Committee Meeting

of

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

SENATE CONCURRENT RESOLUTION NO. 57
(Determines that proposed coastal regulations are not consistent with legislative intent)

SENATE CONCURRENT RESOLUTION NO. 60
(Determines that certain proposed coastal permit program rules are inconsistent with legislative intent)

SENATE CONCURRENT RESOLUTION NO. 65
(Determines that proposed list of environmental hazardous substances is inconsistent with legislative intent)

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

DATE: May 16, 1994
2:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator John P. Scott, Chairman
Senator Andrew R. Ciesla, Vice-Chairman
Senator John O. Bennett
Senator Ronald L. Rice
Senator Nicholas J. Sacco
Senator Raymond J. Zane

ALSO PRESENT:

Raymond E. Cantor
Office of Legislative Services
Aide, Senate Legislative Oversight Committee

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

SCOTT
IR
/ R. CIESLA
airman
BENNETT
. MCNAMARA
) L. RICE
AS J. SACCO
ND J. ZANE

New Jersey State Legislature

SENATE LEGISLATIVE OVERSIGHT COMMITTEE
LEGISLATIVE OFFICE BUILDING, CN-068
TRENTON, NJ 08625-0068
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COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE LEGISLATIVE OVERSIGHT COMMITTEE

FROM: SENATOR JOHN P. SCOTT, CHAIRMAN

SUBJECT: **COMMITTEE MEETING - May 16, 1994**

The public may address comments and questions to Mark Connelly or Raymond E. Cantor, Committee Aide, or make bill status and scheduling inquiries to Carol Hendryx, secretary, at (609) 292-7676.

The Senate Legislative Oversight Committee will meet on **Monday, May 16, 1994 at 2:00 PM in Committee Room 9, Legislative Office Bldg, Trenton, NJ.**

The following resolutions will be considered:

SCR-57 Gormley/Ciesla	Determines that proposed coastal regulations are not consistent with legislative intent.
SCR-60 Cafiero/L.Connors	Determines that certain proposed coastal permit program rules are inconsistent with legislative intent.
SCR-65 Scott (pending intro)	Determines that proposed list of environmental hazardous substances is inconsistent with legislative intent.

Issued 05/11/94

Assistive listening devices available upon 24 hours prior notice to the committee aide(s) listed above

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SENATE COMMITTEE SUBSTITUTE FOR

SENATE CONCURRENT RESOLUTION, Nos. 57 and 60

STATE OF NEW JERSEY

By Senators Gormley, Connors, Ciesla, and Cafiero

A *CONCURRENT RESOLUTION* concerning legislative review of Department of Environmental Protection regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.

BE IT RESOLVED *by the Senate of the State of New Jersey (the General Assembly concurring):*

1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Legislature may review any rule or regulation of an Executive Branch agency to determine if the rule or regulation is consistent with the intent of the Legislature as expressed in the language of the statute which the rule or regulation is intended to implement.

2. a. (1) The Legislature enacted the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), (hereinafter referred to as "CAFRA") to dedicate the coastal area of the State "to those kinds of land uses which promote the public health, safety and welfare, protect public and private property, and are reasonably consistent and compatible with the natural laws governing the physical, chemical and biological environment of the coastal area." The Legislature also recognized the legitimate economic aspirations of the inhabitants of the coastal area and encouraged "the development of compatible land uses in order to improve the overall economic position of the inhabitants of that area within the framework of a comprehensive environmental design strategy which preserves the most ecologically sensitive and fragile area from inappropriate development and provides adequate environmental safeguards for the construction of any developments in the coastal area."

(2) The Legislature enacted the Waterfront Development Act, R.S.12:5-1 et seq., to facilitate the preservation and improvement of proper navigation and the improvement of commerce upon the navigable rivers and waters of the State.

b. (1) Section 17 of P.L.1973, c.185 (C.13:19-17) requires the Department of Environmental Protection to adopt rules and regulations to effectuate the purposes of that act. In 1993 the Legislature enacted P.L. 1993, c.190 which amended CAFRA and the Waterfront Development Act. Pursuant to the amendments the department was mandated to adopt, in consultation with the State Planning Commission and county and municipal governments located in the coastal area, new rules and regulations to implement the provisions of P.L.1993, c.190. Partly to fulfill this mandate, the department published notice of its Proposed Rule Number 1994-125 and 1994-126 to readopt and amend the Coastal Permit Program Rules and the Rules on Coastal Zone Mangement in the New Jersey Register on February 22, 1994.

(2) R.S. 12:5-3 requires that certain plans for waterfront development must be approved by the Department of Environmental Protection, and lists certain exemptions to this requirement. The Coastal Permit Program Rules and the Rules on Coastal Zone Management contained in Proposed Rule Number 1994-125 and 1994-126 also implement this statutory provision.

3. a. The Legislature finds that the proposed Coastal Permit Program Rules and the proposed Rules on Coastal Zone Management proposed in Proposed Rule Number 1994-125 and 1994-126 are inconsistent with the intent of the Legislature as expressed in the language of P.L.1973, c.185, P.L.1993, c.190, and R.S.12:5-1 et seq., for reasons including those enumerated in subsections b. through p. of this section.

b. (1) The proposed regulations require permits for the construction of decks, patios and similar structures if these structures are to be placed on a beach or dune or entail the use of pilings on a beach or dune.

(2) The Legislature finds that these permit requirements are inconsistent with the intent of the Legislature as expressed in the language of section 7 of P.L.1993, c.190 (C.13:19-5.2), which provides that a permit will not be required for the construction of decks, patios and similar structures.

c. (1) The proposed regulations will require a CAFRA review for an entire development even if only a small fraction of that development takes place in a statutorily established threshold area for a CAFRA permit.

(2) The Legislature finds that regulations that trigger a CAFRA review for an entire development when only part of the development is located within an area in which a CAFRA permit is required are inconsistent with the intent of the Legislature as expressed in the language of section 5 of P.L.1973, c.185 (C.13:19-5).

d. (1) The proposed regulations will require that an emergency permit be obtained for laying tubes of sand or other material on dunes as a response to dangerous conditions created by a natural disaster.

(2) The Legislature finds that this emergency permit requirement is inconsistent with the intent of the Legislature as expressed in the language of section 3 of P.L.1973, c.185 (C.13:19-3) because such activities often are temporary and protect tourism-related property, and are therefore exempt from permit requirements pursuant to the statutory exemption in that section pertaining to temporary or seasonal structures related to the tourism industry.

e. (1) The proposed regulations stipulate that pools and other substantial developments will not be considered "intervening developments" for the purpose of establishing the "first-use" threshold established in the 1993 amendments to CAFRA.

(2) The Legislature finds that this narrow definition of an intervening development is inconsistent with the intent of the Legislature as expressed in sections 3 and 5 of P.L.1973, c.185 (C.13:19-3 and 13:19-5). Section 5 of P.L.1973, c.185 (C.13:19-5) stipulates that developments within 150 feet of a beach, dune or mean high water line will be regulated unless there is an intervening structure between the mean high water line and the 150 foot delineation. By failing to recognize certain developments as "intervening developments," the proposed regulations are inconsistent with the statutory definition of "development" in section 3 of P.L.1973, c.185 (C.13:19-3) and will effectively require more proposed developments to be subject to CAFRA review than intended by the Legislature.

f. (1) The proposed regulations would exempt from CAFRA review the reconstruction of a development that is damaged or destroyed by natural hazard or act of God only if the reconstruction does not increase or change the footprint of the development, increase the impervious cover, or change the use of the development.

(2) The Legislature finds that these conditions on reconstruction are not consistent with the intent of section 7 of P.L.1993, c.190 (C.13:19-5.2), which exempts from the CAFRA permitting requirements the reconstruction of such developments without conditions.

g. (1) The proposed regulations will narrow a statutory exemption from waterfront development permits for the proposed reconstruction of docks, bulkheads and similar structures, by requiring a permit for such developments if the developments result in any permanent environmental damage.

(2) The Legislature finds that narrowing this statutory exemption is inconsistent with the intent of the Legislature as expressed in R.S.12:5-3, as amended by section 1 of P.L. 1981, c.315, which states that docks, bulkheads and similar structures used for recreational purposes do not fall under the purview of the Waterfront Development Act.

h. (1) The proposed regulations will narrow a statutorily established grandfather provision that allows permit exemptions for projects that receive [preliminary] municipal approval prior to July 19, 1994 and that begin construction within three years, provided construction continues with no lapses of more than one year. The regulation will define "begin construction" to mean that all foundations have been layed.

(2) The Legislature finds that narrowing this statutory grandfather clause is inconsistent with the intent of the Legislature as expressed in subsection a. of section 7 of P.L. 1993, c.190 (C.13:19-5.2). The proposed regulation will not allow an exemption unless foundations have been layed for proposed developments within three years of the date of preliminary approval. However, a plain reading of "begin construction" would suggest that "begin construction" also means site preparation or other preliminary activities. Furthermore, the proposed regulations allow temporary lapses in construction (i.e. inactive winter seasons) to be cumulatively assessed, thereby allowing for a further inconsistent limitation of the exemption clause.

i. (1) The proposed regulations will require that a permit be issued for the "voluntary reconstruction" of a non-damaged development within the same footprint, even if the voluntary reconstruction entails only the replacement of an existing wall.

(2) The Legislature finds that requiring a permit for the repair or replacement of a part of an existing development is inconsistent with the intent of the Legislature as expressed in section 5 of P.L.1973, c.185 (C.13:19-5), which requires that a permit be issued for a "development," which is defined in the statute as construction, relocation or enlargement. A statutory exemption is provided in subsection c. of section 7 of P.L.1993, c.190 that allows for the vertical enlargement of an existing development. In this context, the department's interpretation of the statute assumes that the Legislature sought to regulate the replacement of a single wall, but not a vertical expansion that could have a greater impact on the environment.

j. (1) The proposed regulations permit the department to suspend a permit after it has been issued if the department determines that a permit applicant failed to predict correctly any unanticipated adverse effects of the proposed development.

(2) The Legislature finds that the suspension of permits on this basis is inconsistent with the intent of the Legislature as expressed in section 10 of P.L.1973, c.185 (C.13:19-10). A permit may be issued pursuant to this section only if the department finds that the project impacts will be minimal. Once this finding has been made and the permit issued, it was not the intent of the Legislature that the applicant should be penalized for adverse impacts that the department itself could not foresee.

k. (1) The proposed regulations will require public utilities to obtain an individual CAFRA permit for maintenance, repair or replacement of existing water, petroleum, sewage or natural gas pipelines and associated pump stations and connection junctions, telecommunications lines and cable television lines that are located on a beach or dune or within 150 feet of the mean high water line or of a beach or dune.

(2) The Legislature finds that requiring permits for services provided within existing public rights of way is inconsistent with the intent of section 7 of P.L.1993, c.193 (C.13:19-5.2).

l. (1) The proposed regulations, at N.J.A.C.7:7-1.4, link CAFRA permitting to the rules for Coastal Zone Management, effectively prohibiting all residential development on a beach or dune or within 150 feet landward of the mean high water line or of a beach or dune. Because the existing Coastal Zone Management rules specifically prohibit non-water-dependent uses, including residential development on beaches, dunes, overwash areas, coastal high hazard areas, filled water's edge areas, flood hazard areas, and many other special land areas, the department would not be able to issue a CAFRA permit for residential development in such areas.

(2) The Legislature finds that this outright prohibition of residential development is inconsistent with the intent of the Legislature, as expressed in section 5 of P.L.1973, c.185 (C.13:19-5), to require permits for the construction of single family houses.

m. (1) The proposed rules require a CAFRA permit for routine beach maintenance, including debris removal and cleanup.

(2) The Legislature finds that this permit requirement is inconsistent with the intent of the Legislature, as expressed in the definition of "development" in section 3 of P.L.1973, c.185 (C.13:19-3), to require a permit only for major disturbances, such as grading, excavation or filling, on beaches and dunes. The intent of the legislation was never to require a permit to clean up the beaches.

n. (1) The proposed rules require an individual CAFRA permit for gardening in certain areas.

(2) The Legislature finds that this permit requirement is inconsistent with the intent of the Legislature, as expressed in the definitions of "development" and "residential development" in section 3 of P.L.1973, c.185 (C.13:19-3). Section 3 defines residential development to include all site preparation associated with residential development. Requiring an individual CAFRA permit for gardening is inconsistent with that definition.

o. (1) The proposed rules extend the jurisdiction of the Pinelands Commission to include the entire Pinelands National Reserve.

(2) The Legislature finds that this extension is inconsistent with the intent of the Legislature, as expressed in the "Pinelands Protection Act," P.L. 1979, c.111, (C.13:18A-1 et seq.), which limited the jurisdiction of the Pinelands Commission to the pinelands protection area and pinelands preservation area, the sum of which is smaller than the Pinelands National Reserve. Furthermore, efforts made by the Pinelands Commission to amend Senate Bill No. 1475 of 1993 (enacted as P.L. 1993, c.190) to provide for strengthened regulatory provisions in the Pinelands National Reserve were purposely refused before the Senate Coastal Resources and Tourism Committee.

p. (1) The proposed rules fail to exempt the paving of an existing roadway from CAFRA permit requirements.

(2) The Legislature finds that this failure to exempt paving existing roadways is inconsistent with the intent of the Legislature, as expressed in section 7 of P.L.1993, c.193 (C.13:19-5.2).

4. The Secretary of the Senate and the Clerk of the General Assembly shall transmit a duly authenticated copy of this concurrent resolution to the Governor and to the Commissioner of the Department of Environmental Protection.

5. a. The Commissioner of the Department of Environmental Protection shall, pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, have 30 days following transmittal of this resolution to amend or withdraw Proposed Rule Number 1994-125 and 1994-126.

b. If the Commissioner does not withdraw or amend the proposed regulations, the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the proposed regulations, in whole or in part, or to prohibit the proposed regulations, in whole or in part, from taking effect.

STATEMENT

This concurrent resolution sets forth the Legislature's finding, authorized pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, that [certain provisions of] Proposed Rule Number 1994-125 and 1994-126, the proposed amendments to the Coastal Permit Program Rules and the Rules on Coastal Zone Mangement, are not consistent with the intent of the Legislature as expressed in the statutes the Coastal Permit Program Rules and the Rules on Coastal Zone Mangement are intended to implement.

Under the provisions of Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Department of Environmental Protection would have 30 days following transmittal of this concurrent resolution to the Governor and the Commissioner of DEP to amend or withdraw the proposed regulations, or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the proposed regulations, or any portion thereof, or to prohibit the proposed regulations, or any portion thereof, from taking effect.

Determines that proposed coastal regulations are not consistent with legislative intent.

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SENATE COMMITTEE SUBSTITUTE FOR

SENATE CONCURRENT RESOLUTION, No. 65

STATE OF NEW JERSEY

By Senator Scott

A CONCURRENT RESOLUTION concerning legislative review of Department of Environmental Protection regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.

BE IT RESOLVED *by the Senate of the State of New Jersey (the General Assembly concurring):*

1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Legislature may review any rule or regulation adopted or proposed by an administrative agency to determine if the rule or regulation is consistent with the intent of the Legislature as expressed in the language of the statute which the rule or regulation is intended to implement.

2. a. The Legislature enacted the "Worker and Community Right to Know Act." P.L.1983, c.315 (C.34:5A-1 et seq.) ("the Act") to establish a comprehensive program for the disclosure by certain businesses of information about hazardous substances in the workplace and in the community and to provide a procedure whereby residents of the State may gain access to this information. As expressed in section 2 of P.L.1983, c.315 (C.34:5A-2) the intent of the Legislature was to establish a mechanism by which individuals could better understand hazardous substances in the environment and address the associated risks of these hazardous substances.

b. Section 4 of P.L.1983, c.315 (C.34:5A-4) provides that the "Department of Environmental Protection shall develop an environmental hazarous substance list which shall include the list of substances developed by the department for the purposes of the Industrial Survey Project, established pursuant to P.L.1970, c.33 (C.13:1D-1 et seq.) and any substance on the list established by the United States Environmental Protection Agency for reporting pursuant to 42 U.S.C. §11023 and may include other substances which the department, based on documented scientific evidence, determines pose a threat to the public health and safety." The environmental hazardous substances list currently includes over 300 environmental hazardous substances.

c. Section 4 of P.L.1983, c.315 (C.34:5A-4) also requires the department to develop an environmental survey. The environmental survey requires that certain information be supplied to the department concerning substances included on the environmental hazardous substances list. The required information includes the chemical name and Chemical Abstracts Service number of the substance; a description of the use of the substance at the facility; the quantity produced at the facility; the quantity brought into the facility; the quantity consumed at the facility; the quantity shipped out of the facility as a final product or in a product; the stack emissions of the substance from the facility; the non-point source emissions from the facility; the amount of the substance discharged into ground or surface water; the treatment methods and the raw wastewater volume and loadings; and the quantity and method of disposal of the substance. Further, the total quantity of environmental hazardous substances generated at the facility, the quantity recycled, and information pertaining to pollution prevention activities at the facility must be reported. Copies of the environmental survey must be transmitted to the department, the county health agency, and the local police and fire officials. The department is required to maintain files of the environmental surveys for 30 years. Any person may request a copy of an environmental survey from the department. In addition, the environmental survey must be maintained by the employer and shall be made available to facility employees within five working days of a request.

d. On January 3, 1994, at 26 N.J.R.123 the department proposed amendments to N.J.A.C.7:1G-2.1 to add several thousand substances to the list of environmental hazardous substances. None of the substances proposed to be added is included in the Industrial Survey Project list or in the list of substances pursuant to 42 U.S.C. §11023 and the department has furnished no documented scientific evidence that any of the substances proposed to be added pose a threat to the public health and safety. Further, section 24 of P.L. 1983, c.315 (C.34:5A-24) provides that "[s]ubstances not included on.... the environmental hazardous substance list shall not be subject to the reporting provisions of this act." Further, the addition of thousands of substances to the environmental hazardous substance list will result in the generation of volumnious data that will effectively defeat the original intent of the Legislature by confunsing individuals with irrelevant information not pertinent to risk management.

3. a. The Legislature finds that the expanded environmental hazardous substance list contained in the proposed regulations at N.J.A.C. 7:1G-2.1 is so voluminous and overinclusive that it prevents individuals from being able to effectievely "monitor and detect any adverse health effects attributable thereto . . . . " , and that the proposed additions to the list contravene the clear and unequivocal text of the underlying act.

b. The Legislature therefore finds that this proposed regulation is not consistent with the intent of the Legislature as expressed in the language of the "Worker and Community Right to Know Act," which the regulation is intended to implement.

4. The Secretary of the Senate and the Clerk of the General Assembly shall transmit a duly authenticated copy of this concurrent resolution to the Governor and the Commissioner of Environmental Protection.

5. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Commissioner shall have 30 days following transmittal of this resolution to amend or withdraw the regulations amending N.J.A.C.7:1G-2.1 and proposed in 26 N.J.R.123 or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate in whole or in part the regulations proposed in 26 N.J.R.123 which amend N.J.A.C.7:1G-2.1.

Determines that proposed list of environmental hazardous substances is inconsistent with legislative intent.

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SENATOR JOHN P. SCOTT (Chairman): I want to call this hearing to order.

Good afternoon and welcome to today's meeting of the Senate Legislative Oversight Committee. Today, we are going to take a look at the specific aspect of the Department of Environmental Protection and Energy's implementation of an important but controversial law, the Community and Worker Right to Know Act. We're also going to conclude the hearing that we had a week ago on CAFRA. For those who don't know, we were there in Ocean City, and we had testimony for some three hours. Substantial information came to us. As a result, we made some changes, and we also combined two resolutions SCR-57 and SCR-60 on CAFRA.

Pursuant to the Right to Know and DEP, they have a responsibility to prepare an environmental hazardous substance list, and that's basically to document scientific evidence that poses a threat to public health and safety.

On January 3, the former proposal and amendment to the Right to Know rules -- that proposal proposes that several thousand chemicals to the environmental hazardous substance list by referring the certain list established by Federal agencies. While some of these chemicals may be hazardous, others may not be. If any of you have ever seen a Right to Know report, you know -- you might agree with the difference between the Right to Know report and a phone book. The phone book isn't written in Latin. A Right to Know report is nearly impossible to read. The overwhelming volume of chemicals on a list and the scientific nature of the associated data make it nearly impossible to read and understand.

In the past, businesses have had to report quantities of such substances, as matches, cleaning fluid, copper, and Wite-Out. The implementation of Right to Know is,

unfortunately, the public right to be overwhelmed and businesses right to be awash with expensive paperwork. The recording requirement needs to be more sensible for those who need access to information, won't be overwhelmed with trivial information, and businesses won't be forced to waste limited resources that could otherwise be put towards employing more of our citizens in a productive way.

Very simply, the law states that chemicals added to the environmental hazardous substance list that are above and beyond statutory mandates must be rationally added by using, in words of the statute, documented scientific evidence that suggests the substance poses a threat to the public health and safety.

The Department cannot legally expand the list by adding the chemicals contained on some other list without this scientific justification. If the DEP wants to expand the list, they must, in accordance with law, use documented scientific evidence for each individual substance. If this is done, then the only important substance will be listed on the environmental hazardous substance list. Individuals will be better able to understand a report, and businesses will be free of excessive red tape. This is what the original law is all about.

I am not opposed and the other members of this Committee are not opposed to expanding the environmental hazardous substance list to include truly hazardous substances. We all want our firefighters and other citizens to have adequate information so that they can take precautions in the workplace and at the scene of emergencies. But the environmental hazardous substance list must be based on science, not on expedience brought on by a regulatory joyride at the DEP.

If DEP ignores the law and adds thousands of chemicals to this list without justification, without subsiding scientific

evidence, then I will work with the other members of this Committee to make use of legislative veto, as quickly as possible. I am aware that further changes to the Right to Know program may be in order. In fact, Commissioner Shinn was a sponsor of legislation last year that would have overhauled the Right to Know program. But further changes will, for the most part, require statutory amendments.

I would like to remind the people that, today, the scope of this Committee is specific parts of the law, legislative intent versus what has happened. If you want to make a statement, if you want to make a two or three minute statement, fine, and that's it. But, otherwise, please stick to the legislative intent and the violation of the law, if you think it is or is not. We all know the problems with the DEP, it's well documented. We all have the horror stories and so on.

We also are going to enter the CAFRA law, which based on the testimony, once again, they've gone well beyond the legislative intent. We have a host of amendments that were added to the two Concurrent Resolutions SCR-57 and SCR-60. They are combined today, and we will start off with that Concurrent Resolution SCR-57 and SCR-60.

All right, there are copies of the Committee Substitute up on the table, up there if someone wants them.

I would like to call Senator Connors to testify on the CAFRA. We will hear the CAFRA first. We have three hours of testimony, so we're pretty well in tune on that. We noticed some of the problems.

Senator Cafiero, if you'd like to join--

S E N A T O R J A M E S S. C A F I E R O: Mr. Chairman, before my colleague begins his testimony, I would like to commend you for the hearing that you had down in Ocean City for the Oversight Committee. It was a tremendous outpour and of

interest. I think a lot was accomplished. I think everything was focused on exactly what the shortcomings of this legislation were. Between you and my good friend Lenny Connors, we gave it the old one-two punch. I think you delivered greatness and I want to commend you for that.

SENATOR SCOTT: Thank you.

S E N A T O R L E O N A R D T. C O N N O R S J R.: Thank you very much, Mr. Chairman. I thank you, Senator Cafiero.

I appreciate the time that you've taken to go down to Ocean City and listen to testimony that was taken that day from DEP officials and others. I complement the Committee that attended that, in seeking what the real truth and what the real intent of the legislation was all about.

As you know, in the last year, we had passed and signed into law an amendment to the Coastal Areas Facilities Review Act. Subsequent to that signing on July 19, 1993, the rules and regulations were promulgated and put forth in the register on February 22, I believe, as a public document and in a position to be adopted. Having read those rules and regulations, it is the opinion of the authors here, Senator Gormley, Ciesla, Cafiero and Connors -- speaking for Connors only, but I feel confident that those individuals -- having read them, felt the same way as I did and immediately precipitated legislation that called for oversight and the original intent of the legislation.

There are a number of articles here that specifically point out those areas that the regulations have far exceeded the intent of the Legislature in the opinion of the authors. I would just like to point out, just a few. Well, all of them, because we care to--

The proposed regulations on page 2 of the Senate Committee Substitute: The proposed regulations require permits for the constructions of decks, patios and similar structures if these structures are constructed on a beach or dune or entail a use of pilot. It's a requirement, if you're going to build a deck on a beach or a dune, that you have to put pilings in.

So the way these rules were read, then, and written was that you couldn't build a deck or a patio. Yet, the legislation said very clearly -- the law said very clearly that it wasn't the intent of the legislation to regulate decks and patios.

The second thing was: The proposed regulations would require a CAFRA review for an entire development, even if only a small fraction of that development takes place in a statutorily established threshold area for a CAFRA permit. In other words, one property touching another that would have just a small piece of it. I don't believe that is the intent of the Legislature, to regulate the second partial of property to the extent of a full blown CAFRA permit.

The third thing was: The proposed regulations will require that an emergency permit be obtained for laying tubes of sand or other material on dunes as a response to dangerous conditions created by a natural disaster.

I'm very familiar with that one, because to my knowledge, my municipality, the municipality of which I'm mayor of, spent considerable funds from our local budget last year to put tubes of sand in a position, particularly in the area of 11th and 12th Street, in the Borough of Surf City. We contacted the American Seashore, National Seashore, and they had recommended the erosion treatment that would help the municipality protect its dunes.

These tubes of sand, for example, are about -- they come in any length you want, you can have them made. They're polypropylene bags. They're very smooth. They are about four or five feet wide, and they'll go -- they'll make them 15 to 20 feet long. We use them 15 feet. You fill them with sand hydrologically. You pump the sand into them. You lay them at the base of the dune so the wave is forced to expend its energy against those tubes of sand in order to protect the dune and the properties behind it.

There was no mention in the Legislature, the legislation of Senate Bill No. 1475, in the law that said anything about tubes of sand, or emergency use, or emergency permit. So we feel that that doesn't meet legislative intent.

The regulations stipulate that pools in another substantial development will not be considered intervening development for the purpose of establishing a first use, established in the 1993 amendment. When specifically we read the language of the law, pools were exempted from this and not considered a first use. It's just an intent to over regulate, and if there was a pool, it would be utilized as a first use.

The proposed regulations would exempt from CAFRA review the reconstruction of a development that is damaged or destroyed by natural hazard or active guard only if the reconstruction does not result in the relocation of the footprint of the development or an increase in the number of parking spaces.

There are many municipalities along the shore in the beach dune area. I'm speaking from experience and knowing a good portion of our coastline that is built on what's called nonconforming lot. These nonconforming lots, some of them have no parking, so if a fire was to come along or a lightening bolt, a wave wash, or something else like that to destroy the house --

if they relocated the house to provide off street parking and comply with the local regulations, they would have to then apply for a CAFRA permit.

I think it was the intent of the Legislature to say, those folks that live there now are exempt, and may rebuild, and put their heads on their pillow at night and not worry about whether or not they're going to have to go through a CAFRA hearing and possibly even be denied under rebuttable presumption.

It goes on further to say that the proposed regulations will narrow a statutory exemption from waterfront development permits for the proposed reconstruction of docks, bulkheads and similar structures by requiring a permit for such developments, if the developments result in any permanent environmental damage.

My understanding is Senator Zane had clarified that a long time ago under the law, and this kind of flies right in the face of the legislation that is in the statute presently now. We think that waterfront development permits shouldn't be needed for recreational docks.

The proposed regulation going on -- the proposed regulation will narrow statutorily established grandfather provision that allows permit exemptions for projects that receive preliminary municipal approval prior to July 19, 1994 and that begin construction within three years, provided construction continues with no lapses of more than one year. The regulation will define "begin construction" to mean that all foundations haven't been layed.

Now, that's not in the statute. That is not in the law. It says, when the permits are taken, as you would grandfather it in. Now, when we read the rules and the regulations that are proposed, now they have to have a

foundation in, something they didn't require before. Ratings activities and other such activities could be construed as a beginning now that foundations must be in. It certainly didn't take into consideration whether, at the time, that the regulations were promulgated and put out -- was it in February -- when the people had little knowledge of this.

It goes on further in our bill to talk about the proposed regulations which would require that a permit be issued for "voluntary reconstruction" -- understanding that voluntary reconstruction means a repair of ones home where you're rebuilding an outside wall. In fact, we specifically point to it -- "voluntary reconstruction of a nondamaged development within the same footprint, even if the voluntary reconstruction entails only the replacement of an existing wall."

I don't think the Legislature wanted to say and the law should say and did say that a person who has a car, hits his home, and he has to reconstruct it, the outside wall, that he has to go for CAFRA permit. I don't think a person should be required to get a CAFRA permit. I don't think it says that in the law -- or a person's home has been eaten out by terminates, and now, he must voluntarily reconstruct that wall -- that outside wall -- that he should be going for a termite. Finally, just say on that issue alone, what does that have to do with the environment?

Then it goes on to further in the bill -- here it says: The proposed regulations permit the Department to suspend the permit after it has been issued if the Department determines that a permit applicant fails to predict correctly any anticipated adverse effects of the proposed development.

In other words, if a person goes to get a permit, gets a permit to do the job, and then they decide that there is adverse effects due to this, they can reverse the permit and

cause pain and suffering to the homeowner. I don't think that is what the Legislature intended.

The next item is: The proposed regulations will require public utilities to obtain an individual CAFRA permit for maintenance, repair or replacement of existing water, petroleum, sewage, or natural gas pipelines and associated pump station and connection junctions, telecommunication lines and cable television lines that are located on a beach or dune within 150 feet of the mean high water line or of the beach and dune.

Now, I know it wasn't the legislative intent to say that if your cable T.V. fell off the side of your house, that the company had to go get a CAFRA permit and pay for a permit in order to reattach the cable T.V.

In fact, I go so broad as to say, in the most recent communication of May 5, that there is an intent to regulate satellite T.V. dishes. In other words, if a person in a beach dune area is 150 feet from the water on a canal, or a lagoon, or in a natural beach area of the bay or a river and wants to put a satellite dish on his roof, he must now go for -- under these rules -- a CAFRA permit. I don't think so, I know the Legislature didn't mean-- I know that all of us that are at this table, except with maybe Mr. Sacco -- Senator Sacco who is here and participated -- nobody intended that to be done and yet it is in there.

The proposed regulations link a CAFRA permitting to the rules for Coastal Zone Management, effectively prohibiting all residential development on a beach or dune or within 150 feet landward of the mean high water line or beach or dune. Because the existing Coastal Zone Management rules specifically prohibit non-water-depended uses, including residential development on beaches, dunes, over wash areas, coastal high

hazard areas, filled water's edge areas, flood hazard areas, and many other special land areas, the Department would not be able to issue a CAFRA permit for a residential development in such areas.

Now, think of it for a moment. The coastal rules -- the coastal zone rules were put in 1973 for developments that had more than 24 units. It didn't apply to single units. Now, what the DEP has done is say, we're going to now regulate down to one -- one unit, because that is what the legislation said, and in the coastal zone rules it specifically says, more than 24 units, you have to have a water related use.

So, in other words, if you wanted to build a 25 unit condominium complex, you must have public access, you must have water related use, so that the condominium was secondary and the access to the water was primary, or otherwise, you wouldn't get a permit. Now, under those coastal zone rules that are being implemented, anybody that owns a waterfront piece of property on the beach or a dune, under those rules, the coastal rules, the DEP by its own rules was prohibited from issuing a permit. I don't think that is legislative intent and I think that should be corrected. I think it would be corrected in this legislation.

Under this document: The proposed rules require a CAFRA permit for routine beach maintenance, including debris removal and cleanup.

Let me tell you, as a mayor of a coastal community, you cannot do that to us. I don't think it was ever your intent to do that. We must cleanup everyday. We have beach screeners out and we pick up wood and debris.

All kinds of flocks come to the shore, from telephone poles and railroad pilings and so forth -- come across on the beaches and this is just one-- My little municipality is only

a mile and a half long -- speaking, let me change my hat for a minute, as a mayor.

You cannot prohibit this and ask for a CAFRA permit. What in the devil does that have to do with the environment? This is better for the environment -- to pick it up.

The fact of the matter is, all of us were here during the time, I think, when we had medical waste coming ashore. We were one of the municipalities, along with all the other municipalities, up and down the coast, picking up all kinds of medical waste and debris that was thrown out. That was really a crime, syringes, etc. that came-- Don't make that a permitted process. It wasn't meant to be a permitted process. I think, I'm hopeful that you agree with it.

The proposed rules require an individual CAFRA permit for gardening in certain areas. Gardening, I mean, and this now, if you look at the rules, they call for indigenous plants, so you must-- Now, a homeowner must raise, if he's in beach dune area or 150 feet in that proximity of that beach dune area, and along the waterfront, or on a lagoon, and if he wants to plant a garden, he must raise his hand to the DEP and say, may I, under a permit to rule. Then he could only plant indigenous plants. He can plant bayberry and white cedar, but he cannot plant a rosebush. Those were in the rules. The Legislature didn't mean that to be that harsh on the people that live along the coast.

Under the proposed rules to extend the jurisdiction of the Pinelands Commission to include the entire Pinelands Nationals Reserve--

Well, there are two areas in the Pinelands; one is the Pinelands Act that encompassed a portion of our State, and then there's the Pinelands Reserve which is under the Federal Act. It goes right to the water line, and under the proposed rules,

now, an owner must go to the Pinelands Commission, in order to get a permit before he gets -- or permission, before he gets a CAFRA permit. And that goes right to the water's edge all along my county, all along Barnegat Bay, right up to the water's edge. Doesn't go out to the barrier islands, but it goes up to the water's edge. I don't think the Legislature intended that.

The last one: The proposed rules fail to exempt the paving of an existing roadway from CAFRA permit requirements.

The fact of the matter, if you read the legislation, the legislation in the law says that is exempt. However, under the rules, they twisted it all the way around to say that the repaving of a road is not a substantial change. So, therefore, it must require a CAFRA permit. So, in other words-- Let me just give you an example.

In one section of my district, in a little town called Stafford Township, and a little area that is along the bay that has 4000 homes -- 4000 homes -- a lagoon front, 150 feet back from that waterfront is the road. Now, there is miles and miles and miles. It has been estimated it costs something like $25,000 to $30,000 to get the CAFRA permit. Because reconstruction under their rules is based on a based fee.

For example, it goes -- to my memory -- it goes, the first $0 to $50,000 is $1450, plus one quarter of 1 percent of the construction cost. What does that have to do with -- is this a money making deal or is this something that protects the environment? That is the question we should be asking today.

Finally, this Legislative Oversight Committee and these bills SCR-57 and SCR-60 sponsored by Senator Gormley, Ciesla, Cafiero and myself are bills-- We have a strong feeling for the environment. But I think we all should ask ourselves a question. Did the legislation say that? My answer to it is, "No, it didn't," and I've read it until I'm blue in the face.

I know every word of that legislation, backwards and forwards. It doesn't say that. Or is this a money making deal and should the DEP be held accountable for writing things that the Legislature didn't intend to say and to live with. So that is the appeal that I make to you personally.

I appreciate the time -- for your listening to me. My colleagues Senator Cafiero, and Senator Gormley, I'm sure, probably have something to say.

S E N A T O R W I L L I A M L. G O R M L E Y: Thank you.

Senator Connors has obviously gone over a number of the matters that are also addressed to my resolution. I would urge the Committee's consideration for a merged piece of legislation that would deal with this problem.

Some of the observations I've made from the hearing that Senator Scott called in Ocean City, not going back to the specifics, but in terms of the approach as to how the regulations came about. It would seem common sense would dictate that if there was some coordination between code enforcement officials in the town and CAFRA that enormous amount of overlap could be eliminated and an enormous amount of common sense could take place. There really isn't that interaction.

The answer we got when we brought up that interaction is, "Oh, we tell them what the regs are after we do them." Well, why don't we have a system where the local code official is the regulator? So there aren't two layers of regulations and that is what we now have.

I found in the hearing that DEP was confused about the regulations. The people they sent to testify were unaware of certain portions of the regulations or impacts of the regulations. Which goes to another point, if they are so good, why have misconceptions, if you consider them misconceptions? Why don't we do this in terms of a partnership?

The people who live along the coast, live there for a reason. There is something to protect. They chose that lifestyle because of the environment, the lack of pollution, because of the open space.

Consequently, regulations like this put a wedge between natural allies of one another.

So I appreciate the actions of this Committee. I appreciate the work of my colleagues, Senator Connors, and Senator Cafiero, Senator Ciesla and everybody involved in this issue. And this is not a question of pointing the finger at DEP.

The real question is what is in the best interest of the citizens and the environment, and has as far more common ground, if people wouldn't deal or come forth with regulations that give people a feeling as if they are watching the old Abbott and Costello monologue of who's on first. "Oh, that is section A. Oh, no, it is section B, that changed last year." Well, look at the time that Senator Connors has put on this. How is the average citizen without the wherewithal, without the staffing supposed to understand what happened?

I think there is far more common ground on this issue, but when things like this were admitted in the-- "Oh, we didn't mean that." "You didn't mean it, but you wrote it." And that is what they said. And what happens then, when there are legitimate arguments on the environment, that then casts a shadow on them that errors were made of that nature.

So I see this resolution instead as-- These resolutions, instead of appearing to be adversarial, they actually offer an opportunity for some common sense, and dialogue and, hopefully, a change of the system in the future that they're built from the ground up, instead of the top down.

Thank you.

SENATOR SCOTT: Thank you very much.

Senator Ciesla, any questions? (no response)

Senator Zane, any questions? No other--

Senator Sacco?

SENATOR SACCO: Senator Connors, your frustration as a mayor comes through very clearly. I mean, you see it from both sides; you relate personally with the people who live and you represent in those areas. So you were there when the original legislation was put in, and you never voted for the legislation as it stands today. Nobody would. In your situation, very personally, you're representing people being affected by this, and they are looking at you and saying, "Why?" You know, so it just seems to be the same story over and over again. The agency started with good intentions. It is now well beyond that and now crushing your area with regulation. The cable T.V. one, I think, is really interesting. I could just imagine my constituents if their wires fell off, and we had to go do a permit process. That you have to go through that, it's frightening. It's good to hear this testimony today.

SENATOR CONNORS: May I respond to that?

SENATOR SCOTT: Yes.

SENATOR CONNORS: Senator Sacco, I really appreciate your compassion. Please believe me, gentlemen of the Committee, it is not because I happen to be the Mayor of Surf City. Although, I have a great law abiding respect for the beach, the dune and all of the waters that are around this-- I've lived there 40 years, 30 of them I've spent as mayor of that municipality. And the plain fact of the matter is, I take no pleasure in taking to task anyone that wants to protect the environment. It should be protected.

We've come a long way. We have a lot further way to go. But it just seems to me that when-- And part of my

objections, so it will be abundantly plain to you because you have observed that I didn't support this-- Yes, I spoke that day that the bill went through. I had an opinion with regard to it.

I'll just give you one segment of that opinion. In the law, it says that the DEP can fine people up to assess a violation. It is very specific. It tells how to go through this assessment up to $25,000 and then compromise that fine, make it less, all right. Then keep it, to increase their fiefdom. Now, we as Senators have got to understand one thing. We talk about the growth of government. We talk about stopping it. You're not stopping this. This is just growing and growing all the time. They are putting people on the payroll for enforcement.

We, the legislation, we, the law-- It says for surveillance flights, so they can fly over and look at you. Now, I wouldn't care where you live, whether you lived in Jersey City or Newark or Surf City. I kind of resent and the people I represent resent the fact that they have to be spied on by an airplane and surveillance flight.

That is what is written in the law and I kind of resent it. If we're ever going to cut our government back, we make the determination. We don't send no one to pontificate here. But we make the determination who is going to spend the money and how much is going to be spent.

We don't send the State Police out with a book of tickets and say, you keep 50 percent, or you keep all of what you have there and to increase your rank because we need more law, more protection. No, we make the decision as legislators -- how much money is going to be spent in that -- in all the other areas except that area. I think that is wrong. I spoke to that issue. It is a cash cow, and if I had my way about it,

I would-- There is a bill in the Assembly, I hope it passes. All of that money should go into the Treasury. It shouldn't be utilized as a temptation to increase the fiefdom that already exists, in my view.

SENATOR SACCO: I mentioned once before that these are nothing more than bounty hunters.

SENATOR CONNORS: I'm glad somebody else is using that one. They heard that in Ocean City.

SENATOR SACCO: When they go out-- I don't know if anyone has used it. But they go out and they perpetuate themselves. They get raises and they increase their staff. They do all these things basically.

SENATOR SCOTT: Well, Senator Connors, you have another mayor speaking, that is why he is aware of what goes on in the municipalities.

SENATOR CONNORS: You have a kindred spirit. Anything comes up in the Municipal Government Committee, let me know. I'm only kidding. (laughter)

SENATOR SCOTT: Senator Rice?

SENATOR RICE: I'm one of those that always believes that legislative intent and the debates and things are really what structure where we go. I've always been one who gets annoyed, also, with these changes or interpretations that people give of what we mean. I hear these arguments -- no reflection on anybody here -- about "dual office holders." I think the advantage is just what I am hearing here.

Those of us at local government level may not be all we should be, but we certainly have a good understanding of people's problems and the barriers in our way. Then we come to our colleagues who may not be dual office holders who are sensitive to the concerns and try to assist us in making things right. Then we get departments and others getting

interpretation that we never intended. Then we wind up fighting each other. I can recall and you, too, Senator, when we got into a very serious dispute, legislatively, over ocean dumping.

A fight that technically we both agreed on, but we got hung up on this particular piece because somebody did something wrong, based on other folks' interpretation to what it is we're trying to craft. So I just wanted to say to my colleagues here and to the Chairman that we need to correct some of this. We need to do this very fast, if New Jersey is going to move forward.

What's happening in the shore community with CAFRA has been a nightmare for us in our community with ECRA and everything else. There is a lot of corrections that need to be done. I don't even recall how you even voted on this stuff. But just sitting here going over it makes it very clear to me that we're going to have to do some cleaning up. We're going to have to maybe take what you have here and review it and maybe send some of this stuff back, too.

So I just want you to know that I am very sensitive to those concerns at the local government level. I am very -- even more so, when I came to the Environmental Committee. I intentionally left Appropriations, because I got tired of -- between governmental agencies and entities and special interest that too many of our colleagues respond to putting us in this environmental bind. I think, out of all the things in New Jersey that hurts us, besides the crime issue, is how we're handling this environmental issue. Then there are folks who want to make us think that we aren't environmentalists. The mere fact that we wake up everyday, and we want to breathe fresh air makes us environmentalists.

So I just want to say that I'm going to support those kinds of things, Mr. Chairman, that are going to correct some of

this. If I feel it is not being corrected, because my local government colleagues tell me it still creates a problem, then we'll reach a compromise. So I just wanted to let you know I'm sensitive.

SENATOR SCOTT: Thank you, Senator.

We do have two people that would like to be heard on this. Susan Uible. I don't know if I pronounced that right. Uible? Okay. From the Pinelands Commission of New Lisbon, New Jersey.

S U S A N U I B L E: Good afternoon. Thank you for letting me speak.

You ready?

SENATOR SCOTT: Yes, go right ahead.

MS. UIBLE: I just wanted to comment on the part of the resolution that deals specifically with the Pinelands Commission. I've given you a letter that we originally sent to the Department in March. That was in their first comment period, and it talks about that push in the rules dealing with the Pinelands Commission.

I don't know if you want to turn to it, but page 3, we specifically state that we think that the language of the proposal actually suggests a policy and requires Commission involvement beyond that intended by the Legislature in the overlap area between the Pinelands National Reserve and the Coastal Zone. We did go on to suggest alternative language that we felt that was more in keeping with the intent of the Federal legislation and the Pinelands legislation.

In the first part of this letter, I do -- we do go into a discussion of the Federal legislation and the State legislation for the Pinelands. Just to briefly give you an idea of what I'm referring to, Section 502 of the National Parks and Recreation Act called upon the State of the New Jersey to create

a planning and an entity to prepare a conference and management plan for the entire Pinelands National Reserve, portions of which are also in the coastal area.

The State legislation went on to state that in addition to the powers and duties herein provided, the Pinelands Commission shall constitute the planning entity authorizing the Federal Act and shall exercise all the powers and duties as maybe necessary in order to effectuate the purposes and provisions of thereof.

In 1981, we did ask for advise from the Attorney General's office when the applicability of the conference management plan in that area -- the overlapped area and in the Pinelands National Reserve-- The Attorney General's advice was that at the outset it should be recognized that the Legislature unquestionably intended the Pinelands Commission to study and adopt a comprehensive management plan for the entire Pinelands National Reserve. It also did go on to say that it was not the intent of the Legislature to have the Pinelands Commission implement and enforce the plan in those areas under the Department's jurisdiction.

That is how we testified before the Senate Environment Committee. In the Assembly Environment Committee, they included a statement for the legislation that said, "Nothing in this legislation is intended to limit the ability of the Pinelands Commission and the Department of Environment Protection to ensure, through existing agreements or perspective arrangements as determined to be necessary, that the requirements of National Parks and Recreation Act of 1978 have been met in that portion of the Pinelands National Reserve located in the coastal area."

We just wanted to make it clear that we did suggest alternative language that we felt was in keeping with the

original legislative intent of the Federal and State Pinelands legislation. We did not intent in anyway to suggest that the jurisdictional boundaries of the Pinelands Commission be expanded, nor did we ever insinuate or suggest to either committees that we should become a permitting agency in that portion of the State.

SENATOR SCOTT: Thank you very much.

MS. UIBLE: You're welcome.

SENATOR SCOTT: Anyone have any questions on that? No? (no response)

Thank you very much.

MS. UIBLE: Thank you.

SENATOR SCOTT: Tim Dillingham and Dery Bennett, Sierra Club, American Littoral Society.

D E R R I C K S O N W. B E N N E T T: My name is Dery Bennett. I'm the Executive Director of the American Littoral Society. Our offices are at Sandy Hook. We're an environmental organization interested in coastal issues and have been working hard to get CAFRA amendments passed and have maintained that the rules and regulations as submitted in the registering in February, we believe, reflected the intent of the Legislature which was to protect coastal ecosystems for the public. We readily admit that it is a difficult document to read and that there are mistakes that can be corrected, and indeed, I think in the memo that the DEP published on the 5th, they indicated places where they thought changes could be made.

You will recall that the rules that we're looking at are proposed rules. They are out for public comment and that is what they're getting back. I think, they're expecting--

SENATOR SCOTT: We're talking about the legislation. Am I right?

MR. BENNETT: Yes.

SENATOR SCOTT: Okay.

MR. BENNETT: The legislative intent-- What I'd like to do is mention a few of the specifics that were brought up earlier by Senator Connors and indicate that I think the legislative intent is met in some of those. I think, Mr. Dillingham will mention some others.

For example, he suggested that the placement of tubes filled with sand on the beaches is not a part of a CAFRA regulation. I suggest that it is because there is plenty of evidence to show that the filling of these tubes in place, in beaches is counterproductive to shoreline erosion control.

SENATOR SCOTT: Well, they said they weren't a part of it. He admitted that part of it -- he knows that. But what they're doing with them, I think, that's the question that Senator Connors had. I don't think he ever said that the tubes were never a part of CAFRA. I think, Senator Connors knows too much about the dunes and everything to have said -- and made a statement like that.

MR. BENNETT: Well, he suggested that the CAFRA -- the legislative intent was not to ask that the permits be required for the placing of tubes to protect the front of the dune, shoreside of the dune. Indeed, it is one of the intents of the Legislature to protect the shore area, and to give you an example, right -- this morning, I had a phone call from a person in Point Pleasant Beach. They're bulldozing sand dunes in front of Point Pleasant Beach. The rules and regs in CAFRA that are proposed would seek a general permit from those towns before they start to squirrel around with dunes when they shouldn't be.

SENATOR SCOTT: Or clean it up or -- anything?

MR. BENNETT: No, this is for the summer, winter -- winter movement.

SENATOR SCOTT: I know, but what Senator Connors, as a mayor of the town concerned with beach erosion and cleanup and so on, and so that's the problem. If you have to clean it up you need a permit. That's what we'll-- Well, you can say, no, but we've had, you know-- That's the difference. He wants to clean it up just like any mayor in any town wants to clean their town up without getting some permit from CAFRA or the DEP or anything else. Some things just have to be done, and you cannot worry about a permit, pay a fee for it in any city or town.

MR. BENNETT: The issue of what you can and cannot plant at the shore between either 150 feet of high tide or the beach east at the back of a dune has been brought up, and that regulation has been consistently misinterpreted. If you read carefully on page 987, it says that the plant--

SENATOR ZANE: Mr. Chairman, isn't the issue not what it might say, but what the intent is?

SENATOR SCOTT: Well, yes that's -- you're right, Senator. That's what we're getting. We're getting out the intent. We're talking about legislative intent. You have to go back to the original legislation.

MR. BENNETT: Senator Connors made examples of places where the legislative intent was not being met and what I'm -- I won't say anymore except to say that on this list I have in front of me, there are specific examples where he has misinterpreted what is in the regulations. If he is using that as an argument to say he is missing the intent, we suggest that he stands to be corrected.

SENATOR ZANE: Can I ask you a question? I'll be very specific.

MR. BENNETT: Sure.

SENATOR ZANE: If somebody had a small bulkhead or a little boat dock and it just deteriorated and fell apart etc.

and they wanted to rebuild it, not expand it, rebuild it, one of the regulations would change that. The intent of the law was very clearly that somebody could do it themselves, they could rebuilt it. Is that one of the areas by any chances that you happen to object on?

MR. BENNETT: I'm not sure--

SENATOR ZANE: Do you happen to object -- are you suggesting that? We're here, again, to talk about intent. You had a list of items that you were going to take exception with what Senator Connors said, was that one of them by any chance?

You're nodding your head, yes. Is that one of them?

TIMOTHY DILLINGHAM: Yes, I am, actually.

SENATOR ZANE: There is nobody in this room better able to tell you what the intent was because it was my bill. So you tell me what you think. If the regulation now wants to restrict you being allowed to do that, you tell me how that is not consistent with what was my intent. I recognized how I speak is one legislator not -- I don't know how everybody else spoke, what was in their minds. It was pretty clear, I think.

MR. DILLINGHAM: Well, I guess I would say two things. One is that my understanding of the way a constitutional amendment works is that it says the intent of the Legislature as expressed in the language of the statute. So, since I'm not capable of knowing what was in the mind--

SENATOR ZANE: I said that.

MR. DILLINGHAM: Okay, well I'm just acknowledging that.

SENATOR ZANE: Given that fact, given that fact, how does this--

MR. DILLINGHAM: As I read the amendment that you put into the Waterfront Development Act, it says that the DEP shall not require permit--

SENATOR ZANE: That's right.

MR. DILLINGHAM: --for maintenance and for other purposes: maintenance, restoration, reconstruction and those types of things.

SENATOR ZANE: That's right. That's right.

MR. DILLINGHAM: My understanding of Senator Connors' bill is that it says that any activities on those docks are exempt if it is used for recreational purposes.

SENATOR ZANE: What you're understanding, is what the regulation does?

MR. DILLINGHAM: Well, that's different. I think, I agree with you, that if the regulation says that if it's maintenance, then it should be exempt. My understanding is, if it goes beyond that, if it's the reconstruction which expands that dock which creates an environmental impact--

SENATOR ZANE: That is the existing law today. That's the law today.

SENATOR SCOTT: That's our problem. Here's the Senator who actually was instrumental in getting that original legislation. So, when we talk about it, legislative intent, I think here is someone that we best listen to.

MR. BENNETT: Well, let me close by saying that the CAFRA amendments themselves are quite short. There is an introductory part and then there is specific places. But they are not that specific, and obviously, it is left to the regulators to try to come up with rules that reflect what's in the bill, in the amendments. It is our belief that what's in these regulations, with the exceptions that the DEP has recognized, is consistent with the intent which was to protect the coastal environment.

SENATOR SCOTT: Thank you very much.

Mr. Dery?

MR. BENNETT: Yes.

SENATOR SCOTT: You're Tim?

MR. DILLINGHAM: Yes. That's right.

Thank you, Senator. I guess, I would also go back to Dery's point about what the legislation actually says and what it doesn't say. I think that there's-- Excuse me, part of the disagreement here is how specific the legislation was and in which instances it made general findings and then charged the Department with developing rules and regulations to implement those. It does say that the Department should or the legislation should go on and protect public and private property. I think that seems to me that in the shore area you're talking about preventing storm hazards. You're talking about preventing development from being located in areas as subject to high hazards, erosions, those types of setbacks and other steps. I think that is where the Department expanded upon what the legislative intent said.

It also talks about preserving the most ecologically sensitive areas. I think that some of the concerns that have been raised flowed to that idea. What is necessary to preserve those areas. It's very easy to say we all believe in environmental protection, but unfortunately, what that often means is that we cannot build in certain areas. We cannot alter certain areas.

One of the comments I think that I'd like to suggest the Committee consider also is that the resolutions don't tend to provide much guidance to the Department as to how to react. It says what you find to be inconsistent, it doesn't further clarify what it is you find to be consistent. Since they made a mistake once--

SENATOR SCOTT: That's not our function to find out what's-- You're going the wrong way. You know, whatever is

inconsistent that's what we're going at. Once they promulgate their regulations, that is when this Committee can get it. We can then determine if they went along with what the intent was, not-- We're not going to say, "Well, gee that's great, you did this because we intended to." That is not what this Committee is about.

MR. DILLINGHAM: No, that's not what I'm saying. I'm saying that, excuse me, part of the issue here is that you feel the Department did not follow what you thought was guidance in the legislation. I'm saying that in those instances when you found that inconsistency that it might help to instruct the Department more clearly as to what you did intend. And then that would help do that.

In terms of some of the specifics, the question about what is considered intervening uses and intervening developments I think, again, you have to look back to what the intent of the legislation should be, which is to protect development from storm hazards from water quality impacts. If you exempt a lot of this development on the basis of very small structures or structures which are not related to those types of impacts, then you miss the opportunity to address those environmental questions that you set out to do in the first place.

What I often find running through this is that the purpose is to try and exempt more development from the Department's regulation, not to select what's appropriate development for protecting the environment.

SENATOR SCOTT: All right, now this is why you come to a disagreement. No, they're trying to protect an individual homeowner for one thing. They're trying to protect a small development from encroaching by three inches and then having the whole development subject to CAFRA.

One of the things I think you heard, you know, Senator Connors and all the Senators now along the beach, I think, no one is more sensitive to the environment then they are. Simply because they live there, they know beach erosion. They know their whole economic security really lies on having clean air, clean beaches, clean water. Otherwise, nobody comes down in the summertime and they lose all the tax money and so on. The people themselves that live there have moved from the cities up north, where I am from and where Senator Sacco is from and Senator Rice, because they want to live down there, and they know the sensitivity to the ecobalance. They understand that more then we do.

I think they are really sensitive to this, and I think for anybody, when they say this is a problem, I have to listen real close. Because they -- if anybody understands the balance of nature and man on the shore -- very sensitive, those islands, the barrier islands, the beaches, the bays, good grief, anything at all can upset that whole balance. So you do have people that are very sensitive to the environment in those towns.

SENATOR ZANE: Senator, would you like a motion?

SENATOR SCOTT: I would entertain a motion.

SENATOR ZANE: I make a motion that we release these bills.

SENATOR CIESLA: I second it.

SENATOR SCOTT: Okay. All in favor, we need to take a vote.

MR. CANTOR: (Committee Aide) On the motion to release a Committee Substitute for Senate Concurrent Resolution Nos. 57 and 60.

Senator Scott?

SENATOR SCOTT: Yes.

MR. CANTOR: Senator Ciesla?

SENATOR CIESLA: Yes.

MR. CANTOR: Senator Bennett?

SENATOR BENNETT: No, with an explanation. I believe that the proposed regulations, in fact, in some cases, do take a departure from the legislative intent of the initial act. I believe, however, that the movement of a resolution is one that should be sparingly undone and I am not convinced. In fact, I am convinced that the Department is in fact moving in the direction before those proposed regulations -- going into effect are going to be in line with the intent of the act. So at this point, I would not move legislation. I therefore vote no.

MR. CANTOR: Senator Sacco?

SENATOR SACCO: Yes.

MR. CANTOR: Senator Zane?

SENATOR ZANE: Yes.

MR. CANTOR: Senator Rice?

SENATOR RICE: Yes. I'd like to just make a comment also and maybe Senator Bennett would -- some things can happen on the floor.

I know that you are surrounded by water also. I've been in your district many times, but like Senator Scott, I have to believe that when it comes to problems that I keep arguing about -- big urban problems, demolition and stuff like that -- I have to have a better grip on that and environmental problems than I do of the shore community.

I just have to believe that local government people, who, as Senator Scott says, have to deal with this stuff everyday -- knowing that the liabilities placed out there politically, the votes -- the whole townships and communities that can be wiped out have a better grip on what we should be doing, how far we should be going, than I do. The difference is you get caught in the middle. You're somewhat caught in the

middle, because you have a combination of both, the things I have to look at and things they have to look at. So I have to assume you want a different type of balance. I'm voting yes to release it. Then we have to talk more before anything else happens, okay.

SENATOR SCOTT: Thank you.

All right, SCR-57 and SCR-60 are released from Committee. Now, we will take up SCR-65 which is legislation concerning the Worker and Community Right to Know laws that have been implemented and regulated and promulgated.

I would like to call Bruce Siminoff.

Remember, please, everybody has got to testify, either make a statement for not too long or something specific. We have a few people that would like to testify. So we don't want to belabor things and go over and be repetitive.

B R U C E G. S I M I N O F F: Thank you, Senator. I will be brief and to the point, and I won't take my two hours allotted. Promise.

My name is Bruce Siminoff, I'm Chairman of the State Issues Committee of the Commerce and Industry Association. I also wear another hat and I'd like to bring that in today. I'm an Emergency Medical Technician in the State of New Jersey and a member of two rescue squads. With my wife, I co-chair a five squad training committee, which in one way gets involved in the back side of the Right to Know.

First of all, as a businessperson, the Right to Know was a good idea. I think that it was appropriate for employees, rescue squad members, firemen, as well as the State to know where hazardous chemicals on SARA 313 list -- which is what the legislation says that it should be, such as formaldehyde and things of that nature -- are located.

The problem is that once the legislation was breached and the amount of chemicals, the 313 danger list became 3000, and we find items like vinegar, and we have to sort shotgun shells from soft nose to hard nose, and we have acidic acid which many people in the room might know as vinegar-- We have to find out where cigarette lighters are located. When it first came out and Wite-Out and toner -- it became silly, but the silliness wasn't just the violation of legislative intent. The silliness was the backslide that actually hurt business in New Jersey, as well as even the DEP.

Let me tell you why it hurt the DEP. First of all, the cost of sending out a half inch thick booklet of 3000 items -- which small and large business had to sort through to find out if they had and record and post somewhere -- was absurd, as opposed to the 313 items, which were the original intent, and which were important to both the environment and to safety.

On the second hand, wearing my EMT hat, my rescue squad hat, I can tell you this law has become the butt of jokes in the fire department. The reason I say that is because no fireman, no rescue worker is going to think in terms of 3000 items or can.

What we're interested in is similar to the Department of Transportation Identification System. When you go to a scene in a "hazmat" situation and you withdraw to the upwind situation, and you look through your binoculars and you find out on that truck that there is an oxidizer and you say, "Gee, I don't want to get near that." You call your 1-800-CHEMTREC number. You find out what to do. You cannot deal with a book that is somewhere. You cannot deal with items that were located in a plant in December, when they were filed. Now this is July, after the report is in, they are no longer there. But you want to know, when you're into the building, is the intent of the

law, which is to identify where and what is there, in a broad categorical statement. So, when you get to the building, you want to know if there are oxidizers. We don't care that there are cigarette lighters somewhere or that somebody has alcohol beverages in their desk drawer.

The problem with this is that by exploding it into all these items it has caused not only difficult for business and rescue workers and fire departments, it has also caused difficulty in understanding complying with it and the expense. And I would hope that this Committee shows the courage, under Senator Scott, that I think you all have, to show the bureaucracy that the legislative intent is what we follow in New Jersey, not what somebody wants to do in some department, whether it be DEP or anywhere else.

I appreciate the work that this Committee is doing, and I hope that you change this so that we can get back to the business of protecting the environment.

Thank you very much.

SENATOR SCOTT: Thank you very much.

May I hear from Frank Reick?

F R A N K L I N G. R E I C K: Senator, I prepared a one page comment here that I think is appropriate.

Once again, the Legislature has the humiliating experience of seeing the DEP thumb its nose at them. The well-intended efforts of the Legislature have again been warped into a bureaucratic power grab.

The Right to Know list of reportable substances has been expanded from hundreds to thousands, without any public or scientific input that I'm aware of. Lord, help us when they discover the oxides of hydrogen. Hydrogen is a deadly explosive gas and atomic oxygen, a highly toxic gas, and will next fall on to the reportable chemicals list?

If you have nothing to report, you're supposed to send in the report anyway, with severe penalties for inaction. Mindless.

There is a long established principle applied to Federal and State tax law, i.e., if you have no income, you are not required to file a tax return. That makes sense.

Unnecessary reports will require that vast forests of green air-purifying trees be cut down just to satisfy the bureaucracy's insatiable lust for paperwork to justify its existence.

This is in effect a welfare system. Armies of eyes, not necessarily brains, will be required to scan the paperwork supplied by citizens reporting they have nothing to report.

The intent of the Legislature has, again, been warped out of recognition.

It is imperative that the Legislature hold an investigation of the DEP to find out who or what outside power groups are behind these never-ending travesties against the citizens of New Jersey.

Questions?

SENATOR SCOTT: Well, how do you really feel about it? (laughter)

Thank you very much.

Does anyone have any questions? (no response)

Thank you very much.

MR. REICK: All right. Just a comment. Everybody wants to clean the environment up. I don't think that's the question. Everybody is concerned about the welfare of the citizenry. That's not the question. But you have created a Frankenstein monster. I'm glad to see some of you have finally recognized this. Now, if you don't do something about your Frankenstein monster, this will go on and on and on and on and

will never stop. Every time you create a law you're going to have to go through this exercise over and over. When, Senators, are you going to admit that you have that Frankenstein monster here that must be controlled? The DEP is our biggest single point of pollution in New Jersey. It is not cleaning up the environment. It's a gigantic bureaucratic welfare system.

Thank you.

SENATOR SCOTT: Thank you very much.

Frank Marra and Glen Roberts, Fragrance Resources.

G L E N R O B E R T S: Good afternoon, Mr. Chairman. My name is Glen Roberts. I'm the Legislative Director of the Fragrance Materials Association in the Flavor and Extract Manufacturers Association. We are two national trade associations with the bulk of our members here in New Jersey.

For a long time now, we have been a strong supporter of Right to Know reform. We particularly supported the bill that Commissioner, then Assemblyman, now Commissioner Shinn supported last year. We believe the program needs comprehensive reform.

The list needs improvement. It needs to be brought back in touch with original intent. We believe the question of threshold is very important and needs to be considered. We believe the labeling program also has significant problems that need to be addressed.

We're thrilled and delighted at your interest and happy to work with you. Since I sit in Washington and don't deal with this program everyday, with me is Mr. Frank Mara, who does deal with it everyday and probably has the kind of input you're looking for.

F R A N K M A R A: Thank you.

Senators, thank you for allowing me to speak today. I'm going to kind of cut to the chase because I know there is a lot of other people who have things to say and do here today.

I'm a member of the Monmouth County Emergency Management Council. I'm a member of the Keyport Emergency Management Council, and I work with Right to Know on a daily basis as Vice President/General Manager of Fragrance Resources. We're a company that manufacturers fragrances, as the name indicates.

The problem we're running into with this report, the Right to Know report-- Now, this is mine. It's 122 pages long. It takes us approximately a month to compile the information, and we're finding that it is totally useless. Members of the Keyport Fire Department Emergency Management Council say to me, "Frank, we don't work with this. This is a piece of garbage. We throw this out." It is so complicated. It is so comprehensive, and yet, it doesn't give you the information you truly need in regards to emergency situations.

I'd like to just read to you from the instruction manual. "The information collected is available to the public and emergency responders, such as police and fire departments. It is also used to supplement other regulatory programs within this State and allow the proper planning for a response to an emergency at a facility which may threaten surrounding community or the environment."

The interesting thing about this book is, I have an eight acre site with ten buildings on it. If building number five, let's say, is on fire, it would take you close to four hours to read through this book to figure out what is in that building. Because in their ultimate wisdom, they filed the report -- forced us to file the report in alphabetical order not by building location. Instead of saying in building five, which

should be the fifth document within this book, these are the products or chemicals within that building, you would have to read through the entire manual to figure out what is in that one building. The building would either be gone or affected the neighborhood by the time you even got to that point.

The next interesting thing is, let's say you do spend the four hours to find the information. It's from last year. The report has to be filed the following year. So everything that's in this report is from last year. I've already moved everything out of that building, or I've gotten a new load of products in, or I've moved it to a different location within the facility. So, even if you do find the information that is in here, in an emergency, it is useless information.

Another interesting point in this survey, where it tells us that we have to identify certain hazardous substances, it does it by a percent code. It starts off with zero to .9 percent and works its way all the way up to 100 percent with 10 designations inbetween. We reach a point where we take .1 percent of a hazardous substance and put it into another product -- let's say there is 5000 pounds of it on site. Why do you need to know that there is .1 percent of a hazardous substance? It's no longer hazardous anymore in that product. So why are we identifying it and talking to people about it?

There is a section in this book, in my manual that takes up four pages just to identify that one product which is nonhazardous as we go through the system.

This is the killer: 37 percent of this report is for half ounce samples in my laboratory. It works out to 6.9 pounds of total material within my plant which is .0002 percent of my plant capacity. I spoke to the Department of Health and said, "It is real simple. Why don't I just put a disclaimer across the top of the report that says, 'for every product on site,

there's a half ounce sample in my quality control laboratory.'" They said that is unacceptable, you have to file a separate line for every sample. There are 590 entries in this report. Two hundred and nineteen of them are for samples in my laboratory. If there's a fire in the laboratory, a fireman is not going to read through every sample that is there and try and figure out how to handle it.

In another section, they ask for days on site, number of days the chemical was on site. Let's say it was on site for 20 days, you have to give them the exact number. What 20 days? Was it 20 days in June? Was it 20 days in August? Was it 20 days in September? You might as well just tell an emergency responder that it is there 365 days a year, because there is no sense in telling them that it was there for 20 days because they haven't got a clue when it was there. Or if it's going to be there the next year.

There's an inventory range that we have to deal with. They're looking for products that have .1 percent of a hazardous substance in them. But if you follow the inventory range codes, it goes up to inventory range code number 13, which is 1001 pounds to 10,000 pounds. So we're interested in .1 percent at one end of the spectrum, but then we're not concerned about 8,999 pounds at the other end of the spectrum. There is something missing here.

This total report cost my company approximately $52,000 a year to put together, including the labeling side of it. We as a company with the local fire department and the Emergency Management Council, they asked us if there was something we could do for them because they don't use this document. They said it's useless to them. So we came up with an emergency response guidebook that we as a company didn't have to do but made it for the local fire department and police

department. They now carry this in their equipment and in their trucks because it gives them the information that they are looking for. It gives them MSDS on the main products. It discusses the extremely hazardous substances, discusses locations of tanks. It goes through a phone number listing of who to contact and when to contact and when they're going to be there. This document that we're forced to make every year doesn't do that.

Lastly, I'd like to read this to you. This morning, I went through the annual report that I have to file. I picked out a list of items that, just running through it, came to mind and that appeared on the list. These are items that we have to report as a member of filing this report: adhesives, compressed air, antifreeze, asphalt, batteries, cigarette lighters, cleaning compounds, dry ice, ink, latex paints, polishes, road flares, lime and liquid wax. Now, they're talking about adding more materials to this list.

The problem that we're going to run into is, that by the addition of and classification of just about anything as a hazardous substance, we significantly dilute the meaning of hazardous. Businesses buried under a plethora of bureaucratic paperwork will be forced to spend valuable time on low priority materials dramatically reducing the significance of truly hazardous substances. What it comes down to is, as a member of this society, working with the emergency responders, we need to come up with a system that protects them. This doesn't do it. All this does is provide jobs for data-entry people down here in Trenton, that's all this does. It does not help the emergency responders or the neighborhood.

Thank you.

SENATOR SCOTT: Thank you very much.

Senator Sacco, any questions?

SENATOR SACCO: Yes. I'm also a school principal, I know what he's talking about. We have a document in my building which is about this thick. (indicating) I don't think anyone has ever read it or asked to read it, even though it's there for people to go through. There were times when we ended up labeling every item because the law wasn't clear. As soon as you took it out of a crate you had to label it.

You had to hire someone to oversee the entire district in the area because of all the paperwork and to make sure we were in compliance as we were being monitored. We've cut back since the original amount, it seems that we were up higher at one point. We seem to have a little better control of it. It just seems that we have another area where a lot of paperwork is taking place, and there is no, nothing practical is happening. I can say just from that viewpoint nothing is happening that's practical. You know, we don't store flammable liquids. I could understand if we had to label them or let people know where they are, but we don't. Yet, we have a million labels all over the place. We're even getting-- We're buying items now that have labels attached to save us sticking labels or Wite-Out. You know?

MR. MARA: This the label?

SENATOR SACCO: Yes.

MR. MARA: Can you see it from there?

SENATOR SACCO: There's thousands of them.

MR. MARA: How does this help with emergency response? It doesn't.

SENATOR SCOTT: It would be okay if the fire is not too high.

SENATOR SACCO: It has to be on each item. See not only -- not on the crate. Every time you take the item out,

you're supposed to put a label on it. You know, so it becomes very wild and it doesn't seem to do anything.

SENATOR SCOTT: Individual items.

SENATOR SACCO: So, you know, I see what you're talking about. I'm sure nobody, none of our predecessors intended it to get out of control.

MR. MARA: I understand that.

SENATOR SCOTT: Thank you.

Senator Rice?

SENATOR RICE: Yes. I don't think some of our predecessors care if they're out of control or not, they would respond to special interests. I've been here a long time to realize that. But I do know that the Right to Know is not to protect just the community and the environment -- the fire department, law enforcement has nice people -- it is also to protect the workers. I think that was a real big issue concerning plants like yours and city halls, like mine, for asbestos and school systems and everything else.

But I think that those of us who were concerned, were concerned that the right kind of information be available, be updated, so that people would have knowledge of-- I think you're right. We made the system too gawky. Because we have done that, even though the intent may have been valid, in many of our cases, special interests played a particular part as to how it got to being so confused and so chaotic and so outdated. I think we're going to have to put it back in perspective without losing the real substance of what the intent of this legislation really is. Because I don't want your product or your environment having any negative impact on those workers there or the community.

I hear what you are saying is that you're doing everything because you want accountability, too, because not

only -- I mean you're a worker, too. I mean, regardless of nothing, you work there too.

We're going to have to do something. I'm not sure if this is all there is to it. We'll probably do some other things, but we are listening and we are concerned. Some of us may have filed a suit in the past, some of us may have argued the case and laws and just voted one way. We have new legislation now and we're looking at it again. There are some of us who are well meaning.

We don't have all the answers; you don't either, but it's going to take a combination of all of us working to stay with the intent. That's the protection to safeguard of our workers and our community. I think that is important. That document, like you said, gave someone some job down here. But I hope when you fire the person that does that document, because we make it smaller, that you find another job for him.

MR. MARA: I have enough work for him.

SENATOR RICE: Oh, okay. I just want to be sure then. That keeps somebody pretty busy up there, too.

MR. MARA: If I can point one thing out very quickly. You know, you're talking that this is important for the workers. I have to keep this on record for my employees if they want to see it and supply it to them within five days.

I have never, in seven years, been asked by an employee to look at this document. What they do look at, though, is under OSHA regulations Material Safety Data Sheets. It gives them more information than you could imagine. It's just a wonderful document, and we have thousands of them on site.

We have a Right to Know center on our property where all of our employees can go and get the information, but they're using Material Safety Data Sheets. They're not using this,

because Material Safety Data Sheets tell them everything they need to know.

SENATOR RICE: Look, no one disagrees-- I mean, I'm probably the most concerned. Senator Scott, who visited my district quite a bit, knows I would love to see industry back, particularly, manufacturing industry. I'm not going to get to first base between Right to Know, the way we're doing it, and CAFRA and, you know, all those other environmental pieces. It's not that people don't want to abide. I think that people spend a lot of money and invest in a lot of dollars for research and employing. People want all these protection mechanisms, too. It makes sense for their investment, but they won't come back into our State because we have everybody too strapped.

So we want to do some things, but we want to do it for messages going outside of New Jersey. "Come here, because we not only want to protect our environment and our workers, we want to protect your industry, too."

I think that is what is in disguise, trying to go with this. We're going to be supportive. We'll agree and disagree, but I think, right now, the direction we're going in, at least, I'm supportive of it.

MR. ROBERTS: Senator, if I may say very quickly.

We agree with you completely, and in fact, the legislative package that I mentioned replaces these labels with the nationally standard label you could read from 50 feet away that every firefighter in America is trained with, so that when they drive up to a building, before they get out of the truck, they can see the sign and see what the hazards are. That's what we're trying to put up. Everybody acts like we're trying to take them down. We're trying to put them up.

SENATOR SCOTT: Thank you very much.

MR. MARA: Thank you.

SENATOR SCOTT: Jim Sinclair, New Jersey Business and Industry.

J A M E S S I N C L A I R: Once again, Senator, I'm happy to be here to support your bill. This is a good bill; it's right, it's right headed. I clearly-- The intent was not to expand the list like this, but similar to the NJPDES, this is just symptomatic of the problem with the Act. I think that the whole act needs to be revisited. Clearly there has been lots of changes in 10 years.

In that period of time, we've had the OSHA Communication Standards which the previous person was talking about. We've had changes in the Federal rules, in terms of Right to Know. We've set Federal standards now for threshold. We have a system that doesn't work. And pointing out by the examples that you've heard, nowhere has this system worked. There is no empirical evidence to show that the New Jersey Right to Know System has helped anybody. But we're talking about costs for one company of $52,000 a year, times 10 years, a half a million dollars. Multiply that by the numbers of companies out there and ask what has been the benefit.

I think that, Senator, you're on the right mission here. Hopefully, this goes forward, but hopefully, we have the kind of legislative reform to come back and revisit the program and ask what should the 1990's look like in terms of reporting requirements. And I think it would be far different from what we put together in this bill before there were Federal standards, before there were all kinds of guidance, before we learned about the cost of doing this.

Thank you, sir.

SENATOR SCOTT: Thank you very much.

SENATOR RICE: I have a question.

SENATOR SCOTT: All right.

SENATOR RICE: Leading up to you, is any of your speakership, by chance, from labor?

SENATOR SCOTT: No.

SENATOR RICE: I raised that for a particular reason.

SENATOR SCOTT: No.

SENATOR RICE: The reason is that labor is always concerned, and rightfully so, about the safety of the workplace. Usually if something is bad, they come rushing in. And it seems to me that they too recognize that all this confusion and this dark powerful document maybe more hazardous to the workplace than anything else. I just wanted to kind of make that observation.

SENATOR SCOTT: Yes.

SENATOR RICE: Also, while the next speaker is coming, are we going to be looking at the Election Law Reports, too, because the legislative intent is one thing--

SENATOR SCOTT: The what?

SENATOR RICE: --but the paperwork is like--

SENATOR SCOTT: The what? (laughter) You don't want to look at that.

Curtis--

I think we'll have a look at that one. (laughter)

Curtis Fisher, New Jersey PIRG.

C U R T I S F I S H E R: Thank you, Chairman Scott.

My name is Curtis Fisher. I'm with New Jersey Public Interest Research Group. We have 50,000 statewide members. I mainly wanted to come speak briefly, of course, and address some of the points that have just been brought up, mainly, to dispel a myth that the Right to Know Act does not help workers or the environment or has no practical application.

I'm going to put everyone on this Committee on this mailing list for this report, "The Clearer View of Toxics,"

which is published by a group Inform, which is a national nonprofit independent research group that published what I think is one of the premier reports. It was released, I think, a month -- two months ago and documents the benefits of the New Jersey law and calls New Jersey's reporting requirements a model for the United States, specifically, in assessing the impact to workers on the use of toxic chemicals. The most important thing that I think this report clearly states and points to as the major shortcoming of this law is the fact that there are only 300 approximately toxic chemicals that are mandated in the reporting requirements. I'm specifically addressing some of the recording requirements.

I would ask the Chair to consider possibly seeking the advice and opinion of some of the firefighters. I know that there was an EMT worker here today -- volunteer. I think those are also the kind of people other than just environmental groups who are trying to use this information.

I think, my understanding is that the firefighters have been in the forefront of pushing this legislation. They are the ones that have supported the DOT list. I don't know if there is a representative from the firefighters--

SENATOR SCOTT: They will be right after you.

MR. FISHER: Okay.

That would be the person who I would rely on for those points. But on the environmental side, this report, and in the commendation of other data that have been available to environmentalist, has documented the fact that there is a staggering amount of toxics reported.

SENATOR SCOTT: All right. You know, I don't-- If you're--

MR. FISHER: I'm going to address it now. Right. Addressing--

SENATOR SCOTT: If you're making a statement fine. Then we'll stop.

MR. FISHER: Right.

SENATOR SCOTT: But then you don't go into -- if you have something specific you go right into the specifics.

MR. FISHER: Sure.

SENATOR SCOTT: Where you say we are not or that we are following legislative intent. Otherwise, if you make a statement, you're entitled to that, and then that is the end of that.

MR. FISHER: No, I'd like to address a resolution. I think that is your point.

SENATOR SCOTT: Okay, specifically.

MR. FISHER: Right. Sure.

The reason why, you know, there were questions about trying to change the statute, in particular by the speaker, so I just wanted to address the overall Act and then-- The most important, that I think is in this, that I would-- The reason why I mainly oppose this bill is a section, which is really the finding section of the resolution, which says that the environmental substance has a substance list. It's so voluminous and over inclusive that it prevents individuals from being able to effectively monitor and detect any adverse health effects attributed there, too.

I find that interesting and kind of confusing, since it is this very data that has given the foundation to these kinds of reports that are the model for this country, in terms of toxic use. Now, the inclusion of more chemicals is in the exact direction that this report has said that New Jersey and this country should be going ahead of. So I think that overbroad statements, I think, are not-- I think this was brought up by Tim Dillingham this year in the CAFRA testimony.

I think it would be -- and I understand the important work that Committee does -- that it would be more helpful to make more precise statements about what is specifically that this Committee is interested in trying to accomplish in terms of these resolutions.

SENATOR SCOTT: Well, it's easy. Very simple. We're trying to go with legislative intent. If they haven't followed legislative intent, we're going to bring them back.

That's the point we're going to bring them back to. That's the intent of the Committee. That's really the whole purpose of the Committee, we don't exist for anything else. We cannot institute new legislation pertaining to auto insurance, whatever. All we can do is say once the law has been passed, promulgated, rules and regulations promulgated, then we can add to it. We cannot initiate new legislation. So that's -- I just want to bring it up.

To answer your question, this is the list of the Right to Know survey. These are all the -- everything in here. I noticed one thing that Superman would be upset with, krypton. I guess we should identify that, because with Superman, we want to tell him where it is so he doesn't go near it. We need his help. We have matches, we have Wite-Out.

The problem we have with this, Curtis, is-- You know, there's a principal of a school and a mayor of a town. You've had the mayor saying, there are supposed to identify and label everything, matches, Wite-Out in my desk. I violated it, I have news for you. Not that I use Wite-Out, because I don't make mistakes. (laughter)

But it seems like people do. I'm like Senator Rice, we don't do those things. When you go that far that's the problem. Look, I don't think anybody here -- and I know I would be battled to the finish if they thought for one minute I was

trying to eliminate toxic waste, flammables from being reported, and I wouldn't. Too many of my friends are on the volunteer fire departments and emergency service.

These guys, you know, they keep us alive. They protect my town, my grandchildren. No way do I want them endangered. I want them available to protect my children and myself. My children, my grandchildren. They're all-- You know, you have to understand what we're saying is like, where did you go? Wite-Out? Everything is toxic. If I drink too much milk in one sitting I'll probably drown. You see, that's the problem, Curtis.

MR. FISHER: I appreciate your concern. I think you would understand my concern when, in this specific statement, that the simple fact that there is a possibility, as you pointed to, that many things are toxic.

The Department of Transportation has looked at this. They're not doing it for the simplest -- they're simply trying to protect people. I think you're right, that there might be a specific example that this list might be -- could retreat, but you know, what I'm pointing out to you is that it's best to give clear direction like you're saying. That's why you have legislative intent. You want the regulatory--

SENATOR SCOTT: We cannot give-- No, we cannot give clear direction. That's not the functin of the Committee. The function of this Committee is to say, once they've put these rules in, we say, "No. No, no, that was not legislative intent." It is not our job, here in this Committee, to say, here is what you do, that's the original legislation. It goes through all these other committees. They say, "Here's what we'd like you to do." Now, that is why we get here, and we find out that they didn't do that. Then it comes to us. We say, "No, you have to go back to what the legislators wanted, what the

Senate and the Assembly wanted in that legislation, not what you thought. You went wrong." Even if it is good, we should pass legislation to put it in. And that is what we're telling people, "Look, we are going to knock it out." But if it is good and we want to go back, we'll put a piece of legislation in through the proper committee, whether it's the Division of Motor Vehicles, whoever violates legislative intent. We want to be able to go back to the Law and Public Safety, whatever committee, and correct it with legislation. That's what we're here to do.

MR. FISHER: You know, the point is that it's not simply the fact that there is a numerical number being used here, whether it be 500, 200 or whatever, 2000 chemicals. It's the fact that it's important for me to clarify what you're saying for the Committee is that you're coming from the position it's the substance, not the simple number.

What I get from reading this is what you're saying, it's that simple number and the fact that citizens cannot make use of this information. I just wanted to come to you to illustrate citizens are using this information. It's crucial information, it's model information for this country. The fact is that we might, we need to increase the list, because as independent groups who have worked in this area for decades have said, we need to go ahead. There are over 70,000 chemicals that pose different hazards to humans, and we need to look at that. That's where I was coming from. I just wanted--

SENATOR SCOTT: Well, we'll have to get rid of the cows because of the methane gas is deadly.

MR. FISHER: Well, we'll leave that up to Al Gore.

SENATOR SCOTT: Al will gladly take care of it.

Yes, Senator.

SENATOR RICE: Mr. Chairman, just right quickly to the speaker. Let me just say this: If you live long enough, you're going to find a lot of new things coming about, as we continue to take, you know, all those chemicals and reinvent something and mix things, and even around the house, something else is going to happen. I mean, I think the intent was to make sure information is available, necessary information is available. I think the frustration with a lot of us, including businesses that help and employ people in our community--

If you want to talk about employment, come to Newark and find out why we cannot put people to work, because I have no industry, okay. We want to have the information. By the same token, we don't need a gawky process to tie you down. Then the information becomes useless, because it is available and you cannot get your hands on it in the right fashion, you know. We don't want to tie up industries putting all their lives, putting together information that they have anyway. I mean, if they don't know what's in their environment right now, at least what they're bringing there, then there is a problem.

So I think you ought to keep that part of the legislative intent, and I wasn't being facetious about Election Law Reports. I think the intent of the Legislature is to make sure there is accountability and people are honest. But to have me spend 10 hours trying to flip page to page, I don't think that was the intent of the legislation, and we're going to be visiting there too. It's this paperwork that is pinning folk down. Even in my office as Senator, council person, my secretary and staff get tired of the way the paperwork is managed.

I was saying, "Well, this is easy, why are we doing it this way?" I mean, the information is still the same, why won't we just do it this way. Because somebody down here decided to

set up their system and had no real knowledge, in my estimation, of what a flow system should look like, what an accountability system should look like to make it easy, manageable and information available there. I think that is what we are talking about.

MR. FISHER: Right and I think it's about balance. You know, the fact is that the Department of Health has said that there are 3000 deaths a year attributed to occupational exposure, 15,000 new illnesses each year in New Jersey at the cost of $279 million a year.

I support paperwork that tries to seek a solution to those kinds of problems, and I think that is what you are saying, you're concerned about the balance. I think that there is a need to address -- like the groups like Inform who have looked at this -- information to go forward, not to go backwards, in terms of getting this information, making the best program that we can. I hope this is one step in that progress and that's in a process that makes us a better program.

SENATOR SCOTT: Thank you very much.

Mr. Pete Smith, Firefighter's Association.

P E T E R S M I T H: I'll be brief. My name is Pete Smith, I'm President of the Firefighters Association of New Jersey, and we support the DEP's intent. We supported the DOT list that is the bible for chemicals and hazardous substances in the fire service. I think they're on the right track and it should continue.

Senator Rice, I'm from AFL-CIO also. I'm a Vice President, and we also support the DEP's intent with the Legislature.

SENATOR RICE: Well, you do that because you want your workers protected. I agree with that. Hell, I have got the biggest city in the city -- I mean, the biggest city in the

State. I got more firemen than half the units put together, I guess, and police, and we want them protected.

The question is: Can we protect them with information without making it gawky? Now, I know the people in my Department, including my "hazmat" people, complain about the way we have to treat the information. We want it and that's the difference. So I didn't say I don't support a list, but I'll be doggone -- and I was a cop for a lot of years.

The AFL-CIO and nobody else came to tell me about some of this stuff, AIDS and stuff. I want to be protected against that stuff, but I don't need a lot of unnecessary paperwork to do that, nor does the fire department, because, you know, Peter, as soon as myself -- as a councilman say, "You know what, Chief, every time you come to a fire, I want an ABC." He said, "Jesus Christ, you have me penned up in paperwork."

That's what we are talking about here, that is part of the legislative intent. But to just start throwing every little thing in, okay, that may not have the type of "harm" that one perceives at the house, doesn't make any sense either. I'm like a lot of other folks, I'm tired of trying to figure out what to throw away next and what to do next. And my city's probably the most toxic around, if you were to cross the State, because it's the largest.

So we don't disagree and that is why it was labeled here. I know that this says workers and community. I know they want workers' rights. I remember that argument. But the labor didn't come and say, "Well, make all this paperwork for the people that is trying to protect us." That has got to be a real serious consideration in this Right to Know: How do we make it easier for industry and government and other entities to abide and comply so we can protect. If not, then I have no industry, I have no workforce.

The number of AFL-CIO people or any other people in my city are getting less and less and less because the folk who are members of the union basically are starting to move out of my city. So I have to figure out how to get you more membership by getting you more industry back into my city before we work.

SENATOR SCOTT: Mr. Smith, let me say this. You know, I'm sincere, and there's nothing that we're not going to do to protect the firemen and emergency service people. There have been some ideas that have been put forward, as to putting a plaque on the building, when you come up you can see it real easy, you don't have to guess -- emergency response guy here, when I went through this with Mr. Mara, Fragrance Resources. This is the condensed part. This is the good part. I know too many of my friends who are on the volunteer fire and they respond and they go to the next town. Because that is one of the things they do. You know, it's a little town.

MR. FISHER: Mutual aid, mutual aid they call it.

SENATOR SCOTT: Mutual aid and they all jump in. They might be from any town, so they don't even know what that building is, no idea. They don't have this, but they're going -- expected to go in and find out. Now, up in my district, as you recall, and lower Bergen County, I guess, we are the chemical capital of the world, right now. We probably, in a five mile radius, we had more chemical companies at one time than anybody in the world. As a result, we still have an awful lot of-- We still have some chemical companies, and we have flyers up here quite a bit. We have the dump, the Meadowlands fires, and in the Meadowlands fires, we have drums. We don't even know what's in there, because it was dumped, and nobody saw them for a number of years.

Senator Sacco lives right there and he is impacted also. We know that. So what we would really be interested in

knowing, how can we, as Senator Rice said, cut down on all the garbage? What do you really need to protect your people? We really want to listen to that. We want to listen. I'm sure the business people said, "Hey, you tell us something." That's where I got the idea to put it on the wall, a big green sign if it's good stuff, or a red sign, a yellow sign. As you walk in, you'll see it immediately. You know exactly what it is. So these are the things we'd like to see working with you not through this committee, because we're not -- we don't do that.

MR. FISHER: Yes, I know. That's why I'm sticking to the intent.

SENATOR SCOTT: I would love for you to work with them, whether it's Law and Public Safety, I'm not sure -- and work with them. I mean, they would love to do it. You would get more cooperation that you ever dreamed possible.

MR. FISHER: Okay, sure.

SENATOR SCOTT: All right. Thank you very much.

MR. FISHER: Thank you.

SENATOR SCOTT: Welles Sumner.

A. W E L L E S S U M N E R, ESQ.: Good afternoon. My name is Welles Sumner. I'm a lawyer. I am here, however, as a private citizen having followed the Right to Know Act for several years and made a considerable study of it, of its legislative history and of the history of the regulations.

I was prompted to get interested in Right to Know about three years ago when two very, very small clients who have no hazardous substances on their premises came to me and told me they were being fined $1000 each for failure to report that they had nothing to report. And if one will take the time and trouble carefully to read the statute, which is not easily read at times, but it is quite cogent, if you take the time and trouble to read it, it is quite clear, in my view that people

who have nothing to report need not report. It's a system just like the income tax.

You have heard, I think, all of the most important points about the proposed legislation. It's a very simple question: Does the DEP's proposal confine itself to the power that the Legislature granted to it informing this environmental survey of environmental hazardous substances? The answer is they have gone beyond it, quite clearly.

The language of the statute is very clear. It's the things on the industrial survey list, about 156 subjects, plus the things on the Federal Sara 313 list, about a little over 300, of which the 156 -- most of those are included, plus anything else that the Commissioner would like to put on, so long as he gives documented scientific evidence that it's harmful. Now the good person from the Public Interest Research Group said, this list is wonderful and it should be longer. I don't think PIRG was listening.

The issue here is, has an agency gone beyond the power that was given to it by the legislative branch as approved by the executive branch? The answer is clearly, yes. To PIRG, I say, if you think we should have more than 300 subjects on the list, then sit down with DEP and help the Commissioner to identify and to prove that there is documented scientific evidence that they should be added and, if so, add them.

Mr. Siminoff made the point that this is a good bill because it reins in an agency. It makes an agency accountable. It gives notice to the agencies that they are and they shall be accountable. That is very good. We have a system of government by law, not by individuals. There have been many instances where agencies had exceeded that and made somewhat of a mockery of that basic tenet of our government.

But why should you take your time on this one? PIRG says it has 50,000 members. What hasn't come out is that the number of businesses that are required to file this survey number over 30,000. And as Senator Sacco well knows, besides the 30,000 businesses, the people that are required to report by the statute are the State and local governments or any agency, authority, department, borough or instrumentality thereof.

That's why if you're riding down the street, as I was one day, and a DOT truck pulls up next to you, and it has a little trailer behind it to patch potholes, it has a label on it. It says asphalt and it has the CAS number. Every political subdivision is subject to this. This is why this particular list deserves the Committee's attention. It affects 30,000 businesses and every political subdivision in the State.

That's why this particular instance of going beyond the legislative intent, going beyond the power granted by the Legislature, making a mockery of our system of government under law -- that's why this particular issue deserves your attention. I'm very, very glad that the Committee has given its attention to it.

Thank you.

SENATOR SCOTT: Thank you very much.

Dolores Phillips, New Jersey Environmental Federation.

D O L O R E S P H I L L I P S: Thank you, Chairman. I'm Dolores Phillips, I'm the Legislative and Policy Director for the New Jersey Environmental Federation, and for the members that aren't familiar with me, it is a statewide environmental advocacy organization consisting of 95,000 members in an adjunct coalition of 68 member groups.

I would like to distribute to you my testimony. I would also like to formally submit for the record-- Because it is my understanding that this is in fact not a hearing on the

Worker and Community Right to Know Act, but it is in fact a hearing on SCS, SCR-65; although, I've heard a lot of extraneous testimony that has dealt with many other issues besides SCR-65. I'd like to submit for the record -- and I do not have the copies with me, but I would be happy to provide them in writing, if I can obtain them -- all the testimony from the Right to Know Advisory Council over the last six years; all the testimony from the regulatory hearings on the Right to Know regulations over the last six years; all the testimony from the Assembly Policy and Rules Committee on the Right to Know Act over the last two years; and all the testimony on the Hazard Elimitation through Local Participation Act in 1990 and 1991.

The purpose in submitting that testimony to you--

SENATOR SCOTT: The hazard elimitation through law, that was not a law.

MS. PHILLIPS: Local Participation Act, that is not -- I said the testimony.

SENATOR SCOTT: No, that never went anyplace.

MS. PHILLIPS: I said the testimony.

SENATOR SCOTT: Why would we be interested?

MS. PHILLIPS: Because I think that it is pertinent to everything else that is being discussed. This has really become a forum, Senator, on the Right to Know Act and not necessarily on SCR-65.

SENATOR SCOTT: Well, but that particular one had -- is gone, it never went anyplace, so I don't think that would be apropos to included that.

MS. PHILLIPS: I would like to submit them--

SENATOR SCOTT: Oh, you can submit it that's fine.

MS. PHILLIPS: --for the testimony, for the record, the testimony on that. Because that was to expand the Right to Know Act and to create--

SENATOR SCOTT: I know you know what we're here for, legislative intent, not something that didn't happen.

MS. PHILLIPS: Senator, all I said was that I wanted to submit the testimony for the record on that.

Please let me read my testimony on SCR-65. I am here today representing our membership opposing SCS, SCR-65 on the basis that the proposed regulation of January 3, 1994 is entirely consistent with both State and Federal community Right to Know statutes.

The rationale for this is Section 2(d) in the legislation. It claims that the proposed regulation allowed several thousand substances to the environmental substances list. The substances are already part of current regulatory procedure and have already been reported for the last six years. If you look at all the lists, and you look at those and what they compile, when they are compiled and what they turn out to be, they're in fact the Federal DOT list.

So, essentially, the issue being that there is no change. The substances on the Federal DOT list, the list in question are recognized carcinogens, mutagens, teratogens, flammables or explosives. It is the Federal DOT list that is currently used as reporting parameters within the Department, and it is the same list that was proposed for renewal. (door slams)

SENATOR SCOTT: Continue.

MS. PHILLIPS: Thank you.

This list fulfills the intent of the law which is to report all hazardous substances that may compromise health and safety.

From testimony of multiple Right to Know Advisory Council meetings, and from voluminous testimony at Right to Know hearings, and from testimony submitted by respected medical and

scientific experts, through the regulatory process, it has been recognized that the substances on the list are pertinent to both risk assessment and risk management.

Section 3 in this SCS is the flawed statement. Who has made the determination that the DOT list is both "voluminous and overinclusive and that it prevents individuals from being able to effectively monitor and detect any adverse health effects"? If that were true, why have all health and safety professionals, including the firefighters and rescue personnel, testified in support of the regulations just eight weeks ago?

Section B of the proposed SCS claims that the current environmental hazardous substance list is over 300 substances. Again, the list currently used is synonymous with the Federal DOT list. The 300 substances list in question is the Toxic Release Inventory List or the TRI list. These are very different lists that have been debated extensively at regulatory and Council hearings. The decision was to maintain the DOT list at both hearings. The debate over which list to utilize is not consistent with the intent of the constitutional amendment that gives the Legislature power to review regulations since the current list utilized, the DOT list, is consistent with the intent of the law to report hazardous substances.

Section 2(d) of the SCS refers to Industrial Survey Project List. This is an antiquated list which was used as the origin for the Federal TRI list. It is no longer pertinent or relevant to this discussion.

Furthermore, the "documented scientific evidence" referred to in the statute has already been established by the Federal government through its proceedings to determine the Federal DOT list. For State government to again justify each substance that the Federal government already has is redundant,

ineffective, and exacerbates bureaucracy, and wastes taxpayers' money, not vice-versa.

The amendment to the SCS in Section 3(a) does not contravene the text of the Right to Know Act because these substances have been determined to be hazardous by the Federal government and because they have been debated and approved for reporting by the Right to Know Advisory Council.

Passage of this SCS will add to the burden of paperwork and bureaucracy of State government, since the Federal government has already established such justification. Since no appropriation has been designated for the added cost to these two agencies, the legislation should not move forward without a detailed fiscal note prepared.

The Right to Know Advisory Council and the regulatory process have already had multiple discussions and deliberations as to the scientific merit of which substances are hazardous. To discount all the effort that is already foregone through this SCS is not justified. For this legislation to claim that the Federal DOT list does not meet the intent of the law without ample review of the volumes of testimony and discussion on this issue is short-sighted and manipulates the facts.

We urge the Committee to hold this legislation and allow the two, not one, but two routes for public discussion and retribution to council and the regulatory process to proceed.

Thank you.

SENATOR SCOTT: Thank you very much.

I want to thank everybody just by large and entertain a motion.

SENATOR RICE: Move it.

SENATOR SCOTT: Seconded by Senator Sacco.

MR. CANTOR: This is a motion to release a Committee Substitute Senate Concurrent Resolution No. 65.

Senator Sacco?

SENATOR SACCO: Yes.

MR. CANTOR: I concur that Senator Zane has left an affirmative vote.

Senator Rice?

SENATOR RICE: Yes.

MR. CANTOR: Senator Ciesla has indicated that he has voted yes on this bill.

Senator Scott?

SENATOR SCOTT: Yes.

SCR-65 has passed out of Committee.

I want to thank everybody. Thank you, Senators. Hopefully, we can go on from here.

Thank you very much.

This hearing is closed.

(MEETING CONCLUDED)

APPENDIX

LEGISLATIVE POSITION

NJ ENVIRONMENTAL FEDERATION

321 WEST STATE STREET TRENTON NJ 08618

Phone (609) 396-4871 fax (609) 393-4893

To: Senate Legislative Oversight Committee Members
Fr: Dolores Phillips, Legislative & Policy Director
Re: SCS SCR 65
Dt: May 16, 1994

Position: Oppose SCS SCR 65
The proposed regulation of 1/3/94 is entirely consistent with both state and federal Community Right To Know statutes

Rationale: 1. Section 2D claims that the proposed regulation will add several "thousand substances" to the environmental hazardous substance list. These substances were already part of current regulatory procedure and already being reported. In fact, all of these substances have been reported by all affected businesses for six years. There effectively is no change.

2. The substances on the Federal DOT list, the list in question, are all recognized carcinogens, mutagens, teratogens, flammables, or explosives. It is the Federal DOT list that is currently used as reporting parameters and the same list that was proposed for renewal. This list fulfills the intent of the law- which is to report all hazardous substances that may compromise health and safety.

3. From testimony at multiple Right-to-Know Advisory Council meetings and from voluminous testimony at Right-to-Know hearings, and from testimony submitted by respected medical and scientific experts, through the regulatory process, it has been recognized that the substances on the list are pertinent to both risk assessment and risk management.

4. Section 3 in this SCS is a flawed statement. Who has made the determination that the DOT list is "voluminous and overinclusive that it prevents individuals from being able to effectively monitor and detect any adverse health effects"? It that were true why have all health and safety professionals, including firefighters and rescue personnel testify in support of the regulations just eight weeks ago?

5. Section b of the proposed SCS claims that the current environmental hazardous substance list is "over 300 substances". Again, the list currently used is the Federal DOT list. The "300" substances list in question is the Toxic Release Inventory List (TRI). These are very different lists that have been debated extensively at regulatory and Council hearings. The decision was to maintain the DOT list. The debate over which list to utilize is not consistent with the intent of the constitutional amendment that gives the legislature power to review regulations since the current list utilized, the DOT list is consistent with the intent of the law - to report hazardous substances.

6. Section 2D. of the SCS refers to the "Industrial Survey Project List". This is an antiquated list which was the list of origin for the Federal TRI list. This List is no longer pertinent no relevant to this discussion and is erroneous drafting in this legislation.

Furthermore, the "documented scientific evidence" referred to in the statute has already been established by federal government through its proceedings to determine the Federal DOT list. For state government to again justify each substance that the federal government already has, is redundant, ineffective, and exacerbates bureaucracy, and wastes taxpayer money.

7. The amendment to the SCS in section 3 A. does not contravene the text of the Right to Know Act because these substances have been determined to be hazardous by the federal government, and because they have been debated and approved for reporting by the Right to Know Advisory Council.

8. Passage of this SCS will add to the burden of paperwork and bureaucracy of state government, since the federal government has already established such justification. Since no appropriation has been designated for the added cost to the two agencies, this legislation should not move forward without a detailed fiscal note prepared.

9. The Right-to-Know Advisory Council and the regulatory process have already had voluminous discussions and deliberations as to the scientific merit of which substances are hazardous. To discount all that effort through this SCS is not justified. For this legislation to claim that the Federal DOT list does not meet the intent of the law, without ample review of the volumes of testimony and discussion on this issue is short-sighted and manipulates the facts.

We urge the committee to hold this legislation and allow the TWO routes for public discussion, the Council, and the regulatory process to proceed.

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State of New Jersey
DEPARTMENT OF ENVIRONMENTAL
PROTECTION AND ENERGY

E TODD WHITMAN
Governor

ROBERT C. SHINN, JR.
Commissioner

May 5, 1994

CAFRA
Summary of Major Issues

The Department of Environmental Protection and Energy is currently evaluating the public comments that it has received on its proposed regulations to implement the 1993 legislative amendments to CAFRA. Commissioner Shinn extended the public comment period to April 25th in response to a number of requests. The Department received written comments from approximately 95 individuals and groups, in addition to hearing from 40 people who testified at the three public hearings held on the proposed rules. The Department is now reviewing the public comments to determine what changes need to be made to the regulations before adopting them by the July 19, 1994 effective date. A summary of the comments received and the Department's responses will be published at the same time as the adopted regulations are published in the New Jersey Register.

The Department has administered CAFRA since the Legislature first enacted it in 1973 using three sets of regulations to explain to the public the process for applying for a CAFRA permit and the policies the Department will use to approve, conditionally approve or deny permit applications. To prepare to implement the new amendments passed by the Legislature in 1993, the Department has proposed to amend these existing regulations. As part of the current proposed rule changes to implement the legislative amendments to CAFRA, the Department has also proposed to change a number of policies that seemed in need of revision, though not specifically because of the new legislative amendments. These proposed changes will help the current and new program run more efficiently, and the Department will consider all public comments received before moving forward.

A summary of the major issues identified to date follows.

I. CAFRA EXEMPT

1. Reconstruction of Damaged Development:

The law states "the reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard or act of God, provided that such reconstruction is in compliance with existing codes of municipal, State and federal law."

Some commenters have suggested that the last phrase in the law, "provided that such reconstruction is in compliance with existing requirements or codes of municipal, State and federal law" could be interpreted to say that a CAFRA permit for reconstruction could be required. The Department has no intention of attempting any such interpretation and will add language to the rule to be adopted emphasizing that this phrase applies to laws other than CAFRA and that the reconstruction of any development, including residential dwellings, which is destroyed, in whole or in part, by fire, storm, natural hazard or act of God is absolutely exempt from CAFRA under all circumstances.

2. Enlargement of Any Development:

The enlargement of any development is exempt from the requirement of a CAFRA permit, provided that the enlargement does not result in the enlargement of the footprint of the development or an increase in the number of dwelling units within the development.

3. Construction of Patios and Decks or Similar Structures at a Residential Development:

The construction of a patio, deck or similar structure at a residential development is exempt from the requirement of a CAFRA permit.

While the law exempts the construction of patios, decks or similar structures, it also requires the protection of dunes. In its proposed regulations, the Department had proposed for public comment conditioning this exemption to provide that such construction not result in the placement of pilings or placement of a structure on a beach or dune. The reason for this condition was to help protect the important natural resources that the same CAFRA law seeks to protect by requiring the Department to review all development proposed for construction on a beach or dune.

In response to public comments, however, the Department has reviewed this issue further and concluded that the law clearly exempts the construction of ALL patios and decks at a residence, even if their construction requires the placement of pilings or placement of a structure on a beach or dune. As a result, the Department will not adopt the regulation as proposed, but rather will indicate in the final rule that ALL patios, decks, and similar structures at residences are exempt from CAFRA, provided that the structure remains used as a patio or deck. If a patio or deck built on a beach or dune is to be enclosed for use for another purpose, such as another room, a permit will be required for the conversion. The Department intends to include this change in the regulations to be adopted by July 19th.

As a result of the changes indicated above, the Department will redefine "similar structure" to more closely relate such structures to patios and decks. The definition of "similar structures" the Department is considering for the purposes of determining CAFRA exemptions would include porches, balconies and verandas.

At the same time, the Department intends to adopt a new Permit-By-Rule which would allow for the construction of other accessory uses provided that these uses do not result in the placement of a structure or placement of pilings on a beach or dune. The other accessory uses which may be authorized by this Permit-By-Rule include open fences, carports, garages, gardens, gazebos, satellite dishes and antennas, sheds, outbuildings, above ground pools, showers/spas/hot tubs which do not discharge to surface waters or wetlands, and wooden boardwalks and gravel or brick/paver block walkways.

In addition, the Department also intends to adopt a new Permit-By-Rule which would allow for the construction of timber dune walkover structures provided that they are constructed in accordance with Department specifications found at N.J.A.C. 7:7E, Rules on Coastal Zone Management.

For activities covered by a Permit-By-Rule, a person need only notify the Department 30 days prior to starting construction. There is no fee or permit approval required.

4. New Construction Which Has Received Prior Approvals:

A development is exempt from the requirement of a CAFRA permit if such development has received the following approvals on or prior to the effective date of the CAFRA amendments (July 19, 1994):

a. Preliminary site plan approval pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.); or

b. A final municipal building or construction permit (including a foundation permit); or

c. Preliminary subdivision approval or minor subdivision approval, where no subsequent site plan approval is required (for residential developments).

For the exemptions listed in A, B and C above, construction must begin within three years of the effective date of the CAFRA amendments (or by July 19, 1997), and must continue to completion with no lapses in construction activity of more than one year. These exemption provisions do not apply to any development that required a CAFRA permit prior to the effective date of the CAFRA amendments.

5. Landscaping:

The landscaping of properties where development currently exists is not regulated pursuant to CAFRA and therefore will not require Department approval. However, if new housing or other development is proposed that requires a CAFRA permit, the Department proposes to limit the types of plant species which can be utilized at that site. The purpose of this restriction is to reflect the natural physiological limitations of species to survive in distinct coastal habitats. Non-suitable species plantings will do poorly, or die, or, if preserved through an intensive maintenance program of 'ph' adjustment fertilization and irrigation, will cause unacceptable groundwater and surface water impacts. Therefore, new vegetative plantings should reflect regional geophysical suitability.

6. Removal of wind-blown or wave-deposited sand from streets and existing development:

The removal of wind-blown or wave-deposited sand from streets and existing developments will not require a CAFRA permit. The placement of sand on a beach is an acceptable activity, as defined by the Rules on Coastal Zone Management, and could be included in a five-year General Permit which will be available to all waterfront municipalities at a cost of $250..

7. Certain Public Developments:

The Department has proposed that certain public developments located beyond 150 feet landward of the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, not require a permit. In response to public comments, the Department is reviewing whether it can add to the rules upon adoption that the following activities may be conducted without a permit in the CAFRA area between the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, and 150 feet landward:

i. The maintenance, repair or replacement of existing water, petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area.

ii. The repair, modification, or replacement of sanitary system components, including upgrading of systems from primary to secondary treatment, provided that an increase in design effluent flow will not result; and

iii. The construction, maintenance, repair or replacement of water lines, telecommunication lines and cable television lines.

II. VOLUNTARY RECONSTRUCTION OF A RESIDENTIAL DEVELOPMENT

The Legislative amendments require that the voluntary reconstruction of a non-damaged, legally constructed, currently habitable residential dwelling be regulated. The Department has proposed to authorize such voluntary reconstruction within the same footprint by a General Permit because it should cause no environmental damage. This General Permit would cost $250 and would be subject to the following limitations:

a. The reconstruction does not result in the enlargement or relocation of the footprint of development; and

b. The reconstruction does not result in an increase in the number of dwelling units or parking spaces within the development; and

c. A relocation landward may qualify for this General Permit if the Department determines that such a relocation would result in less environmental impact than the prior development.

III. CONSTRUCTION OF SINGLE FAMILY OR DUPLEX DWELLINGS

1. Bulkheaded Lagoon Lot:

The Department has proposed that the new construction of a single family or duplex dwelling on a bulkheaded lagoon lot can be authorized by a General Permit, subject to certain conditions described in N.J.A.C. 7:7, Coastal Permit Program Rules. The primary conditions for General Permit authorization are as follows:

a. no wetlands exist upland of the bulkhead;

b. the dwelling is set back a minimum of 15 feet from the waterward face of the bulkhead;

c. landscaping is limited to indigenous coastal species to the maximum extent practicable; and

d. the driveway is covered with a permeable material or is pitched to drain all runoff onto permeable areas of the site.

2. Non-Lagoon Lots:

New construction of single family or duplex dwellings on lots other than bulkheaded lagoon lots will require an individual CAFRA permit. The Department has proposed to limit review of such applications to six of the 48 Special Area Rules if applicable, that are applied to larger projects: Dunes (-3.16), Beaches (-3.22), Wetlands (-3.27), Wetland Buffers (-3.28), Coastal Bluffs (-3.31) and Endangered or Threatened Wildlife or Vegetation Species Habitats (-3.38), and shall comply with other Coastal Rules by meeting certain design standards as described in N.J.A.C. 7:7E-7.2(f).

IV. FEES

1. Letter of Exemption:

The DEPE does not require property owners to obtain a letter of exemption from CAFRA prior to commencement of construction of a CAFRA-exempt development. If a letter of exemption is requested by a property owner, however, the Department proposed to charge a fee of $250 for processing such requests. In response to public comments, the Department now plans to reduce the amount to $125.

2. General Permit For Bulkheaded Lagoon Lot Construction:

The Department proposes to charge a fee of $250 for the processing of General Permit applications for the construction of single family or duplex developments on a bulkheaded lagoon lot.

3. Individual CAFRA Permit For Non-Lagoon Lots:

The Department proposes to charge a fee of $500 per unit for the processing of CAFRA Permit applications for the construction of single family or duplex dwellings which are proposed for construction on non-lagoon lots or lagoon lots which are not bulkheaded.

SUMMARY OF MAJOR ISSUES: PROPOSED AMENDMENTS TO THE RULES ON COASTAL ZONE MANAGEMENT (N.J.A.C 7:7E)

I. Special Areas:

1. Beaches (-3.22) and Dunes (-3.16)

The Department has received comments regarding the Beaches and Dunes rules, particularly the proposed Subchapter 3A: Standards for Beach and Dune Activities. This section includes standards for routine beach and dune maintenance, mechanical sand transfers, emergency post-storm beach restoration, dune creation and enhancement, and beach access/dune walkover construction. Among the comments have been concerns that the placement of minor improvements such as dune fencing would require a permit and cost hundreds or thousands of dollars to obtain.

Any and all of these activities may be authorized through a CAFRA General Permit which has been proposed as part of the amendments to the Coastal Permit Program Rules (NJAC 7:7). It is envisioned that each municipality would apply for a General Permit which would authorize such activities for a five-year period. This General permit authorization would permit the municipality to conduct these activities at any time during the five-year permit period, without the need to reapply to the Department during that period.

2. Overwash Areas (-3.17)

There have been numerous comments on this proposed rule amendment, although there is very little revision actually proposed to this regulation that has been in effect for more than 10 years. Most of the concern is based on the fear that the Department will define overwash areas to include all of the barrier islands after a major storm event, and then prohibit all development in these areas. The Department will not do this. The current and proposed language of this rule does not prohibit all development in these areas, and the CAFRA amendments (and associated Coastal Permit Program Rules, NJAC 7:7) specifically exempt the reconstruction of developments which are damaged by storms or flooding. Therefore, this rule only applies to currently undeveloped sites which are located in overwash areas, and which are subject to regulation pursuant to CAFRA.

Even for new development, the proposed overwash areas rule specifically allows for development of these areas if mitigation, through dune creation, is performed to diminish the possibility of future overwash. In order to provide guidance in the area of overwash mitigation through dune creation, the proposed amendment to this rule refers to a "design dune" which establishes a minimum dune volume required to provide storm protection. This standard, which is described at NJAC 7:7E-3.16 (Dunes), will be evaluated to determine the overwash potential in cases where mitigation is proposed.

3. Pinelands National Reserve and Pinelands Protection Area (3.44)

The Department has received significant comment against this proposed amendment, although the policy is an existing regulation that has been in place since 1980. The concern behind many of the comments seems to be that many small developments will now be subject to CAFRA and, therefore, to this rule. The actual changes proposed are minor, since the current practice for CAFRA permit reviews is outlined in the DEPE-Pinelands Commission Memorandum of Agreement, and this procedure is not proposed for revision. The Department is currently reviewing all the public comments and suggestions it has received on this issue.

4. Assessing Impacts to Endangered and Threatened Wildlife Species in Environmental Impact Statements (Subchapter 3C)

The proposed rule amendment includes requirements for endangered or threatened species surveys which are often required as part of the CAFRA Environmental Impact Statement (EIS). These standards are intended to provide guidance to permit applicants and to assist in the preparation of the permit application, specifically the EIS. The Department has received comment regarding this proposal which claim that the requirements are burdensome and costly. However, these requirements are already being applied by the Department, and the proposed rule amendment is only intended to formalize this requirement so that permit applicants can know before they apply what they will need to do to demonstrate either that there is no habitat for threatened or endangered species on their site or that the habitat is being protected.

II. General Land Areas

1. Environmental Sensitivity Rating (5.4)

The proposed amendment to this rule includes a provision to classify forested sites as being "high environmental sensitivity areas." This proposal has been criticized as being overly restrictive, with the potential to significantly limit areas which can be developed. The Department is currently reviewing the comments and recommendations related to this proposal, and may revise the specific language of the proposal in response to these comments.

III. Use Rules

1. Resort Recreational Use - Marinas (-7.3(d)7)

The proposed amendment to this rule has resulted in a fair amount of comment due to the proposed prohibition on the use of treated lumber for the construction of five or more boat mooring facilities on the Navesink River, Shrewsbury River, Upper Manasquan River and St. George's Thorofare. These waters are highly productive shellfish harvest areas, and the proposed amendment is intended to provide added protection to these areas.

The Department has identified several commercially available, alternative construction materials, including recycled plastic, fiberglass reinforced plastic and vinyl, which could be used in place of treated lumber. Standards and specifications for these alternative materials have been made available, as well as a list of New Jersey projects which have utilized some of these alternative materials. The Department is now confirming that these alternative materials are available before deciding whether to go ahead with this policy change.

Another section of this rule proposal includes standards for marina site selection, design, construction and operation. The standards for marina siting have been questioned by several commenters as being to idealistic, particularly in a predominantly developed coastal area such as New Jersey. However, the other standards which address marina design, construction and operation would be applicable to New Jersey marina site/projects. Therefore, the Department proposes to amend the current language of the proposal to delete the marina siting standards and to maintain the design, construction and operation standards.

IV. Resource Rules

1. Stormwater Runoff (-8.7)

The Department has received comments regarding this proposed amendment, both for and against the proposal. The comments against the proposal are directed at two specific areas: 1) the proposed designation of underground infiltration as a discouraged stormwater management technique, and 2) the potential for conflict between this proposal and other stormwater management regulations currently under development.

The Department is reviewing these comments to consider what changes to the proposal are appropriate. One change the Department has already decided to include is a revision to reflect support for the stormwater management program in place in Stafford Township, Ocean County and to indicate that it is consistent with CAFRA and the Department regulations.

2. Buffers and Compatibility of Uses (-8.13)

The proposed amendment to this rule includes a buffer matrix table which establishes the required buffer distance between adjacent land uses, and a provision for buffer treatment (landscaping specifications). The purpose of this proposed amendment was to provide specific guidance to permit applicants in the area of site buffering, and to ensure a greater level of consistency on the part of DEPE in applying buffer requirements. In response to this proposal, several comments were received which express concern that the proposed matrix table represents a direct conflict with local zoning requirements. Therefore, the Department may revise the proposal to delete the matrix table and maintain the provisions for buffer treatment through specific landscaping requirements.