfortunate reality of respiratory disease. Cardiovascular specialists have concluded that these sensitive sufferers have been exposed to health-threatening benezene, toulene and zylene. We implore New Jersey legislators to maintain their watchfulness, along with Staten Island representatives, as we develop a more sophisticated health-notification system. Ozone alerts during summer months do not cause panic. They do serve to put respiratory sufferers on a behavioral alert and have undoubtedly saved lives with their caution.

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The potential environmental hazards present in this corridor demand a more coordinated relationship between all of our health departments. A constant regional air monitoring program is long overdue and would serve as a necessary warning system to all residents.

It is difficult at this point to comment extensively on the devastating loss of birds in our region. Delayed acknowledgement from Exxon and a false initial report allowed oil to irrevocably seep into our shores and marshlands. Wetlands, feeding and breeding grounds may never come back into full productivity. We hope that we can count on your continued interest and cooperation toward securing full reparation from Exxon.

Again, thank you for the opportunity to share some of the concerns I have regarding the environmental future of this region. While we are focusing on the disasters surrounding the Exxon spill, let us seize this opportunity to establish a regional approach toward insuring a safe and healthful future.

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