

PUBLIC HEARING
before

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT
and
ASSEMBLY COMMITTEE ON AGRICULTURE AND ENVIRONMENT

on

S-1409 and A-1903

(Spill Compensation and Control Act)

P7771976a

Held:
June 2, 1976
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator John F. Russo (Chairman)
Assemblyman H. Donald Stewart (Co-Chairman)
Senator Joseph L. McGahn
Assemblyman Walter J. Kozloski
Assemblyman James J. Barry, Jr.

* * * *

1975

Report

COMMITTEE ON ENERGY AND ENVIRONMENT
and
COMMITTEE ON AGRICULTURE AND ENVIRONMENT

on

S-1407 and S-1408

(Spill Compensation and Control Act)

Wash:
June 2, 1975
Assembly Chamber
State House
London, New Jersey

REPORT OF THE COMMITTEE ON ENERGY AND ENVIRONMENT
AND THE COMMITTEE ON AGRICULTURE AND ENVIRONMENT
ON
S-1407 AND S-1408
(Spill Compensation and Control Act)

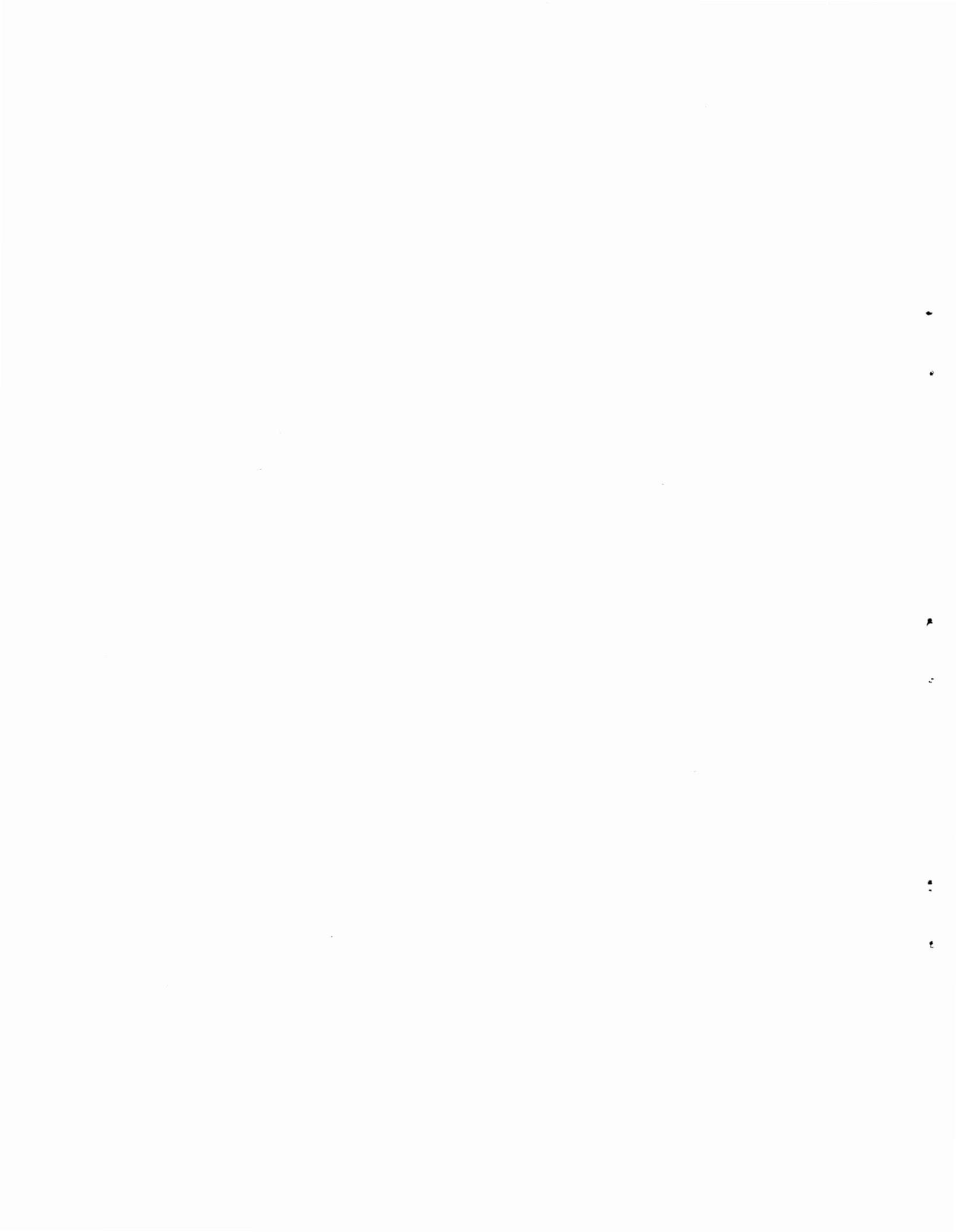
I N D E X

	<u>Page</u>
David J. Bardin, Commissioner New Jersey Department of Environmental Protection	1
Maxine Lipeles Environmental Policy Institute	15
Walter P. Anderson Manager, Environmental Science Tenneco Chemicals, Inc.	21
Leonard T. Connors, Jr., Mayor Surf City, New Jersey	27
Robert S. Hullings, Councilman Borough of Surf City, New Jersey	30
William Beren, Legislative Agent League For Conservation Legislation	30
Leonard H. Ruppert, Executive Director New Jersey Petroleum Council	32
Don E. Cornett Environmental Conservation Coordinator Marine Department, Exxon Company, U.S.A.	37 & 1x
Frank Simmons Supervisor of Income & Excise Taxes Chevron Oil Company, N.J.	48
Charles Worthington, County Executive Atlantic County, New Jersey	55
O.J. Shirley Manager of Safety & Environmental Conservation Shell Oil Company, New Orleans, Louisiana, and Chairman, Clean Atlantic Associates	56 & 6x
Diane Graves, Conservation Chairman Sierra Club, N. J. Chapter	59
Darryl F. Caputo, Assistant Director N. J. Conservation Foundation	61
Chester Mattson Chief of Environmental Programs & Planning Hackensack Meadowlands Commission	63



I N D E X - Continued

	<u>Page</u>
Bruce A. Mc Crodden, Environmental Specialist Standard Oil Company of Ohio	65
Dr. Harold Haskin Professor of Zoology Rutgers State University	66
Robert W. Huguley, Environmental Planner Monmouth County Planning Board	68
Frank Romaker Buckeye Pipe Line Company	69
Gordon Paulson London Group Protection & Indemnity Insurers	70
Elizabeth Clarity, President Citizens Energy Coalition of Monmouth County	72
 <u>ALSO SUBMITTED:</u>	
Statement by Atlantic Richfield Company	15x
Statement by the League of Women Voters of New Jersey	17x
Statement of the Chemical Industry Council of New Jersey	18x
Comments from Joseph A. Hoffman, Commissioner Department of Labor and Industry, State of New Jersey	19x
Letter from John R. Galloway Gulf Oil Corporation	22x
Letter and Statement from Ed R. Heintz Sun Oil Company	25x
Letter from J. Douglas Sinclair, Chairman Committee for a Better Environment, Inc.	30x
Letter from Robert C. Patterson, Jr., Executive Director Cape May County Chamber of Commerce	32x



SENATE, No. 1409

STATE OF NEW JERSEY

INTRODUCED APRIL 26, 1976

By Senators RUSSO, McGAHN, MERLINO, CAFIERO, BUEHLER,
BEADLESTON, HAGEDORN, PARKER and FAY

Referred to Committee on Energy and Environment

AN ACT prohibiting the discharge of petroleum and other hazardous substances, providing for the cleanup and removal of any such discharge, establishing a spill compensation fund, providing for the raising of revenues therefor, all in order to protect the economy and environment of this State, supplementing Title 58 of the Revised Statutes and repealing sections 1 through 10 of the "New Jersey Water Quality Improvement Act of 1971," approved June 1, 1971 (P. L. 1971, c. 173; C. 58:10-23.1 et seq.).

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

1 1. This act shall be known and may be cited as the "Spill
2 Compensation and Control Act."

1 2. The Legislature finds and declares: That New Jersey's lands
2 and waters constitute a unique and delicately balanced resource;
3 that the protection and preservation of these lands and waters
4 promotes the health, safety and welfare of the people of this State;
5 that the tourist and recreation industry dependent on clean waters
6 and beaches is vital to the economy of this State; that the State is
7 the trustee, for the benefit of its citizens, of all natural resources
8 within its jurisdiction; and that the storage and transfer of
9 petroleum products and other hazardous substances between
10 vessels, between facilities and vessels, and between facilities,
11 whether onshore or offshore, is a hazardous undertaking and im-
12 poses risks of damage to persons and property within this State.

13 The Legislature finds and declares that the discharge of
14 petroleum products and other hazardous substances within or
15 outside the jurisdiction of this State constitutes a threat to the
16 economy and environment of this State. The Legislature intends
17 by the passage of this act to exercise the powers of this State to

18 control the transfer and storage of hazardous substances and to
19 provide liability for damage sustained within this State as a result
20 of any discharge of said substances, by requiring the prompt
21 containment and removal of such pollution and substances, and to
22 provide a fund for swift and adequate compensation to resort
23 businesses and other persons damaged by such discharge.

1 3. Unless the context clearly indicates otherwise, the following
2 terms shall have the following meanings:

3 a. "Administrator" means the chief executive of the New Jersey
4 Spill Compensation Fund;

5 b. "Barrel" means 42 United States gallons or 159.09 liters or
6 an appropriate equivalent measure.

7 c. "Board" means a board of arbitration convened by the admini-
8 strator to settle disputed disbursements from the fund;

9 d. "Cleanup and removal costs" means all costs associated with
10 a discharge incurred by the State or its political subdivisions or
11 their agents in the (1) removal or attempted removal or, (2) taking
12 of reasonable measures to prevent or mitigate damages to the
13 public health, safety, or welfare, including but not limited to, public
14 and private property, shorelines, beaches, surface waters, water
15 columns and bottom sediments, soils and other affected property,
16 including wildlife and other natural resources;

17 e. "Commissioner" means the Commissioner of Environmental
18 Protection;

19 f. "Department" means the Department of Environmental
20 Protection;

21 g. "Director" means the Director of the Division of Taxation
22 in the Department of the Treasury;

23 h. "Discharge" means the intentional or unintentional releasing,
24 spilling, leaking, pumping, pouring, emitting, emptying or dumping
25 of hazardous substances into the waters of the State or onto lands
26 from which it might flow or drain into said waters, or into waters
27 outside the jurisdiction of the State when damage may result to
28 the lands, waters or natural resources within the jurisdiction of
29 the State;

30 i. "Fund" means the New Jersey Spill Compensation Fund:

31 j. "Hazardous substances" means such elements and compounds,
32 including petroleum products, which are defined as such by the
33 Federal Environmental Protection Agency pursuant to section 311
34 of the Federal Water Pollution Control Act Amendments of 1972
35 (P. L. 92-500, 33 U. S. C. 1251 et seq.).

36 k. "Major facility" includes but is not limited to any refinery,
37 storage or transfer terminal, pipeline, deep water port, drilling
38 platform or any appurtenance related to any of the preceding
39 that is used or is capable of being used to refine, produce, store,
40 handle, transfer, process or transport hazardous substances. A
41 vessel shall be considered a major facility only when hazardous
42 substances are transferred between vessels. Facilities with total
43 above-ground or buried storage capacity of less than 400,000
44 gallons are not major facilities for the purposes of this act.

45 l. "Natural resources" means all land, fish, shellfish, wildlife,
46 biota, air, waters and other such resources owned, managed, held
47 in trust or otherwise controlled by the State;

48 m. "Owner" or "operator" means with respect to a vessel, any
49 person owning, operating or chartering by demise such vessel;
50 with respect to any major facility, any person owning such facility,
51 or operating it by lease, contract or other form of agreement; with
52 respect to abandoned or derelict major facilities, the person who
53 owned or operated such facility immediately prior to such abandon-
54 ment, or the owner at the time of discharge;

55 n. "Person" means public or private corporations, companies,
56 associations, societies, firms, partnerships, joint stock companies,
57 individuals, the United States, the State of New Jersey, and any
58 of its political subdivisions or agents;

59 o. "Person in charge" means the individual immediately
60 responsible for the operation of a major facility and, in the case of
61 a vessel, the master and pilot of such vessel;

62 p. "Petroleum" means oil or petroleum of any kind and in any
63 form including, but not limited to, oil, petroleum, fuel oil, oil
64 sludge, oil refuse, oil mixed with other wastes and crude oils;

65 q. "Taxpayer" means the owner or operator of a major facility
66 subject to the tax provisions of this act;

67 r. "Tax period" means every calendar month on the basis of
68 which the taxpayer is required to report under this act;

69 s. "Transfer" means unloading or offloading between facilities
70 and vessels or vessels and facilities, and from vessel to vessel or
71 facility to facility, except for fueling or refueling operations;

72 t. "Vessel" means every description of watercraft or other
73 contrivance that is practically capable of being used as a means of
74 commercial transportation of hazardous substances upon the water,
75 whether or not self-propelled;

76 u. "Waters" means the ocean and its estuaries to the seaward
77 limit of the State's jurisdiction, all springs, streams and bodies of
78 surface or groundwater, whether natural or artificial, within the
79 boundaries of this State.

1 4. The discharge of hazardous substances is prohibited. This
2 section shall not apply to discharges of hazardous substances
3 pursuant to and in compliance with the conditions of a Federal or
4 State permit.

1 5. Each owner or operator of a major facility shall submit to the
2 department the following information:

3 a. The number of barrels or another measurement of the storage
4 capacity of the facility;

5 b. Average daily throughput of the facility;

6 c. A primary and contingency cleanup and removal plan which
7 includes, but is not limited to, an inventory of;

8 (1) The storage and transfer capacity of the facility;

9 (2) The containment and removal equipment, including, but not
10 limited to, vehicles, vessels, pumps, skimmers, booms, chemicals,
11 and communication devices, to which the facility has access, within
12 1 hour of a discharge whether through direct ownership or by
13 contract or membership in a discharge cleanup organization recog-
14 nized by the department;

15 (3) The trained personnel which are required and available
16 within 1 hour of a discharge to operate such containment and
17 removal equipment;

18 (4) All equipment and trained personnel used or employed in
19 any capacity at the facility to prevent discharges of hazardous
20 substances;

21 (5) The terms of agreement and operation plan of any discharge
22 cleanup organization to which the owner or operator of the facility
23 belongs;

24 (6) The type and amount of hazardous substances transferred,
25 refined, processed or stored at the facility;

26 d. The steps taken to insure prevention of a discharge;

27 e. The source, nature of, and conditions of financial responsi-
28 bility, established by any one, or a combination of the following:

29 (1) Insurance;

30 (2) Qualification as a self-insurer;

31 (3) Surety bonds payable to the fund.

1 6. Any person responsible for causing a discharge shall immedi-
2 ately notify the department. Failure to so notify shall make per-
3 sons liable to the penalty provisions of section 22 of this act.

1 7. Whenever any hazardous substance is discharged, the depart-
2 ment shall act to remove or arrange for the removal of such dis-
3 charge, unless it determines such removal will be done properly
4 and expeditiously by the owner or operator of the facility or any
5 other source from which the discharge occurs.

6 Removal of hazardous substances and actions to minimize dam-
7 age from discharges shall, to the greatest extent possible, be in
8 accordance with the National Contingency Plan for removal of oil
9 and hazardous substances established pursuant to section 311 (c)
10 (2) of the Federal Water Pollution Control Act Amendments of
11 1972 (P. L. 92-500, 33 U. S. C. 1251 et seq.).

12 Whenever the department acts to remove a discharge or contracts
13 to secure prospective removal services, it is authorized to draw
14 upon the money available in the fund. Such moneys shall be used
15 to pay promptly for all cleanup costs incurred by the department
16 in removing or in minimizing damage caused by such discharge.

17 Nothing in this section is intended to preclude removal and
18 cleanup operations by any person threatened by such discharges,
19 provided such persons coordinate and obtain approval for such
20 actions with ongoing State or Federal operations. No action taken
21 by any person to contain or remove a discharge shall be construed
22 as an admission of liability for said discharge. No person who
23 renders assistance in containing or removing a discharge shall be
24 liable for any civil damages to third parties resulting solely from
25 acts or omissions of such person in rendering such assistance ex-
26 cept for acts or omissions of gross negligence or willful misconduct.
27 In the course of cleanup operations, no person shall discharge any
28 detergent into the waters of this State without prior authorization
29 of the commissioner.

1 8. a. Any owner or operator of a major facility or vessel which
2 has discharged a hazardous substance shall be strictly liable, with-
3 out regard to fault, for all direct and indirect damages no matter
4 by whom sustained, including but not limited to:

5 (1) The cost of restoring, repairing, or replacing any real or
6 personal property damaged or destroyed by a discharge, any in-
7 come lost from the time such property is damaged to the time such
8 property is restored, repaired or replaced, and any reduction in
9 value of such property caused by such discharge by comparison
10 with its value prior thereto;

11 (2) The cost of restoration and replacement, where possible,
12 of any natural resource damaged or destroyed by a discharge;

13 (3) Loss of income or impairment of earning capacity due to
14 damage to real or personal property, including natural resources
15 destroyed or damaged by a discharge, if a claimant derives at
16 least 50% of his earnings from activities related to real or personal
17 property or natural resources damaged or destroyed by such dis-
18 charge;

19 (4) Loss of tax revenue by the State or local governments for
20 a period of 1 year due to damage to real or personal property
21 proximately resulting from a discharge.

22 b. Any person who has discharged a hazardous substance shall
23 be strictly liable, without regard to fault, for all cleanup and re-
24 moval costs.

25 c. An act caused solely by war, which does not include states
26 of insurrection or civil strife, shall be the only defense which may
27 be raised by a person responsible for a discharge in any action
28 arising under the provisions of this act.

1 9. a. There is hereby levied upon each owner or operator of one
2 or more facilities a tax to insure compensation for cleanup costs
3 and damages associated with any discharge of hazardous sub-
4 stances. The tax shall be determined by the director as measured
5 by the barrels of hazardous substances transferred to the major
6 facility, provided, however, that the same barrel subject to multiple
7 transfers from or between major facilities shall be taxed only once
8 at the point of the first transfer.

9 b. The tax shall be \$0.02 per barrel transferred until the balance
10 in the fund equals or exceeds \$50,000,000.00. In each fiscal year
11 following any year in which the balance of the fund equals or ex-
12 ceeds \$50,000,000.00, no tax shall be levied unless the current bal-
13 ance in the fund is less than \$30,000,000.00 or (2) pending claims
14 against the fund exceed \$25,000,000.00.

15 c. Every taxpayer shall on or before the twentieth day of the
16 month following the close of each tax period render a return under
17 oath to the director on such forms as may be prescribed by the
18 director indicating the number of barrels of hazardous substances
19 transferred from his facility during the tax period and at the said
20 time shall pay the full amount of the tax due. Every person who
21 transfers a hazardous substance, as defined in this act, shall within
22 10 days after such transfer register with the director on such form
23 as shall be prescribed by him.

24 d. If a return required by this act is not filed, or if a return when
25 filed is incorrect or insufficient in the opinion of the director, the
26 amount of tax due shall be determined by the director from such
27 information as may be available. Notice of such determination
28 shall be given to the taxpayer liable for the payment of the tax.
29 Such determination shall finally and irrevocably fix the tax unless
30 the person against whom it is assessed, within 30 days after re-
31 ceiving notice of such determination, shall apply to the director

32 for a hearing, or unless the director on his own motion shall re-
33 determine the same. After such hearing the director shall give
34 notice of his determination to the person to whom the tax is as-
35 sessed.

36 e. Any taxpayer who shall fail to file his return when due or to
37 pay any tax when the same becomes due, as herein provided, shall
38 be subject to such penalties and interest as provided in the "State
39 Tax Uniform Procedure Law," Subtitle 9 of Title 54 of the Revised
40 Statutes. If the Division of Taxation determines that the failure
41 to comply with any provision of this act was excusable under the
42 circumstances, it may remit such part or all of the penalty as shall
43 be appropriate under such circumstances.

44 f. (1) Any person failing to file a return, failing to pay the tax,
45 or filing or causing to be filed, or making or causing to be made,
46 or giving or causing to be given any return, certificate, affidavit,
47 representation, information, testimony or statement required or
48 authorized by this act, or rules or regulations adopted hereunder
49 which is willfully false, or failing to keep any records required by
50 this act or rules and regulations adopted hereunder, shall, in ad-
51 dition to any other penalties herein or elsewhere prescribed, be
52 guilty of a misdemeanor.

53 (2) The certificate of the director to the effect that a tax has
54 not been paid, that a return has not been filed, that information
55 has not been supplied or that inaccurate information has been
56 supplied pursuant to the provisions of this act or rules or regula-
57 tions adopted hereunder shall be presumptive evidence thereof.

58 g. In addition to the other powers granted to the director in this
59 act, he is hereby authorized and empowered;

60 (1) To delegate to any officer or employee of his division such
61 of his powers and duties as he may deem necessary to carry out
62 efficiently the provisions of this act, and the person or persons to
63 whom such power has been delegated shall possess and may exercise
64 all of said powers and perform all of the duties delegated by the
65 director;

66 (2) To prescribe and distribute all necessary forms for the im-
67 plementation of this act.

68 h. The tax imposed by this act shall be governed in all respects
69 by the provisions of the "State Tax Uniform Procedure Law,"
70 Subtitle 9 of Title 54 of the Revised Statutes, except only to the
71 extent that a specific provision of this act may be in conflict there-
72 with.

1 10. The New Jersey Spill Compensation Fund is hereby estab-
2 lished as a nonlapsing, revolving fund in the Department of the
3 Treasury to carry out the purposes of this act. The fund shall be
4 credited with all taxes and penalties related to this act. Interest
5 received on moneys in the fund shall be credited to the fund.

1 11. The State Treasurer shall appoint and supervise an admin-
2 istrator of the fund. The administrator shall be the chief executive
3 of the fund and shall have the following powers and duties:

4 a. To represent the State in meetings with the alleged discharger
5 and claimants concerning liability for the discharge and the amount
6 of the claims;

7 b. To determine if boards of arbitration are needed to settle
8 particular claims;

9 c. To administer boards of arbitration;

10 d. To certify the amount of claims and names of claimants to
11 the State Treasurer.

1 12. Claims shall be filed with the administrator not later than
2 2 years after the date of discovery of damage nor later than 6 years
3 after the date of the incident which caused the damage. The ad-
4 ministrator shall prescribe appropriate forms and procedures for
5 such claims, which shall include a provision requiring the claimant
6 to make a sworn verification of the claim to the best of his knowl-
7 edge. Each person's damage claims arising from one incident shall
8 be stated in one form. Damages not included in the claim at the
9 time compensation is made shall be deemed waived. Upon receipt
10 of any claim, the administrator shall as soon as practicable inform
11 all affected parties of the claim.

1 13. The administrator shall attempt to promote and arrange a
2 settlement between the claimant and the person responsible for the
3 discharge. If the source of the discharge can be determined and
4 liability is conceded, the claimant and the alleged discharger may
5 agree to a settlement which shall be final and binding upon the
6 parties and which will waive all recourse against the fund.

1 14. If the source of the discharge is unknown or cannot be
2 determined, the claimant and the administrator shall attempt to
3 arrange a settlement of any claim against the fund. The administra-
4 tor is authorized to enter and certify payment of such settlement
5 subject to such proof and procedures contained in regulations
6 promulgated by the administrator.

1 15. a. Boards of arbitration shall be convened by the administrator
2 when persons alleged to have caused the discharge, the administra-
3 tor or other persons contest the validity o ramount of damage claims

4 or cleanup and removal costs presented to the fund for payment.
5 If the source of discharge is not known, any person may contest
6 such claims presented for payment to the fund.

7 b. In the discretion of the administrator, a board of arbitration
8 may consist of three persons or a single neutral person. In the
9 case of three-person boards, one person shall be chosen by the
10 person alleged to have caused the discharge, one person shall be
11 chosen by the claimant, and one person shall be chosen by the first
12 two to serve as chairman. If the two arbitrators cannot agree
13 upon, select, and name the neutral arbitrator after their appoint-
14 ment, the administrator shall request the American Arbitration
15 Association to utilize its procedures to select the neutral arbitrator.
16 If the source of the discharge or liability is not conceded, the ad-
17 ministrator shall request the American Arbitration Association to
18 utilize its procedures to select the neutral arbitrator and an
19 arbitrator normally selected by the absent or unknown person.
20 Representation by any party on the board shall not be considered
21 as any admission of liability for such discharges. In the case of a
22 one-person board, such neutral arbitrator may, in the discretion of
23 the administrator, be selected by the administrator, by agreement
24 of the affected parties or by utilization of the procedures of the
25 American Arbitration Association.

26 (1) Arbitrators shall be designated by their principals within 30
27 calendar days after the administrator notifies the principals of
28 claims against the fund arising from a discharge.

29 (2) Should either party fail to name an arbitrator within the
30 designated time, then the administrator shall request the American
31 Arbitration Association to utilize its procedures to select that
32 arbitrator. The two arbitrators thus chosen shall select the neutral
33 arbitrator required by this section.

34 c. One board of arbitration may be convened to hear and deter-
35 mine all claims arising from or related to a common discharge.

36 d. The boards shall have the power to order testimony under
37 oath and may subpoena attendance and testimony of witnesses and
38 the production of such documentary materials pertinent to the
39 issues presented to the board for determination. Each person
40 appearing before the board shall have the right to counsel.

41 e. All costs and expenses approved by the administrator attrib-
42 utable to the employment of any arbitrator shall be payable from
43 the fund.

44 f. All decisions of the boards of arbitration shall be in writing
45 with notification to all appropriate parties, and shall be rendered

46 within 60 calendar days of the final appointment of the board unless
47 the parties otherwise agree in writing to an extension.

48 g. Determinations made by the board shall be final. Any action
49 for judicial review shall be filed in the Appellate Division of the
50 Superior Court within 30 days of the filing of the decision with the
51 administrator.

52 h. No sooner than 30 days after the determination of the arbi-
53 trators, nor more than 60 days thereafter, the arbitrators shall
54 certify all claims settled or arbitrated to the administrator who, in
55 turn, shall certify the amount of the award and the name of the
56 claimant to the State Treasurer who shall pay the award from the
57 fund. No claim shall be paid while any judicial proceeding for the
58 review of the arbitrators' decision is pending. In any case in which
59 the person responsible for the discharge seeks judicial review,
60 attorneys' fees and costs shall be awarded to the claimant if the
61 decision of the board is affirmed.

1 16. Moneys in the New Jersey Spill Compensation Fund shall be
2 disbursed by the administrator for the following purposes and no
3 others:

4 a. Costs incurred under section 7 of this act;

5 b. Damages as defined in section 8 of this act;

6 c. The sum of not more than \$200,000.00 annually for research
7 on the prevention and the effects of spills of hazardous substances
8 on the marine environment and on the development of improved
9 cleanup and removal operations;

10 d. Such sums as may be necessary for the boards, general admin-
11 istration of the fund, equipment and personnel costs of the depart-
12 ment and any other State agency related to the enforcement of this
13 act.

14 The State Treasurer may invest and reinvest any moneys in said
15 fund in legal obligations of the United States, this State or any of
16 its political subdivisions. Any income or interest derived from such
17 investment shall be included in the fund.

1 17. The Department of the Public Advocate may act to assert
2 such claims as are alleged against the fund by persons who in the
3 opinion of the Public Advocate, may be better represented as a
4 class in recovery of damage or cleanup costs provided by this act.
5 All moneys recovered for this class from the fund shall be distri-
6 buted by the Department of the Treasury after certification by the
7 administrator. Failure by the Department of Public Advocate to
8 act on behalf of such class shall in no way prejudice the claims to
9 be asserted by such class or individuals under the provisions of this
10 act.

1 18. Payment of any cleanup costs or damages by the fund arising
2 from a single incident shall be conditioned upon the administrator
3 acquiring by subrogation all rights of the claimant to recovery of
4 such costs or damages from the discharger. The administrator shall
5 then seek satisfaction from the discharger in the Superior Court
6 if the discharger does not reimburse the fund. In any such suit, the
7 administrator need prove only that an unlawful discharge occurred
8 which was the responsibility of the alleged discharger. The admin-
9 istrator is hereby authorized and empowered to compromise and
10 settle the amount sought for costs and damages from the alleged
11 discharger and any penalty arising under this act.

1 19. In the event that the total awards for a specific occurrence
2 exceed the current balance of the fund, the immediate award shall
3 be paid on a prorated basis, and all claimants paid on a prorated
4 basis shall be paid, as determined by the administrator, a pro rata
5 share of all funds received by the fund until the total amount of the
6 proven damages is paid to the claimant or claimants. The admin-
7 istrator may also provide through regulation to fix the priority for
8 the payment of claims based on extreme hardship.

1 20. Any claim for costs of cleanup, civil penalties or damages by
2 the State, and any claim for damages by any injured person, may
3 be brought directly against the bond, the insurer, or other per-
4 son providing evidence of financial responsibility.

1 21. The commissioner, the State Treasurer and the director,
2 respectively, are authorized to adopt, amend, repeal, and enforce
3 such rules and regulations pursuant to the Administrative Pro-
4 cedure Act, P. L. 1968, c. 410 (C. 52:14B-1 et seq.) as they may deem
5 necessary to accomplish their respective purposes and respon-
6 sibilities under this act.

1 22. Any person found in violation of the provisions of this act
2 or any rule promulgated thereunder shall be liable to a penalty of
3 not more than \$10,000.00 for each offense, to be collected in a
4 summary proceeding under the "Penalty Enforcement Law"
5 (N. J. S. 2A:58-1 et seq.) or in a court of competent jurisdiction
6 wherein injunctive relief has been requested. The Superior Court
7 shall have jurisdiction to enforce said Penalty Enforcement Law.
8 If the violation is of a continuing nature each day during which it
9 continues shall constitute an additional, separate and distinct
10 offense.

1 23. Nothing in this act shall be deemed to preclude the pursuit of
2 any other civil or injunctive remedy by any person. The remedies
3 provided in this act are in addition to those provided by existing
4 statutory or common law, but no person who receives compensation

5 for damages or cleanup costs pursuant to any other State or
6 Federal law shall be permitted to receive compensation for the same
7 damages or cleanup costs under this act.

1 24. If any section, subsection, provision, clause or portion of
2 this act is adjudged unconstitutional or invalid by a court of
3 competent jurisdiction, the remainder of this act shall not be
4 affected thereby.

1 25. This act, being necessary for the general health, safety, and
2 welfare of the people of this State, shall be liberally construed to
3 effect its purposes.

1 26. Sections 1 through 10 of P. L. 1971, c. 173 (C. 58:10-23.1 to
2 58:19-23.10) are repealed.

1 27. This act shall take effect on the first day of the third month
2 after enactment.

STATEMENT

The threat of economic and environmental damage to the State's coastal resources and businesses may increase as a result of the development of offshore oil and gas and additional shipments of oil and other hazardous substances into the State and in coastal waters.

This bill, the "Spill Compensation and Control Act," is intended to provide more adequate protection for the resort industry and others threatened by direct or indirect losses resulting from spills of oil and other hazardous substances. The bill (1) requires plans and procedures to prevent and contain spills (2) establishes liability without fault for damages within the State resulting from spills caused by major facilities transporting or storing hazardous substances occurring both within and outside the State's jurisdiction; and (3) establishes a fund financed by a tax on transfers of hazardous substances for prompt payment of claims for direct and indirect damages caused by spills.

In order to protect against the occurrence of such spills, the Department of Environmental Protection is authorized to obtain from the owners and operators of major facilities engaged in the shipment, transfer or storage of hazardous substances information concerning the available procedures, equipment and personnel to protect against and remove spilled substances. Each facility is also required to maintain insurance or other guarantees of financial responsibility for damage caused by a spill.

In the event of a spill, the person responsible is required to notify the department. Failure to provide such notification subjects the violator to penalties. The department is directed to take such measures needed to contain and remove spills unless it determines

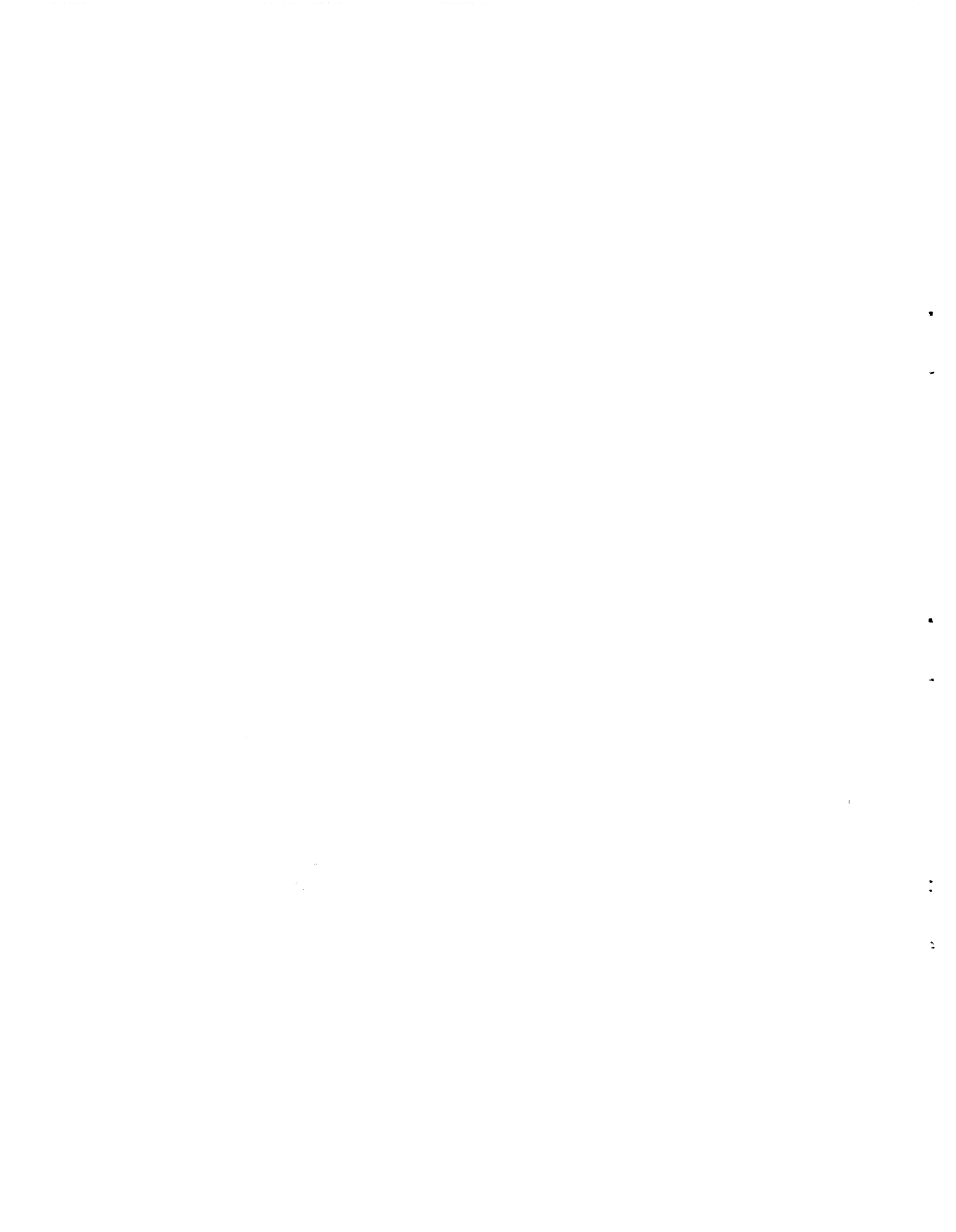
that the person responsible for the spill is capable of containment and cleanup. All measures taken are to be consistent with Federal and State contingency plans; the use of any detergent to dissolve a spill is prohibited without the prior authorization of the Commissioner of Environmental Protection.

In order to facilitate prompt and adequate payment of claims for damage resulting from a spill, there is created in the Treasury the "New Jersey Spill Compensation Fund." The fund is to be financed by a two-cent tax on each barrel of a hazardous substance transferred between major facilities, including refineries and pipelines, until the fund reaches \$50 million. The tax will terminate when the fund reaches the \$50 million level, but may be automatically reassessed if the fund is depleted by claims resulting from spills.

The fund is available to compensate for damages caused by a spill from a major facility or a vessel transporting hazardous substances including (1) costs of restoring or replacing property, including the income lost during the time of repair and any loss in value of the property; (2) costs of restoring or replacing natural resources such as fish, shellfish and wildlife; (3) loss of income or impairment to earning capacity if a claimant derives half or more of his income from activities related to damaged natural resources or property; and (4) loss of tax revenue by the State or local governments due to damage for a 1-year period. The liability of a major facility or vessel for such damages is to be imposed without limit and regardless of fault. In addition, any person who is responsible for a discharge is subject to liability without fault for the full extent of cleanup and removal costs.

The administrator of the fund is directed to promote and facilitate settlements directly between the alleged discharger and the claimant. If a settlement is not reached, the bill provides for prompt resolution of claims through arbitration and appellate review. Attorneys' fees may be imposed against alleged dischargers who unsuccessfully appeal arbitration determinations in order to promote the objective of prompt settlement of claims. The Public Advocate is authorized to represent those persons whose claims may be best asserted as a class. Upon payment of claims, the administrator of the fund is directed to seek recovery from the person responsible for the discharge.

In addition to the provisions for damages, the act makes any violator of its provisions subject to a penalty of \$10,000.00. This penalty may be imposed for each day of a violation which is continuing in nature.



SENATOR JOHN F. RUSSO (Chairman): We will begin this public hearing. This is a joint public hearing of the Senate and Assembly Energy and Environment Committees. I will introduce those of us who are here at the present. I am Senator John Russo from Ocean County, Chairman of the Senate Energy and Environment Committee. To my right is Assemblyman Donald Stewart of Gloucester County, Chairman of the Assembly Energy and Environment Committee. To his right is Assemblyman Walter Kozloski of Monmouth County of the Assembly Committee. The other members of the committees will be drifting in but we will start now. Since the entire proceeding is being transcribed and will be made available to every member of both committees, we won't wait for all members to be personally present.

The public hearing today concerns the Spill Compensation and Control Act. The bills that we will be concerned with today are, Senate #1409, sponsored by myself and cosponsored by Senators McGahn, Merlino, Cafiero, Buehler, Beadleston, Hagedorn, Parker and Fay and also the equivalent companion bill in the Assembly, sponsored by Assemblymen Newman, Doyle, LeFante, Hamilton, Barbour and Kozloski - that is Assembly #1903. Related, also, are Assembly #1915, sponsored by Assemblymen Bornheimer and Karcher and Senate #1397, sponsored by Senator Lynch.

I would first like to extend the Committee's thanks to the staff members, Dave Matteck and his staff, who did the work of putting the public hearing together and controlling all of you people with regard to the agenda. As usual, it was a very fine job and we appreciate it.

We will get right to the testimony concerning these bills. The first witness will be the Commissioner of Environmental Protection, David J. Bardin.

D A V I D J. B A R D I N: Chairman Russo, thank you. I appreciate the opportunity to appear in support of S-1409 and A-1903, key pieces of legislation recommended by the Byrne Administration and enjoying the widespread, bipartisan support which is reflected in the sponsorship you have just read.

I am accompanied today by several members of the staff of the Department of Environmental Protection and I would like to introduce them to you briefly. At my right is Carl Birns, the Chief of the Office of Special Services who heads up the Oil and Hazardous Materials Spills Unit in the Division of Water Resources, an organization, incidentally, which has a nationwide reputation in pollution control with regard to the oil-chemical spill problem. That office has prepared an exhibit which is outside the room, describing, generally, the work of the Spill Control Unit, cleanup and also showing, in a photograph taken just last week, the particular incident which is one of the worst oil spills in New Jersey's history - the one that took place on the Hackensack River in Jersey City and the end of which we still haven't seen.

At Mr. Birns right is Mr. Edward Linky, counsel with the Division of Marine Services.

Across the aisle is Mr. Russell A. Cookingham, the Director of the Division of Fish, Game and Shell Fisheries and at his left is Mr. Donald T. Graham, the Director of the Division of Marine Services, which includes the Marine Police.

These three Divisions, Water Resources, Fish and Game, and Marine Services, together carry out the emergency response program of the State of New Jersey in case of any oil spill and do so in cooperation with Federal agencies, including the U.S. Coast Guard with respect to spills on the waters of the United States, and the United States Environmental Protection Administration, with regard to spills on the land.

S-1409 and A-1903 would mitigate the threat of environmental and economic damage to resources and businesses anywhere in New Jersey, resulting from a discharge of petroleum or other hazardous substances. Let me emphasize "anywhere in New Jersey".

These bills apply to damage done on land, damages done on the beach, damages done on the waters - in marinas or to ships at sea - no matter where the source of the oil or hazardous chemical may be, whether it is from a land-based installation - such as took place just last week in Jersey City - or whether it is from a ship at sea, or a pipeline crossing a beach, or whatever.

The bills require contingency preparedness by each major facility handling hazardous substances. The bills would establish a fund, financed by a 2¢ per barrel tax on the initial transfer of hazardous substances for the prompt payment of damage claims and cleanup and removal costs. The bills would prescribe no-fault liability for damages suffered inside the State as a result of spills occurring inside or outside of the State's jurisdiction.

In the case of a spill that occurred beyond the three mile limit, if the damage, as a result of the action of the tides or the currents, was sustained within the three mile limit, or on shore, the bills would cover that.

The bills deal with no-fault liability to third parties as well as to the people who are directly injured or who incur cleanup costs.

The fund under the bills would be available to compensate for direct or indirect damages, in case of a spill from a major facility or a vessel transporting hazardous substances.

Among the damages covered would be, one, cost of restoring or replacing property, including the income lost during the time of repair and any loss in value of the property; two, cost of restoring or replacing natural resources; three, loss of income or impairment to earning capacity if a claimant derives half or more of his income from activities related to damaged natural resources or property; and, four, loss of one year's tax revenue by the State or local government due to the damages.

In addition, the bills would extend no-fault liability to the full measure of cleanup and removal costs.

Senate #1409 and Assembly #1903 propose a comprehensive spill liability law for New Jersey, a law that would be far superior to any yet enacted in the country. These bills would apply not only to petroleum products but to spills of all hazardous substances. It could include such spills as the pesticide spill that occurred off our shores a couple of weeks back. It could apply to a spill of a hazardous substance, such as kepone which might threaten the aquifer and might threaten to pollute the ground waters and the drinking supplies of the well systems.

The bills would establish a mechanism for quick and efficient cleanup of spills and a fair and expeditious method of compensation for those persons who are injured. In my judgment, the bills represent simple equity to the general public of New Jersey - business communities and individual property owners - in relationship to the risk of spills, which are associated with a certain kind of petrochemical industry, which is a key element of our economic life.

I therefore urge your favorable consideration of these Byrne Administration proposals.

Manufacture of petroleum, petrochemicals and related chemical operations constitute the single largest industrial activity in New Jersey. By the very nature of these operations, the industry engages in activities that pose a tangible threat to New Jersey's environment and resources. This is a risk we assume with our eyes open.

The transfer, storage, and disposal of petroleum and other hazardous substances present environmental risks with attendant economic implications to the State's second largest industry - tourism. New Jersey's tourist industry is based, in good measure, on the beauty of its beach areas and the quality of waters adjacent to them.

New Jersey's tourist industry tends to be concentrated on our shore and concentrated seasonally to the extent that all of the Federal studies show that the economic exposure of New Jersey is greater than that of any other state, with respect to the possible effects of an off-shore spill on our on-shore businesses.

These factors can be damaged - the beauty of the beach areas and the quality of the waters - in some cases for years by a discharge of petroleum or other hazardous substances. Any spill of hazardous substances, regardless of origin, could substantially harm the environment, including private property. A spill can kill fish and wild life, can wipe out vegetation. Substances can seep into the land, drain into and pollute ground or surface waters. Such seepage and pollution are generally difficult to counteract. We have in this room some examples of materials used - booms used - to try and control spills, but as you will see from the photographs outside - or you can still see from a trip across Newark Bay - there is a great deal of drift of oil, drift of pollution, which simply is not controlled by any booming activity. In the case of the spill in Jersey City, we had booms which broke open with every single tide, including the boom that was designed to protect the Saw Mill Creek Wild Life Refuge of the Hackensack Meadowlands Commission.

The spill effects can linger long after the spilled material itself has been substantially removed to the detriment of fish, wild life, vegetation, and water quality.

Director Cookingham has with him examples of the marsh grass which was injured just last week in the Jersey City spill and one duck that was actually killed. What happens to the wild life in these cases is that they go out on the banks, get themselves covered with the oil and are unable to liberate themselves from it - they get deeper and deeper into it - and the oil destroys the protective coating on their feathers and wings and they end up drowning or suffocating as a result.

Now, what is the objection to this kind of legislation? When I discuss the problems of the Jersey shore and the New Jersey tourism and related industry with people in Texas, California - throughout the country - I generally run into understanding and sympathy and an expressed desire to see to it that whatever risk we assume as a result of the oil business that may be coming off our shores, that the people who bear the risk - most notably the communities and individuals and businesses on the shore - will be compensated in case anything goes wrong. Yet, the American Petroleum Institute, the national trade association of the oil companies, has argued against such bills as these. The American Petroleum Institute argues instead that there should be a Federal program to preempt any existing state laws or any future state spill liability legislation.

In my judgment, the opposition of big oil to these bills is totally unrealistic and does no credit to the civic-mindedness traditional with some of these companies. In the first place, no relevant, comprehensive, Federal program exists today. There isn't a comprehensive program that is ready to do the job at the Federal level. So, the argument, "Don't pass State legislation, rely on Federal legislation instead" is simply premature. Unless states enact legislation of their own, they will leave their citizens exposed to the incomplete Federal coverage on the Federal statute book today.

Second, in the limited instances that Congress has enacted spill liability laws, it carefully and specifically reserves to the states the right to enact their own laws in the same area. In other words, Congress has twice heard the arguments of big oil to preempt the states and Congress has twice resisted the arguments of big oil and rejected the arguments of big oil and has allowed the states to enact legislation. The precedent is there in Congress, in Washington, and it would be a mistake, in my judgment, for our own Legislature to fail to take advantage of it for the protection of

our people and our businesses.

Moreover, there are unique state interests. New Jersey with its relatively short but intensively used coast is unusually susceptible to damage from on off-shore spill. In the absence of both existing or proposed Federal legislation capable of adequately protecting businesses and resources in New Jersey, it seems vital that this state legislature enact comprehensive liability legislation to protect New Jersey interests.

The prospect of outer-continental shelf oil leasing, which confronts the Jersey shore today, would further increase the risks, which have been dramatized by spills in the Delaware River and spills, just last week, in the Hackensack River. That prospect, therefore, demands early, favorable action on S-1409 and A-1903. Thank you, gentlemen.

SENATOR RUSSO: Thank you, Commissioner. Before we go on, one of our late starters, at the end, is Assemblyman Jim Barry of Morris County, a member of the Assembly Energy and Environment Committee.

We will begin the questions with the committee members. I will reserve my questions until you are finished. Assemblyman Stewart.

ASSEMBLYMAN STEWART: Commissioner, do any other states have similar legislation now in operation?

COMMISSIONER BARDIN: Some of the states have enacted comperable bills.

ASSEMBLYMAN STEWART: Do they fund it the same way that this bill is proposed to be funded - a 2¢ --?

COMMISSIONER BARDIN: Generally it is the same way. There are differences in the amount. Some of them have larger tax amounts than ours.

ASSEMBLYMAN STEWART: Do you have any specific state that you can mention?

MR. LINKY: Florida, Massachusetts -- they have a 2¢ per gallon tax, the same as ours.

ASSEMBLYMAN STEWART: But Pennsylvania, Delaware - along the Delaware River - do not?

MR. LINKY: That's correct.

COMMISSIONER BARDIN: The Ford Administration, in Washington, is recommending legislation which we believe is inadequate in the extent of its coverage.

SENATOR RUSSO: Did you say inadequate?

COMMISSIONER BARDIN: Inadequate in the extent of its coverage, but which also uses the mechanism of a tax and a fund. Their proposal is for a 5¢ per barrel tax. So, in that sense, ours is a relatively low tax proposal.

ASSEMBLYMAN STEWART: What happens in an example where a ship is going up the Delaware River to a major facility in Delaware or Pennsylvania - Pennsylvania I would assume - and has an accident? Assuming this legislation is in effect, how are we protected and how would it come into play?

COMMISSIONER BARDIN: If there were an accident, the bill - the Russo bill and the other bills - would do the following things: One, there would be an obligation on the part of the spiller to take action. If the spiller could handle it himself - the ship owner or operator - he would be allowed to retain, hire, and pay for, all of the activity that had to be done to contain the spill. If he couldn't handle it himself - or judgment was that he wouldn't be doing enough - then the state government could move in, using the backup of the fund - the spill fund - to see to it that the spill containment and cleanup job was done right away. In the case of the state moving in and using fund money, the state would then be entitled - the Treasury of New Jersey - to sue for recovery from the owner of the vessel. There would be absolute liability on the part of

the owner of the vessel toward the state for cleanup cost, toward a private or community interest for cleanup cost, and toward anybody who was damaged - a marina owner, a boat owner, a land owner, a hotel owner - and whose business or recreation activity was diminished because people were scared away as a result of the news of a spill.

The bill would provide that these people who were damaged would be entitled to go directly to the fund for compensation. They would not have to sue the owner of the vessel, wherever he was, nor find him. They would not have to negotiate or bargain or be nicked and dined by lawyers for the owner of the vessel. The people who were damaged, who own the boats, own the marinas, own the businesses affected, could go directly to the fund, prove to the Treasury of New Jersey that they had sustained the damages and get recovery promptly, while it would still do them some good and give them a chance to keep that business going, rather than sustain all of the delays of a court case.

The fund, then, could sue the owner of the vessel to recover the money back again and that recovery would go back into the fund.

ASSEMBLYMAN STEWART: In the example that we have been using, I would assume that that major facility, or that vessel, would not have been paying the tax?

COMMISSIONER BARDIN: You are saying if the facility is on the Pennsylvania side of the river?

ASSEMBLYMAN STEWART: Yes.

COMMISSIONER BARDIN: It would not pay the tax. If there was a transaction that moved the oil from Pennsylvania to New Jersey then the tax would be paid and, incidentally, paid only once.

ASSEMBLYMAN STEWART: Now, the private landowner whose land is damaged - I thought I read in here where he had to show that half of his income was derived from that property. We are talking about private residence, say either along the river or along the seashore area.

COMMISSIONER BARDIN: There are two different cases. You are right in one of them. If it is a question of a hotel owner, or a business which has lost customers, it is going to have to show that half of its anticipated revenue for the period, or more, has been lost. In other words, someone who has lost a very small fraction and can't make that showing of 50%, won't be able to recover for loss of revenue. There is a cut-off.

To the extent that he shows damages sustained to property he owns - his marina is damaged, the boats have-- The boats in the Hackensack and the marinas in the Hackensack River have residual fuel oil on them. They are going to have to be taken out, scraped down and repainted. Those costs he will be entitled to recover from the fund, even though those costs might not be enough to justify a law suit - given the cost of suing - against a company that was going to resist it.

ASSEMBLYMAN STEWART: Okay. But a private homeowner who has a home along the Delaware River and whose beach, seawall, and maybe his wall is marred by an oil spill, he has recourse?

COMMISSIONER BARDIN: He has recourse for the damages he suffered, including the cost of reseeding the lawn, the cost of fixing up the beach. The 50% limit does not apply to his own property.

ASSEMBLYMAN STEWART: Okay. Then just one step further - if we carry that same example to the seashore resorts, many of those properties are rental-type. They may not be along the beach but a spill, theoretically, anywhere along the Atlantic coastline would ruin an entire season of operation. Would those private property owners still have to be able to prove that half of their income came from--?

COMMISSIONER BARDIN: The way the bill is written, the damages which consist

of loss of income because he couldn't rent that bungalow for the summer, would have to show at least 50% of the income for the period was lost. Now, that 50% is simply a cut off that was selected in drafting the bill. You could propose a higher or lower cut off, depending upon the policy questions. But, there ought to be some because there will be a problem with proof even vis-a-vis the fund to show the amounts affected. There is no magic about the 50%.

SENATOR RUSSO: Assemblyman Kozloski.

ASSEMBLYMAN KOZLOSKI: Yes, just a couple of things. Looking at the Hackensack River - the oil spill we had recently - have you made an estimate, as of this time, of what damage was done, monetarily?

COMMISSIONER BARDIN: We have not put a dollar figure on it, but I can describe to you the pieces involved. The Hackensack River has been polluted up to the Turnpike Bridge in Ridgefield - there is roughly 9 miles there - down into Newark Bay, which is a pretty well polluted body of water anyhow. The pollution has been carried by the high tide, deep into the Meadowland of the 1,600 acres of wetland protected by the Hackensack Meadowlands Development Commission. We estimate that 800 acres - about half - have been affected, and perhaps 250 acres have been very severely affected, to the point where the grass is destroyed. The oil is sinking to the bottom. It will smother the organisms and it will cut out the productivity of that wetland for a period of years - hopefully not too many - until sediment forms over it again and the cycle can be restored. It is going to have an effect on fish life and the rest.

There are small marinas on the Hackensack and I have personally inspected, from the air, and it seems to me that every case I saw, the booms were not successfully keeping out all of the oil. I would think that almost every berthed boat on the Hackensack is likely to have been water damaged.

Now, that is not a swimmable river so we don't have any beach damage. It is a river with relatively little residential development along the banks. There happens to be a very fine development now under construction right there but it is not yet occupied.

The damages on the Hackensack will probably be much less than a comperable spill might have caused in some of the -- in say your district, where we have so much water-based, personal recreational activity and commercial business dependent upon the water-based recreation.

I will just ask Mr. Birns and Mr. Cookingham whether they have any further information to supplement that at the moment.

MR. BIRNS: The cost of cleanup is also going to be expensive. The shore-line on both sides of the river will have to be cleaned up and the cost of cleaning up the marsh is going to be quite great. A large amount of the reproductive area has to be cleaned.

MR. COOKINGHAM: Our estimate is that over 30% of the vegetation is very seriously affected. Fortunately, in that part of the Hackensack we don't have migrating birds going through at this time of the year but all the nesting birds, the shore birds, have been affected.

COMMISSIONER BARDIN: There is one very interesting lesson for Hudson County and for all of the rest of the State - what could have been. Most of the oil that has been picked up was not picked up by the Coast Guard but was picked up by the Jersey City Sewer Authority, in the sewer plant.

The situation there in Jersey City was that a major tank - a tank with a capacity of over three million gallons - gave in on the bottom, and filled in a diked area. One side of the dike was built merely of cinder block and was not capable of

handling the kind of pressure that the oil spillage imposed on it. It gave way under the pressure of the oil and that oil rolled out into the street, parking lots, and both the storm and the drain sewers of Jersey City. Some of it went into the river. We estimate 200 thousand gallons went into the river and 100 thousand was removed by trucks from the river. But, much, much more went into the Jersey City sewer plant. Under our monitoring, trucks have pumped out of the Jersey City sewer plant, 700 thousand gallons of residual oil - seven times as much as has been taken out of the river - and we estimate that another million gallons is held in holding pits in the sewer plant.

Now, there are two things I would like to point out to you. One, the engineer in charge of that sewer authority did some quick thinking that saved the Hackensack River a much worse pollution problem. He saw that his plant was not capable of removing very much of that residual fuel oil at a very high pace, and if he operated the plant normally he would just be putting out in the effluent pipe into the river hundreds of thousands of gallons back into the Hackensack. So, he diverted a substantial amount of that oil into pits - holding pits - in his plant and we estimate that a million gallons are being held there. Those million gallons are mixed with sewer sludge. Normally, Jersey City incinerates its sludge. For air pollution reasons, it probably will not be able to incinerate that mixture. There is, incidentally, a very substantial bill potentially involved in getting rid of that million gallons. I presume - I am not testifying that it will be so but I presume the liability and responsibility will rest with the oil company involved.

But, the first important lesson is, quick thinking kept that out of the river and we ought to give credit where it is due, to a municipal, civil service official, who did his job and did his job right and saved New Jersey from what would definitely have been the worst spill in our history.

But, number two, that is a primary treatment plant. All it has is mechanical settling-type separation of sewerage. Some day, Jersey City and all of the major communities along our various shorelines are going to have at least secondary treatment and most of those secondary treatment plants will depend on biological systems of digestion. Now, a slug of oil in that kind of quantity, had it hit a secondary treatment plant, would have knocked out the sewer treatment plant for that region of the state and it would have caused a very substantial damage to publicly-owned facilities handling that kind of sewerage. It didn't happen in this instance in part because we do not yet have the better, more sophisticated kind of sewer treatment facility installed. As you appreciate, Assemblyman, in some of the shore communities in Monmouth County and elsewhere we are much more advanced and we already have that kind of capability.

ASSEMBLYMAN KOZLOSKI: I didn't get a figure - one of my concerns is, is \$50 million enough? Suppose you have a spill such as happened in the Hackensack and you also have something within that same year's period - as Assemblyman Stewart just mentioned - over by the Delaware River, would this fund be replenished enough, or would the state have to pick up additional costs if there is a higher cost factor involved here?

COMMISSIONER BARDIN: If the entire available fund were limited to the \$50 million that is going to be accumulated in the proposed fund and you couldn't replenish it, it would not be enough considering the exposure of our tourism industry on the shore. But the fund is simply a rotating device to get a job done. The fund is going to be replenished from two different kinds of sources. One will be damages paid into the fund by the spiller, to whom the Treasury turns, under its power of subrogation, to claim the damages back.

Number two is the right to reimpose the tax on the additional future barrels

to make it up.

Now, whether we really have to reimpose the tax is going to depend on the interaction of several things. One, to what extent are we going to have a spill in fact? Of course, we hope that it won't occur, although all experience shows that it keeps occurring. We have a chart in the back of the room showing year-by-year the reported spill record in New Jersey. As you see the bar graphs, the numbers of spills have been going up pretty dramatically over the years without any regard to any off-shore development of leases off our coast. But, we hope there will be a minimum of them and a minimum of damages.

Number two, we hope that, by and large, where a spill does occur, the responsible company - the company that is responsible under the no-fault principle of the bill - will be a good citizen and will go ahead and get the job done without recourse to the fund. That is always preferable when it can be done.

On some of the cleanup costs, which are very substantial - in this Jersey City case the cleanup will undoubtedly exceed \$1 million, just for cleanup, and it may go considerably higher - you would hope that oil company would see it as its advantage to take charge to select the contractors and manage the cleanup. It is only after these two factors - whether spills occurred in a magnitude and the extent to which the direct cost is borne first by the oil company, rather than by the fund - that you could see whether you need more. If the conclusion of the Legislature were that it wanted more funding, it seems to me it would want a contingent mechanism to maximize the funding rather than to accumulate larger amounts and hold them in the fund. It is not holding the \$50 million in the fund that is the best protection for New Jersey, it is the ability to replenish the fund on a timely basis, when, as, and if that ever becomes necessary. That is the key thought I would like to leave with you.

ASSEMBLYMAN KOZLOSKI: Thank you, I have nothing else to ask.

SENATOR RUSSO: Assemblyman Barry.

ASSEMBLYMAN BARRY: Without this fund being in effect, at the present time we have the responsibility solely with the oil companies, is that correct, for cleanup and for compensation?

COMMISSIONER BARDIN: It is partially correct. In the case of a spill on federal waters - on navigable waters - in the absence of action by the oil company, the Coast Guard has a contingency fund from which it can put out money for cleanup costs, but that federal fund is not available for third party damages of any kind - the hotel owner, the marina owner, the private property owner. All the Coast Guard will do is work on the cleanup costs.

ASSEMBLYMAN BARRY: Do you mean this contingency fund is paid by federal funds or by the oil companies?

COMMISSIONER BARDIN: Our tax money. You and I are paying for it.

ASSEMBLYMAN BARRY: So where does the--?

COMMISSIONER BARDIN: Congress appropriates money into a fund which is available to the Coast Guard to pay for cleanup if the oil company isn't ready to do it. They then would go back and sue the oil company.

But, these are just the direct cleanup costs - the cost of sucking the oil out of the river and the cost of sponging it up. It does not include the cost of the damages sustained by people - the cost of scraping your boat off and repainting it, the cost of fixing up your lawn, etc. It is just the cost of removing as much as is removable.

ASSEMBLYMAN BARRY: Well, then, would it be correct to say that the oil companies do not pay for the cleanup and that it is actually paid for by federal funds?

COMMISSIONER BARDIN: No, they are supposed to reimburse the federal government for the cost of cleanup. What they don't pay for at all today is indirect damages. The oil industry gets a "free ride" and you could say that we as consumers of oil products get a "free ride" with respect to the indirect damages to, say, the hotel owner.

When Santa Barbara experienced that massive oil spill, there were damages paid by the oil companies for cleanup costs of many kinds, in the water and on the beaches, but hotel owners, whose business was scared away, did not get damage payments from the oil companies.

A major feature of this bill is that at least in the case of the hotel owner or a marina owner, whose business is damaged to the tune of 50% or more, they do get entitlement to compensation, in principle, and a practical way of realizing that by going to the fund rather than having to sue an oil company. That is very important. Think of our shore industry. It is seasonal. It is concentrated between Memorial Day and Labor Day. It is exposed to ocean-source spills more than anybody else. The basic currents tend to be counter-clockwise. A spill off our shores, a spill in the proposed leasing and exploration area, is more likely to hit the Jersey beach, and hit extensively along the Jersey beach, than any other beach.

Number two, the density of recreation business on the Jersey shore is at least as great as anywhere else on our coast.

You know, when I went down to Texas to speak about our coastal program, I found that Texas has beach wilderness, untouched - not protected by federal park ownership, or state park ownership - and still just open land that nobody has gotten around to thinking about developing. They have beach wilderness which is more extensive than our entire coastline, from Sandy Hook to Cape May Point.

ASSEMBLYMAN BARRY: Well, Commissioner, it would seem to me that the purpose of a bill like this would be, at least, more important to deal with property damage - compensation for property damage - rather than for the cost of cleaning up spills because it would seem that we do have some mechanism for payment of cleanup.

COMMISSIONER BARDIN: Well, the state has no mechanism for payment for cleanup except appropriations by the Legislature. So, I think it is important that we have a mechanism in state law by which we could move in when we think it is important. I think our voice in the entire interaction of federal and state agencies will be much greater if we have not only the competence and the reputation for competence that Mr. Birns' Special Services Unit has won for New Jersey, but that we also have the funding capability. We are short. When you have an oil spill, as you had in the Hackensack, you will find that it is very difficult for the New Jersey operation to function.

Second, the federal program is limited today to oil spills, it doesn't reach hazardous chemicals, and it is limited to surface waters and it doesn't reach the ground waters. In large parts of our state the potential pollution - and unfortunately the actual pollution - of some of the aquifers is the making for disaster for particular communities who are dependent on that well water.

As far as the hazardous chemicals, such as the pesticide spill that we had, or the kepone situation they had down South, the federal law authorizes the EPA Administrator to implement that program with respect to hazardous chemicals, but he simply has not done that so far. My recommendation to you is that New Jersey should not continue to wait for a federal administrator to do the job. New Jersey, which is a leading chemical production state and, of course, wants to continue to be a leading chemical production state, should also make sure that we protect ourselves and we are ready to protect ourselves from the accidental misadventures and the accidental failures that can occur from the consequences of the chemical industry. We should be able to move in and do

something about a hazardous chemical spill, particularly one on land, which might endanger aquifers and other critical resources of the state.

SENATOR RUSSO: Commissioner, Assemblyman Kozloski asked you about the adequacy of the \$50 million fund and you emphasized the replenishment aspect of it.

Now, as I understand what we are proposing, we would tax the transfer of hazardous substances - oils, chemicals, etc. - at the rate of 2¢ per barrel, until we reach \$50 million and then we would stop and that money would be in a fund. I assume the fund would grow as a result - if it was not used - of interest accumulated, etc.

Now, let's assume we establish a \$50 million fund and we stop the taxation and then, several years later, we have a major spill and that the damages are well in excess of \$50 million - which I am sure is conceivable for a major spill. I think what Walt was alluded to - and I am concerned about also - is, if we were to assume, hypothetically, that the damages were \$100 million and the \$50 million were exhausted, it is going to take time to accumulate funds, is there any state liability to replenish the funds to compensate for damages over and above the \$50 million?

COMMISSIONER BARDIN: It is not a question of liability. There is a mechanism in this bill to replenish the fund any time it falls below \$30 million. The state does not assume additional liability. Its liability would be to first pay out-- You are speaking hypothetically?

SENATOR RUSSO: Right.

COMMISSIONER BARDIN: With \$100 million in damage and only \$50 million to cover it, the state would pay out 50¢ on the dollar in damages. The state would then, under the subrogation principle, go back against the spillers and try to realize, as quickly as possible, the \$50 million. To the extent it succeeded, that would be a major source of replenishment. The state would, furthermore, reimpose the tax automatically and start replenishing the fund in that way.

SENATOR RUSSO: Would the party - and I think I know these answers but I think we ought to clarify them - suffering the damage, who receives 50¢ on the dollar, receive his other 50¢ when the fund is replenished, or is his recovery limited to 50¢ on the dollar?

MR. LINKY: His recovery is limited to that.

SENATOR RUSSO: His recovery is limited to 50¢ on the dollar, you say?

COMMISSIONER BARDIN: I am not sure. Senator, I would like to clarify that. My impression was that he would ultimately receive the other 50¢ but that the speedy relief principle which is one of the critical features of the bill--

MR. LINKY: I think you are correct.

SENATOR RUSSO: Commissioner, I understand that on page 11 of the Bill, Section 19, would establish a prorated compensation when the fund is exhausted. However, he would receive the further sum when the fund is replenished.

COMMISSIONER BARDIN: Section 19 is quite explicit on that point.

SENATOR RUSSO: Right. So, therefore, someone who-- The question has been raised as to whether the fund is adequate and if the answer is no - for just the sake of assumption - it wouldn't really make a difference except in time, in that if we had an oil spill with damages of \$100 million, the full \$100 million would eventually be paid to those suffering the damages. They would receive \$50 million immediately and the balance as the fund is replenished.

COMMISSIONER BARDIN: That is absolutely correct. Section 19 of your Bill spells that out in black and white.

SENATOR RUSSO: Okay. Commissioner, we talked about the loss of income - for example, to a person who had a marina or had a rental home, etc. - and you indicated

that the break-off point was 50% of the income. I think it is pretty clear that you would be receptive to, or suggestive of, reducing that figure to 25%, would you not?

COMMISSIONER BARDIN: If the Legislature in its judgment, with its close understanding and familiarity with the kinds of businesses we have on the shore and elsewhere that are exposed to these spills, concluded that 25% were appropriate, I think there would be no difficulty with that. I also should point out that it is not 50%, or whatever the figure, of his total income but 50% of that income which is related to the activity that was injured. For example, somebody owns a marina and he owns a trucking operation - we don't have to take into account his trucking revenues in applying the 50% test.

SENATOR RUSSO: Or, more simply stated, if he happened to be the Commissioner of Environmental Protection and also had a home on the beach that he rented out, he wouldn't have to have a loss exceeding \$21,000, or 50% of his income, before he could be compensated for the rental loss?

COMMISSIONER BARDIN: Right, sir.

SENATOR RUSSO: Is that right? Commissioner, with regard to loss of use, let's stay with the same hypothetical situation, that same Commissioner has a home on the beach but he doesn't rent it out; he uses it himself. Because of an oil spill it is useless to him for the season, but there is no economic loss - direct economic loss. What is his basis for compensation, just from the loss of enjoyment or the use of it, that would also be suffered by a great number of seashore residents who don't rent out or gain economic income from their property?

COMMISSIONER BARDIN: If the market value of the house actually dropped, there could be a basis for compensation. If damage were sustained to the property, such as the destruction of the lawn or what have you, there would be damage. But, as I understand the bill, the mere loss of enjoyment of the second home is not covered. Even under this bill, tough as it is, even though it goes further than any other statute now on the books in the United States, it still gives the oil companies a free ride with regard to the risk of that kind of suffering, which, of course, is a very substantial risk to many people in New Jersey who own homes and are exposed to that sort of loss of perhaps a season or two in the case of a massive oil spill.

SENATOR RUSSO: So, basically, Commissioner, we are limiting this what I would call major step forward, but nevertheless a step, to economic losses only and not, for example, the loss that I would suffer as a resident five miles inland and who likes to use the beach and now can't use it for enjoyment. I would have no claim for damages?

COMMISSIONER BARDIN: That's correct.

SENATOR RUSSO: Only the fellow who would have gotten the admission from me, had I been able to come to the beach if there were no oil, would recover? My loss of enjoyment would not be covered?

COMMISSIONER BARDIN: Right. The recovery is for business and property losses, not for the personal suffering or the personal disquiet, or the personal lack of opportunity to enjoy what so many people move down to your district, and other districts, to enjoy. It is not a complete compensation for the risks involved - the risks and losses involved.

SENATOR RUSSO: Now, let me ask you this: Many people have related this bill - and you have pointed out that perhaps it is inaccurate to do so - primarily to off-shore oil drilling, as precipitating the need for it. You have indicated it covers spillage from tankers coming in, other than off-shore drilling, chemical substances, etc. Commissioner, a study that was recently put out indicated that the danger of a spill from importing oil

by tanker - say, from the Arab states - is far greater and far more substantial than the projected danger from drilling. Would you agree with that?

COMMISSIONER BARDIN: The drilling operations in our circumstance - we are talking about 50 miles or 70 miles offshore-- There is a relatively low chance of these operations producing a spill that reaches our beaches, as compared with a tanker operation in the Delaware Estuary and New York Harbor, including the lightering, the off-loading and the rest that is going on all the time. Many of the spills that you see on that bar graph are spills due to the kind of tankering and trans-shipping operations that go on in New Jersey today.

On the other hand, if the off-shore operation would find substantial oil - they may or they may not, there may be nothing commercial out there - and it is in sufficient quantities to justify laying a pipeline on-shore, then you will get into a situation which in the day-to-day operation of the pipeline, there should be fewer spills than supplying the same refinery by tanker and barge. But, if - and there is a big if here - that pipeline is allowed to cross the beach in Monmouth County or Ocean County, or somewhere on our shoreline, and you had a break in the pipeline near the beach, not 50 miles out but 5 yards out or 5 yards under the beach, then you would be up against a very, very serious problem. In fact, this is such a sufficiently serious question that we have raised the issue tentatively with the Federal agencies and the oil companies and other groups - whether New Jersey should be willing to see any oil pipeline cross our beachline, or whether the oil companies should have to pay for the longer route around Sandy Hook or around Cape May point, to bring the oil in without having to cross the beachline. We haven't resolved that issue but it is one that the Legislature and the communities of New Jersey and the people of New Jersey ought to consider very carefully. This is, obviously, a question for the oil companies and they don't like the idea of a round-about route, and there may be other problems with a round-about route, but perhaps the worst possible exposure that I see for the beaches is in terms of an oil pipeline - a crude oil pipeline - crossing the beach.

Let me make just one point about crude oil. We have here in these jars some examples of oil that you might want to look at. The jar in my left hand - that I am raising now - is crude oil from East Texas. This is a black, sticky kind of substance which is a mixture of thousands of different chemical compounds, including some highly volatile, some toxic, some flammable, and some very, very long-lasting.

I am now raising, in my right hand, a jar which contains number six residual fuel oil. This is the kind of oil that was released into the Hackensack River in Jersey City last week and into the sewers and the sewer system of Jersey City last week. This is the heavier fraction of the crude oil barrel. It is a mixture of very sticky stuff, much less volatile than crude oil - it doesn't have the volatile fractions, the highly flammable fraction. It is used in power plants and in big heating facilities but it is a hard thing to remove.

Now, the third one is number two fuel oil - a lighter fraction - and this gives you the impression of the difference between the so-called white oils and the black oils - gasoline and kerosene are even lighter and more volatile than the number two fuel oil.

So, I emphasize that the crude oil is posing a particular problem for the beaches because of the time it takes to remove it and the fact that it contains in some ways the worst of all worlds - it has those fractions which are highly toxic to fish life, with the threats they pose to the marine environment and to the commercial and sport fishing industries. They also have the long-lasting stuff that will "gum" up the beaches, stick to the rocks after you remove it the first time - and it is going

to take weeks to get it off, even on a crash program with one beach. You will still have little globules from the places where you were not able to remove it. I distinguish that from the, say, natural gas pipeline, even though natural gas, in many cases, carries with it substantial amounts of liquid condensate. That is a much lighter kind of situation and poses less risk to the beach line.

It may be that when the Legislature studies these issues it will conclude that the risk should be assumed and the state should allow crude oil pipelines across the beaches. But I think that is a big issue which shouldn't be resolved by the oil companies alone, or by the oil companies in discussion merely with bureaucrats and officials of the Executive branch. I think that is an issue which has to be taken up publicly and candidly with the Legislature of New Jersey when the time comes to do that.

SENATOR RUSSO: Commissioner, the federal bill - the \$1.5 billion bill - with regard - leaving aside for a moment the amount - to areas that are covered, does it cover the areas of damages as extensively as the state bill does?

COMMISSIONER BARDIN: No, it certainly doesn't. It doesn't deal with the indirect damages to third parties - such as the hotel owner, the marina owner, the restaurant owner. It simply hasn't undertaken that responsibility.

SENATOR RUSSO: That federal bill would not compensate a marina owner who suffers damages from an oil spill?

COMMISSIONER BARDIN: It would compensate him only for direct damages. The question of cause and effect remoteness would, at some point, cut them off. In other words, the marina owner has to scrape off oil from his own property - yes, that would be covered in the federal bill, as I understand it.

SENATOR RUSSO: It is a broad question because there are a number of different federal bills. The one I am referring to--

COMMISSIONER BARDIN: Which one are we talking about - the Studds bill or the Ford administration bill?

SENATOR RUSSO: Senator McGahn pointed out that the administration bill that recently expressed support for this is a compromise bill.

COMMISSIONER BARDIN: I believe that the Ford administration bill, Senator, will cover the removal costs and the direct damages but even as to these it has the defect that the man - the property owner or the businessman - who suffers a loss has got to go to the oil company and negotiate or sue before he can get any relief from the Federal Government.

Under your bill, he doesn't have to risk what might be months of delay and being driven out of business and just have a law suit to his name. He can go and get relief from the Treasury of New Jersey right away and keep his business going.

Number two, the Ford administration bill does not even impose a liability on the oil company in court for the long chain of causation. We all know that a bad spill on the beaches of New Jersey, around Memorial Day, is going to keep people from coming to the shore. Only a fool would deny it. And, yet, a good defense lawyer can claim that the effect on a hotel owner's business is quite remote and indirect and therefore should not be recognized under existing tort law. Your bill would correct that situation.

The Ford administration bill would not correct the situation and, worst of all, it would preempt this Legislature from acting as a matter of state law to protect the people and businesses of New Jersey.

The Ford administration bill represents big oil positions: Preempt the states; don't let the states give the businesses and property owners full protection against the risk they are assuming for the sake of the national energy needs.

The Ford administration bill, the big oil position, preempts this Legislature from protecting and does not provide a full substitute at the federal level.

SENATOR RUSSO: Are you suggesting that if the bill presently receiving the backing of the Ford administration should pass it would preempt this field to us - or keep it from us, I should say - and render our efforts and our discussion here today, at this public hearing, ineffective?

COMMISSIONER BARDIN: That is the proposal of the Ford administration, with the backing - or instigation - of the big oil companies. That is a proposal which I trust our representatives in the Congress will act decisively to defeat - the preemption proposal.

SENATOR RUSSO: Has the Administration communicated its position with regard to these bills and the fact that the Administration bill in Washington would cut off, or eliminate, everything that we are trying to do with regard to compensation for property owners if that bill should pass? Has the Administration's position been made known to our Congressional and U. S. Senate representatives?

COMMISSIONER BARDIN: Yes, it has.

SENATOR RUSSO: It has. Senator McGahn, do you have any questions?

SENATOR MC GAHN: Commissioner I wonder, because of the Florida case where, basically, the Supreme Court upheld the fact that there was no federal preemption, wouldn't that same principle apply in the case where we come up with our own oil cleanup liability the same as Florida?

COMMISSIONER BARDIN: I am glad you asked me that question, Senator McGahn. Let me clarify that point. From all the advice I get from the lawyers, there is no question that, because of the case you just mentioned and the constitutional principles, this Legislature and the other state legislatures may act without any fear of federal preemption so long as Congress does not pass an explicit preemption law.

I point out, again, that where Congress has passed spill liability laws in the past - and those are two statutes, one had to do with deep water ports and it is a very special and unique law, and the other is the general Water Pollution and Control Act, Public Law 92500 - in each case, Congress refused to preempt; it did the opposite. It went out of its way to say, "We are not preempting the states from doing more to protect their citizens, their businesses, and properties within their jurisdiction."

So, what Ford administration and big oil are asking of Congress, and what I think you will hear big oil ask of you, is a revolution against the right of the State Legislature, against the protection of businesses and properties within the state, and in favor of a free ride for the oil industry and for all of us who consume oil products in the form of preemption. It is a revolutionary proposal which is inconsistent with the whole thrust of what has happened in Washington up 'till now. Both the Supreme Court and Congress have taken the position, "no preemption." And, I strongly urge you that that is the right position and the position that the State Legislature of the Sovereign State of New Jersey should assert on this critical issue.

SENATOR RUSSO: Thank you, Commissioner. We appreciate all the time you have taken to testify.

COMMISSIONER BARDIN: Gentlemen, I appreciate the opportunity and I congratulate you on the far-sightedness of the bills you have presented and the depth and care with which you are studying them and considering them.

SENATOR RUSSO: Thank you very much, Commissioner.

Maxine Lipeles of the Environmental Policy Center, Washington, D.C.

Assemblyman Stewart, would you chair the meeting for a few minutes?

ASSEMBLYMAN STEWART: Yes.

MAXINE LIPELES: Good morning, my name is Maxine Lipeles and I am representing the Environmental Policy Institute, a private, non-profit environmental organization in Washington, D.C.

We would like to thank you very much for the opportunity to testify before you concerning Assembly Bill 1903, the Spill Compensation and Control Act. I have been interested in the subject of oil spill liability for the past two years and have been closely following the proposed comprehensive oil spill liability bills currently before the Congress. We would like to commend your committee for initiating prompt action upon these bills, which, if passed, would likely be the strongest state oil spill law in the nation.

Before discussing the provisions of these bills, I would like to identify what I see as the three basic functions of spill liability laws. The first is to encourage companies to prevent spills from taking place. The second is to provide for rapid and responsible cleanup of spills which, nonetheless, will occur. And the third is to compensate those who are damaged by such spills.

In terms of the prevention incentive, businesses facing potential liability for multi-million-dollar cleanup and damage costs should find it economical to invest some thousands of dollars in crew training, safety equipment, and more careful operating procedures. Since most spills are caused by human error or carelessness, and since only 20-30% of the spilled material is recovered, the prevention incentive is probably the most important function of liability laws.

When spills do occur, liability motivates the spiller to clean up as quickly and thoroughly as possible in order to prevent the need for the government to step in and undertake more expensive cleanup operations and also to minimize the resulting damages.

Finally, liability laws enable damage victims to obtain compensation when it would otherwise be unavailable by establishing settlement procedures outside of the courts and by expanding the range of compensable damages to such areas as loss of income.

Keeping in mind these goals, I would like to focus upon three central issues raised by the bill before you. First, to what extent is state oil spill legislation necessary in light of the pending federal bill? Second, should hazardous substances, other than oil, be included in your bill? And, third, is unlimited liability desirable and feasible?

At the present time, federal law covering spills of oil and hazardous substances - as Commissioner Bardin explained before - only imposes liability upon the spiller for government cleanup costs. Individuals and government officials must take the spiller to court and establish his common law liability in order to obtain compensation for injury to property and resources, or any other damages.

Two special statutes cover both cleanup and damage liability for oil spills in only special cases - the Alaska Pipeline and deepwater ports. Proposed amendments to the Outer Continental Shelf Lands Act, currently before the Congress, would impose liability for cleanup costs and damages and create a federal compensation fund in the case of oil spills from OCS facilities and vessels carrying OCS oil ashore.

During the past two years, government, industry, and environmental interests have reached a consensus on the need for comprehensive federal oil spill legislation to replace the patchwork of uncoordinated and inadequate laws currently on the books. Three proposals now pending before the Congress would cover both cleanup and damage costs of oil spills from vessels, onshore and offshore facilities, and deepwater ports.

One bill - as explained before - was drafted by the Ford administration. One was introduced by Massachusetts Congressman Gerry Studds and Delaware Senator Joseph Biden and one, introduced only in the Senate, was sponsored by Senator Warren Magnuson.

Some Congressional leaders from New Jersey have co-sponsored the Studds-Biden bill, which, as mentioned before, would not preempt state law. Those people include Senator Clifford Case, Congressmen James Howard and Peter Rodino.

The House Merchant Marine and Fisheries Committee has held four months of hearings on the Administration and Studds-Biden bills, and is presently in the midst of amending and voting upon them. However, the bill which the Merchant Marine and Fisheries Committee will-- It is before a sub-committee right now. It will have to go from the sub-committee to the full committee and then to the Public Works Committee and then if it survives that whole process, it might go to the House Floor. The Senate is even at a less advanced stage; it has not yet acted and it is not expected to act upon the liability proposals this year.

In short, a comprehensive federal oil spill bill will not emerge from Congress for at least another year or two-- quite possibly longer. Considering the absence of adequate federal legislation and the relatively feeble interest exhibited by the Congress in adopting a comprehensive oil spill law, and considering the daily threats of oil and chemical spills in the waters of New Jersey, and the impending prospect of offshore drilling, your efforts to establish a strong state liability scheme seem responsible and prudent.

However, since one of the key provisions of the Ford administration's bill would preempt state laws, you may be reluctant to invest considerable time and energy in designing a law that might later be nullified. I would like to respond to that and encourage you to continue your efforts and adopt a state law.

We believe that states have an essential role to play in the area of spill liability, with or without a comprehensive federal law. In the only area presently covered by both federal and state laws -- cleanup -- the states have proven more effective than the federal government. Many states complain that it takes the federal agencies -- normally the Coast Guard -- much longer than state agencies to respond to spills and arrange for cleanup.

There was a recent hearing about a 250,000 gallon oil spill in the Chesapeake Bay last February and it was revealed that the Coast Guard did not discover the spill until the oil had washed ashore some six days after the barge had sunk in the Bay.

Several states have understandably indicated that they do not want to see sole responsibility for oil spill cleanup vested in the federal government. I would like to note that New Jersey is only one of several states that are on record against the federal preemption provision in the Ford bill. These states are Massachusetts, Alaska, Delaware, Florida, Pennsylvania.

In the other general area covered by the proposed federal and state laws -- damage compensation -- states may also prove to be more effective than the federal government. State officials may be more qualified to evaluate local damages, particularly in the state's environmentally unique regions. Also, a compensation fund administered on the state level may be more accessible to claimants and speedier at processing claims than the relatively remote federal fund.

Thus, in terms of at least two of the functions of liability schemes -- rapid, responsible cleanup and equitable damage compensation -- states seem more likely to fulfill those functions effectively than the federal government.

In terms of the third function -- incentive to prevent spills -- your bill will probably be more effective than the new federal scheme, if and when one is adopted. By imposing unlimited liability for all cleanup and damage costs, with a defense only for acts of war, the proposal before you would create maximum incentives for companies handling oil and hazardous substances to take every possible precaution against the occurrence of spills.

Despite the considerable advantages of having state as well as federal liability laws, Congress may adopt some limited form of preemption. The Administration and oil and shipping industries have argued that the existence of overlapping state and federal laws places burdensome compliance requirements upon industry and raises the cost of petroleum products to consumers. As a result of preliminary discussions of this issue, the Coast Guard Subcommittee wants to preserve some of the advantages of state laws, while minimizing the cost to industry and consumers and they will probably strike some sort of a balance on the preemption issue.

One possible compromise - and this is just really a guess at this point, there is no way of saying what the eventual federal bill will look like - is that the federal law would require states to accept the federal certificates of financial responsibility and therefore minimize the compliance costs to the industry and it may also prevent the states from levying fees on oil. So, you would have to create your fund out of appropriations rather than, let's say, the 2¢ per barrel fee in the present bill. But, on the other hand, the federal would - I would think - most likely permit states to impose their own liability limits and to create funds by appropriations in order to undertake cleanup operations and to provide compensation for damage victims.

Since the proposed federal liability law only applies to spills of oil, and since the existing federal law covering spills of hazardous substances does not preempt state law, the state has fairly clear authority to establish a liability scheme for hazardous substances. A quick look at what the federal government is doing and not doing in this area, I should underscore the importance of state-level efforts to control hazardous substances spills.

The federal law covering hazardous substances was passed in 1972, as an amendment to the Water Pollution Control Act and it required EPA to do four things within two years. It is now four years later and they haven't done one thing. They proposed rules last December to implement those four things but they are not yet on the books and they are not yet final.

At the same time, Congress is voting today on amendments would would severely weaken the Hazardous Substances section of that law. They would reduce the maximum penalty for spilling hazardous substances from \$5 million - as it is right now in the law - to \$50 thousand. So, if New Jersey finds it desirable to control the spillage of hazardous substances - which I presume you do - it would seem unwise to rely upon the federal government to do the job in this area.

Perhaps the most controversial feature of the bill before you is the imposition of unlimited liability for all cleanup costs and damages, except regarding spills caused by acts of war. I would like to devote the remainder of my statement to try and refute some of the arguments of the people who oppose unlimited liability and who say that it may not be desirable or feasible.

I think unlimited liability is the best way of preventing oil spills and of encouraging people to clean them up when they occur anyway. One example of this comes from the Santa Barbara oil spill. After this spill occurred, the Interior Department proposed regulations imposing unlimited liability and the oil company that would have been liable said that if they had known they were to have unlimited liability they wouldn't have drilled there in the first place because the area was just too dangerous to conduct offshore drilling. So, unlimited liability can serve as a very effective environmental protection against the most risky oil activities and would encourage oil companies to undertake the activities that are least likely to lead to pollution.

When spills occur anyway, unlimited liability is also important in the cleanup area. First, a spiller knows that if doesn't clean up right away, the government

is going to step in and clean up and I think most business men believe that it costs private industry less to perform the same job as the government and in order to prevent the government from doing it, they will try to do it first. Also, the knowledge that he must pay all cleanup costs will encourage the spiller to complete the cleanup operations. With limited liability, when the spiller reaches his limit he has no reason to continue cleaning up. There is a case of a spill on the Mississippi River where the spiller just left the cleanup in the middle of the operation because he had reached his limit.

The third thing is that if the spiller knows he is to pay all damages caused by his spill, he wants to clean up as thoroughly as possible in order to minimize the resulting damages and this would be an economically and an environmentally sound approach.

The biggest challenge to unlimited liability is that it is uninsurable. However, the fact is that unlimited liability is insurable. Protection and indemnity associations, which are mutual insurance arrangements among the vast majority of the world's ship owners - most of them are headquartered in London - issue unlimited liability policies for all non-pollution liabilities, such as crew claims and cargo damage. There are indications that they placed a limit upon pollution liability in order to discourage legislators from imposing high limits or unlimited liability. However - and this should be made perfectly clear - they are able, even if they are not eager, to include pollution within their overall unlimited insurance protection.

In the past, insurance coverage has expanded to meet new legal requirements. After the Santa Barbara spill, insurers excluded pollution coverage for offshore facilities. In response, the oil industry created its own insurance company, called Oil Insurance Limited, that offered up to \$75 million worth of pollution liability coverage. Seeing that they were losing income, commercial insurers responded by including, once again, pollution within their coverage. So, now you can either get pollution coverage for offshore facilities from this cooperative venture offered by the oil companies or through the commercial market.

The same thing happened with the airline industry in 1970, when the jumbo jets were about to come on line. Commercial insurers said that they could not cover the high legal liability of the 747's. The industry began to set up its own insurance company and, suddenly, the commercial market expanded and offered adequate coverage before the airlines' mutual got off the ground.

Also, unlimited liability requirements have been in effect for several years without any adverse impacts upon small businesses. On the federal level, OCS regulations imposed unlimited cleanup liability and they have been in force since 1969. The participation of independents has increased rather than decreased since the imposition of unlimited liability. Also, four states, Maine, Massachusetts, Washington, and Oregon have implemented unlimited liability laws without noticing adverse impacts upon the oil industry, whether major oil companies or small independents.

I guess that is the end of my remarks. I would be willing to answer any questions.

SENATOR RUSSO: Senator McGahn, do you have any questions?

SENATOR MC GAHN: I have only one question. Do you feel that the provision in the bill that would relate to any oil spills - either within or without the state's jurisdiction - is unreasonable in this instance? This particular bill provides a three mile limit and a twelve mile limit, and beyond that as well - beyond the twelve mile limit, probably, would be preempted under the federal preemption as far as the commerce clause is concerned. Should that particular section be deleted and simply only pertain to the waterways adjoining the contiguous state?

MISS LIPELES: No, I don't think it is unreasonable to cover oil spills that

damage the state's property, whether it is within the three mile limit or on land. If the spill occurs outside but still damages, I don't see it being any less of a threat to the state than if it occurs within the three miles and still damages the state.

The fact is that most oil spills occur with harbors or just along the coastline. Something like .3% of all the oil spills in the U.S., in 1973, occurred on the high seas, which is outside the 12 miles. The vast majority occur within the state's jurisdiction and a small amount occur within the contiguous zone.

SENATOR MC GAHN: That is because of what has happened in the past - because of the system of lightering and, basically, because of ships coming into port, for example Delaware and, of course, North Jersey. We are now talking about an entirely new concept. We are talking about off-shore drilling. We are talking about the concept of pipelines coming in. We are talking about, let's say, 90% of the oil spills outside of the 12 mile limit not reaching the shores, depending upon what the circumstances are.

The point I am getting at is, would the bill be constitutionally defective because of that particular provision, rather than simply addressing it to the contiguous waterways over which the state actually has control?

MISS LIPELES: I am not aware -- To my knowledge, the state has control up to three miles and the federal government has jurisdiction over the contiguous waterways. I don't think that there is any problem with covering spills outside the state's jurisdiction as long as the spill damage is within the state's waters. I don't see that the state would have any interest in covering spills that didn't damage the state waters and that occurred somewhere on the high seas. So, I don't see this as being a practical problem.

SENATOR MC GAHN: I think in response to your question, "Should hazardous substances be included in the bill?", frankly I think this is going to be the subject of an additional bill and not be, basically, included in this. So, under those circumstances, the definition of hazardous substances and accidental spills would be taken care of in separate legislation, so there would not be any conflict. So, if there are questions about hazardous substances being included in this, then you might find the bill lacking because there is no agreement about control of hazardous substances. I think that is something that will be addressed in a subsequent bill.

SENATOR RUSSO: Assemblyman Kozloski.

ASSEMBLYMAN KOZLOSKI: Yes. You made reference to a Mississippi River oil spill where someone left in the middle of a cleanup. Who conducted this cleanup? I am thinking now about if we had a spill -- just to see someone, in the middle of a cleanup, leave. Was this the federal government authorizing it, or was this conducted by the oil company - who was involved in this?

MISS LIPELES: The company was cleaning up the spill, according to the federal requirements. Under the Water Pollution Control Act the company is supposed to clean up and if he is not doing an adequate job, the Coast Guard will step in. Usually there are a lot of private contractors that will handle this. The company would just hire a private contractor. I believe that was happening and the insurance company of the owner of the ship signaled the ship and said, "We are not covering you beyond your liability limit" and the ship owner packed up and the Coast Guard took over.

ASSEMBLYMAN KOZLOSKI: Would you happen to recall just what dollar figure was involved? I'm sorry, I know you came to New Jersey to discuss our particular bill but I think it could have a relation to us. When I asked before, "Is \$50 million enough?", I would hate to see somebody leave a job half done here in New Jersey, as would happen as you relate the story about Mississippi.

MISS LIPELES: Well, there is a distinction between the liability of the state fund and the liability on the individual person that spills. I think your \$50 million in the state fund should be fully adequate to cover the cleanup costs of any spill. The question is, how much is the individual liable for. Under the Water Pollution Control Act, the liability limit of a vessel is \$100 per gross ton. For a barge of, let's say, 1,000 tons, that doesn't amount to a whole lot of money and once he reaches that point, he doesn't have an incentive to clean up.

There was a recent spill in Chesapeake Bay - it was 250 thousand gallons - and the cleanup cost to the Coast Guard was about a little under \$400 thousand and the cleanup liability under the Water Pollution Control Act was a little over \$122 thousand. The company just didn't even -- The company decided from the beginning it didn't want to clean up because the operation would be much too expensive.

ASSEMBLYMAN KOZLOSKI: Do you think that \$40 thousand would be--

MISS LIPELES: Four hundred thousand dollars, approximately, for cleanup cost.

ASSEMBLYMAN KOZLOSKI: Total?

MISS LIPELES: To the Coast Guard, and about \$122 thousand was the liability, with a liability limit of \$100 per gross ton.

ASSEMBLYMAN KOZLOSKI: Thank you very much.

ASSEMBLYMAN STEWART: Does any other state have, to your knowledge, this no-fault liability provision? Are they all the same?

MISS LIPELES: The four states that have unlimited liability have no-fault. I believe other states have no-fault but may have a limit. Connecticut, Maine, Massachusetts, Michigan - well, under your existing law, which only covers cleanup, - has no-fault right now, and Virginia and Washington.

ASSEMBLYMAN STEWART: The only exclusion in the other state laws is also an act of war?

MISS LIPELES: Maine has an act of war, or an act of God, or an act of government. Connecticut has just absolutely no defenses. If the spill comes from your facility, you have to pay no matter what. That is the same in Michigan, Massachusetts. Virginia has an act of war and an act of God, or a third party act.

ASSEMBLYMAN STEWART: What is your opinion of an act of God or an act of sabotage, for instance?

MISS LIPELES: Again, I am not a lawyer but I am a little--

ASSEMBLYMAN STEWART: What is your personal opinion about these exclusions being put into this bill?

MISS LIPELES: I think the act of God is a sort of a convenient loophole for a company. The Chesapeake Bay spill, again, occurred in very bad weather conditions. When the barge set sail there were storm warnings and there were gale warnings as it was going along, and the barge continued and ended up sinking. In their telegram to the Coast Guard saying that they weren't going to take cleanup operations, they said that they might plead the act of God. The spill might have been caused by an act of God, therefore they weren't going to cleanup because they weren't responsible.

ASSEMBLYMAN STEWART: How about an act of sabotage?

MISS LIPELES: I guess I don't have any-- I haven't thought about that much. My inclination, in general, in terms of defense, is to make it as strict as possible and you still reserve subrogation rights. If the person was actually held liable, then you can prove somebody else sabotaged and he can sue him and recover the cost that he had to pay. So, he is the person that has to pay in the first instance but he may be able to get recovery through the courts.

ASSEMBLYMAN STEWART: Okay. Thank you very much. Our next witness will be

Walter P. Anderson, Chairman of the Water Quality Control Committee, State Chamber of Commerce.

W A L T E R P. A N D E R S O N: My name is Walter P. Anderson. I am a resident of Basking Ridge, New Jersey and am employed as Manager of Environmental Science by Tenneco Chemicals, Incorporated, located in Saddle Brook, New Jersey.

I am appearing today as Chairman of the Water Quality Control Committee of the New Jersey State Chamber of Commerce and wish to present this statement on behalf of that committee.

Our committee has reviewed Senate Bills #1397 and 1409 but has not yet had the opportunity to review the companion Assembly Bills #1903 and 1915, which we understand are very similar, if not identical, to the two Senate bills. With this understanding, our comments apply equally to both the Senate and Assembly bills.

We restricted our review of these bills to the broad concepts contained in them and will not attempt to criticize the language in detail; we will confine our comments to what we consider the basic principles involved.

Many of the detailed requirements in both Senate bills are also contained in Section 311, P.L. 92 500, the Federal Water Pollution Control Amendments of 1972, and in existing New Jersey laws. I refer to the ban on discharge of oil or "hazardous materials", however that term may finally be defined to the requirements to report accidental discharges; to the penalties for accidental discharge; and to the holding of dischargers financially responsible for cleanup operations. The federal law also provides for a revolving fund to cover the cost of cleanup operations which, in part, serves the purpose anticipated for the projected "New Jersey Water Quality Improvement Fund."

A proposed Federal law, contained in H.R.-9294 and S-2162, entitled "Federal Comprehensive Oil Pollution Liability and Compensation Act", sponsored by the Administration, has been introduced in the Congress and is scheduled, as we understand, for committee markup this week. This proposed law would address the matter of restitution to the injured parties and proposes a \$200,000,000 revolving fund for that purpose, to be supported by a 3¢ per barrel tax on petroleum.

With this background of existing and proposed law, we question the need for similar legislation by the State of New Jersey. Our objections are based on several considerations:

First, we oppose in principle the duplication of laws or activities by both state and federal agencies. In our experience, such duplication does not improve the total enforcement effort. It is interesting to note that the sponsors of S-1397 have somewhat similar concerns about unnecessary duplication. In section 9 of that bill we find the following: "Provided, however, that in order to avoid unnecessary duplication, no county, municipality, or other agency or instrumentality of this state may adopt or establish a similar program of registration or fees for the accomplishment of this amendatory and supplementary act." If the duplication downward is judged undesirable, then it would seem that, by the same logic, these bills are unnecessary.

Secondly, we believe the economic impact of these bills should be carefully considered. At a minimum, this will amount to a 2¢ per barrel tax on petroleum products and certain other materials brought into the state by New Jersey refineries and manufacturers. We must recognize this is very likely to be 2¢ on top of a 3¢ federal tax for the identical purpose. In addition to supporting the revolving fund, the tax would support an enforcement organization of unknown size and cost, which for all practical purposes would be a duplicate of an existing federal organization. Regardless of where it is imposed, the tax will necessarily pass on to the consumer and become yet another

increment of cost for doing business in New Jersey.

A third point of serious concern is that of holding the dischargers financially responsible for unlimited liability without regard to fault. This, we believe, will place companies subject to this bill in the position of being uninsurable risks, with attendant serious consequences.

We urge you to give this matter very careful consideration. At a time when efforts now are being made to attract new business to New Jersey, and to improve our state's economic climate, it does not seem prudent to levy a new tax, to build a new enforcement agency which duplicates existing coverage by federal agencies, and to impose unlimited and unknown future liabilities on New Jersey companies without regard to fault or negligence.

We recommend that action be deferred on this matter until the Congress acts on the proposed Federal Comprehensive Oil Pollution and Compensation Act. Then there should be a careful analysis made of the coverage provided by the Federal laws.

We thank you for the opportunity of being here today.

SENATOR RUSSO: Thank you, Mr. Anderson. I have a few questions, if I may.

MR. ANDERSON: Certainly.

SENATOR RUSSO: It is really not quite fair to you that the Committee Chairman also happens to be the sponsor of the bill that you are opposing and I may not be entirely objective. But, bearing that risk in mind, we will proceed.

MR. ANDERSON: All right.

SENATOR RUSSO: It seems as though the thrust of what you say is that we ought not have duplicating legislation - state and federal - and I don't think there is too much quarrel with that, but it makes an assumption that, in fact, federal legislation will do what these bills will do that are pending in the legislature and that we are here for today.

MR. ANDERSON: Yes.

SENATOR RUSSO: Is that a fair assumption, Mr. Anderson?

MR. ANDERSON: I don't know whether this is a fair assumption or not. This is why we are simply suggesting that action be deferred and a careful examination made to avoid duplication of coverage.

SENATOR RUSSO: Okay. You understand, do you not, that action was deferred for a considerable period of time awaiting federal legislation, which has never come about? Are you aware of that? The administration only moved with regard to this legislation after it appeared as though the federal legislation was stalled.

MR. ANDERSON: I don't know at what point, sir, we would say things are stalled or not. I am sorry, I can't comment on that.

SENATOR RUSSO: I gather, then, that you wouldn't object to these bills - with particular reference to S-1409 - if, in fact, there was no similar federal legislation?

MR. ANDERSON: No. I would have-- One of the thrusts of our objection here is the duplication of effort, which, of course, means personnel, money, and everything else, at both the federal and state level. The other points, of course, are the general economic impact, which is there. And the third is a matter of unlimited liability without regard to fault of negligence.

SENATOR RUSSO: You are aware, are you not - correct me if I make a wrong assumption - that the federal legislation that was just recently and finally supported by the administration, would not go as far in its damage aspects as this present state legislation would?

MR. ANDERSON: I have not examined the federal legislation in detail, sir. I

am merely making the point that I think there should be a careful examination and duplication should be avoided. This is the thrust of my statement here.

SENATOR RUSSO: I think, incidentally, this committee - the joint committee - probably completely agrees with you on that.

MR. ANDERSON: That's good.

SENATOR RUSSO: The purpose of these bills has been because there hasn't been any federal legislation and even that which is reluctantly supported by the administration would not accomplish what this legislation would do. But, in any event I have a couple of more questions.

You talk about the economic impact of these bills. You talk about the economic impact to the oil industry of the tax per barrel. What about the economic impact to the resort industry, including that which would affect many of the members of your own organization, if there is a major oil spill, as the studies indicate we can almost be assured of - at least one?

MR. ANDERSON: Well, I would answer that, Senator, by saying this: I would much prefer to see this liability covered by a federally funded bill, which would be across-the-board, rather than place it entirely in New Jersey.

SENATOR RUSSO: So, we come, really, back to the same question I gather. If the federal government doesn't do anything about it, then you support this legislation?

MR. ANDERSON: I would take a different view of it, sir, if the federal government does nothing about it.

SENATOR RUSSO: And that different view, I gather, means that you feel it is good legislation but it is duplicative of the federal bill?

MR. ANDERSON: I would certainly agree, in principle, sir, that some restitution is due to one who is damaged.

SENATOR RUSSO: Has your organization supported the federal legislation in this area?

MR. ANDERSON: Our organization generally does not get involved with federal legislation, sir. We are a State Chamber and we do not get involved in federal legislation as a general thing. We have not, in this case, to my knowledge.

SENATOR RUSSO: Don't you think it would be a good idea for you to get involved in this instance, rather than just opposing the state legislation that you say would be duplicative?

MR. ANDERSON: We are not opposing the state legislation, sir, we are asking you to be careful that the state and federal legislation do not overlap. We are saying that we agree.

SENATOR RUSSO: Let me see - I don't want to misstate your position. If, in fact, this legislation is duplicative of federal legislation, you, in fact, oppose this state legislation?

MR. ANDERSON: Yes, if it is, I do.

SENATOR RUSSO: And if it is not duplicative then you do not oppose it?

MR. ANDERSON: We have a different view on it then.

SENATOR RUSSO: Okay. Now, you also refer, in your statement, to an enforcement organization of unknown size and cost on the state level.

MR. ANDERSON: Yes.

SENATOR RUSSO: Why did you say there will be need for an enforcement organization as a result of this legislation?

MR. ANDERSON: Well, if you are going to set up an elaborate oil spill control program, with research, with cleanup, and all this, I don't see how you can avoid having

a state agency here.

SENATOR RUSSO: You will have to forgive me. I wasn't aware - and maybe I am going to learn more about my own bill from you than I know myself - of any need for any research organization, or anything but a damage fund and arbitration panels, perhaps, to compensate those who show they have suffered damages.

MR. ANDERSON: I read into it that the bill will pay out certain monies annually for research and I certainly read into it that if the state is going to take over cleanup responsibility, someone is going to have to do it. I don't see how this can be avoided, sir.

SENATOR RUSSO: Now, you also criticized the concept of unlimited liability without regard to fault.

MR. ANDERSON: Yes.

SENATOR RUSSO: You are aware, of course, that the doctrine of strict liability - or liability without fault - is not a new one in law?

MR. ANDERSON: I am aware of this. I have discussed this with our legal people. I am more concerned, frankly, from my viewpoint, with liability without fault than I am without the limit - from my own personal viewpoint.

SENATOR RUSSO: You are more concerned with liability without fault?

MR. ANDERSON: Yes.

SENATOR RUSSO: Well, let me ask you this: The concept in law of liability without fault stems around what the law refers to as "ultra hazardous activity", generally.

MR. ANDERSON: Yes.

SENATOR RUSSO: If, in fact, there is a concern that, for example, oil drilling might result in oil spills - a concern that is disputed by the people who are going to do the drilling - why do you find it difficult to accept compensation to the businessman who may be put out of business as a result of it, without the need of proving fault, from an oil spill that results from drilling?

MR. ANDERSON: I am not finding fault with the compensation to the businessman, I am finding fault with going back to the discharger and holding him responsible when he is without fault. It appears to me that one concept of this fund is to provide compensation for those cases where fault, or liability, cannot be established.

Bear in mind, sir, I am not an attorney; I am speaking from a layman's view of what would appear to me to be fairness here. So, if the fund is here and the damaged person is compensated, this, to me, would seem fair. But to go back and hold someone liable for reimbursing that fund when he has no fault, then this does not seem fair. And this is the way I understand it, when you talk of liability without regard to fault.

SENATOR RUSSO: So, your difficulty then is with assessing the liability against the person, or the company, whose drilling, let's say - we are talking about drilling for the moment - causes a spill, even though it was without fault - say a hurricane or some such thing came along?

MR. ANDERSON: Yes.

SENATOR RUSSO: I see.

MR. ANDERSON: I am much more concerned about the liability without regard to fault than I am the limitation on the liability.

SENATOR RUSSO: Well, how would you handle the problem, then, of -- You have a drilling for oil and then you have, let's say, as a result of storm, or what have you, a major spill - a major oil problem - that wipes out the entire shore area from a season's business, let's say. Conceivably, according to the studies, this could happen but it is

not likely. Let's assume so. How would you propose to handle that?

MR. ANDERSON: Well, you go back again, Senator -- This comes back to my understanding of the purpose of your comprehensive and revolving fund - it is to reimburse those who are damaged. This is part one of it.

Secondly, where there is fault, then, of course, the state, after reimbursement, would go back to the person who was at fault and seek money from him to replace it in the fund. Where there is liability, I think this is a reasonable concept. Where there is no fault or liability, then it would seem to me that the fund should act as an insurance and not go back and seek reimbursement from the discharger, who is not at fault.

SENATOR RUSSO: So, you have no objection to those who suffer the damage from recovering from this fund?

MR. ANDERSON: No.

SENATOR RUSSO: You would then replenish the fund in the same manner it was established, rather than go at the drilling company whose rig---

MR. ANDERSON: Yes. My objection to it, sir, is based on holding an individual discharger - in the term that we think of discharger here - liable for an action which is not the result of any fault or neglect of his.

SENATOR RUSSO: Right.

MR. ANDERSON: We have act of war in here. An act of God, admittedly, is a very, very vague term, but you also have things like civil disobedience, and this kind of thing, over which people have absolutely no control. I think it is unfair not to throw those in as a defense.

SENATOR RUSSO: So, you support the concept of compensation but you would spread the cost, let's say, among all the drilling companies, rather than just the one whose rig blew?

MR. ANDERSON: When you say drilling companies, I think you are saying, sir, that we would spread the cost over everyone in New Jersey who is going to pick up the tab on this.

SENATOR RUSSO: Or everyone in the United States, perhaps.

MR. ANDERSON: Provided we export it.

SENATOR RUSSO: Which we do today, don't we? I think it is important to mention that because you mention about levying a tax.

MR. ANDERSON: Yes.

SENATOR RUSSO: Am I incorrect when I say that much of oil that is refined in New Jersey goes out of New Jersey?

MR. ANDERSON: Also much refined products. I am not an oil man but I am told that much refined product comes into New Jersey too, which would be taxed, as well as many things other than oil which comes into the state and would be taxed.

SENATOR RUSSO: What I am saying is that the cost would-- It is sort of spreading the burden. The concept you talked about a moment ago would really be spread throughout the nation - maybe throughout the world - wouldn't it?

MR. ANDERSON: Yes. I am not objecting to the concept of reimbursing those who are damaged. I think this is a reasonable concept. But I am objecting to holding someone liable for an act for which he had no responsibility and no way of preventing it.

SENATOR RUSSO: Except if he wasn't allowed to, say, drill in the first place, the hurricane would not have caused the oil to come out and get on the beaches of Atlantic County and Ocean and Monmouth Counties.

MR. ANDERSON: In which case we would not have had the oil either, so--

SENATOR RUSSO: Right. Well, we have - what - 22 day's worth entirely underneath that shelf out there?

MR. ANDERSON: I do not know what there is, sir. This is out of my area.

SENATOR RUSSO: I thought it was rather surprising. One of the newspapers mentioned today that the entire amount of oil that is under there - offshore - may be as few as - or as little as - 22 day's supply for the United States.

MR. ANDERSON: Well, at the risk of offending some of my friends in the oil business, I would say that is the biggest "crap game" in the world.

SENATOR RUSSO: Yes.

MR. ANDERSON: From what I recall, there is exploration and drilling off the Florida coast that hasn't produced a "show" yet. So, this is a chance you take in that business.

SENATOR RUSSO: Okay, Mr. Anderson, thank you. Senator McGahn.

SENATOR MC GAHN: Yes, I think it is interesting to note - and I have to be parochial in this respect - from what you were talking about with relation to no-fault, the Supreme Court of the State of New Jersey recently came out in a medical malpractice suit and they held, in the case of Somberg, that it was not negligence but somebody had to be responsible for the adverse reaction that occurred and it was remanded to the lower court to see who was at fault. I think that that principle, basically, may be something that may be applicable as far as this is concerned.

Unfortunately, I do not share with you - and I am from a contiguous Atlantic coast county, down the coast just a little bit - a regard that the federal government will come up with a bill that will be in the better interest of the coastal areas, especially where New Jersey is concerned.

Certainly, I think you know that to ignore history is to repeat it, or certainly any federal bill coming out has been geared toward the interest of big oil companies and big industry. Because, frankly, the number of states that are impacted by this are minuscule in relation to the number of states that are not. There are only about 15 coastal states on both the Pacific and Atlantic coasts, and I exclude the Gulf of Mexico and the Great Lakes, that are actually interested in this type of support.

We also have, if you will, state rights, as against federal rights and unless they are expressly exempted, the state has a perfect right, basically, to do what it wants to.

I think that your comparison here, where you say there is duplication in Section 9 as far as no county, municipality, or agency in the state shall adopt or establish a similar program - this is par for the course. No municipality or county can adopt any type of ordinance - air pollution, water pollution, or what not - that, basically, is higher than the state ordinance or guidelines, as far as that is concerned. I don't think this is, again, a fair comparison.

Finally, dual taxation - assuming there is a federal law, there would not be dual taxation; there would be preemption of anything as far as the state is concerned. But, from a time standpoint, we are faced with offshore drilling occurring in the immediate future and certainly the timetable, as far as federal legislation is concerned to get this enacted, I think would put the Senate's effort to pass an income tax, really, in very small perspective. I really think that one thing that has to be done - and I represent Atlantic County, John represents Ocean County-- Very frankly, the people in these counties have not opposed offshore drilling but we do want some reasonable assurance that should there be an accident, that there is going to be something to compensate them and that it is not going to wipe out an entire season. I don't think this is unreasonable.

Making the statement here that whatever is going to be imposed is going to be passed on to the consumer I think is ludicrous in view of what has appeared in this morning's newspaper, as far as oil companies having fixed oil prices and gasoline companies having fixed gasoline prices. This goes up and down like the tides and I think, certainly, one or two cents a gallon here and there can be fixed in any particular way and certainly if it is going to go to a compensation fund to clean up this, I think this is it.

One question I would like to ask you is, do you think an industry has the responsibility to be responsible for any adverse reaction, or any spill of any hazardous waste material that is spilled or released? Do you feel that industry has a responsibility to the people of the state in which that industry operates, to actually clean it up and compensate for damages, or do you think that responsibility should be the state's and/or the federal government's?

MR. ANDERSON: I think where there is fault or responsibility, there is certainly a responsibility to clean up and make restitution.

SENATOR MC GAHN: Thank you.

MR. ANDERSON: There is no question about that, sir.

SENATOR RUSSO: Incidentally, Mr. Anderson, as Senator McGahn points out, when you really break it down, this 2¢ per barrel we are talking about - there being 42 gallons, I think, in a barrel - comes out to about 1/20th of 1¢ per gallon and that only applies so long as we are replenishing the fund. Once we reach the \$50 million, there is no more tax. But, even while there is it is only 1/20th of 1¢ per gallon. So, instead of paying 59.4¢, we pay 59.5¢ for that.

MR. ANDERSON: Yes, but to the large consumer this also winds up to be quite a few dollars. I am simply making the point that this is an additional tax.

SENATOR RUSSO: I think Senator McGahn would then probably say to you, "Yes, but look, comes Memorial Day around Atlantic City when all the tourists start coming, gasoline prices go up 2¢ a gallon, not 1/20th of 1¢. So, we are not too mellow with the oil industry around Memorial Day - those of us who represent seashore counties.

MR. ANDERSON: Okay, sir.

SENATOR RUSSO: Thank you, Mr. Anderson.

I wonder if I could exercise the prerogative of the Chair and interrupt the regular schedule to call a witness who will be very brief. I have to do it because he is from my county and he is speaking on behalf of most of the mayors and I don't want him to get angry at me. So, I would like to call Mayor Connors of Surf City, who has assured me it will be brief. He has a commitment and I have to get him out of here quickly. I hope the committee members won't mind.

LEONARD T. CONNORS, JR.: Thank you, gentlemen, for allowing me to testify along with Councilman Hullings from my municipality. Councilman Hullings is a member of our governing body.

At this time, my office has been in contact with the Mayor of Beach Haven, the Mayor of Long Beach Township, the Mayor of Harvey Cedars and the Mayor of Barnegat Light, representing five of the six municipalities on Long Beach Island - a strip of beach approximately 18 miles long.

We would have been better prepared, gentlemen, but we couldn't respond properly to the invitation due to the communication coming in yesterday. However, we have been apprised of what has been going on with your office, Senator, with regard to this bill.

We have been opposed to offshore drilling out of fear for our environment and we agree that apparently the federal government is going ahead with this project. The need for such a bill to protect our environment and economy is imperative. If we

were to face a condition such as the ones that occurred in Santa Barbara, California and the coast of Louisiana it would be disastrous. The fishing and resort business is over a \$1 billion business in the state of New Jersey and I question whether \$50 million is enough.

I would just like to make a few comments with regard to some of the questions I have on bill 1409. On page 3 - the definition of major facility -- I won't ask for a definition at this time, gentlemen, except that I would like to have it read into the record in order that you might look at it later and provide me, and the mayors of Long Beach Island, with that definition.

On line 40, page 3, under k - major facility - "a vessel shall be considered a major facility only when hazardous substances are transferred between vessels." Facilities with total above or buried storage capacity of less than 400 thousand gallons are not major facilities for the purpose of the act, and my question is, if these leak or discharge, are they responsible for the payment of compensation to--?

SENATOR RUSSO: If I may interrupt you, the definitions you refer to only deal with those who are taxed. It does not mean that if a facility with less than a 400 thousand gallon capacity leaks that there is not compensation for it; there is.

MAYOR HULLINGS: I understand that, Senator. I understand that part of it except that in the statement in the rear the words facility and major facility are interspersed and it would give the impression - or it gives me the impression-- As I said, I didn't want to go into too much length on it. I would like the assurances for my municipality anyway, should the bill be successful, that the facility or major facility, regardless of where the leakage is, -- that the municipality will be compensated and the people would be compensated under that.

On page 5, under section 8 a., again, the word major facility comes up and it says, "Any owner or operator of a major facility or vessel which is discharging a hazardous substance shall be strictly liable." There is a weaving of the word major facility and the word facility which comes into play - if you understand what I mean. It says, "Any owner or operator of a major facility or vessel which is discharging a hazardous substance shall be strictly liable", and that is why I asked the question with regard to the 400 thousand gallons being a facility.

On page 5, line 13, item 3, "The loss of income or impairment of earning capacity due to damage to real or personal property, including natural resources destroyed or damaged by a discharge. If a claimant derives at least 50% of his earnings from activities related to real or personal property or natural resources damaged or destroyed by such a discharge..." I can't agree with this part, gentlemen, I think it should be 100%. We have a great many people in our municipality. As I understand this, if you don't derive 50% of your income from a rental, we will say, and you lose the whole summer, we are going to have an awful lot of people with non-payment of taxes, for instance, because many of them are second homeowners with an small investment and this is based on the fact that they can rent these places during the summertime. Do I make myself clear on that?

SENATOR RUSSO: I think you might be misreading that section. You don't want that to say 100% because you would want it to say 0%.

MAYOR CONNORS: 0% - I understand.

SENATOR RUSSO: Right. I think you may not have heard Commissioner Bardin when he testified regarding this subject earlier.

MAYOR CONNORS: Yes, I did.

SENATOR RUSSO: You did? He suggested perhaps the figure ought to be reduced to 25%, if not, in fact, 0%. The committee will be considering an amendment. I am inclined

to think, subject to discussions with the committee, that it will be amended somewhat but whether it will be amended all the way to 0 or not, I don't know. But you would suggest that it go all the way to 0?

MAYOR CONNORS: Yes, under those terms, yes, sir.

On page 6, line 9 a., "There is hereby levied upon each owner or operator of one or more facilities a tax to insure compensation for cleanup costs and damages associated with any discharge of hazardous substances." Further on down it says that "The tax shall be \$0.02 per barrel transferred until the balance in the fund equals or exceeds \$50,000,000.00." I respectfully request that the committee and the Senate and the House consider 4¢ per barrel and raise those figures from \$75 million to \$100 million. I think that our resort industry and the environment, when we take into consideration the environmental loss that would be there - that the state would receive as I understand the bill - plus the compensation for homeowners and people that would lose income out of this, this could conceivably get into that area.

SENATOR RUSSO: Mayor, I think you understand, do you not, that the fund - the compensation - is not limited to \$50 million.

MAYOR CONNORS: I understand that, Senator.

SENATOR RUSSO: If, in fact, you had a \$100 million loss, the \$50 million in the fund would be paid and then, later, the balance, as the fund was replenished, would also be paid.

MAYOR CONNORS: Absolutely.

SENATOR RUSSO: Don't you think that really would cover our problem?

MAYOR CONNORS: Not being a mathematician by profession, I understand that - you mentioned before, Senator, that you read this in the newspapers and that is about where I get most all of my information - we have about a 22 day supply of oil off the continental shelf. Didn't you mention that before?

SENATOR RUSSO: It is in today's Star Ledger - a minimum of 22.

MAYOR CONNORS: Okay, a minimum of 22. Well, getting that down to 2¢ per barrel, my arithmetic comes to 2 1/2 billion barrels of oil that would be necessary before we even got the \$50 million. So, I am concerned that there wouldn't be enough oil off there to substantiate even the \$50 million, based on your figure.

SENATOR RUSSO: Well, once we use up the oil, we don't have to worry about oil spills any more either.

MAYOR CONNORS: Well, what if something happens in the meantime? In other words, we are taxing the oil as it is coming out of the continental shelf - do you see what I mean? Suppose we go up to \$35 million and the resources dried up and we had a \$100 million spill?

SENATOR RUSSO: The answer is that this tax is not only on oil that is drilled from offshore.

MAYOR CONNORS: It is coming from freighters or tankers?

SENATOR RUSSO: It is on any oil that passes through refineries or major facilities going in or out, really. So, the amount that is under that continental shelf is not the limit of the amount we can tax under this bill.

MAYOR CONNORS: I understand.

SENATOR RUSSO: So, I don't think there is any danger of the fund being sufficient. You know, when you start talking millions of dollars, it sort of boggles the mind. I am not sure \$10 million or \$200 million is sufficient. I think the thing we tried to approach is, it is a first step; it is the largest fund that any state has passed; it is the toughest oil spill liability bill passed - or proposed - by any state, to my knowledge, in the entire country. It may still not be enough but it is a major

step forward.

MAYOR CONNORS: I agree with you, Senator. We are in accord with the bill. I think it is a good bill, in light of the fact that we are going to have offshore drilling, apparently - as you suggest in your letter - and this has to be done to protect the citizens of the State of New Jersey, as far as their natural resources are concerned.

SENATOR RUSSO: What is your name, sir?

R O B E R T S. H U L L I N G S: Robert Hullings, Borough of Surf City.

SENATOR RUSSO: Councilman?

MR. HULLINGS: Yes, Councilman. You said that this is the largest bill for compensating so far anywhere in the country and you said that it doesn't matter where you set that figure if your claim is \$100 million and the fund were \$50 million, you will still pay as it comes. Well, if the fund were built up to the amount of \$100 million, wouldn't it take care of the loss of time, waiting for that other \$50 million to come in to pay the loss and compensate the offended party?

SENATOR RUSSO: Yes, but the only problem I have is, I guess you could say, "Well, \$200 million will do it even better."

MR. HULLINGS: That's true.

SENATOR RUSSO: I don't know. I am not suggesting that \$50 million is enough or it is too much. I assume there may be people here on the petroleum side who will say it is too much and others will say it is not enough. I don't know that answer. I don't think any of us do. It is a first step and we will see how it works out. We can always take another step later if we have to. But it is the first one and it is a major one and we want to get it off the ground. I think we have a better chance of getting it off the ground if we don't get too greedy about it.

MR. HULLINGS: My basis for coming up with a higher figure is the fact that the resort industry has such tremendous value to begin with. If you look at it from the standpoint of percentage basis, the percentage of the total loss that could occur is very minimal and that was the basis for my increase of the amount that should be kept in reserve. Thank you.

SENATOR RUSSO: Thank you. Are there any questions by the members of the committee?

(no questions)

Thank you, Mayor Connors. Thank you, Mr. Hullings.

Bill Beren, League for Conservation Legislation.

W I L L I A M B E R E N: Thank you, Mr. Chairman, my name is William Beren. I am the Legislative Agent for the League for Conservation Legislation, an environmental lobby here in the State of New Jersey.

New Jersey may be unique among all coastal states because of the diversity of its economy. We have what I feel is a unique situation, with the three top industries in the state being as diverse industries as the petro chemical industry, farming and agriculture, plus tourism, all, from what I understand, contributing about \$3 billion a year to the state's economy.

Also, those three industries are fairly incompatible with each other, in terms of the pollution and destruction caused by the petro chemical industry and the need for a pristine environment by both tourism and agriculture.

I think this highlights the specific need here in New Jersey for a strong spill compensation and control act, as has been introduced by Senator Russo. The bill has our full support and we particularly commend sections of the act, such as the unlimited liability on the part of the perpetrator of the spill, the main reason being, as Maxine Lipeles has indicated, for the preventive nature that it has. If the

operator of an offshore platform, or a tanker, or a refinery, knows that he is going to be liable for any spill, he is going to take very much care to install the best practical technology, not necessarily the technology that is most economical for him to operate but that technology which is really going to protect him as much as possible against any unforeseen accident, including the worst possible accident which is always used as a base accident in any study.

We also think that the compensation for third party damages - for people who lose economically out of the thing - plus the fact that the state will be reimbursed for any lost revenue from taxes are significant steps forward which we think are excellent parts of the bill.

I do have a few specific things where we feel the bill can be tightened up a little. The definition of "Major facility" on page 3 - you state that "Facilities with total above-ground or buried storage capacity of less than 400,000 gallons are not major facilities..." Not being a lawyer, I get lost in what is an "and" and what is an "or", but I hope a facility which has both above-ground and buried, each of which is less than 400,000 but the total of which is above 400,000, would be covered by the act and be considered a major facility.

On the next page, section 5 requires the owner or operator of a major facility to submit to the department the following information - and it goes through a whole range of contingency plans and what is required so that the department has an idea of exactly what the plant's capabilities are to control spills. Missing from this section is any authority for the department to develop rules and regulations and minimum standards for those facilities to comply with, so that, say, the Hackensack Company, which only had cinder block retaining walls around its tanks, would submit that information to the department and the department could then come back and say, "No, cinder block will not hold up under your spill and we are going to require you to put in an earthen dike." The department should have this kind of authority to determine what is an adequate plan and what isn't.

In section 6, it indicates that any person responsible for causing a discharge shall immediately notify the department. I would change that to the owner or operator of a plant should be responsible for notifying the department since he has the responsibility for the control of the plant. The person may be the person who forgot to close the -- you know, whatever it is that controls the oil.

Section 7, where it states that the department is responsible for removing any discharge - "...unless it determines such removal will be done properly and expeditiously by the owner or operator of the facility...", I would change to, "unless that owner or operator is already undertaking to control and clean up the operation." We don't want the department not cleaning up the oil on the understanding that the company will begin within the next hour or so to clean up the operation. Oil pollution has to be contained immediately when it is discovered and the sooner the better. If the company, for any reason, is delaying, the state should move in promptly. The only reason it should not move in is if the company is actually already cleaning it up.

On page 8, section 12, the bill says that claims shall be filed within 2 years after the date of discovery and not later than 6 years after the incident. Then it goes on to state that the person can only apply for damage claims at one time in the process. Each person's damage claims arising from one incident shall be stated on one form. And, if you don't include any damage on that one form then you waive your right to receive compensation for that. However, from my understanding of the nature of oil spills, particularly in wetlands areas, the damage is cumulative. Oil will sink down and will not be recovered and then it will begin to ooze out years later, floating out causing

new damage in new places. I don't want to see section 12 mean that you put in an immediate claim, right after damage, and then two years later, from the same incident, all of a sudden oil is seeping out of the ground again and causing additional damage that you cannot receive compensation for. Possibly some changes can be made in that section to cover that possibility.

Otherwise, I would just like to reaffirm the League's support and the members of the League's support for this bill. We think it is an important piece of legislation and a milestone and we hope that it gets speedy attention in the committee, which we are sure it will. Thank you.

SENATOR RUSSO: Thank you, Bill. Are there any questions from the committee?

SENATOR MC GAHN: Bill, only a comment - a person doesn't mean an individual; a person, as described in the act, is the corporation or company. It is the usual legal jargon.

MR. BEREN: Often you talk about the owner of a facility having to do a specific thing and I just wanted to make sure--

SENATOR MC GAHN: No, read it in relation to the definition.

SENATOR RUSSO: I think we will probably have time for one more witness before breaking for lunch. Upon resumption after lunch, I will ask those witnesses who have written statements, that you are going to submit anyway, we won't restrict you but perhaps you could limit your testimony to a summary of the statement. We have a long list. It looks like we are going to be here all day. So, any of you who could help by presenting your written statement and perhaps summarizing instead of reading it in full detail, it would be helpful to us, but we do not want to restrict you. You proceed as you see fit. We will give you all the time you need, but any help you can give us, we would appreciate it.

We are going to vary the order just a bit so that we can intersperse environmentalists and the oil fellows and not have just one group entirely and then maybe at the end of the day the others. So, we will call, at this time, Len Rupert of the New Jersey Petroleum Council. Mr. Rupert, do you want to tell us first about why our gasoline prices went up for the tourist season? We will start with that because it might determine how receptive we are to the rest of--

L E O N A R D H. R U P P E R T: Well, I think for that you need the FDA - the people who approve that.

I am Leonard Ruppert, Executive Director of the New Jersey Petroleum Council, which is a division of the American Petroleum Institute. We have offices here in Trenton. Our Council represents some of the major companies doing business here in New Jersey but also many other independent large and small companies and the individual members of API.

I appreciate the opportunity to address this Joint Committee in reference to the bills before you, which impose a new excise tax on petroleum and other products to create these oil spill compensation funds.

As I said, my own statement today is basically introductory. Other witnesses who will follow me shortly will offer the committee expert testimony on the reasons we believe these bills are not now needed. I will not duplicate their testimony but I would like to point out that there already is an abundance of federal laws, which will be shown to you, and regulations. Additional ones are now being considered on the national level and the bill that was mentioned before and some others are, incidentally, now in mark-up session, as I understand, before the Congress. The next witness can get into that more deeply.

Any potential development of offshore oil and gas production, which these bills mention, is really not so imminent as to demand hasty action that may later prove

wrong.

This latter point - that hasty action could be a mistake - perhaps demands some emphasis. In the area of environmental protection, along with other matters that they have done very adequately, New Jersey has achieved, in its headlong rush to go one step further than anyone else, a somewhat national reputation in industrial circles for hasty actions and frequent overkill. We did it with our sulfur restrictions. We did it with our auto emissions program - the timing of it - and with our one-part-per-million oil and grease run-off restrictions. Now, each of these laws or regulations has since had to be delayed or modified after proving to be either unwise or untimely. Yet, here we are again with the possibility of making the same mistake again.

It should be understood that the petroleum industry is not - and I emphasize "not" - opposed to the concept that those damaged by the occurrence of oil spills should be compensated and that every attempt should be made to prevent such occurrences. Oil spills are bad, on that point there can be no argument. The industry does not want these spills and is willing to accept responsibility for any that are the industry's fault. In fact, it has been doing that for some time. But there are serious questions whether these bills approach the problem in the proper way.

The bills cannot be considered, really, solely as environmental legislation. They are tax bills creating excessive funds that will discourage business and job development and further expand the state bureaucracy. If I may be permitted a little aside there, I am amused sometimes by my good friend, the Commissioner, who this morning constantly talked about big oil. We feel rather the same way about big government. The amounts to be raised by these measures are really far in excess of any damage which has ever occurred as a result of any spill incident anywhere. It would be difficult to demonstrate a factual need for such amounts.

I will digress a little bit here from my text, which points out the famous Santa Barbara spill resulted in costs that were nowhere near the amount contemplated here.

There are those who might say that this new tax per gallon is infinitesimal, but we have to remember when a small unit number is multiplied by a very large volume number, the total then becomes huge. Sums up to \$50 million still have to be paid by someone and that someone eventually is the consumer.

From the business point of view, what these bills represent is another business tax on stable industries which conceivably could be forced to shift terminals to other states or avoid further New Jersey expansion. I say that not as a threat of any sort. I don't have any control over it. But it is a fact. The bills could also mean that whatever economic benefits may arise from successful offshore drilling in the future could go to states other than New Jersey, which right now is aggressively seeking these benefits.

Later today other presentations will point out inconsistencies and serious questions we feel these bills may raise. For example, as these bills now read, even contributory negligence by a claimant would not bar his recovery. It hardly seems fair to make someone pay for damages that are caused by someone else's negligence. Then there are items such as the definition of "hazardous substances" - I understood from this morning's comments that this, perhaps, would be the subject of another bill but it currently is in this bill - and the negative effect on existing oil cleanup cooperatives that are now financed by industry rather than paid for by taxes and questions that may arise strictly from a tax viewpoint.

With your permission, Mr. Chairman, I would like at this time to introduce Don Cornett of Exxon's Marine Department, from Houston, who will review the existing

laws and current activity on the congressional level. Perhaps he can clear up many of the questions that were raised this morning.

SENATOR RUSSO: Len, my suggestion was going to be - and the reason I asked him to hold those statements - that we may have some questions of you that might consume the balance of the time before the break and then we can hear from the rest of your people after lunch. Does that pose any problem for you?

MR. RUPERT: No. It may pose one for you insofar as getting proper information because in many of these areas I am not the real expert. The experts are here and it would be, perhaps, better to direct your questions to them on these points. If I can't answer, I will tell you and you can go on to them. If I can, I certainly will. So, whichever you want to do--

SENATOR RUSSO: We have some questions to ask you, Len, so perhaps we can do that and then your people can testify after lunch because some of the questions we raise will give you time to think about the answers over your lunch.

MR. RUPERT: Fine, that would be fine. You could ask and, perhaps, if I cannot answer we would be prepared to give the answers when we come back.

SENATOR RUSSO: Okay. In this case we will start with Senator McGahn.

SENATOR MC GAHN: Len, why is it that if the state wants to put a 2¢ charge on a barrel of oil, it is an excise tax but the oil company increases the price of gasoline 1¢ or 2¢ per gallon, that is not a tax, that is a cost of doing business?

MR. RUPERT: Well-

SENATOR MC GAHN: Could you answer me why, in setting up a compensation fund, you simply are stating, in terms, that this is an excise tax? In essence it is, I will grant you that. But, you know, it is all right for the oil companies to increase the price of gas 1¢ or 2¢.

Only until you reach the \$50 million limit would this be placed upon the product coming into the state.

MR. RUPERT: Well, there are several questions there. One, we call it an excise tax because you call it an excise tax in the bills and we are referring to it that way.

As to the pricing, it is the one area that we, as a Trade Association, do not - thank God - get involved with. Other people that will follow perhaps can speak to that. The FEA pretty much determines what the price is and those costs that lead to that pricing I would say are still going to be there and whatever, this is going to be on top of it.

Now, you asked another part of that question and, frankly, it slipped my mind.

SENATOR MC GAHN: Let me say, you quote a celebrated oil spill as actually costing a total of \$24.6 million - in 1969 dollars. Inflationary factors, at 12% per year, would raise that about 90% over and above what it was in 1969, not taking into consideration new technology. So, today's costs could be closer to \$50 million than \$25 million.

MR. RUPERT: I cannot really say. The way I have it here, Senator, is, I have three estimates of the 1969 Santa Barbara oil spill cost. Now, I do not know whether all of those were paid in 1969 in 1969 dollars. The settlements may have come as recently as today, for all I know.

SENATOR MC GAHN: Okay. Basically, the point I am getting at is, inflationary costs for any type of industry like that - heavy construction or otherwise - has been pegged at approximately 12% per year increase over the previous year. So, what we are really talking about is almost double the charges that would be in that particular year.

MR. RUPERT: Well, I don't know when it was paid. We will try to respond to that when we come back.

SENATOR MC GAHN: I have no further questions.

MR. RUPERT: One question, if I may, that I would like to pose is, there was discussion about the federal bill, and there will be later, possibly preempting the state legislation. Now whether or not this is considered a good idea by the legislators-- In the event that took place and there was a preemption, in the meanwhile you would be, obviously, collecting the tax, what happens to the fund money in that instance? That is a question I would like answered.

SENATOR MC GAHN: I would assume we would raise our salaries. We wouldn't be worrying. We would go on vacation. Actually, just as your people have done, you know, when there is an increase in gas.

MR. RUPERT: They don't give me a vacation, sir.

SENATOR RUSSO: Len, you know, on the Santa Barbara spill, the fact is that so many of the items of damage that would be allowed under this bill were not allowed under that, isn't that right?

MR. RUPERT: Well, again, you know I don't feel comfortable sitting here and appearing to dodge your questions, which I am not attempting to do. I think perhaps the people that follow could answer that.

SENATOR RUSSO: That's all right. I am really trying to raise the question now so that your people will be prepared to come back after lunch and tell us because the point I would make, and we will hear from them later, is, that if, in fact, you had this bill in California at the time of the Santa Barbara spill, the damages would have been perhaps as high as \$100 million and \$50 million wouldn't have been enough. We will leave that for your people later.

The second thing is, we have heard now, for the second time today, from a responsible person about the abundance of federal laws, as though we are simply doing something here that is an exercise in futility and isn't needed. Now, I am going to ask your people when they come back to tell us, are there, in fact, federal laws that will cover what we are trying to do and then, number two, even if there aren't, is there anything pending that will do what this bill would propose to do? Because we don't want to waste our time either with duplicating what the federal government is doing. We feel there is no such thing pending that will cover what we are trying to do.

MR. RUPERT: I think that is a very fair question. The next witness to follow, the whole thrust of his presentation is to review all of the existing laws and pending bills.

SENATOR RUSSO: Okay. The next thing, Len, you mentioned -- Senator McGahn I thought made a good point about why you call these excise taxes instead of "doing business taxes" or "cost of doing business." You pointed out that this is what we call it, so we are going to change the name of them from now on.

But you talk about there being tax bills creating excessive funds that will discourage business and job development. Do you have any basis-- You know, we heard this on many of the tax proposals - how business would flee the state and all I could see was a jam-up in the Holland Tunnel as you were all dismantling refineries to get out. Do you really believe that what we are proposing to do here is going to cause the oil industry to leave New Jersey? And, if so, why?

MR. RUPERT: I can report to you, basically, what is told to me and what is told to me by the company executives is that it becomes more economic in many cases to go to the areas where they are being courted. Now, on the offshore - and we have an expert on that later, I don't want to get into this area - simply by moving the

angle of that pipeline, etc., a small degree, you can go to another state. You can go to Rhode Island. You can go to Delaware. You can go to Virginia. They are aggressively competing for them. You do have companies who, under this bill, bring in products from out-of-state to terminals, from which they supply the whole northeast. I am not talking about refineries now; I am talking about product terminals. Their reaction, - when I called them to a meeting to look at this bill - was that it may become more economic for them to locate that terminal elsewhere.

Now, this is what they are saying amongst themselves and that is all I can report to you, really.

SENATOR RUSSO: Len, I guess what they mean is, that there is no S-1409 pending in the Rhode Island Legislature.

MR. RUPERT: That's true.

SENATOR RUSSO: And that is because there is no offshore drilling eminent off the shores of Rhode Island, isn't that right?

MR. RUPERT: It is not as eminent as New Jersey, but the hearings are about to come up.

SENATOR RUSSO: Okay. But the Senators McGahn and Russo in Rhode Island and Assemblymen Stewart, etc., they haven't concerned themselves with a liability bill because there is no major offshore development eminent in Rhode Island, nor even tanker traffic, as there is here, is that right?

MR. RUPERT: I understand what you are saying. I can't speak for what they are doing.

SENATOR RUSSO: The oil industry is not talking about moving to California where there is an oil spill liability bill, are they?

MR. RUPERT: I beg your pardon?

SENATOR RUSSO: The oil industry, or the refinery industry - the petroleum industry - isn't talking about moving from New Jersey to, for example, a state like California where there is such legislation, isn't that right?

MR. RUPERT: As far as I know. Now, you are talking too about a fierce competition among refineries. In the same company you will have a Baton Rouge refinery, one up in Linden, one some place else, etc., and apparently it becomes economic to divert the product to one of those refineries rather than one of these refineries. In all business, ours included, I think it is apparent from the studies that they are all drifting towards the so called "sunshine states" and the older areas, such as the northeast, are losing. This is what we, and me personally as a former official here and a person who lives here, would like to see prevented.

Again, I think those questions are better answered by someone who has the authority in this area which, really, I do not.

SENATOR RUSSO: The reasons for the trend towards the "sunshine states" is not because of things like S-1409. There are reasons other than this.

MR. RUPERT: Well, the general tax climate and the general ambience, I guess you could say, of whether people want them or do not want them all are factors. This would be one more factor.

SENATOR RUSSO: I don't want to get into another subject, Len, but, you know, the management consultant studies indicate that things, for example, like personal income tax - I don't want to ruin everybody's lunch by getting into that--

MR. RUPERT: We support it, by the way.

SENATOR RUSSO: Well, you know, they say that the studies indicate that that is like third on the list of the factors that determine whether business comes or not.

Things like real estate are eighth on the list. I have always found this concept hard to accept, that an industry - an Exxon refinery - locates or doesn't locate in New Jersey because of what the real estate taxes are, or some such thing - or even a 2¢ per barrel tax up to a certain amount on oil brought in, or gasoline brought in.

MR. RUPERT: I think it is a factor.

SENATOR RUSSO: Isn't labor and location for where you are going to distribute - isn't that really what determines whether you locate in Linden or Santa Barbara, or wherever?

MR. RUPERT: Again, what I am giving now is personal opinion. I have no expertise in this area. I think all the things you mention certainly are factors to a person who is going to decide on a plant site, including taxes.

SENATOR RUSSO: All right. So, it is a factor. It might be miniscule. It might be more. You don't know.

MR. RUPERT: That's right, I don't know.

SENATOR RUSSO: You don't know?

MR. RUPERT: I think it is all relative. What is miniscule to one is big to another.

SENATOR RUSSO: Okay. Are there any further questions?

SENATOR MC GAHN: No, but since you brought up the income tax, I will support an income tax on oil.

SENATOR RUSSO: Get that message down to the Governor.

Suppose then we recess and resume with your people after lunch.

MR. RUPERT: Fine. I think you will get a lot more answers out of them.

SENATOR RUSSO: We will resume at 2:00. Thank you, Len.

(lunch recess)

AFTER LUNCH

SENATOR RUSSO: We will resume the hearing with Mr. Cornett of the New Jersey Petroleum Council.

D O N E. C O R N E T T: Mr. Chairman and members of the Committee, my name is Don Cornett. I am the Environmental Conservation Coordinator for the Marine Department of Exxon Company, U.S.A., a division of Exxon Corporation. Our department operates Exxon's U.S. flag tankers, barges and towboats.

I appreciate the opportunity to appear before this joint committee today in its consideration of Senate 1409 and Assembly 1903. My comments are made on behalf of the New Jersey Petroleum Council and the American Institute of Merchant Shipping. These industry organizations are opposed to this legislation for numerous reasons, but I plan only to briefly outline the major objections. The main portion of my testimony will be to discuss the overall subject of oil spill compensation funds and to acquaint the committee with a plan which has the support of industry and other groups and which we hope will receive the support of all persons interested in the protection of the environment.

Our major objections are: The bills propose to eliminate three of the four standard maritime defenses - acts of God, acts of government, and acts or omissions of third parties.

The bills propose unlimited liability without regard to fault - except for act of war.

They would require preparation of detailed facility operating plans, much of which is duplicative of existing Coast Guard requirements and EPA requirements.

Finally, these bills would impose a tax on transfers of "hazardous substances" in the state to build a \$50 million spill compensation fund which, in addition to providing compensation for costs of cleanup and damages to resources and third parties, may be spent for broad administrative costs related to administration of the act, plus \$200,000 per year for research on the prevention and effects of spills and development of improved cleanup and removal operations.

Those are our major objections. Now, I will direct my remarks to the topic of oil spill compensation funds and describe a proposal to provide a single fund on the national level with coverage of all types of oil spills in any U.S. waters from any source, at much lower cost to the petroleum consumer who will ultimately bear that cost.

In recent years, many state and federal laws have been passed which contain provisions for funds to compensate for damages from oil spills. The purpose of this paper is to: Review the current status of oil spill compensation laws and funds in the United States; to examine the trend toward costly patchwork solutions to problems perceived; and suggest a uniform, comprehensive solution at a much lower cost to the nation.

The existing and proposed oil spill compensation funds are aimed at solving problems perceived to affect a particular geographical location or caused by oil from a particular source or at some given type of facility. For example, the Pipeline Right-of-Way Act provides a \$100 million fund to compensate U.S. citizens or West Coast Canadians damaged by a spill from a ship carrying oil that has passed through the Port Valdez, Alaska, terminal. Florida is building a \$35 million fund for compensation of anyone in Florida damaged by an oil spill. The Federal Deepwater Port Act provides a \$100 million fund that will, if needed, supplement payments made by vessel or facility owners as a result of damages from oil spilled in deepwater port operations. Several other funds exist and more are proposed.

All of these funds are built with money raised through the imposition of a tax, fee, or premium on the amount of oil handled. The situation becomes complex at times. For instance, both California and Alaska propose to raise compensation funds to cover damages to their states from oil spills. California proposes to raise its fund from a tax on each barrel of oil transferred and Alaska would charge oil handlers an "insurance premium" to build its fund. Most of the marine transported oil in both states will probably be covered by the \$100 million fund set up by the Pipeline Right-of-Way Act, so the net result is that each barrel of oil coming from Port Valdez to California could be taxed three times and in return be double insured against damaging either of those states. In these times of escalating prices and shortages of capital, how can the country afford this kind of multi-million-dollar double coverage? The cost will eventually come to rest on the already over-burdened oil consumer. The question should not be, "How can we afford the cost?", but, "How can we avoid the cost and still have ample compensation to cover oil spill damage anywhere in the country?"

This paper analyzes the current situation in the U.S. and recommends that legislators and other interested persons support a Congressional effort to enact a single domestic oil spill compensation fund that covers all types of damages from all types of oil spills from all types of facilities and conveyances, in all waters of the U.S., including inland waters, the territorial sea, the contiguous zone, and the outer continental shelf. It includes discussions of existing and proposed oil spill compensation provisions, the oil and shipping industries' views on a national fund, how it could work, how it should be funded, its advantages over a patchwork approach, and the work needed to bring it about.

Figure 1 summarizes the status of compensation funds by "international", "national", and "state" levels of government. The first column lists existing compensation funds. It starts off with two acronyms that require some explanation. TOVALOP is short for Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution. CRISTAL stands for a Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution.

The shipowner members of TOVALOP, which includes over 99% of the world tanker fleet, assume liability of \$100 per gross registered ton of their vessel or \$10 million, whichever is lesser, for government cleanup but not for damages to the third parties. They are required to provide insurance coverage of that liability up to the limiting value.

CRISTAL was formed by oil companies to extend coverage up to \$30 million for cleanup and third party damages, starting where TOVALOP and existing law leave off. CRISTAL was started with a \$5 million initial assessment, and provisions exist for additional assessments when needed. Assessments are made in proportion to a member's crude and fuel oil volumes transported by sea. CRISTAL covers over 90% of all oil shipped by sea.

The Federal Water Pollution Control Act, which limits the liability of shipowners for cleanup to \$100 per gross registered ton, or \$14 million - whichever is lesser - and \$8 million for facilities, also provides for a national contingency fund, which is \$35 million, provided by the U.S. Treasury for use of the Coast Guard or EPA in cleaning up spills. This is money that is available today to clean up any spill not cleaned up to the satisfaction of the agency in charge. It has been used in several instances where responsibility for a spill has been questionable. The Coast Guard and EPA may perform cleanup and bill the offender to recover their costs or require the offender to undertake cleanup to the satisfaction of the agencies, thus avoiding having to expend monies from the National Contingency Fund. The fund is also available for use in cases where the spiller is unknown or unable to pay.

The Trans-Alaska Pipeline Fund came about through an amendment to the Pipeline Right-of-Way Bill that would permit construction of the Alaskan Pipeline. It is to be funded to \$100 million by a 5¢ per barrel tax on all oil passed through the Valdez terminal. It will compensate for cleanup, resources injuries and third party damages up to \$100 million per spill, and it is exclusively for protection against spills from the marine leg of the system.

Recently, the Federal Deepwater Port Act was passed. It contains a \$100 million oil spill compensation fund to be built by a 2¢ per barrel tax on oil handled by any deepwater terminal. Liability limits for cleanup and claims for oil spills at deepwater ports was set at \$20 million for vessels and \$50 million for the terminals. This fund comes into play only after these liability limits are exceeded.

The states listed in the first column are those that have legislated compensation funds. In July, 1974, after Florida industry felt the effects of the 1970 statute - which was unlimited no-fault liability - Florida modified her law to remove onerous liability provisions and accept Federal Water Pollution Control Act limits and defenses. In conjunction with those changes, the Florida Coastal Protection Fund was increased from \$5 million to a full-funded \$35 million to be built from fees, penalties, other charges, and a 2¢ per barrel tax on transfers of pollutants in coastal areas of the state - including transfers from offshore production pipelines. It is interesting to note that many states are apparently unaware of Florida's decision to change her "no fault, unlimited liability law", and they continue to follow Florida's original lead by proposing laws that will keep many shippers out of those states because of unavailability of insurance.

Maine has a \$4 million fund built by a 1/2¢ per barrel tax on oil transfers. Maryland has a one-half million dollar fund and North Carolina \$5 million. Both Washington and Oregon have provisions for funds to be built from fines, fees and other charges, but no limit is set on either fund.

The second column is a list of proposed compensation funds. At the international level, there is the Civil Liability Convention - a proposed international law. It would require shipowners to provide insurance to cover liability proposed in the Convention of \$160 per gross registered ton, or \$16 million, whichever is lesser. The CLC coverage can be used to pay cleanup costs and third party legal liability for spills only of black oil from ships. It is intended to supersede the TOVALOP agreement. The International Compensation Fund is \$36 million built through assessments on receivers of imported oil. It is for cleanup and third party claims and, again, only for spills of persistent oils from ships. It is intended to replace the CRISTAL agreement.

The U.S. Senate has not yet ratified these two conventions. Legislation previously introduced to implement them included a \$100 million domestic supplementary compensation fund for increased protection from persistent oil spills from tankers in U.S. waters. Some Senators reportedly feel strongly that in order for them to fully support the ratification of these conventions, a multi-million dollar domestic fund should be added. They do not believe the international conventions provide enough coverage.

The proposed Energy Supply Act of 1975, known as House Rule 6218, which would amend the Outer Continental Shelf Lands Act of 1953, includes a \$200 million oil spill fund to be built by a per barrel tax on OCS oil.

The states listed in the proposed column are those actively pursuing new or larger funds. The sizes of the proposed funds are given where stated in the proposed legislation.

We can expect the future to bring more proposals. One U.S. Senator has suggested three \$100 million funds, one each for the Atlantic and Pacific coasts, and one for the Gulf of Mexico. It is also expected that the regional planning commissions will propose compensation funds for their respective regions.

One of the reasons funds continue to be legislated is that current funds are either limited in amount of compensation, or types of spills covered. Figure 2 illustrates this graphically.

For discussion purposes, let us say that one fund from which a maximum of \$100 million could be collected as a result of a single spill is enough to both provide adequate compensation - which experience indicates this to be more than enough - and meet with approval of legislators and the interested public. And to be completely comprehensive, a fund must provide compensation for cleanup, third party claims, and natural resources injuries. It should cover spills of both persistent and non-persistent oils in both inland and coastal waters, including the contiguous zone and also cover facilities on the OCS under the jurisdiction of the United States. The large cubes in figure 2 represent outlines of such a fund.

Within the left cube is drawn the approximate coverage that would be provided by the Civil Liability and Fund conventions, if ratified. The right cube represents the TOVALOP-required insurance and the CRISTAL coverage. Notice that they provide compensation coverage for cleanup and third party damages from spills or persistent oils from seagoing vessels only. They do not cover non-persistent oils, inland barges, platforms, refineries, pipelines, terminals, or natural resources injuries. Neither are they of the size said to be acceptable to legislators and the public.

It was noted above that the previously proposed implementing legislation for the international conventions included a \$100 million domestic supplementary fund. As proposed, this fund would cover only third party claims for spills of persistent oils from ships. In other words, looking at the cubes again, it would simply extend the third party coverage of persistent oil spills from ocean vessels to the \$100 million level, leaving most of the large cube empty.

It is the effort on the part of legislators to fill up these voids on a case-by-case basis that has given rise to the current proliferation of multi-million-dollar oil spill compensation funds.

The National Contingency Fund is shown on figure 3. As you can see, it covers cleanup only, but will cover any oil in any U.S. waters.

One fund could be structured that would eliminate the need for all the others at much less cost to the consumer. The outer cubes in each of the drawings in figures 2 and 3 represent such a fund. It is called the National Oil Spill Compensation Fund Proposal. It would provide adequate compensation for all three categories of oil spill damages. It would compensate for any spills in any U.S. waters. It would cover both persistent and non-persistent oils just as the FWPCA and the proposed 1973 International Pollution Convention do. In addition to covering spills from ships and barges, it would provide coverage for spills from terminals, pipelines, refineries, drilling rigs, production platforms and deepwater terminals, pipelines, refineries, drilling rigs, production platforms and deepwater ports. It would replace all existing federal funds and preempt state oil spill funds.

Now, figure 4 - I am talking about the functioning of a national fund now - this figure is intended to demonstrate one way a national fund could function. Listed at the top are all possible types of oil spill damages which would be compensated by the fund. Next are the claimants. Note the federal and state governments are eligible to make claims under cleanup, natural resources, or third party. However, individuals or corporation claims are, by definition, third party claims. Next are the settlement options each claimant would have. It is proposed to promote and continue the practice of having the spiller clean up and restore the area and then settle all claims out of court, if possible. This procedure has been used satisfactorily in the majority of spill situations in the United States. I have brought along a copy of a study with the American Petroleum Institute prepared in answer to a questionnaire from Senator Ernest F. Hollings of South Carolina on this subject. I think it would bear me out in the statement that I have just made. If out of court settlement is impossible, the injured party could take his claim to the administrator of the fund, or an administrative law judge.

The figure is divided by what has come to be called the "front line." It is intended to indicate against whom the legal claim is first made. Claims should be against the spiller's financial resources - including the insurance required by TOVALOP, and any other compensation funds to which he may have access - until either the claim is satisfied, the spiller's financial resources are exhausted, or the limits of his liability have been reached. If the claim is not satisfied by the spiller through TOVALOP-required insurance, CRISTAL, or funds established by international conventions for either of these reasons, the liability would pass through to the \$35 million National Contingency Fund for cleanup and the proposed National Oil Spill Compensation Fund for third party damages, natural resources injuries, and cleanup above \$35 million.

Funding Method - There are available many methods by which the monies for the fund could be acquired. These have been investigated with the idea that the method chosen should be as nearly equitable as possible, be simple so that no new bureaucracy will be needed, and that each barrel of oil be taxed only once. The collection of

monies could be through a tax or assessment on certain categories of oil. The major categories are domestic inshore production, domestic offshore production, imports, and domestic waterborne shipments, including exports.

It is considered inequitable to tax certain onshore pipelines and tank car movements, or domestic onshore production which may never be transported by water, though the fund would cover a spill from those sources if they polluted.

It is also difficult to tax domestic waterborne movements and avoid multiple taxation.

Which of the categories are included in the base, and the tax or assessment rate used would depend upon the level to which the fund should be backed by cash and the speed with which the fund should be built.

The oils that could logically be included in the base, using the above criteria, are imports and refinery receipts of oil. To put the tax numbers in perspective, a 1¢ per barrel tax on imports and offshore production will build a \$100 million fund in 2.8 years; and on imports alone it would take only 3.2 years.

The pros and cons of the various funding methods boil down to two things: The method chosen should be equitable and should get the big volumes with minimum new bookkeeping and, the fund should be backed by cash and/or guarantees to the level necessary to accomplish the objectives of adequate compensation and preemption of other funds.

The cost effectiveness of a single broad fund are readily evident when comparing the above data with the Alaska Pipeline Fund at 5¢ per barrel, the Florida law at 2¢ per barrel; the Deepwater Port Fund with 2¢ per barrel, the OCS bill at 3¢ per barrel; other existing and proposed funds, and other fund proposals to come. We think this advantage is of importance to the American consumer.

Other advantages are that each state will have more compensation coverage immediately available than offered by the average state fund. This coverage would be provided with much less taxation in each state. States would avoid having to create or add to taxing agencies to manage collections and enforcements of tax provisions. A national fund can extend coverage beyond the limits of state waters to provide coverage not available in state funds and, the comprehensive coverage of the national fund would insure that no spill in the United States would result in uncompensated real damages to any person, corporation, governmental entity, or resource.

Efforts are underway on many fronts to establish provisions for fair and ample compensation for all types of real damage from oil spills and end the patchwork approach with its proliferation of multi-million-dollar funds.

Congress, in 1973, proposed that additional domestic compensation coverage of \$100 million for third party damages from ships carrying persistent oils be made part of ratification and implementation of the international fund conventions. The oil and shipping industries, after studying the existing and proposed funds and balancing them against the needs, concluded that a better approach was possible. In 1974, those industries took a position in favor of one large comprehensive fund that would satisfy the needs and be more cost-effective than the alternative of many special purpose funds.

Concurrently, the President's Council on Environmental Quality, working with other federal agencies and departments, came to a similar conclusion. As a result of the Administration's interest and a requirement in the Deepwater Port Act that the Justice Department furnish Congress a study of oil spill liability and compensation in the United States, President Ford sent Congress proposed superfund legislation in August 1975. The resulting bills are H.R.-9294 and S-2162. I brought along a copy in case you don't have a copy of the proposed bills.

Senator Magnuson and Congressman Studds have sponsored S-1754 and H.R.-12347 respectively, each with the stated intent of solving the patchwork funds problem, but neither one preempts states from continuing the enactment of spill compensation funds. In short, instead of solving the problem, they further complicate the situation.

At this time, hearings on H.R.-9294 and 12347 are complete in the Coast Guard Subcommittee of the House Merchant Marine and Fisheries Committee. Markup was held on May 25th and 27th and is scheduled to continue tomorrow. Textnsive testimony was taken from federal government agencies, state officials, industry organizations, insurance underwriters, maritime lawyers, and environmentalists. The preponderance of testimony was in favor of the Administration's bill - H.R. 9294. House Public Works Committee will take up the bill when the Merchant Marine and Fisheries Committee is finished.

Hearings in the Senate before a special committee comprised of members from Commerce, Public Works, and Interior and Insular Affairs Committees are reportedly planned.

In summary, states have been proposing and enacting funds to provide oil spill compensation coverage for their citizens. Congress has provided special solutions to special problems perceived at the national level. It is hoped that this paper has pointed out a better way to satisfy the whole nation's needs in a fair and cost-effective way. It is further hoped that you will consider the advantages of the broad national fund over the continuing proliferation of narrow, special purpose funds and join the effort for its implementation.

SENATOR RUSSO: Thank you, Mr. Cornett. If I might summarize your proposal, as I understand it - bearing in mind that I might not fully understand it - you, in effect, propose that there be a national program to take care of this entire problem rather than a number of individual programs, such as the several states have passed and several have proposed, including ours, is that correct, sir?

MR. CORNETT: That's right.

SENATOR RUSSO: And the total fund that you have suggested would be \$100 million?

MR. CORNETT: Well, that was just for talking purposes. The bill proposes \$200 million and the industry supports that level.

SENATOR RUSSO: Which bill are you referring to?

MR. CORNETT: H.R. 9294.

SENATOR RUSSO: Now, do I understand that H.R. 9294 -- that's the bill that the Administration supports, is it not?

MR. CORNETT: That's right.

SENATOR RUSSO: Is that the bill you feel encompasses what you have proposed here?

MR. CORNETT: Yes.

SENATOR RUSSO: Let me ask you this: It is correct, is it not, that the present bill that is pending in the Senate and the Assembly in New Jersey - S-1409 and the companion Assembly bill - is broader in its coverage and compensation than H.R. 9294?

MR. CORNETT: I would say in one or possibly two minor extents. Your bill would cover spills on land and in reading the Justice Department report, they concluded - I believe that is where I got the information - that a spill on land would always be identifiable and they couldn't conceive of a spill that was confined to land that would be of the magnitude that would touch the fund in the multi-million-dollar range.

The other area where there might be a possible difference is, we feel that the line should be drawn on compensation at the point where the damaged party can no longer prove damage - and there only.

SENATOR RUSSO: I'm sorry, I don't follow that.

MR. CORNETT: Speculative damage. Damage that may have occurred to me. I am a taxi driver and I normally take 10 fares a week to the Fontainebleau hotel and the hotel closes for a week and I say that you should give me 10 fares for the week - you would have to come in, under the President's bill, and prove that you actually lost income, that you didn't take 10 fares to some other hotel.

SENATOR RUSSO: You would apply the standard measure of damages that exist in the law today, which is - if I remember my law school training - damages proximately and naturally flowing from the act?

MR. CORNETT: No, it would be broader than that.

SENATOR RUSSO: It can be broader than that?

MR. CORNETT: If you can prove that you lost money, you will get your money back. If you can't, you don't.

SENATOR RUSSO: Isn't it true that the Administration supported bill that you mentioned does not include damages resulting from spills that are caused by an act of God, so to speak?

MR. CORNETT: No, that is not true. What it does is give the spiller a defense for acts of God, but the fund would pay the cost. Compensation would be made from the fund.

SENATOR RUSSO: For damages that result, even though, perhaps, let's say, a hurricane caused an oil rig offshore to result in a spill?

MR. CORNETT: Well, as far as the compensation is concerned, it makes no difference where it came from, even if it was from sabotage or negligence, or whatever. The person that was damaged gets compensated.

Now, if the spiller, or the owner of the platform, can show that the spill occurred as a result of negligence of the government, sabotage, certain acts of God, or an act of war, he doesn't have to pay it, the fund would have to pay it. That is the difference.

SENATOR RUSSO: Now, a recent newspaper article indicated that the bill supported by the Administration would set up a \$1 billion fund.

MR. CORNETT: A \$1 billion fund?

SENATOR RUSSO: Yes. I am referring now to a recent Star Ledger article that says - if I may - "The Ford Administration, in February, drafted a more modest counter-proposal..." - modest compared to a \$1.5 billion fund - "...which would set up a \$1 billion fund to provide financial assistance to all areas affected by new federal energy resource development, including the development of offshore oil, onshore oil and gas, coal, oil shale, and geothermal preserves."

MR. CORNETT: That is a completely different thing. I am not familiar with that. It is not the oil spill compensation proposal that I am familiar with.

SENATOR RUSSO: Now, Mr. Cornett, part of our problem, as is California's and Florida's, and so forth, is the fact that no such legislation has yet been adopted by the federal government, as I think you know. There is no desire here to duplicate anything the federal government may do.

Basically, as I understand your testimony, with an exception or two here and there, you would support S-1409 if it were, say, the federal bill with the proper amounts, or am I incorrect?

MR. CORNETT: I don't think I understand that.

SENATOR RUSSO: The thrust of your objection is the proliferation of liability funds and the increased cost to the industry and to the ultimate consumer, not so much

with the content of S-1409 itself.

MR. CORNETT: Well, I have some serious objections to S-1409 in the area of no-fault liability. Those are untenable situations to put an oil transporter in. Florida is an example.

SENATOR RUSSO: That is another major difference between 1409 and H.R. 9294, isn't it?

MR. CORNETT: That's right.

SENATOR RUSSO: So, it isn't only then the fact that there are a number of programs as much as it is the content of the particular legislation that we are proposing?

MR. CORNETT: Well, if I might review, just for a moment, the things that we take exception to - one is the elimination of three of the four standard maritime defenses. One of the Senators was talking about sabotage earlier. Would it comfort you any to know that you had subrogation against a saboteur if you spent \$10 million cleaning up an oil spill and your only recourse was to try to get it out of his hide? We feel that should be taken care of by the fund. If I can show that I was sabotaged, I should not have to bear the full cost of cleanup and compensation.

You can say the same thing from an errant missile from Cape Kennedy if it hits one of your tankers. That would come under negligence of the government.

Another good example is the buoys that the Coast Guard puts out in the channels. If they put a buoy in the wrong place and I run my ship aground, why should I have to put up all the money? Why shouldn't the fund put up the money and collect it from the government, rather than making me put it up and then go get it from the government?

This just seems like an unnecessary burden when the objective of the legislation, I think, is to make sure that the individual who loses, gets it back promptly - in full.

SENATOR RUSSO: Your point is, you feel that the individual who is damaged as a result of, say, a spill that results from a navigational aid being placed improperly, should be compensated from the fund and not from the--

MR. CORNETT: Well, I should compensate him up to the limits of my liability. I don't think that you should have no liability. I think you should have, if you are in this business, liability that is enough to make you careful, but it is not enough to put you out of business and it is not necessarily enough to triple your insurance cost, that you would have to pass on to the fellow with the Volkswagen trying to buy gas. I think it should be reasonable, insurable, and above that the national fund should take care of spills from any source, or any damage that anybody can prove they have - and give it promptly.

May I have just a minute to respond to a couple of things that were said earlier? I wanted to tell you - and I will hand this in for the record - this is a summary of Florida's experience after a year and one-half. They are building a \$35 million fund. They have now collected \$7 million. They have paid 15 claims totaling \$3,900. They have turned down 15 claims, totaling \$98,000. They have spent \$600 thousand in administrative costs. They put \$10 million of seed money into this from the Legislature and at the time they had \$6 or \$7 million collected from a tax. They needed \$10 million, so they pulled their seed money out. Now, that doesn't seem significant except there is a lesson there. They felt, evidently, quite comfortable with \$7 million as a compensation fund at that point. They know it is going to grow, but they didn't feel they needed \$17 million.

The State of Maine has their full \$1 million fund completed. And now they are entertaining motions from legislators to continue the tax rather than stop at \$4 million, to spend it on research, firewood, windmills, and other alternate fuels.

I hope they are not trying to put us out of business in Maine.

The reason I mention this is, there is a temptation, when that much idle money lies around and states are crying for funds to do important things, to raid the oil spill fund.

I wanted to mention just a couple of other things that were said earlier. This chart in the back of the room - it should be pointed out that the Federal Water Pollution Act amendments were passed in 1972. Reporting was required after that. 1973 was the first full year that all oil spills had to be reported. Records were kept on all reported oil spills. It really isn't fair to start earlier than 1973 and if you look at that chart and start with 1973, 1974 isn't all that bad. I think you will find that 1975 is not going to jump that high. Our experience is, we are over the hump. The message has gotten down to everybody in the organization now that you have to report oil spills and your job is in jeopardy if you don't, plus your freedom is in jeopardy if you don't.

SENATOR RUSSO: I think the only problem is, even though it didn't go up that much in 1975 from 1974, that doesn't help that duck outside that got caught in the increase in 1975.

MR. CORNETT: I appreciate that.

The preemption that is in H.R. 9294 - to clear up one point that was made earlier - is only for the things that are covered in H.R. 9294. If you can find anything in that bill not covered that you want to cover, you certainly are not preempted. But, I think when it finally comes out, as I believe it will, it will cover everything outside of personal injury and that sort of thing.

SENATOR RUSSO: I think the bottom line, really, of the industry's position probably would be that if there is some way that whatever power - much or little - the industry has - you know, we hear all kinds of stories - they should get that federal bill passed and passed soon, otherwise I would imagine a number of states are going to follow what we are doing here and what California and Florida have done, but, yet, it does not seem to be going anywhere.

With all due respect, we have had primary election eve statements about support for a bill that we didn't have before. But the point is, we still don't have anything that solves this problem on the national level and until we do, all we have is hope. And there may be people in this Legislature who would agree with you, that that is the way it should be resolved. But is it going to be?

MR. CORNETT: Well, I think it stands a good chance. I think it is an idea which has a great deal of broad support. There is a good deal of controversy, or discussion, about exactly what the final form should be but it is my understanding that - you know, you can't predict what Congress is going to do - they are at least doing something on it.

SENATOR RUSSO: Well, our information - and I don't really know too much of the details, or how valid it is - is, that prospects don't look bright for federal legislation being passed by Congress and signed by the President that is acceptable.

MR. CORNETT: I don't think there is any problem with getting it signed by the President, if we can get it through the Congress. But I want you to understand that there was a little misconception here earlier that the administration reluctantly supported this bill. The administration drafted this bill from the ground up. It is supported by industry. It is supported by all the American Flagships, the barge industry, the oil industry, the liquid terminal industry; it has very broad support, not because it is going to be a free ride for the oil industry. The only person who is going to get a free ride out of it is the fellow who is going to get his gasoline at a little lower

cost.

SENATOR RUSSO: Isn't it a fact that the proposal that you presented here today is one that you have, in fact - not necessarily you yourself but the industry - presented to each, or some, or all, of these other states while they were considering their legislation?

MR. CORNETT: Several, yes.

SENATOR RUSSO: And, yet, still nothing has happened on the federal level?

MR. CORNETT: The bill hasn't passed but a lot has gone on on the federal level.

SENATOR RUSSO: When did the petroleum industry first present this proposal, how long ago?

MR. CORNETT: First presented--?

SENATOR RUSSO: To any legislature, or anywhere?

MR. CORNETT: In 1975.

SENATOR RUSSO: That was the first?

MR. CORNETT: Yes. It was presented also, partially, in South Carolina who - while we are naming the states - passed a resolution urging the passage of H.R. 9294, and it was introduced by Senator Hollings about a month ago. They looked at passing their own fund. They are going to have oil development off their coast too.

It seems to me that if you consider all the people involved and all the industries - the oil industry, the shipping industry, the people who are concerned for the environment, the people who stand to be damaged greatly, and the consumers - H.R. 9294 hits pretty close to the right thing to do. I don't see how you can ever construct an equitable oil spill compensation system that is uniform enough to do the same thing 9294 would do by doing it piece-by-piece in the states, and include onerous liability sections also.

SENATOR RUSSO: May I suggest, Mr. Cornett, that assuming the committees involved do not agree that we ought to await a federal act and since most of your testimony was directed to what you feel is a better alternative, that your people present us with a more detailed analysis - by memorandum, if possible - and suggested amendments to S-1409 and the companion Assembly bill, on the basis that, if you are going to have it, what is wrong with it and how do you think it can be improved and cleaned up? It might be helpful to us and I can assure you we will definitely give it some close study.

MR. CORNETT: I will be glad to do that.

SENATOR RUSSO: Assemblyman Stewart.

ASSEMBLYMAN STEWART: I would just like to ask if all the members of the committee could have a copy - if someone on the staff could make a copy - of that last bit of information you had comparing other states - Florida, Maine. That will go into the record, but I would also like to have a copy of it.

MR. CORNETT: I only have the Florida thing written out. The other was from memory.

ASSEMBLYMAN STEWART: Secondly, I agree with a lot of the things you pointed out. I didn't find too much fault with a lot of your testimony. I think we are all shooting for the same goal, and that is protect the guy who is injured, protect the party who is going to be damaged by the oil spill.

I would hope that none of us are here with the idea that we are out to get the oil companies and we are going to make them pay, regardless of what. I sometimes get that impression in listening to some of the testimony and seeing some of the statements. Believe me, that is not my goal and that is not, I don't think, any of our goals - those of us who are sitting up here. We need this type of industry in the state, there is no doubt about that.

I am concerned about the delay in waiting for the federal government to do something. I would think there is nothing wrong with us adopting some of the suggestions you made, many of which I think would be a tremendous improvement over what we have right now, in the legislation in front of us, knowing full well that if and when the federal government does do something, the bill is going to self-destruct anyway. From what I understand, it preempts our right to enact legislation. If that is not accurate, the trend today seems to be towards what they are calling "sunset" type legislation that does self-destruct after a period of years. I would even consider us putting that into this piece of legislation - something where, after a period of years, it does self-destruct and we either pass it again or else it goes by the board.

I don't like seeing this maze of each state having its own regulation. In my particular legislative area, I am bordered by Pennsylvania and Delaware and we are constantly in turmoil between what Delaware wants, what Pennsylvania wants, and what South Jersey wants. But, by the same token, I don't think we can just sit back and do nothing about this. I think the Senator's suggestion that you folks take this bill and make it as livable as possible is a very, very wise one. I would hope that you folks would do that. I know I am concerned about the sabotage part. I never thought about the governmental negligence. These are all good points that you brought out.

I am also very interested, if you have any facts, in what the administrative cost is in some of the states. How many people did they put on the payroll, for instance, in Florida? How many new state employees did they have to bring in to handle something like this? Someone said it very well when we were talking about big oil versus big government - it gets a little ridiculous on our end too. So, I would hope that you folks realize that it is not a one-way street. We are concerned about the same things you are concerned about and I would hope you get us some of that information that the Senator suggested.

SENATOR RUSSO: Thank you, Mr. Cornett. I think next from your group is Mr. Simmons.

FRANK SIMMONS: Yes, that is correct. I am in that very unenviable position of being a tax man, working for and representing an oil company and I think that pretty much says it all.

Before I get into my prepared statement, a copy of which I hope you have, I wanted to mention two things. My comments will relate to Senate bill 1409 and 1397. I haven't heard any testimony relating to 1397 and I assume that it is more important to talk about 1409. I would want to point out, though, that in 1397 there is probably going to be a problem with the definition of hazardous substances. As you may know, there is a sliding scale tax rate in that bill.

Let me confine my comments to S-1409. It might also be helpful to - as I understand it - clarify the current tax situation on the East Coast. According to my CCH records, there are only two states that have a tax similar to the one that is proposed here - Maine, which has a 10th of a cent rate currently in effect and our friends down in the southern state of Florida, they have a 5¢ rate. There is no other tax that I am aware of that currently is in effect in any state between Maine and Florida. I think that is important for you to know.

We have heard from the tourism industry part of the state and I think it is also important to hear from the chemical and petroleum industry, which is up in the northern part of the state. It is also an important part of this wonderful state and has a lot of interest in this bill.

Let me now get into my prepared statement. I take it you have a copy of that.

My name is Frank Simmons, I am Supervisor of Income and Excise Taxes for Chevron Oil, located in Perth Amboy, Middlesex County, New Jersey. I am not reading exactly as it looks here. I might ad-lib even more than that. I kind of feel like the London prostitute who always wore a turtle necked sweater. Somebody asked her, "Gee, how come you have that turtle necked sweater?" And she said, "Well, it hides my flea collar." Well, I kind of feel like that situation here.

Without going into great detail, I have several tax points to raise concerning the oil spill tax legislation pending before you:

First. There are some problems in determining who the taxpayer is in certain types of transfers. For example, a pipeline is included under the definition of a major facility. It has storage facilities along its route which are also defined as a major facility. It also delivers product directly to the terminal facilities belonging to another party. Would the pipeline, a common carrier, be the taxpayer in the case where it transferred to its own facilities and not the taxpayer when transferring to the owner or operator of another major facility?

Second. Major terminal facilities operators receiving product from an in-state supplier would be receiving product upon which tax theoretically would have been paid. On product received directly from outstate suppliers, he would be liable to calculate and pay the tax. A detailed reporting system would have to be established to assure both the taxpayer and the state that the correct tax was being reported and paid. Without such a procedure, the taxpayer could not be certain that another facility operator had, in fact, actually paid the tax. This could be a substantial administrative burden, both to the taxpayer and the state.

Third. Section 9 of Senate 1409 is inconsistent. Sub-paragraph (a) levies the tax on barrels transferred to a major facility. - underscore the word to. Subparagraph (c), on the other hand, requires a report to the Director of Taxation on barrels transferred from his facility. In the case of a refinery - which is what Chevron Oil Company operates in Perth Amboy - is it the crude that is taxable upon receipt or is it the finished product that is produced and transferred to our customers?

The fourth tax point is the definition of "hazardous substances". This relates, again, to S-1409. This includes a whole variety of elements and compounds and needs clarification. In the Federal Register of December 30, 1975 - which was referred to earlier - beginning at page 59960, there was published a proposed regulation one inch thick on the definition of a "hazardous substance". Several hundred such compounds, both dry and liquid measure, were analyzed and would affect almost - I assume - all of New Jersey business. A serious problem exists in converting certain chemical substances into taxable liquid quantities. Also, how are certain feed stocks within refineries or other manufacturing plants to be classified since they involve many different elements and compounds?

Fifth. Once a facility has been determined to have the 400,000 gallon capacity, or its equivalent in dry measure, then no matter how large or small a quantity of hazardous substance is brought in, the owner or operator therefor is liable for this proposed tax.

Sixth. The rate of tax proposed here in New Jersey is substantially higher than in Maine, which has a current rate of 1/10¢ per barrel. You should be aware that the Maine Oil Spill Compensation Fund is only one-fifth the size of the proposal in Senate 1409. That point was just raised by Mr. Cornett.

There are some other points that basically are not tax problems but due to their importance, I wish to bring them to your attention.

First - can these costs be passed through under current FEA regulations? As you

can imagine, this could be a very important matter for the Chevron Oil Company.

Second - what would be the effect on the New Jersey economy if companies changed their methods of distribution to by-pass New Jersey terminals and delivered product direct to customers or other facilities outside the state? Substantial product passes through this state, particularly to the Northeastern part of the county.

Third - this is the first bill I am aware of that reaches transfers of product entirely on land. Obviously, in relation to our sister states, this places us at a distinct economic competitive disadvantage. Further, due to the difference in potential for damage due to spillage between pipelines and other onshore locations and water transfers, it must be important to consider rates relative to the difference in this potential.

I appreciate very much the chance to be with you. Do you have any questions?

SENATOR RUSSO: The federal system for raising the funds under that act is similar to ours, is it not?

MR. SIMMONS: I am not familiar with the federal bill at all, Senator. I am a tax man and I am not familiar with it.

SENATOR RUSSO: They haven't asked you to look at the federal bill?

MR. SIMMONS: No, that is handled in San Francisco, sir. Sorry.

SENATOR RUSSO: I think - I might we wrong - if you call that fellow in San Francisco he is going to tell you that it is pretty similar - maybe even a little higher, I am not sure.

MR. SIMMONS: I'm sorry, I am not aware of what you are talking about.

SENATOR RUSSO: You referred to, for example, the rate of tax under S-1409 being higher than Maine.

MR. SIMMONS: Yes.

SENATOR RUSSO: And your colleague that preceded you suggested maybe the federal bill would be the way to solve this whole problem. The point I am making is that their way of raising the fund is similar to that which is contained - I think - in S-1409.

MR. SIMMONS: I don't know, sir.

SENATOR RUSSO: Okay. You foresee that, if this legislation passes, there is a real danger of companies changing their methods of distribution by bypassing New Jersey?

MR. SIMMONS: Oh, yes, sir, especially in the area of lightering.

SENATOR RUSSO: What's that?

MR. SIMMONS: Lightering. Do you-- It is a new term to me.

SENATOR RUSSO: Yes, I know what it is. It is a transferring from the tankers to the onshore facility.

MR. SIMMONS: We just would not do that here.

SENATOR RUSSO: And where would you do it?

MR. SIMMONS: We would do it in another state, at another location up in New York.

SENATOR RUSSO: In New York?

MR. SIMMONS: Yes. This does not have a similar tax in effect.

SENATOR RUSSO: Yet.

MR. SIMMONS: Yet.

SENATOR RUSSO: And then when they do you might come back here?

MR. SIMMONS: I'm not sure. I know it would be a competitive disadvantage for us to be shifting it all around and changing the economics of our various office locations and terminals.

SENATOR RUSSO: You might not make the shift in the first place because of that additional cost, am I right?

MR. SIMMONS: On the lightering it would be simple to just send it directly to our customers. We have a large refinery in Perth Amboy.

SENATOR RUSSO: It is going to cost you more money to do that, isn't it?

MR. SIMMONS: To go direct to the customer?

SENATOR RUSSO: Yes. Because if not, my next question is why don't you do it now?

MR. SIMMONS: I can't say.

SENATOR RUSSO: You can't say.

MR. SIMMONS: I can't say. I don't know how much it costs. I say we would change our method of distribution - I assume.

SENATOR RUSSO: You would change your method of distribution if the economic advantages were in favor of changing the method of distribution.

MR. SIMMONS: I think that is a --

SENATOR RUSSO: It is as simple as that.

MR. SIMMONS: Yes.

SENATOR RUSSO: And you are not prepared to say that this proposed bill, if it passes, creating this fund, would be of sufficient economic disadvantage to you as to justify the additional cost of changing your method of distribution. You say it is a possibility and it is one factor to be considered but you are not telling us that you will.

MR. SIMMONS: I am not in a position to do that. I do know, though, that economic impact is very severe, in terms of our expanding refinery capacity that is going on now. It would become more and more important. You are certainly correct that it is only one factor but there are a lot of factors that are occurring in New Jersey that are leading us to reexamine all of our distribution - ways of distributing product. This would just be another example.

This throughput tax - which is what it is as far as we are concerned--

SENATOR RUSSO: What did you call it?

MR. SIMMONS: It is a throughput tax, based upon the crude coming in to our refinery. It is like the same problem of changing that throughput to our Pascagoula unit or another unit; we would be looking at all of these factors.

SENATOR RUSSO: You always would; it is all relative, isn't it?

MR. SIMMONS: Everything is relative.

SENATOR RUSSO: Sure. I just wanted to get it clear, you are not suggesting to us, in all honesty, that the passage of this bill will result in you changing your method of distribution or closing down your refineries or anything else.

MR. SIMMONS: Again, I can't say. This is going to cost us about \$1,100,000, based upon our throughput at our Perth Amboy refinery. That's a heck of a lot of money. I don't know what my management is going to do about that.

SENATOR RUSSO: You estimate a cost of \$1,100,000?

MR. SIMMONS: At the rate of 2¢ per barrel.

SENATOR RUSSO: Up to \$50 million - up to the fund reaching \$50 million.

MR. SIMMONS: At that point -- The first year, or however many years the fund would be in effect; I can't predict that.

SENATOR RUSSO: Yes. But once the fund reaches that point - assuming we don't have any major spill, as your industry very frequently assures us we won't--

MR. SIMMONS: We are very careful.

SENATOR RUSSO: I am sure you are and it may well be, and I hope there will be

no need for any of this money. But the point is, once that fund is reached, you don't have any more tax then, do you?

MR. SIMMONS: Not until you reinstitute the tax.

SENATOR RUSSO: Which will only be reinstated if there are major oil spills, or major damages, right?

MR. SIMMONS: Just like in Maine, that's correct.

SENATOR RUSSO: Just like in Maine.

MR. SIMMONS: It is going to cost us dearly the first few years of this tax, no matter what.

SENATOR RUSSO: \$1,100,000 it is going to cost you.

MR. SIMMONS: That is our estimate.

SENATOR RUSSO: That's swell.

MR. SIMMONS: That's not a --

SENATOR RUSSO: I accept that.

MR. SIMMONS: Don't hold me to that.

SENATOR RUSSO: Right. It is an estimate. I understand that. I accept that. Of course, once you have paid that - if your confidence in the safety of the industry is justified - you don't have any more tax to pay under this bill, or certainly no substantial tax, right?

MR. SIMMONS: Assuming all of the factors you have just laid out, yes.

SENATOR RUSSO: And, of course, if it turns out that the fund does get depleted it is because we have needed it, isn't it? It is because we have major spills uncompensated by federal programs or such, isn't that right?

MR. SIMMONS: That's a possibility.

SENATOR RUSSO: So, in effect, the people in the State of New Jersey are, using your figure, assessing you a \$1,100,000 assessment to protect against the care and safety of your industry.

MR. SIMMONS: Yes, for something that we feel is our obligation. As you may know the City of Perth Amboy has a boom ordinance that we comply with very faithfully and we consider ourselves a very conscientious environmental company, except in the San Francisco Bay.

SENATOR RUSSO: I think Assemblyman Stewart really hit the nail on the head when he said earlier that the purpose of this legislation is not with the intention of being - it may well result in that - a "ripoff" of the oil companies - a favorite whipping boy, naturally. I won't go into the justification or lack of it. And it is to establish a protection against catastrophes that basically you say probably won't happen. It is the cost that you are paying to give us that assurance - the \$1,100,000.

MR. SIMMONS: In other words, we are paying you \$1,100,000 in anticipation of spills we would pay for if it occurs normally, is that what you are telling me?

SENATOR RUSSO: Wait a minute now -- that you would pay for if it occurred normally?

MR. SIMMONS: We feel it would be our obligation if there was some fault on our part. We would be more than happy to pay for that.

SENATOR RUSSO: What if there wasn't fault on your part but it happened because of your industry - that is, by your very being there?

MR. SIMMONS: The no liability - or strict liability - features, I think, are extremely onerous, especially in our particular industry and just because we are in a location and a saboteur does us in at our refinery, or does in one of our tankers, doesn't seem to me to be an equitable way of administering a proper cleanup and damage

provision of any law. It is like a truck going down a highway - what is strict liability will be resolved in the courts, I guess. I don't know anything about the legal aspect.

SENATOR RUSSO: You know that presently - as we mentioned before - there are areas of strict liability and tort in other industries.

MR. SIMMONS: What's a tort?

SENATOR RUSSO: Civil wrong. Strict liability where something is defined as "ultra-hazardous activity" - which you may or may not agree the, say, for example, offshore drilling should be included in.

MR. SIMMONS: It is a question. I don't have the answer.

SENATOR RUSSO: It's not fair to you. I am getting you into an area now that's--

MR. SIMMONS: Let me go to law school first and I will come back and answer your questions.

SENATOR RUSSO: This is beyond your subject.

MR. SIMMONS: I am just strictly tax.

SENATOR RUSSO: Okay. Assemblyman Stewart.

ASSEMBLYMAN STEWART: The one thing in your discussion that still sticks in the back of my mind bothers me. Let me see if I get this right. As the Senator points out, you are only going to be paying your \$1.1 million, until such time that the fund is - the pot is full, the \$50 million is there. But, what bothers me is the ships that are going to Delaware, Pennsylvania; they are not paying that tax. We are charging our industries here in New Jersey that tax.

MR. SIMMONS: That bothers me too.

ASSEMBLYMAN STEWART: These guys can run up and down that Delaware River until they are blue in the face and they can have spills in the Delaware River, deplete that fund that you are funding and that tax will continue on you. These guys are getting off scott free. What do we do about that?

MR. SIMMONS: Assemblyman, I didn't mention that I am quite concerned about tramp steamers coming in with bilge problems, or whatever. They are not even going to be subject to a law suit. That is because they are going to run as soon as they can. We won't even find them.

ASSEMBLYMAN STEWART: It is possible that a New Jersey firm would not even have a major spill and yet the fund would still be depleted, isn't that possible?

MR. SIMMONS: I do believe that is correct.

ASSEMBLYMAN STEWART: Or at least it could be cut into.

MR. SIMMONS: I believe that is correct.

ASSEMBLYMAN STEWART: I am thinking of along the Delaware River. Many of the major ones we have had recently have been from ships going into the markets of Pennsylvania and I don't know whether that would be covered under this legislation or not. From what I got from Commissioner Bardin, it would not be, unless they were Jersey ships or something, I don't know.

MR. SIMMONS: That's what I understood. But, I don't know.

ASSEMBLYMAN STEWART: Can somebody from the industry get us some sort of an economic impact report or statement showing us exactly what the various refineries in the various sections of the state can be expected to pay? I was going to ask you the question, how much do you think you are going to be paying out of your plant. You already volunteered that.

MR. SIMMONS: See what a nice guy I am? That is kind of a confidential number but I think it is important for you to know that we are going to be paying a tax--

ASSEMBLYMAN STEWART: Representing an area that has several refineries it is

something that I should know. I am sure that this is not going to cause Moble Oil to close down in Gloucester County but I don't think it is going to encourage them to increase their operation in Gloucester County either. And that is one of the things that we are interested in, in seeing that our viable industries grow. We are also interested, incidentally, in protecting against these oil spills. So, we are trying to have the best of both worlds. We don't want to drive you out of business.

I am concerned. Do you have any suggestion about what do we do about these ships that are coming up these neutral waters of the Delaware? We have no provision to take care of that. I guess it would have to be -- would it have to be federal legislation to do that?

MR. SIMMONS: I am not competent enough to say but I-- I'm sorry for interrupting a minute ago. I have a tendency to get excited about these things. I don't know what we would do about a tramp steamer. That concerns me very much, that I have to pay a tax for their wrongdoing.

In reference to your economic study, I would be interested to know how this affects the chemical industry. Even under 1409, the definition of hazardous substances, I would assume, is broad enough to include that industry which, I also assume, is one of the number one industries in this state. I don't know whether there is anybody in the audience that will be responding for that industry or not. They are dramatically affected by this and the very difficult problem of taking a tax that is based on barrels, that is determined by gallonage, and apply it to dry measured units such as, say, chlorine, or whatever comes in powder form.

I think probably, based upon the throughputs that occur at our refineries, we could come up with a figure, but there are so darn many terminals and pipelines and related major facilities that are involved that I think it would be very hard to determine the economic impact.

ASSEMBLYMAN STEWART: Do you have any suggestion as to how long it would take us to raise \$50 million under this tax?

MR. SIMMONS: I have absolutely no idea how long it will take. Is there any projected time period?

ASSEMBLYMAN STEWART: Would you say two years, five years, ten years, twenty years?

MR. SIMMONS: I don't know anything about the chemical industry, I don't know. I think that is a very important factor.

SENATOR RUSSO: The staff advises me that we do not have a definite idea. The best "guesstimates" by the staff are two to ten years.

MR. SIMMONS: Thank's a lot. That's only \$10 million - at the outside.

SENATOR RUSSO: Are you saying your costs will be \$1,100,000 a year?

MR. SIMMONS: That's correct, sir. Don't make me mis-state this.

SENATOR RUSSO: No.

MR. SIMMONS: \$1,100,000 a year, if I understood what what was just said, - the Senator said from two to five years - could be \$2.2 million or \$10.1.

SENATOR RUSSO: Yes, but your outside parameters are the \$50 million fund. That might be two years. You know, whatever it takes, and then the fund stops. I thought when you said about the \$1.1 million earlier, that you were saying that would be your particular company's share of the fund necessary to reach the \$50 million. That is what I understood you to mean.

MR. SIMMONS: How would I know that unless I knew how long it would take? I was going on a yearly basis.

SENATOR RUSSO: I don't know, I was wondering the same thing.

MR. SIMMONS: This is an annual figure, Senator.

SENATOR RUSSO: Conceivably, depending upon how we define the ultra-hazardous substances, you might only pay one year; we don't know yet.

MR. SIMMONS: Hopefully, we won't have to pay this tax at all.

SENATOR RUSSO: Well, we can always raise the Lottery or something like that.

Don, you raised the question about the tanker in the river who doesn't have to bear his share of the burden. The fact is, if there is a spill resulting from such a tanker, although he is not paying the tax under this fund, by the amount this fund is depleted because of that, the fund brings suit against that particular company to recover damages. So, in effect, he is not going off-- They are not paying his damages, in other words. Is that it? Thank you very much Mr. Simmons.

MR. SIMMONS: Thank you.

SENATOR RUSSO: There are certain unwritten rules they tell me we have to follow here, such as-- You know, as they say over in the Senate, once a Senator always a Senator; I have never heard them say that about Assemblymen. But I assume that goes. We have one here - a former Assemblyman - that has asked to be taken out of turn and I don't know. What is the vote of the Committee? Assemblyman Worthington.

CHARLES WORTHINGTON: Thank you. I am sorry to intrude but we did call - our office called - and try to make an appointment and I thought they had one.

I just have a couple of minutes and I would like to go on record, Senator Russo and Assemblyman Stewart. We certainly are concerned in Atlantic County. We are concerned primarily because of the lack of federal legislation. We think that this kind of legislation in the state, in the absence of federal law is certainly necessary.

I am Charles D. Worthington, County Executive of the County of Atlantic, New Jersey. I appear before you to testify in favor of the proposed Spill Compensation and Control Act, as drafted.

As you well know, Atlantic County is economically heavily dependent on the resort trade. The resort trade in New Jersey is the second largest industry, with an estimated annual gross value of 3.5 billion dollars in 1975.

Just to provide a little perspective, the single largest industry in this state is the petrochemical industry, with an annual gross of about 4 billion dollars.

Our local Chamber of Commerce has estimated that approximately 45% of all recreation dollars in New Jersey are spent in Atlantic County alone, which makes this industry worth about 1.5 billion dollars annually. All who visit the seashore know that the foundation of the shore-oriented resort trade is the unspoiled beach.

The proposed Spill Compensation and Control Act provides a large measure of insurance against any adverse economic effect upon Atlantic County's resort industry as a result of some unfortunate event which would cause our beach to become spoiled. From a purely economic survival point of view, Atlantic County urgently needs the enactment of the Spill Compensation and Control Act, especially in view of the imminent oil exploration of the outer continental shelf off Atlantic County's coast.

Without the needed insurance of the Spill Compensation and Control Act, any pollution of Atlantic County's beaches could have grave repercussion on municipal and county government's ability to provide services to its citizenry.

The five shore communities most adversely affected by an oil spill would be Brigantine, Atlantic City, Ventnor, Margate and Longport. These five communities combined, account for 43% of all county tax ratables. Any serious oil spills affecting this county's beaches, without the economic insurances of the Spill Compensation and Control Act, would negatively affect tax collections in these key municipalities.

The negative municipal tax collections in turn would curtail the operation of county government, since its revenues are primarily based upon municipal ratables.

I need not elaborate upon the effects of curtailed revenues on county government, especially in these times when state government is facing similar problems.

So far, I have dwelled on potential adverse impacts of future oil spills upon beach front communities. The effects of such a spill may not be limited to just these communities, but would, in all probability, affect an additional eight communities fronting on our bays.

Because of the grave consequences that a spill of hazardous substances can have on Atlantic County, I strongly endorse provision of the Spill Compensation and Control Act, which establishes strict liability of owners or operators of major facilities for the cost of restoring, repairing or replacing any real or personal property damage, the cost of restoring natural resources damaged or destroyed by a discharge, loss of income or impairment of earning capacity due to damage to property, loss of tax revenues by the state or local government, and all cleanup and removal costs.

I feel that the 2¢ per barrel tax of hazardous substances transferred to be a reasonable tax, although I question whether the \$50 million fund will be large enough to compensate for damages.

In summation, I feel that this draft of the Spill Compensation and Control Act is good for Atlantic County and it has my endorsement.

I urge that you take whatever action you can to insure passage of the Spill Compensation and Control Act in its present draft form.

Thank you for the opportunity to speak before your combined committees on Energy and Environment, and Agriculture and the Environment.

I read as quickly as I could because I feel I have intruded. I thank you for the opportunity, John.

SENATOR RUSSO: You haven't intruded at all. We are glad to have you back. You read quickly because having sat here, you know our problem. We have a long list. We do appreciate it very much.

I don't think I have any questions.

MR. WORTHINGTON: Thank you, Senator.

SENATOR RUSSO: The Petroleum Council group had one more speaker, Mr. Shirley, and I understand that he has a plane to catch. He is a little further down on the list and that will complete their testimony, so we will hear him at the present time. Mr. Shirley.

O. J. SHIRLEY: Thank you, Senator Russo. My name is O.J. Shirley. I am employed by Shell Oil Company in New Orleans, Louisiana, as Manager of Safety and Environmental Conservation for Shell's Southern region, which encompasses the Gulf Coast and the Atlantic Seaboard States. However, I am appearing here before you today in my capacity as Chairman of Clean Atlantic Associates, a newly-formed oil spill cooperative, designed to serve future exploration and, hopefully, production activities on the outer continental shelf, off the entire Atlantic Coast, including the State of New Jersey, of course.

For the record of this hearing, I would like to submit the written statement concerning Clean Atlantic Associates, which was offered in my testimony before the Environmental hearing in the proposed Mid-Atlantic Lease Sale, held in Atlantic City, New Jersey in January of this year. I believe you have a copy of that statement.

In the interest of saving time, I will not read that statement into the record but I will quickly summarize the purposes and the current status of Clean Atlantic

Associates.

Following this brief, informal presentation, I will be pleased to attempt to answer any questions you may have concerning Clean Atlantic Associates or potential exploration and production activities off the New Jersey coast.

Let me begin by stating that Clean Atlantic Associates was formed in November of 1975, in anticipation of the forthcoming drilling activity off the Atlantic Coast. Sixteen companies have joined the organization and they are shown in the written statement.

The purpose of Clean Atlantic Associates is to provide oil spill payment and cleanup capability for any accident arising from exploration and production activities on the Atlantic Coast. The initial stockpile of equipment to support exploration activity in the Mid Atlantic will cost approximately \$1 million. Additional equipment will be purchased as needed to support exploration activities in the North and South Atlantic, or production activities that may result in any area along the Atlantic.

The backbone of our open sea capability for the exploration phase will be the fast response unit. I have here - I will pass them to you later - some pictures of the fast response unit. The remaining equipment to be purchased initially is shown on figure two of my written statement.

At this moment, Clean Atlantic Associates is in the final stages of negotiating an agreement with our contractor. We hope to execute that final agreement with them in about three weeks. We plan to have all equipment purchased and in place on the East Coast by late Summer or early Fall of this year in anticipation of exploratory drilling in the Mid Atlantic in early 1977.

One final observation - Although we will be ready to respond to any oil spill emergency during this exploratory activity, we think it is unlikely that the equipment that we are stockpiling will actually be needed. In 29 years of offshore operations, there has not been a significant spill during offshore drilling. Thus, the probability of an oil spill from exploratory drilling operations on the New Jersey Coast is remote. In my opinion it should not be of sufficient concern to mandate special legislative action. If oil is discovered off the New Jersey Coast, production activities will not likely occur until 1981 or 1982, which should allow adequate time for consideration of any needed legislation after the presence or absence of oil deposits has been established.

Thus, to the extent that possible drilling activities off your coastline are providing an impetus for the bills under consideration, I suggest there is no need for crisis legislation. I would urge you to consider the merits of these bills as to their effect on the existing activities within your state, and not in anticipation of some unknown and uncertain future drilling activity off your coast.

Before I answer any questions you might have, I would like to, with your permission, address some points that were made this morning.

I would like, first, to put in perspective, if I may, the relative amount of oil that goes into the waters from offshore drilling activities - drilling and production activities - as compared to other sources. Approximately 1% of the oil that goes into the ocean comes from offshore drilling and production activities. This is as opposed to about 10%, which comes from natural seeps, such as off the crude oil point in the Santa Barbara area, off the West Coast.

Commissioner Bardin also referred to pipeline variety that would avoid the beach areas of the New Jersey Coast. I would submit to you that that would likely increase the probability of an oil spill from a pipeline, in that I think the suggestion would be that we would follow the waterways rather than cross the beach area.

About 85% of these spills from pipelines are caused by ships dragging anchor across the pipeline and if the pipelines were to be mandated to go through the waterways where there are anchorage areas, I think it would greatly increase the environmental hazard.

Those are the points I would like to make. One additional point is, Commissioner Bardin also stated that there was a high probability of an oil spill from the outer continental shelf impacting the New Jersey Coast. According to a study made by M.I.T., the shortest time it would take any spill to arrive would be some 46 days and during that period of time the oil - crude oil - would likely, by and large, be evaporated, dispersed, broken-up by degradation and it is very unlikely that any residual would create any particular problem on the beaches, if, indeed, it did arrive.

I would be happy to answer any questions.

SENATOR RUSSO: I have a few. You see, this is what our problem is. You just referred to a study that said that any oil spill resulting from offshore drilling operations would take 45 days--

MR. SHIRLEY: 46, according to their study.

SENATOR RUSSO: What is the likelihood, first of all, of there being a major spill?

MR. SHIRLEY: To begin with, we have drilled about 20,000 wells offshore. There has been, in that time frame, 20,000 wells in 29 years - one which reached the beach. So, I would say the odds are rather remote.

SENATOR RUSSO: The Interior Department did a study and they said that - and I quote from the newspaper account, recognizing that it could be inaccurate - "Oil spills represent the biggest threat to the Atlantic Coastline posed by OCS development." According to the Interior Department's report, there is almost a 100% chance that at least one major spill will occur in the mid-Atlantic region during a projected 25 year drilling period. That is a spill offshore. We haven't yet gotten onshore damage. There is a 100% chance that we will have a major spill.

Then they say, "Once a major oil spill occurs, there is a 10% chance that it will have an onshore impact." Overall, the report states that "There is about a 40% likelihood that a major spill will strike the mid-Atlantic Coastline during the 25 year drilling period."

Then insofar as the time it takes - you mentioned 45 days - the study noted that since all tracts are between 47 and 92 miles from the shore it would take at least 3 to 5 days for a spill to reach the coastline, under the worst possible conditions. Most spills would not reach the shoreline in less than 15 days, the study says. Now, that is a direct variance with what you have referred to.

MR. SHIRLEY: Yes, I am aware of that. That is a-- Let me address the question of the spill frequency first - that is the number one question. I don't think that those particular numbers are too much in variance with history. Now, the Santa Barbara spill is the only one, to my knowledge, where there has been any serious impact onshore. There have been other major spills offshore. So, their odds of one major spill in 25 years of operation, with a 10% chance of it reaching the shore, does not sound too unreasonable to me.

In terms of the study - and I think that is quoting a DLM study as opposed to the M.I.T. study - there are a number of deficiencies in all of these studies at the moment, in that they are fundamentally water movement studies. The mechanism for moving oil across the water is twofold. One is current - surface current - and the second is wind. Now, depending upon what importance one assigns to these two parameters

and what sort of hydrological or meteorological data you put into your model, you come up with different answers. I cannot say which is more accurate. But I can say that neither of the studies - neither the M.I.T. study, nor the DLM study - take into account what happens to the oil products in transit.

During the first few hours after crude oil is spilled, a large percentage of the crude oil will evaporate into the atmosphere. Assuming that there is no effort to pick it up - and, of course, that is the reason that Clean Atlantic exists, but assuming there were no effort at all to contain it or pick it up - there would be a natural dispersion of the crude oil by wave action; there would be bacterial action that begins almost immediately to destruct the oil. So, it will not arrive at the beach as it was originally spilled and it will be of considerably lesser quantity when it gets there.

SENATOR RUSSO: Thank you, Mr. Shirley.

Diane Graves, Sierra Club.

D I A N E G R A V E S: Thank you for the opportunity to comment on A-1903 and S-1409, the Spill Compensation and Control Act. My name is Diane Graves and I am Conservation Chairman for the Sierra Club's New Jersey Chapter.

The Sierra Club supports this legislation and we urge its speedy enactment. D.W. Bennett, who was to testify for the American Littoral Society, had to leave and our statement has been subscribed to by him and by the American Littoral Society.

New Jersey is not only the most densely populated state in the nation, it is also one of the most highly industrialized. The state leads the nation in chemical manufacturing, and it appears to be sixth in petroleum refining, according to the Standard Industrial Classification #29. Now, New Jersey is faced with the prospect of OCS oil and gas development. The hazards are obvious.

On the matter of OCS development, we hope that this legislation will encourage oil companies to implement the Council on Environmental Quality's recommendations to improve consideration of the human element in OCS equipment design and operating practices, improve technology to meet the harsher conditions of the Atlantic and improve the technology and practices to minimize impacts on virgin OCS areas. This legislation provides a strong incentive to take care.

Significant adverse ecological impacts can result from oil spills and chronic discharges from oil rigs, ships and pipe leakages. Oil persists in the marine or coastal environment, especially in saltwater marshes. Such spills and discharges also impact adversely on land, and on surface and ground water.

A-1903 and S-1409 deal with major spills, but perhaps an additional benefit will be to eliminate, or at least reduce, some of the smaller, chronic discharges, which really have a worse, more insidious impact. A March 1975 EPA report, "Oil Spill and Oil Pollution Reports"- July '74 through October '74, lists oil spill events. Even though most of the events were small the listed causes point toward carelessness.

The causes include: Collision between source and another vehicle; equipment failures - defective valves, hose leaks, corrosion, which is evidently a very large problem, pipe ruptures, faulty pumps, etc.; deliberate discharges - vandalism, disposal of waste oil, pumping out a hole for installation of a storage tank; structural failures - tank ruptures, storage tank leaks, etc.; personnel errors - improper hose connections, tank overfill, a very large problem; natural phenomenon - flooding and heavy rain; casualties - tank struck by lightning, derailments, truck accidents; equipment malfunctions - relief valve stuck, etc.; and many "unknown" causes.

Industry appears to be very careless and incentives to reduce the indifference are long overdue. Good housekeeping and maintenance could make a big difference.

Most scientists - worldwide - agree that 60% to 90% of all cancer cases are caused by environmental and occupational factors. New Jersey has been referred to as the "cancer capital" and "cancer alley" because the National Cancer Institute findings show that the state has the highest cancer death rate in the nation. Industrialization is accompanied by spills, both large and chronic, of oil and other hazardous substances. Spills often end up in surface or ground waters. These waters may be a drinking water source.

The Congressional Subcommittee on Environment and the Atmosphere of the House Committee on Science and Technology conducted hearings on the "costs and Chronic Effects of Low-Level Pollutants" in November 1975. The hearings produced agreement that there is increasing awareness in the scientific community that chronic exposure to low-level pollutants is probably responsible for a large portion of the increase in human cancer, may very likely cause genetic mutations, birth defects, and other insults to man, animals and plants, and that the costs to society of these impacts are staggering. We would oppose a move, suggested in comments made this morning - if I understood them correctly - that the hazardous substances provision be separate from this legislation. It is crucial that this provision remain in A-1903 and S-1409.

We believe this legislation is a major and essential step toward eliminating or reducing some very serious risks to human health and the environment. We respectfully suggest some additions and changes.

Page 2, Section 3 (d), line 15, after "surface", insert "and ground", so that it ends up being surface and ground water.

Page 2, Section 3 (j), line 35, between "by" and "the", insert "and added to and/or modified by", so that when EPA comes up with a list and they add to it at some point, that will also be covered in this act.

Page 3, Section 3 (k), line 38, after "refinery", insert "industry".

Page 11, Section 22, line 3, between "not" and "more", insert "less than \$2,500 nor." In other words, there should be a minimum charge - a minimum penalty.

Again, on page 11, same section, same line, change \$10,000 to \$25,000.

Add a new section: "The Administrator shall submit an Annual Report to the Commissioner. The report shall include, but not be limited to, a list of all oil and hazardous substances spills under the provisions of the Act, including the name of the responsible major facility, owner, or person, date, time, source, location - including affected waters - total volume spilled, volume in water, type of substances, cause, comments on cleanup effectiveness, costs and who paid, the spill information source, and penalties levied and collected. The report shall be available to the public."

Again, we urge prompt passage and enactment of A-1903, especially. Thank you.

ASSEMBLYMAN BARRY: The chairman has requested some clarification of your comments regarding the cancer rate and oil spills, or spills of hazardous substances. Could you broaden your statement in that regard?

MS. GRAVES: Well, we know that there is a cancer problem and we don't know, precisely, the causes, but we suspect that there are elements in the air and the water and the food and smoking, of course, plays a part too. We also know that there are numerous small spills, as well as large spills. Those spills go somewhere. Many of them end up in our waterways. They might spill on the land or, actually, some of the land is saturated with oil around the refineries and rains come and it is beached or washed into the nearby waterways. That stuff isn't good for us. It may be a contributing factor to the chronic low-level pollutant problem that we have. We don't know for sure, but it is certainly something that needs to be considered.

ASSEMBLYMAN BARRY: But it is probably not a major concern.

MS. GRAVES: I would say it is a major concern. The reports on low-level effects of hazardous substances - and oil is a hazardous substance - indicate that it is the low-level of stuff that gets into the water and into the air-- It may come from a large spill but eventually as it filters through it will be a low-level in the water that may not even be detectable by the equipment that we have. That affects us all.

ASSEMBLYMAN BARRY: Thank you very much.

Darryl Caputo.

D A R R Y L F. C A P U T O: My name is Darryl F. Caputo and I am Assistant Director of the New Jersey Conservation Foundation, a non-profit membership foundation with offices in Morristown, New Jersey. The Foundation operates in three major areas, acquiring open space for public purposes, environmental education, and assisting municipal environmental commissions and other conservation groups in a service capacity. In recognition of the time constraints, which I know you are under, I will attempt to summarize various sections of my statement.

The Foundation supports the concept of controlling the discharge of petroleum and other hazardous substances and compensating losses resulting from their spills. The paramount need for this type of action was demonstrated last week by the oil spill which occurred in the Hackensack River. The Department of Environmental Protection estimated that approximately three to five million gallons of oil was discharged. This occurrence endangers not only the health, safety and welfare of the state's citizens, but also the long-strived-for and costly environmental advancements made in the Hackensack Meadowlands.

As drilling for oil and gas commences in the New Jersey outer continental shelf, oil spills are expected to occur with greater frequency. However, as we see this morning and early this afternoon, there are many studies with conflicting results. Some studies say there will be large occurrences of oil spills, others say there will not. However, we must look upon this fund as something similar to life insurance in that each and every one of us hopes we will never use it, but eventually we will have to use it.

Besides this, S-1409 addresses other impacts, that is, land spillage and other causes of the discharge of hazardous substances, other than OCS activity.

The Federal Government's awareness of the need to control oil pollution has a long history. However, earlier testimony has demonstrated that this action, if it comes to fruition, may not be adequate to solve the problems of New Jersey and also this action does not include a very important provision which S-1409 does include - and that is, land spillage.

The pollution of waters by petroleum has severe ecological consequences. Oil spills destroy fish and wildlife, as seen by the duck which is on the table in the hallway. The coating of birds with oil results in body heat loss and often death by exposure, and results in a loss of buoyancy and death by drowning. Oil pollution also destroys valuable finfish and shellfish. Oil pollution will prevent fish from breeding. Anadromous species, such as shad and striped bass, are prevented from migrating to spawning grounds and nursery areas. As less reproduction occurs, the number of species declines, creating an instability in fish and wildlife populations. Additional stress may have a catastrophic effect on the remaining species. Also, petroleum in water has been shown to concentrate existing chlorinated hydrocarbon pesticides - DDT, for example - at the water's surface. These dangerous pesticides are known to accumulate throughout the food chain to be finally consumed by people. Even at extremely low levels, oils result in narcosis, cell damage and eventual death of juvenile forms of marine life.

Lastly, certain crude oil fractions, especially those containing 1, 2-benzopyrene and alcobenzedrene are known to be carcinogenic - that is, cancer-inducing agents.

The presence of other forms of life is extremely important to people. Scientists now recognize that the presence of wildlife is an indicator of the quality of the environment within which we must live. Much of New Jersey's coastal zone provides wintering, breeding, and feeding grounds for thousands of species of wildlife and presently represents a quality environment.

Although ecological reasons alone justify the prevention of discharges of petroleum and other hazardous substances, other reasons exist which must not be overlooked.

The discharge of such substances can adversely impact the economy of the state's coastal area. This was brought out in earlier testimony this morning. It is said that New Jersey enjoys a national reputation as the "playground of the East." This distinction results primarily from the state's 127 miles of beachfront along the Atlantic Coast. Associated with, and as a consequence of, this natural resource is a large growing resort and recreational industry currently estimated to generate annually over three billion dollars in goods and services. The growth of this industry, undoubtedly the single most important industry along the coast, has been significant. From 1960 to 1970, the value grew from \$1.6 billion to \$2.7 billion and by 1973 to \$3.1 billion. Thus, from 1960 to 1973, this industry doubled.

It has been documented that "all large accidental oil spills, to date, have occurred fairly near shore, and the spreading sheet of oil has drifted or has been blown by winds onto beaches and into shallow areas. Such a large accidental spill off New Jersey's shore during the tourist season could have drastic economic consequences for the shore communities.

Oil spills also threaten the state's commercial fishing industry. In 1974, over 116 million pounds of finfish and shellfish, valued at \$16.9 million were landed in the state. Although not a large economic activity in itself, this industry is inseparably linked to the state's recreation and resort industry. Any activity, such as an oil spill, affecting one, adversely impacts the other.

It is recognized that there are those who would protest Senate Bill 1409 on the basis that the cost of compliance would increase the price of petroleum and its by-products to the consumer. However, the consumer, in the past, has indeed been paying these costs in terms of higher taxes, reduced health and environmental degradation.

The Foundation would like to point out a provision of the bill that appears to be unclear. Section 10 states that "Interest received on monies in the fund shall be credited to the fund." The bill has provisions for maintaining the fund at fifty million dollars. Undoubtedly, the fund will be managed to insure maximization of income. There appears to be nothing in the bill which sets a ceiling on the fund. We are concerned with the growth of this fund as a result of interest gained on the money. One could consider this interest to be an inflation compensation factor. However, it must be remembered that even at 5%, the money will double in 14 years. The Foundation would like to propose, for the committee's consideration, that any amount in the fund exceeding 75 million dollars be used to maintain and improve the productivity of the state's fish and wildlife habitats and resources and for the purchase of such lands which provide needed habitats. This suggestion is based on the following reasoning: Although accidental oil spills cause the most visible damage to natural resources, chronic low levels of oil pollution, often undetected, and resulting from normal operations of oil carrying tankers, refineries, petrochemical plants, submarine oil wells and the disposal of spent products lead to long-term environmental spoilation and a loss

of natural resources and adversely affects human health. It is appropriate that since the state is the custodian of our fish and wildlife resources, it provides for their long-term protection.

In conclusion, the Foundation recognizes the past efforts of the legislature, particularly the Wetlands Act of 1970 and the Coastal Areas Facilities Review Act. The non-existence of action, such as is included in S-1409, threatens the obtainment of the goals of these efforts.

The New Jersey Conservation Foundation is pleased to have been invited to present this testimony. Thank you very much for the opportunity.

ASSEMBLYMAN STEWART: Thank you very much. Our next witness is Chester Mattson.

C H E S T E R M A T T S O N: My name is Chester Mattson. I am Chief of Environmental Programs and Planning at the Hackensack Meadowlands Commission and I should like to thank you for the opportunity to testify.

The Hackensack Meadowlands Development Commission, at its regular meeting today at its office in Lindhurst, New Jersey, passed a resolution in support of Senate 1409, which I am here to discuss in further detail. I will submit that resolution in writing, separately.

First I should like to comment on an aspect of estuarine destruction that is pertinent to this bill, and that is the event of the Hackensack River oil spill of last Wednesday, May 26, 1976, where a large oil storage tank ruptured. The oil flowed into a protective moat. The moat ruptured and the oil flowed into the river. The oil was trapped behind a Coast Guard boom. The boom broke. The oil was transported into the Hackensack Estuary. A series of eight booms that have been placed along the Saw Mill Creek Wildlife Management area, within the Hackensack Meadowlands - these being placed by myself and members of our environmental staff Wednesday and Thursday nights - broke before the force of the tide and the oil, as Commissioner Bardin and his representatives have indicated, has spread massively throughout the estuary.

So, one thing that we can provide at this hearing is an example of what happens when the oil reaches shore and when similar procedures - the Coast Guard's - are invoked to deal with this kind of massive disaster.

In the first place, thousands upon thousands of yards of creek bank, ditch bank, shallow tidal bay, and low salt marsh have been covered with a band of oil. Destruction has been massive. The destruction has been most difficult and extensive where the tide has slowed most vigorously. This is a terrible irony because where the tide flows most vigorously, life is most abundant in the marsh. So, in the Hackensack Meadowlands, where life is most abundant, destruction is the worst.

Destruction has responded to the tide's volume and thrust, proportionate to the volume and thrust. In the northern part of the estuary, in Little Ferry, marinas have experienced only light coatings of oil on their boats. And in the southern part of the estuary, in the wildlife management area, I have noted the level of destruction.

Damage to wildlife has been most noticeable so far in contact organisms of the mud of the marsh. Fiddler crabs and blue claws crabs have been most hard-hit, as have bird populations that have nested on the outward banks of creeks.

The interior of the marsh - so far - is secure from destruction and we hope that broods of the many breeding types in the estuary will survive and will replenish the estuary next year, or the year after.

The next stage that we must undertake after the cleanup of the oil is the restoration of the marsh and that is why I am particularly supporting Section 8 (a) - I am using the Senate Bill, 1409 document as my reference - on page 5, line 5 and following -

which deals with the cost of restoration and replacement, where possible, of any natural resources damaged or destroyed.

To give you an idea of what is entailed in that, we now contemplate cutting thousands of yards of creek banks free of the vegetation soaked with oil. This is a massive job, which will remove the grasses and which will, therefore, remove the capacity of the oil-stained grasses from leeching that oily residue into the muds of the marsh, for it is the muds that are the most sensitive and most difficult to re-establish, if contaminated.

So, wetland restoration is costly, it is difficult, and it is work-hours-related.

The second paragraph of the bill that I would like to stress our support of occurs on the lines following those I just mentioned and deals with loss of property or property loss as a consequence of the spill. There are seven marinas on the Hackensack River, these growing in response to the recovery of the "eco system." The oily residue on the marinas are evidence of the kind of difficulty posed by oil slicks of this type and magnitude.

I should like to make my next comment relate to Section 7 of Senate 1409, page 5, on line 6 - to me this is an important aspect to study carefully in the implementation of this needed legislation. This is the line that reads, "Removal of hazardous substances and actions to minimize damage from discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil..." etc. I have had a chance, on several occasions, in the Meadowlands over the last 6 years to work closely with the Coast Guard in the cleaning up of spills, in that these are federal as well as state waters. The Coast Guard's response is magnificent. They are well-equipped to deal with problems like this. They have boats and line and chain and anchors and equipment and men. They coordinate quickly and deal well with ocean currents. They know their way around oil spills and I should like to stress the high level of cooperation that exists between state DEP environmentalists and Hackensack Meadowlands Commission environmentalists with the Coast Guard in work in such spills. It would be unthinkable if the state were to develop plans which didn't coordinate beautifully with the Coast Guard because these are the people who have done it so much and who do it so well.

It is true that this law addresses aspects of estuarine destruction that the Coast Guard's jurisdiction does not and it is for that reason that I am very enthusiastic about this bill. But I should like to be one who works with those who develop ways for the state and the Coast Guard to work harmoniously in difficult cleanup operations.

Finally, I should make one comment about what seems to me an omission in the legislation as drawn. The legislation refers - as does the Coast Guard's capability - to drawing upon existing consultants and existing equipment to clean up spills like this. It seems to me very important for the state to develop a stockpile of basic equipment, such as heavy-duty ocean booms, collars for catching oil, which they can locate in areas where spills are likely to happen, in the event that that equipment is not immediately forthcoming from consultants. The consultant's model, which is the one in use today, suggests that there will be enough oil spills around for consultants to advance a lot of money to buy equipment which the likelihood of spills predict the marketability of and that, in fact, is what happens. But sometimes a consultant is already on oil spill 1, with the equipment that is needed on oil spill 2, and in a case like that - where statistics do us in - the need for equipment might be quicker than the market system can provide. So, I would like to see, in the legislation, the capability of the state to acquire some of the basic equipment for protection against the worst of spills,

equipment such as booms.

We, at the Meadowlands Commission, store 800 feet of boom in our offices just for occasions like this and it was our ability to get some of these out that might have made the difference in this slick, had the worst not happened. The tides ripped our booms apart anyway.

Finally, I want to remark about how we at the Meadowlands Commission view this environmental disaster in the Hackensack Estuary. We have worked for six years to return the river to health and to secure wetlands from garbage dumping and filling. The irony for us is that the marshes we have been able to preserve up there were thereby made corruptible by this oil. So, we look at the blackness all around and say that our efforts have been set back enormously. But I have talked with biologists around the country who have worked in our marsh and who work with people who have worked in our marsh, to discover that we do have a temporary set-back in the Hackensack Estuary and I wanted to stress that. We have gotten an enormous public response to our difficulties and the tenor of that has been that this marsh is destroyed; it is not.

The oil can be removed. It will be long and arduous. New grasses will grow and will replace the contaminated grasses and the muds will cleanse of the oil. So, that would be the major final point that I would make in this testimony - that a major reason to have such a fund is that marshes can be restored through the use of techniques such as this. It is physically possible to go in and help a marsh bring itself back, as we will do in the Hackensack Estuary.

SENATOR RUSSO: Thank you very much.

Bruce McCrodden, Standard Oil.

B R U C E A. M C C R O D D E N: Good afternoon. My name is Bruce A. McCrodden. I am an Environmental Specialist for the Standard Oil Company of Ohio. Our subsidiaries, BP Oil Inc. and Sohio Pipe Line Company, own and operate petroleum product terminals and pipelines in the State of New Jersey. Sohio Pipe Line Company is also the operating agent for the Harbor Pipeline System in New Jersey.

We are pleased to have this opportunity to present our views on S-1409 and A-1903. We are vitally concerned with the impact of this legislation on our operations. We recognize that oil spills can and do occur. Our efforts have historically been directed toward the prevention of spill incidents in the design and operation of our facilities. We have prepared spill contingency plans, and maintain cleanup equipment at our facilities. As part of our contingency plans, we participate in three mutual aid groups in the New Jersey area. The purpose of these groups is to lend equipment and assistance in a pre-organized manner during a spill event. The three groups are the Arthur Kill Mutual Aid Group, the Eastern Pipeline Emergency Assistance Group, and the Oil Control Coordinating Committee in the Delaware River area. Our contingency plans also list cleanup contractors that are available to supplement our available resources.

Following a recent review of our industry's spill response capabilities in New Jersey, we concluded that our cleanup efforts for major spill events relied on the use of manpower rather than major capital equipment, such as harbor booms and vessel skimmers. We also concluded that the use of this type of equipment to remove spilled oil from water would afford better protection to beaches, marinas and environmentally-sensitive areas.

In response to these conclusions, we are currently participating in the formation of two oil spill cooperative organizations - one in the Northern New Jersey/New York Harbor area and a second in the Delaware River area. These cooperatives will have funds available to purchase and maintain booms, skimmers, and lightering equipment which will handle major spill events. The equipment will be located at sites that will permit

rapid response. Equipment operators will be thoroughly trained and will also be available for rapid response. The industry projects spending approximately \$2 million, on a timed schedule, by late 1977 in the formation of the Clean Harbors Cooperative in the Northern New Jersey area. Our portion of this investment at Standard Oil of Ohio will be approximately 5%, based on the annual throughput of our facilities.

We believe that spill cooperatives have been and will continue to be a viable method for providing containment and cleanup in the event a spill occurs. The enactment of the bills under consideration today will discourage participation in spill cooperatives. The tax that would be imposed on our terminal operations alone would be \$1.8 million over a period of four to five years. Payment of this tax would detract us from contributing additional funds to spill cooperatives. We believe the cooperative approach to spill containment and cleanup is the most cost effective method available.

Although we fully support spill cooperatives, we do recognize the possible enactment of a spill liability and compensation fund. Should such a fund be established, we would prefer that all transfers of crude oil and petroleum products within the United States be covered by a single fund. Thus, a tax or fee would only be collected once, even though a shipment was transported through several states. It would be more equitable to require fees for a single fund and this would cover the situation mentioned earlier in the Delaware River area. Such a fund would impose less of a financial burden on our operations, while still serving the purposes of S-1409 and A-1903. In this regard, we favor the compensation fund currently being considered at the federal level.

In summary, we believe that the enactment of S-1409 and A-1903 result in a negative incentive for participation in oil spill cooperatives. Spill cooperatives have been and will be a viable and advantageous method for providing cleanup and containment in the event a spill occurs. We do recognize the possible enactment of a spill liability and compensation fund and would favor an umbrella fund at the federal level, rather than individual state funds.

We again appreciate the opportunity to present our views.

SENATOR RUSSO: Thank you very much.

Are there any witnesses, in view of the late hour - we are going to finish today, no matter how long we have to stay - who want to submit a prepared statement to be incorporated into and printed as part of the record, rather than waiting to present oral testimony? Yes, sir?

MR. WALSH: If I may make a brief statement - My name is Walsh, Robert T. I am Executive Director of the Carteret Industrial Association. That, naturally, is in Carteret.

SENATOR RUSSO: Well, are you going to testify or--

MR. WALSH: I would like to make a statement and then, in order to save time, send you a statement on this.

SENATOR RUSSO: How long is your statement going to take?

MR. WALSH: If you prefer, I shall defer and contain it in the written statement.

SENATOR RUSSO: I would rather, yes.

MR. WALSH: Very good. Thank you.

SENATOR RUSSO: Thank you very much.

Dr. Harold Haskin.

D R. H A R O L D H A S K I N: I appreciate very much the opportunity to be heard today. My name is Harold Haskin. I am professor of Zoology at Rutgers State University. I teach courses in coastal oceanography, estuarine ecology and in malacology. My research activities over the last 30 years have dealt almost exclusively with the commercial shellfish resources of New Jersey, and I have been closely associated with

officials responsible for shellfish management in the Department of Environmental Protection and its precursor Department of Conservation and Economic Development. I wish to speak in support of Senate Bill 1409 and Assembly Bill 1903, the Spill Compensation and Control Act.

I support this bill because it provides a very strong incentive for: 1 - the prevention of discharges and spills of such substances as petroleum and, 2 - the rapid cleanup of such discharges, if they occur. With my particular interest in the shellfish resources of New Jersey, I strongly endorse those sections providing for "restoration and replacement, where possible, of any natural resource damaged or destroyed" and for reimbursement for loss of income to those persons depending on a natural resource damaged by such discharges.

In spite of its relatively dense population, the State of New Jersey has exceptionally rich shellfish resources which provide a livelihood for a significant number of its citizens, as well as recreational shellfishing for many visitors to the coastal areas.

These resources are endangered by the increasing traffic in hazardous materials in our bays and estuaries and along the open coast. Consider, for a few moments, two of our important species, the oyster and the surf clam.

Our principal oyster industry is based on the oyster populations of Delaware Bay. Two years ago we began a study, under financing by the National Science Foundation, to assess the hazards to this oyster population of an increasing oil industry in the Delaware Estuary. It has long been known that oysters and other filter-feeding shellfish will accumulate oil-related materials from the surrounding water and thereby acquire unpleasant flavors. Previous studies on oysters, principally in the Texas and Louisiana areas, have indicated this flavor problem as the major damaging effect of petroleum-related materials on oysters and have generally also indicated that after return of oysters to clean water, they will regain flavor and quality and become saleable.

Our studies in which we have exposed adult oysters to crude oil absorbed on fine clay particles, thus simulating conditions in our turbid estuaries, have already shown that with oil concentrations as low as 0.7 ppm, oysters are almost totally prevented from spawning. With chronic exposure at oil concentrations as low as 0.3 ppm, substantial mortalities of oysters occur within four to six weeks. These concentrations are not completely unrealistic for the Delaware estuary. In several series of water samples collected from the upper Bay to the Wilmington Bridge in the weeks following the "Corinthos" spill of February 1975, our chemists reported total oil concentrations associated with suspended sediments, ranging from 0.2 to 0.6ppm. Total oils in a similar series of water samples analyzed by the Federal EPA Laboratory ranged to over 1.2 ppm.

We have become particularly concerned with concentration of oil absorbed on sediments in the river that are carried bayward by the natural transport processes of the estuary. In March of this year, we collected a series of over 50 bottom sediment samples extending from the Bay to the Philadelphia area. Total oil on the finer sediments ranged from values as low as 50 ppm - based on dry weight of the sediment - in the Upper Bay, through 500 to 1,000 ppm in the middle river to 3,000 - 7,000 ppm in the Philadelphia area. Displacement of such oil-laden sediments bayward by expansion or extension of the lower valley petroleum industry would seriously endanger the oyster populations.

Detailed study by scientists of the Woods Hole Oceanographic Institution of a small fuel oil spill in West Falmouth, Massachusetts Harbor, in the fall of 1969, showed a devastating pattern of continuing damage to bottom dwelling invertebrates,

including shellfish, over more than a two-year period following the spill. Penetration of the surrounding salt marsh and bottom sediments by the oil apparently formed a reservoir of contamination from which toxic components were then released and spread over a period of years. With this background of documentation it is not difficult to imagine the possible effects of a major oil spill in the lower Delaware Estuary. Fouling of the surrounding marshes by oil and seepage of oil into Bay sediments could conceivably result in closure of the Delaware and New Jersey oyster industry for a period of one to several years. Senate Bill 1409 would at least provide for some compensation to oyster growers for their losses.

Along our open Atlantic Coast are the surf clam populations which support a New Jersey industry with a fleet of more than 50 boats and major packing plants in Ocean, Atlantic, Cape May and Cumberland Counties. Last year, New Jersey landings of this shellfish species totalled more than 2 million bushels. The largest remaining known concentrations of the surf clam are within the three-mile limit from Beach Haven to Cape May. It is these concentrations on which the industry is almost totally dependent during the winter and spring months when a stormy weather prevents the smaller boats from ranging to the offshore beds.

To the best of my knowledge, there is no data on the vulnerability of the surf clam to hazardous materials. There is no question in my mind, however, that a major spill of petroleum-related materials along our open coast would render surf clams in the area at least unsaleable for an unknown period of time. Again, penetration of sediments by oil components would prolong the period of stress to the shellfish and the industry dependent upon them. Quick clean-up of shore accumulation of the hazardous materials and containment, with mop-up of any floating materials would tend to reduce such penetration and consequent damage to the resource and to the industry.

Similar considerations would also apply to all our other New Jersey shellfish resources. I believe that the proposed legislation would provide some measure of additional protection for them and the coastal and estuarine regions in which they grow. Thank you.

SENATOR RUSSO: Thank you, Dr. Haskin.

Mr. Huguley, Monmouth County Board of Freeholders.

ROBERT W. HUGULEY: My name is Robert W. Huguley. I am on the staff of the Monmouth County Planning Board as an Environmental Planner. I am also on the staff of the Monmouth County Environmental Council.

Today I am speaking on S-1409 on behalf of the Monmouth County Board of Chosen Freeholders.

I will state for the record that I have reviewed this bill and discussed it, last Thursday, with the Freeholders and they have given their full approval and support to the Spill Compensation and Control Act. This support is based on the following points: The Monmouth County shore has long been a prime recreational area for county residents and tourists from northern New Jersey and New York. We are greatly concerned over the potential effects that an oil spill could have on tourism in the county.

A mid-season oil spill, washing up on our beaches, would cause an immediate financial loss to municipalities which derive income from beach fees, to operators of stands, or concessions, adjacent to these beaches and to motel and restaurant operators who depend upon the summer influx of people for a portion of their income.

Another element that comes into play is the oil spill scare factor. If there is a major spill in an area, people tend to stay away from that area for a period of time. Thus, the beach operators, motel operators, etc. would face a continuing financial loss,

weeks or months after the toxic material is cleaned up. If we consider that many of these businesses derive a majority of their yearly income from the summer season, such losses would be even greater.

The same case may be made for our bays, rivers, and creeks and the people who depend upon them for their livelihood or summer recreation. A large number of people have moved to Monmouth County in the last 20 years or so for the quality of life there. We want to keep Monmouth County that way.

It should be noted that we in Monmouth County are not against offshore oil exploration or production and we have gone on record many times saying that we are not against this type of activity. We are also not against building or proper industrial development. We are, however, concerned about possible land use impacts from such oil production and allied development. We are also concerned about impacts on our resort businesses and the excellent quality of life that we enjoy in Monmouth County.

The Monmouth County Board of Chosen Freeholders support S-1409 and urges that it be speedily passed and signed into law. Thank you.

SENATOR RUSSO: Thank you, Mr. Romaker.

Mr. Frank Romaker.

F R A N K R O M A K E R: I would like to make a brief statement on behalf of the Buckeye Pipe Line Company.

Buckeye Pipe Line Company owns and operates a pipeline transportation facility at Linden, New Jersey which has the capability of receiving refined petroleum products from connecting interstate carriers and New Jersey based refineries. From Linden, refined petroleum products are transported west to Pennsylvania at a nominal rate of 300,000 barrels per day, east to Long Island at a nominal rate of 170,000 barrels per day and north to Newark Airport at a nominal rate of 30,000 barrels per day. To accommodate these shipments a 2 million barrel capacity storage facility is operated and maintained at Linden.

Buckeye's operations are regulated by the Interstate Commerce Commission in the U.S. Department of Transportation, the U.S. Environmental Protection Agency, the U.S. Department of Labor and the New Jersey Department of Environmental Protection. In New Jersey we are in compliance with all regulations.

Although Buckeye has demonstrated its responsibility in holding refined petroleum products in New Jersey since beginning operations here 25 years ago, we have developed and currently maintain a spill contingency plan. Our facilities are basically inland; we have no offshore facilities. Accordingly, this bill would provide no benefit for the citizens of New Jersey with respect to the operations of Buckeye Pipe Line Company.

By requiring us to report certain information and to collect certain taxes on petroleum products transported through Buckeye's system, the cost of these petroleum products consumed by the citizens of New Jersey will be increased.

But beyond the cost implications we believe it will be most difficult to make the judgment required to assure that the same barrel is not subject to multiple taxation. Also, there remains a major federal constitutional question which would be construed in brief, "Is this tax an undue burden on interstate commerce?"

In summary, the Buckeye Pipe Line Company opposes this legislation because of the no-fault provision, particularly our concern for third-party damage, the role of the New Jersey Department of Environmental Protection in cleanup efforts, the difficulty in identifying the taxpayer, and the basis on which the tax will be paid. Thank you.

SENATOR RUSSO: Thank you.

Gordon Paulson.

G O R D O N P A U L S O N: Thank you, Mr. Chairman. I apologize for not having a prepared statement. I didn't know until yesterday that I would be here and I have not had a chance to work anything out.

I am representing, firstly, the London Group of P and I Insurers. I have been an attorney involved with them for many years. I have appeared in connection with legislation in Washington and Florida, especially, and I have also been involved with legislation in Texas.

I am not appearing either for or against the legislation but I think that it is important for those who are sponsoring it to know the possible insurance implications. This was an element in the federal legislation from the very beginning. Back in 1968, when what was the precursor of the Water Quality Improvement Act was being considered, the London Group was asked to present to Congress the insurance implications of the legislation that was then being considered and representatives came over from London and gave evidence as to the maximum amount of insurance that could be given for this type of liability, in addition to other types of liability which are already covered.

The legislation which was enacted covered the maximum liability insurance that was available. Now, I should explain because it is a rather esoteric phrase - I am only talking in connection with vessels, I am not speaking with respect to fixed land installations at all.

Protection and Indemnity Associations are not insurance companies; they are groups of shipowners who ban themselves together to insure one another's liabilities. The London Group is called that because London has been, for a long, long time, the hub of the insurance industry. They are not all London people. Four are based in other English cities; a number are in London; two are Norwegian; one is Japanese; three are based in Bermuda; one is Swedish; and one is in Luxembourg. As I say, they are the owners of the vessels who have become associated in these groups and together they insure liabilities of this type for over 80% of the world's ocean-going tonnage and more than 90% of tanker tonnage. So, the insurance industry is pretty much centered in this group of associations.

All vessels, as you know, calling at United State's ports are required to give evidence of financial responsibility to meet the obligations imposed by federal legislation. And no vessel can call here without that. All of these associations are approved as insurers for this legislation and their certificates are accepted by the Federal Maritime Commission.

In the draft legislation - the bill which we have been considering today - there is a provision that evidence of financial responsibility be given as a condition to transfer of oil from vessel to vessel. I am not too sure of what the implications are in the legislation but that is the way I read it. That presents an insurmountable problem for these associations. They give the evidence to Washington. They cannot give it to other coastal states. That is a practical, mechanical problem, not a substantive problem and I think in that connection I should say now that perhaps it would be useful at some point for those who are working out, perhaps, later modifications of the bill, if we could get together and talk about how that could be handled because that does present an insurmountable practical problem.

On the nature of liability, as contained in this bill - which is unlimited and absolute - that also presents an insurmountable problem. Now, the bill was described this morning as the toughest of all state legislation in the nation. As I mentioned earlier, I was involved in the Florida legislation and Florida has been mentioned before today. They had an extremely tough Act which was described then as the "toughest" and

I was involved in testing the constitutionality of that act and the decision is a very indecisive one as to what the areas are - the proper areas - within which a state can act.

But, as was mentioned by one of the speakers today, subsequent to that decision, it was discovered that the State of Florida could not exist with its tough law because it developed that by reason of the heavy liability and the unlimited nature of the liability and the requirement that there be evidence of financial responsibility, owners of vessels could not obtain insurance to cover these because the maximum insurance had already been given to cover the federal liability. As a result, owners put in their charter parties, for tankers and other vessels calling at Florida ports, or other vessels which could possibly call at Florida ports, a provision similar to the provision which dealt with Communist nations - they were banned from calling at Florida ports. The tourist industry, which is a major industry in Florida, as it is in your beautiful state of New Jersey, found that oil was necessary in order to run the air conditioning of the hotels and for practical reasons the legislation was modified so that now the Florida Act is something which is livable and I would suggest that it would be useful for you, who are considering an Act in New Jersey, to consider the implications of the first tough Florida Act and how it was necessary to amend it, and how it was amended, so that now Florida does have ocean-going tonnage carrying oil to Florida. I would be very glad to work with your staff in any way along that line.

Secondly, I would like - if I may - to make a comment in my capacity as a member of a Select Committee on the Uniformity of the Maritime Law Association of the United States. I would ask leave to file comments, if I may, within, I understand, a couple of weeks after these hearings, as to those areas of this bill which, in the view of the Committee, may be in conflict with the Maritime Law of the United States.

I would like merely to state now that the comments which were made earlier that oil companies - the big oil companies, as they were described earlier - got a free ride with respect to liabilities to third parties, aren't so. There always has been liability for negligence. The thing that is different in this bill is the fact that the liability is absolute. But there always has been liability for negligence. It is recognized in Maritime Law, without any legislation. I think it is perhaps an important conceptual question for you to consider whether one class of claimants - for example, hotel owners would be injured financially by reason of an oil spill - should be preferred over other classes of claimants - for example, the owner of a shop which might be destroyed because a passer-by flicked a lit cigarette into it and burned it down. Why should a hotel owner have a preferred status over these other types of claimants? That is a conceptual question and I just raised the question without giving any answer. Thank you very much.

SENATOR RUSSO: Thank you, Mr. Paulson. Where is your office located?

MR. PAULSON: In New York at 1 State Street Plaza and I would be very happy to come here anytime that it might be useful to discuss the implications of this legislation.

SENATOR RUSSO: Do I understand correctly that it is your thought that New Jersey would not be able to live with this bill as proposed?

MR. PAULSON: I am not sure. I am not sure, for example, what the evidence of financial responsibility aspect of it, as written now, really means. It is a little hard for me to interpret it. I only saw the bill for the first time yesterday.

With respect to the nature of the liability, that presents very heavy problems which I think should be worked out. I think we could find a way to work it out. Florida

did. Its final Act was something which Florida could live with. The vessels carrying oil and other substances which were needed for Florida's industry, they could live with it. And the P and I Associations could live with it also.

SENATOR RUSSO: Thank you, Mr. Paulson.

MR. PAULSON: Thank you very much.

SENATOR RUSSO: Elizabeth Clarity.

E L I Z A B E T H C L A R I T Y: My name is Elizabeth Clarity and I am the President of the Citizens' Energy Coalition of Monmouth County, which is a coalition of a group of environmentalists in the County. I am happy to be able to come here today to discuss Senate Bill 1409.

We feel this bill is very badly needed, especially since federal legislation hasn't been and still may not be passed that will protect out state.

I would like to discuss a couple of specific things in the bill. The first one is mentioned on page 2, and it is the description of the discharge, as defined by the bill. What we were wondering is, will this cover low-level, chronic discharges and the damages caused by these discharges?

The second thing we would like to question is on page 4, Section 5, Line 12 - the fact there is 1 hour within a discharge that the companies must have containment equipment available. We are wondering what you are defining the 1 hour by - is that 1 hour away by helicopter or one hour away by ship? We would also like to know if, since most of the damage will probably occur in bad weather, this would be a valid measurement?

The man who spoke before about Hackensack and who discussed the containment equipment showed why we should be concerned about that.

Also on page 4 it says the person responsible should immediately notify the Department in case of an oil spill. We would like that more clearly defined because that is a pretty fuzzy definition of a time limit.

On the bottom of page 4, on line 15, beginning with "...if a claimant derives at least 50% of his earnings from activities related to real or personal property...", we would like to see dropped from the bill. We don't see any reason to limit it by the amount of percentage of earnings that person earns from the activity. This would also eliminate people who have just started out in business or who are trying to build their business up, or even people who own real estate property at the shore.

One of the things we are most interested in is the Administrator of this fund. We would like to see someone appointed and we would like to see it written into the bill that the person appointed would not have been associated with the oil companies for 5 years prior to his or her appointment. We think the problems that have been faced in the regulatory agencies in Washington, especially the FDA, would point out the necessity of this clause in the bill. We feel this is very important.

On page 8 of the bill, we feel that the time limit should be changed from 2 years and 6 years to 3 years and 10 years.

Also on page 8, we think that the clause in line 8, Section 12, which says, "Damages not included in the claim at the time compensation is made shall be deemed waived" should be excluded because of the fact that there could be additional damages not recognized at the time and that would later surface and that the people would want to claim. We think that is too limiting.

I am almost finished. Section 13, on page 8, "The administrator shall attempt to promote and arrange a settlement between the claimant and the person responsible for the discharge" - we think there should be a 30 to 60 day time limit on that. We feel

that many of the people making claims will be businesses who will need the money right away for their claim and we see in the bill that there can be a long, drawn-out judicial process and we don't think it should be long and drawn-out in the beginning. We feel an unstated time would be a real problem in the beginning.

On page 10, line 61, where it says that the attorney's fees and costs shall be awarded to the claimant if the decision of the board is affirmed, we feel this should be changed because if the judicial process awards the claimant a smaller amount than the board, it could be stated that they would not get the attorney's fee. It should be changed to show that if their liability is shown, the claimant should then be awarded the fee.

One of the things we are really concerned about is, on Line 57 and 58 on page 10, where it says that the person responsible for the discharge, during the judicial review, will not have to make payment to the claimant. Again, I would like to say that we feel because there will be so many small businesses that will lose their operating money, and perhaps their money for the season, the payment of the claim should be made upon certification of the board and in case of pending judicial review, notice should be given to the claimant and if the amount of the award is reduced, the claimant will then have to make a refund to the fund.

We believe this bill is a good bill but we feel that these few changes should be looked into. I also have been asked to speak for the Committee for a Better Environment, which is based in Monmouth County, and for the President, Douglas Sinclair, who also supports the bill and will submit copies of changes he feels would better the bill to this committee. Thank you.

SENATOR RUSSO: Thank you, Ms. Clarity.

I think that concludes our hearing. If there is nothing else, again, thank you to the staff for putting this hearing together. I think someone has mentioned that we would like to have the transcript as soon as we can, if that be possible. At that time the Joint Committee, hopefully, will meet with regard to any amendments and if there are sufficient votes to release the bill, after it is amended - if it is amended - it will be put on the floor for a vote as soon as possible.

A number of points were made here that I think the Committee is in agreement with. Particularly, we want to find out a little more about Florida's experience and it may well be that we will have to look into that as soon as possible, with some of their people, and find out from their Legislature and Governor's office what their experience has been and why we have heard some vague talk about the oil companies ganging up and black-listing Florida. We don't think the oil companies would do that but we are going to find out and try to understand what they did so that we don't jump into something that we may regret. We are determined not to do that. We are going to pass this legislation if we feel it is in the best interest of the people of the State. It will not be passed only as a - I don't think - sop to the public everytime the price of gasoline goes up 2¢.

So, that concludes our hearing. I think the members of the committee who were here. I thank Assemblyman Barry for remaining right through the bitter end.

(Hearing Concluded)

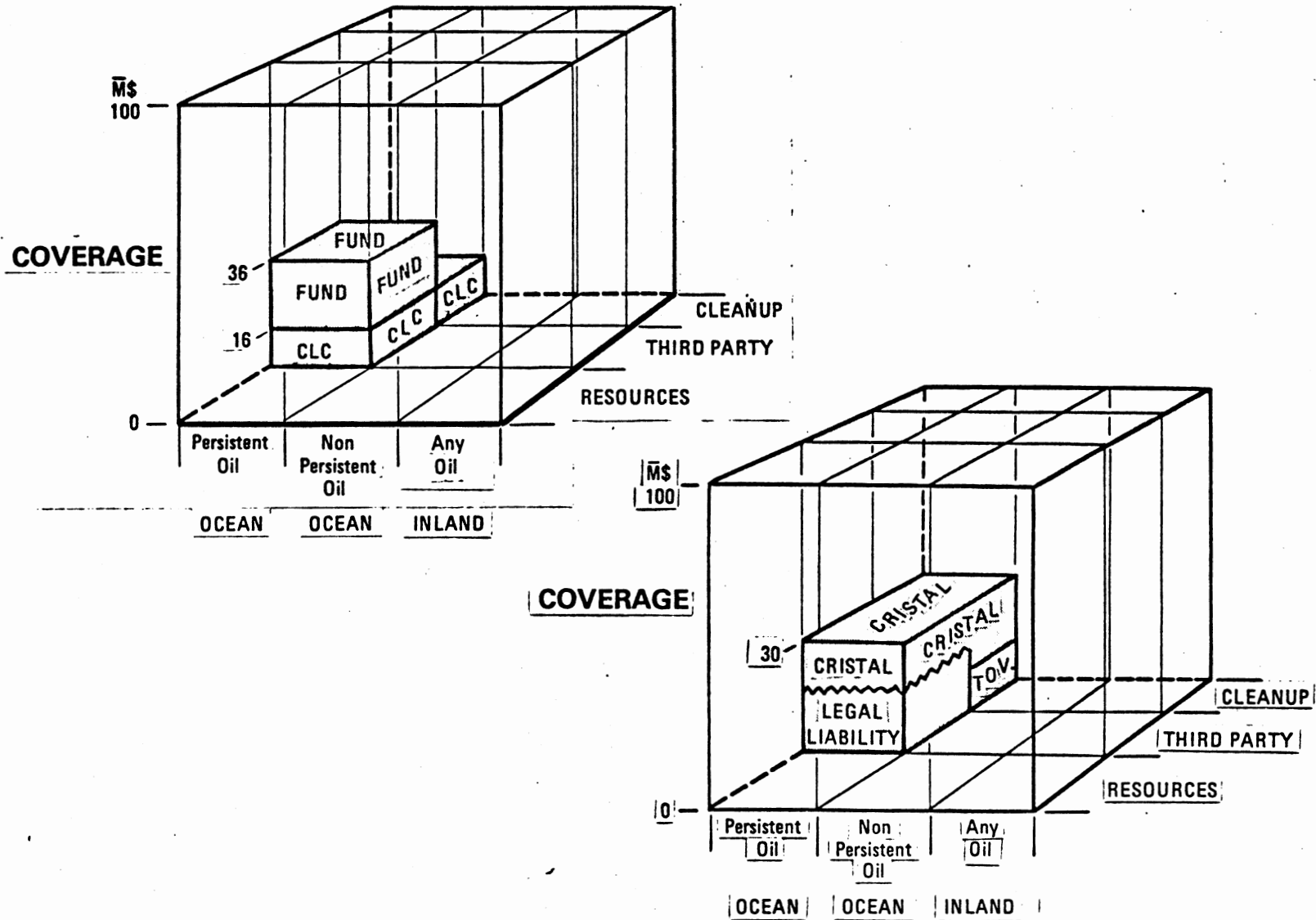
- - - -



COMPENSATION FUND STATUS

	<u>Existing</u>	<u>Proposed</u>
International	TOVALOP	Civil Liability Convention
	CRISTAL	International Compensation Fund
National	National Con- tingency Fund	OCS Management Act (S.521)
	Trans-Alaska Pipeline Fund	
	Deepwater Port Fund	
States	Florida	Alaska
	Maine	California (\$35 and \$100 million)
	Maryland	Massachusetts (\$10 million)
	North Carolina	New York
	Oregon	New Jersey (\$50 million)
	Washington	South Carolina (\$10 million)

OIL SPILL COMPENSATION FUNDS



2x

FIGURE 2

OIL SPILL COMPENSATION FUNDS

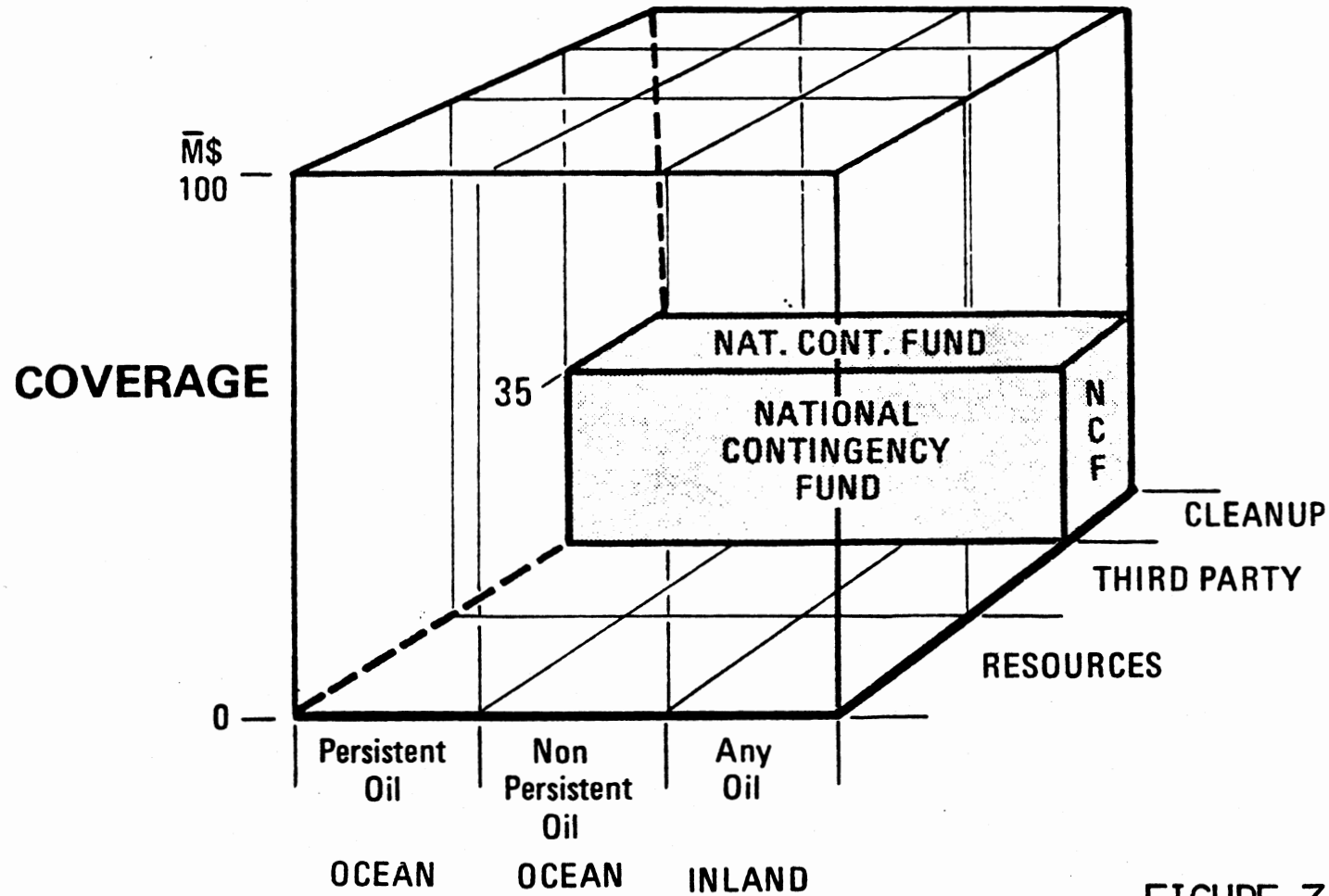
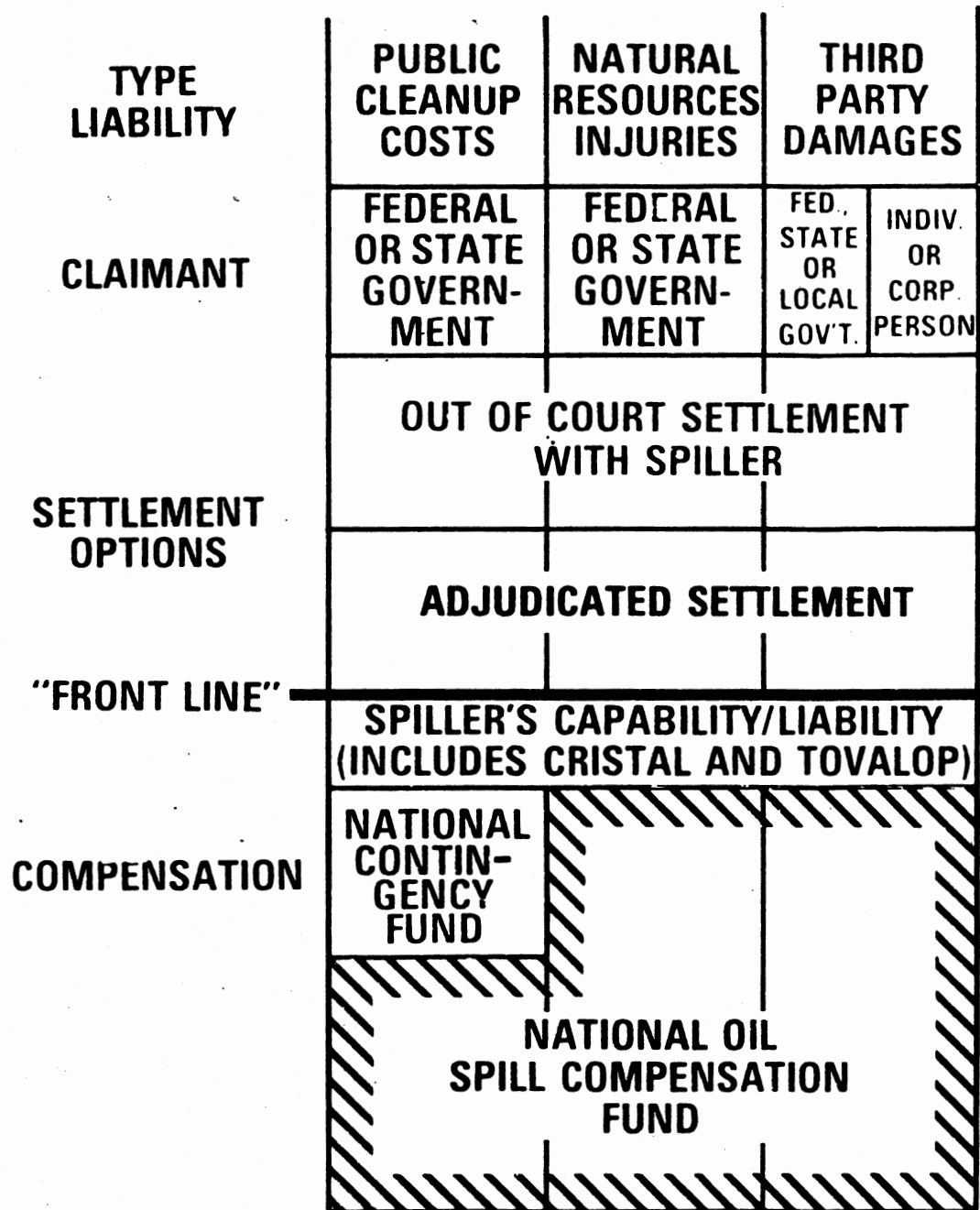


FIGURE 3

LIABILITY & COMPENSATION DIAGRAM



4x

FIGURE 4

May 21, 1976

MAY 24 1976

American Petroleum Institute
2101 L Street Northwest
Washington, D.C. 20037



interoffice

RECEIVED

memo

From: W. W. Mahoney *WWM*

MAY 21 1976

To: F. J. Jandrowitz

L. B. CORNETT

On the basis of a conversation with Chris Jensen today, the balance in the Florida oil spill fund is about \$7,000,000 after nearly 1½ years of operation. The limit is \$35,000,000 and there is no effort being made to increase that ceiling. Except for \$40,000 in license fees the proceeds have come entirely from the 2¢ per bbl. tax.

Administrative and operating costs (including clean-up equipment) have amounted to \$600,000. The fund has paid 15 claims totaling \$3,966. It has denied 15 claims totaling \$98,000 and 11 claims (total \$80,000) are pending. Significantly 173 other claims have been paid directly by spillers. In other words more than 90% of claims paid have been satisfied without recourse to the fund.

WWM:sjb

Great tourist trade also.

cc: C. T. Sawyer ✓
L. H. Ruppert

5/24/76

Copies to:

- DE Cornett*
- OR Menton*
- JJ Reynolds*
- CE Sandler*
- DE Smiley*
- J Ware*
- File*

5x

og

STATEMENT
O. J. SHIRLEY
CHAIRMAN, CLEAN ATLANTIC ASSOCIATES

JOINT HEARING OF THE
SENATE ENERGY AND ENVIRONMENT COMMITTEE
AND ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE
NEW JERSEY LEGISLATURE
JUNE 2, 1976

MY NAME IS O. J. SHIRLEY. I AM HERE TODAY REPRESENTING CLEAN ATLANTIC ASSOCIATES, AN OIL SPILL COOPERATIVE OF WHICH I AM CHAIRMAN. FOR OVER 27 YEARS I HAVE WORKED IN THE PETROLEUM EXPLORATION AND PRODUCTION INDUSTRY, AND CURRENTLY I AM MANAGER OF SAFETY AND ENVIRONMENTAL CONSERVATION FOR SHELL OIL COMPANY'S SOUTHERN REGION. IN ADDITION, I HAVE WORKED WITH CLEAN GULF ASSOCIATES, A GULF COAST OIL SPILL COOPERATIVE SINCE ITS FORMATIVE STAGES.

CLEAN ATLANTIC ASSOCIATES IS A NON-PROFIT ORGANIZATION OF 16 COMPANIES IN THE ENERGY FIELD ACTING AS AN INDUSTRY COOPERATIVE FOR OIL CONTAINMENT AND CLEANUP IN THE ATLANTIC OCEAN IN ANTICIPATION OF EXPLORATION IN ATLANTIC WATERS FOLLOWING A MID-ATLANTIC FEDERAL OIL AND GAS LEASE SALE.

CLEAN ATLANTIC ASSOCIATES IS A NEW ORGANIZATION. WE WERE CHARTERED IN NOVEMBER, 1975. HOWEVER, OUR ORGANIZATION HAS BEEN PATTERNED AFTER OTHER HIGHLY SUCCESSFUL COOPERATIVES, SUCH AS CLEAN GULF ASSOCIATES, AND HAS AN IMPRESSIVE DATA BANK OF EXPERTISE IN SPILL CONTAINMENT AND CLEANUP WITHIN ITS MEMBERSHIP. I HAVE ATTACHED A LIST OF THE MEMBER COMPANIES TO MY WRITTEN TESTIMONY. ITS 16 COMPANIES ACCOUNT FOR THE BULK OF OFFSHORE EXPLORATION AND PRODUCTION IN U.S. WATERS.

INITIALLY, THE PARTICIPATING COMPANIES ARE SHARING EXPENSES EQUALLY. AFTER LEASES ARE AWARDED EACH COMPANY WILL CONTRIBUTE FINANCIAL SUPPORT IN PROPORTION TO THE AMOUNT OF OFFSHORE ACREAGE IT HAS LEASED IN THE ATLANTIC. COMPANIES WITHOUT ATLANTIC LEASES WILL BE ALLOWED TO CONTINUE THEIR COOPERATION SINCE THEY MIGHT WIN TRACTS AT LATER LEASE SALES. AS CLEAN ATLANTIC WAS BEING FORMED ALL POSSIBLE INTERESTED COMPANIES WERE CONTACTED TO JOIN, AND WE EXPECT ALL COMPANIES WHO ACQUIRE ATLANTIC OCS LEASES TO JOIN THE ORGANIZATION.

CLEAN ATLANTIC ASSOCIATES HAS ONE MISSION - TO PROVIDE A STOCKPILE OF CONTAINMENT AND CLEANUP EQUIPMENT TO BE USED IN AN OIL SPILL EMERGENCY IN ATLANTIC WATERS OFF THE EAST COAST AND TO PROVIDE TRAINED MANPOWER TO OPERATE AND MAINTAIN A 24-HOUR RESPONSE FOR ITS USE. THIS APPROACH WILL ALLOW THE INDUSTRY TO RESPOND TO ANY OIL SPILL ARISING FROM PETROLEUM OPERATIONS IN THE ATLANTIC OCEAN.

OTHER TESTIMONY HAS EMPHASIZED MEASURES TO BE TAKEN TO PREVENT OIL SPILLS. THESE MEASURES INCLUDE TRAINING TO REDUCE THE NUMBER OF HUMAN ERRORS, THE INSTALLATION OF SAFETY EQUIPMENT AND POLLUTION PREVENTION EQUIPMENT, AND IMPLEMENTING OPERATION AND INSPECTION PROCEDURES TO ENSURE PROPER FUNCTIONING OF THIS EQUIPMENT. THESE MEASURES ARE SUFFICIENT TO PREVENT MOST SPILLS.

THE PUBLIC MAY ALSO BE UNAWARE THAT ALL OFFSHORE OPERATIONS ARE CAREFULLY REGULATED BY THE U.S. GEOLOGICAL SURVEY. THE AGENCY REQUIRES ALL SAFETY SYSTEMS TO BE TESTED AT REGULAR INTERVALS, RANGING FROM EVERY WEEK TO YEARLY DEPENDING ON THE TYPE OF DEVICE. IN ADDITION, THE U.S. GEOLOGICAL SURVEY CONDUCTS EXTENSIVE INSPECTION PROGRAMS, THE MAJORITY OF WHICH ARE UNANNOUNCED, TO DRILLING RIGS AND PLATFORMS TO SPOTCHECK THESE TESTS. THESE STRINGENT INSPECTIONS TOGETHER WITH EXACTING INDUSTRY SAFETY PROGRAMS AND SYSTEMS CONSIDERABLY REDUCE THE CHANCE OF AN OIL SPILL.

TO PUT THE OIL SPILL RISK IN PERSPECTIVE, IN OVER 28 YEARS OF OFFSHORE DRILLING AND PRODUCTION ACCOUNTING FOR OVER 19,000 WELLS, THERE HAVE BEEN ONLY 3 INSTANCES WHERE A SIGNIFICANT SPILL OCCURRED FROM A WELL BLOWOUT. MORE IMPORTANTLY NONE OF THESE WERE ASSOCIATED WITH EXPLORATORY DRILLING. IN THE TOTAL EFFORT OFFSHORE, THERE NEVER HAS BEEN ANY MAJOR POLLUTION INCIDENT BECAUSE OF EXPLORATORY DRILLING IN THE OUTER CONTINENTAL SHELF.

DESPITE THESE PRECAUTIONS, EQUIPMENT CAN MALFUNCTION AND MEN MAKE ERRORS. RECOGNIZING THAT THE POSSIBILITY ALWAYS EXISTS FOR A MAJOR INCIDENT, NO MATTER WHAT SAFEGUARDS ARE TAKEN, CLEAN ATLANTIC HAS BEEN ORGANIZED TO PROVIDE THE

PETROLEUM EXPLORATION AND PRODUCTION INDUSTRY WITH THE CAPABILITY FOR FAST AND EFFECTIVE CONTAINMENT AND CLEANUP OF OIL SPILLS THAT MAY OCCUR IN THE OFFSHORE WATERS OF THE ATLANTIC OCEAN.

IF A SPILL OCCURS, THE IMMEDIATE OBJECTIVE WILL BE TO MINIMIZE ANY RESULTING DAMAGE AND CLEAN IT UP. TO ACHIEVE THIS, CLEAN ATLANTIC IS PLANNING TO HAVE CLEANUP EQUIPMENT SUFFICIENT TO HANDLE ONE MAJOR SPILL AND A BACK-UP CAPACITY TO COMMENCE CLEANUP OF A SECOND CONCURRENT SPILL. UNDER NORMAL CONDITIONS, WITHIN TWELVE HOURS FROM THE TIME A DISTRESS CALL IS MADE, CLEAN ATLANTIC EQUIPMENT CAN BE OPERATIONAL AT THE SPILL SITE AS FAR AS 125 MILES AWAY FROM ITS SHORE BASE.

PRESENTLY CLEAN ATLANTIC ASSOCIATES IS CONTRACTING A MAJOR SERVICE COMPANY TO PROCURE AND MAINTAIN IN 24-HOUR READINESS THE MOST ADVANCED OIL SPILL CONTAINMENT AND CLEANUP EQUIPMENT AVAILABLE AND TO TRAIN PERSONNEL OF MEMBER COMPANIES IN ITS PROPER USE.

CLEAN ATLANTIC IS ALSO IN THE PROCESS OF PURCHASING NEARLY \$1 MILLION OF CLEANUP AND CONTAINMENT EQUIPMENT. THIS WILL INCLUDE FAST RESPONSE OPEN SEA AND BAY SKIMMER SYSTEMS, AN OPEN SEA CONTAINMENT BOOM, AND OTHER OCEAN AND BEACH PROTECTION AND CLEAN UP EQUIPMENT, INCLUDING SUCH EXOTIC GEAR AS "BIRD SCARERS." TO MY WRITTEN TESTIMONY I HAVE ATTACHED A DETAILED LISTING OF CONTAINMENT AND CLEANUP EQUIPMENT WHICH CLEAN ATLANTIC ASSOCIATES IS NOW PROCURING.

IN ASSESSING OUR NEEDS WHICH LED TO THE DECISION TO PROCURE THE EQUIPMENT NOTED, CLEAN ATLANTIC HAS COORDINATED ITS EFFORTS CLOSELY WITH OTHER OIL SPILL COOPERATIVES AND CONTRACTORS ON THE EAST COAST AND OTHER AREAS. CLEAN ATLANTIC PERSONNEL MADE AN EXTENSIVE ON THE SPOT SURVEY INVENTORYING EQUIPMENT AND OIL SPILL CLEANUP SERVICES AVAILABLE IN THE MID-ATLANTIC AREA. CONSIDERABLE RESOURCES ARE ALREADY IN PLACE. FOR INSTANCE, THERE ARE NEARLY 18 MILES OF CONTAINMENT BOOM OPERATIONAL IN THIS

AREA AND OVER 300 FULL TIME WORKERS EMPLOYED BY OIL SPILL CLEANUP COOPERATIVES AND COMPANIES.

AS THIS WOULD INDICATE, UNFORTUNATELY OIL SPILLS ARE NOT A NEW PHENOMENON ON THE EAST COAST BECAUSE OF ITS VAST PETROLEUM CONSUMING MARKET AND ITS EQUALLY VAST TERMINALLING, TANKER AND BARGE ACTIVITY. WITH THE EXISTING CLEANUP AND CONTAINMENT STOCKPILE AND WITH THE EQUIPMENT BEING PROCURED, MEMBERS OF CLEAN ATLANTIC CAN RESPOND AND COMBAT ANY OIL SPILL QUICKLY AND EFFICIENTLY. IN ADDITION, THE CLEANUP EQUIPMENT OF THE U.S. COAST GUARD'S ATLANTIC STRIKE FORCE FACILITY AT ELIZABETH CITY, NORTH CAROLINA IS ALSO AVAILABLE FOR USE IN CASE OF A SPILL.

IF THE MID-ATLANTIC LEASING TAKES PLACE AS PROPOSED, THERE COULD BE FIVE RIGS DRILLING FOR OIL OFF NEW JERSEY AND DELAWARE BY THE END OF THIS YEAR, AS ESTIMATED BY THE WOODWARD-CLYDE MID-ATLANTIC STUDY. CLEAN ATLANTIC'S CONTAINMENT AND CLEANUP EQUIPMENT DESCRIBED WILL SATISFY INITIAL REQUIREMENTS FOR A CONTINGENCY OIL SPILL PLAN RELATED TO EXPLORATORY DRILLING IN THE MID-ATLANTIC REGION. OUR PLANS CALL FOR EXTENSION TO OTHER AREAS OF THE ATLANTIC AS THEY ARE OPENED TO LEASE. CLEAN ATLANTIC WILL ACQUIRE MORE EQUIPMENT AND FACILITIES AS NEEDED. OF COURSE, IF PRODUCTION IS ESTABLISHED THE EQUIPMENT WILL BE EQUALLY USEFUL. CLEAN ATLANTIC WILL ALSO DOCUMENT ALL CONTAINMENT AND CLEANUP RESOURCES IN A MANUAL AND DISTRIBUTE IT FOR THE USE OF ITS MEMBERS.

IN CASE OF A SPILL IN THE PROPOSED LEASE AREA, THERE IS LITTLE CHANCE OF ANY OIL REACHING THE ATLANTIC BEACHES BECAUSE THE CLOSEST OIL EXPLORATORY RIGS WILL BE AT LEAST 50 MILES FROM SHORE. ACCORDING TO THE DRAFT ENVIRONMENTAL STATEMENT, THE DEPARTMENT OF INTERIOR ESTIMATES THAT UNDER WORST CONDITIONS IT WOULD TAKE A MINIMUM OF 46 DAYS FOR AN OIL SPILL TO REACH THE EAST COAST, IF THE OIL REACHED THE COAST AT ALL, ACCORDING TO THE M.I.T. STUDY REFERENCED.

HOWEVER, WITH THE STRINGENT REGULATIONS CURRENTLY IN EFFECT AND WITH THE INDUSTRY'S SAFETY DEVICES AND PROTECTION SYSTEMS, THE HISTORY OF OFFSHORE EXPLORATORY DRILLING SUGGESTS THAT THE PROBABILITY OF A SIGNIFICANT OIL SPILL IS STILL VERY REMOTE.

BUT NONETHELESS, IF OIL WERE SPILLED FROM A DRILLING RIG OR PLATFORM, CLEAN ATLANTIC WILL BE READY TO RUSH EQUIPMENT TO THE SCENE TO CONTAIN AND REMOVE THE OIL AND IF NECESSARY CLEAN UP ANY OIL THAT REACHES LAND.

#

EXHIBIT 1

CLEAN ATLANTIC ASSOCIATES
MEMBERSHIP

AMOCO PRODUCTION COMPANY
ATLANTIC RICHFIELD COMPANY
B.P. ALASKA EXPLORATION, INC.
CITIES SERVICE COMPANY
CHEVRON OIL COMPANY
CONTINENTAL OIL COMPANY
EXXON COMPANY, USA
GULF ENERGY AND MINERALS CO. - U.S.
HOUSTON OIL AND MINERALS CORPORATION
MARATHON OIL COMPANY
MOBIL OIL CORPORATION
PENNZOIL COMPANY
SHELL OIL COMPANY
SKELLY OIL COMPANY
SUN OIL COMPANY
TEXACO, INC.

EXHIBIT 2

CLEAN ATLANTIC ASSOCIATES
INITIAL EQUIPMENT STOCKPILES

<u>ITEM</u>	<u>NUMBER</u>
<u>OPEN SEAS</u>	
FAST RESPONSE OPEN SEAS & BAY SKIMMER SYSTEMS	2
MINI-FAST RESPONSE UNITS	2
OPEN SEAS CONTAINMENT BOOM	2000 FT.
VIKOMA SEA PACK (1600 FT. OPEN SEAS BOOM)	1
<u>NEARSHORE/INLAND</u>	
HELICOPTER SPRAY UNITS	2
BOAT SPRAY UNITS	3
DISPERSANT	50 DRUMS
COLLECTION AGENT	10 DRUMS
<u>BEACH PROTECTION & AUXILIARY EQUIPMENT</u>	
COMMUNICATIONS SYSTEM	1
AUTOMATIC PROPANE GUNS (BIRD SCARERS) SET OF 12	2

EXHIBIT 3

CLEAN ATLANTIC ASSOCIATES
PARTIAL LISTING
AVAILABLE EQUIPMENT IN MID-ATLANTIC AREA*

<u>ITEM</u>	<u>AVAILABLE</u>
<u>CONTAINMENT BOOMS</u>	
SMALL (18" & UNDER)	62,600 FT.
LARGE (19" - 36")	28,000 FT.
EXTRA LARGE (OVER 36")	4,200 FT.
<u>SKIMMING APPARATUS</u>	
SELF-PROPELLED	1
SELF-POWERED & OTHER	141
<u>OTHER EQUIPMENT</u>	
VACUUM BARGES	4
VACUUM TRUCKS	28+
PUMPS	161+
BOATS (OVER 15 FT.)	93
SORBENTS (PILLOWS & BAGS)	35,000
(BOOM)	10,000 FT.
STORAGE	32+ MILLION GALLONS
OCEAN GOING BARGES	50
AUTOMATIC PROPANE GUNS (BIRD SCARERS)	12
BIRD REHABILITATION UNITS	2
EARTH MOVING EQUIPMENT	READILY AVAILABLE

*FROM U.S. COAST GUARD, OIL SPILL CLEANUP COOPERATIVES
& CONTRACTORS, & OTHERS.

ATLANTIC RICHFIELD COMPANY STATEMENT
REGARDING STATE OF N. J.
SENATE BILL 1397
SENATE BILL 1409
ASSEMBLY BILL 1903
ASSEMBLY BILL 1915
AT HEARING BEFORE THE
SENATE ENERGY AND ENVIRONMENTAL COMMITTEE
AND
ASSEMBLY AGRICULTURE AND ENVIRONMENTAL COMMITTEE
JUNE 2, 1976
Trenton, N. J.

June 2, 1976

ATLANTIC RICHFIELD COMPANY STATEMENT

The Atlantic Richfield Company appreciates the opportunity to comment on the proposed Spill Compensation and Control Act. We understand the concerns of the State of New Jersey and its desire to preserve its clean waters and beaches and adequately protect its resort industry. These are valid concerns which demonstrate the responsibility of the legislature in its attempts to protect the public interest. However, we believe that interest is already protected by existing Federal legislation and that no state law is necessary or desirable. In any event, it is clear to us that state legislation should not be enacted without a complete review of the existing federal and industry capabilities for handling spills and a thorough study of actual clean up and removal costs.

The proposed act completely disregards the steps already taken by industry and the federal government to provide adequate spill prevention, containment and clean up. The proposals in many ways duplicate the already established Federal requirements for Spill Prevention Control and Countermeasure Plans and the fund provided for by the FWPCA which is to be used in part for reimbursement to states for the cost of cleaning up oil spills.

If state by state funding for oil spills occurs, the result will be a total funding nationally in an amount far exceeding realistic needs to provide the intended safeguards. Since the cost of funding these programs must be borne by the consumer, excessive funding means higher energy costs. We recommend that funding for oil spills should be handled on a national basis. This will reduce the funding requirements and provide for equitable allocation of funds to suit actual needs.

If a state fund is ultimately decided, we recommend the legislation should require the Department of Environmental Protection to conduct a thorough study of all available information on the frequency and extent of past spills and discharges and the related actual containment and clean up requirements and costs. Information should be solicited from all interested parties. To be fair to the taxpayer, the Director of the Division of Taxation should analyze the data on actual clean up and removal costs from the study as a basis for determining a reasonable tax to be levied. Arbitrary assessment of the tax rate and total funding will provide no measure of protection to the environment.

Although we share the State of New Jersey's concern for the economy and environment of the state, we do not feel enactment of the proposed legislation will provide additional protection for these interests as intended. At the very least, action on this legislation should be delayed until the history of spills and clean up and actual cost experience has been analyzed to assess the need for new state programs to control spills.



LEAGUE OF WOMEN VOTERS OF NEW JERSEY

460 BLOOMFIELD AVENUE, MONTCLAIR, NEW JERSEY 07042 TELEPHONE 748-1465 AREA CODE 201

Statement by the League of Women Voters of New Jersey
to the Senate Committee on Energy and Environment

on S.1409

June 2, 1976

The League of Women Voters of New Jersey has been concerned with water quality since 1955. After studies of statewide and national problems, the League has supported policies and procedures which promote long range planning for conservation of water resources. We also support the concept that pollution abatement is the responsibility of the polluter. In addition, the League is concerned with the vulnerability of New Jersey's coastal area to damage caused by spills and hazardous wastes.

We wish to go on record during this hearing today in support of the concept of S.1409 which requires plans and procedures to prevent and contain spills of hazardous substances and establishes liability for damages resulting from spills of hazardous substances.

We plan to examine the bill in detail and submit a more complete statement within the period allowed for comment.

*statements made by Cameron Boehme
member of the Environmental Quality Committee
of the League of Women Voters of New Jersey*

*The same stand is being taken by the
Interleague Council of The Delaware River Basin
an organization comprised of the individual Leagues
of Women Voters in the Delaware River Basin.*

STATEMENT OF THE CHEMICAL INDUSTRY COUNCIL OF NEW JERSEY

ON

S-1397, S-1409, A-1903, A-1915

TO

SENATE ENERGY AND ENVIRONMENT COMMITTEE

AND

ASSEMBLY AGRICULTURE AND ENVIRONMENT COMMITTEE

JUNE 2, 1976

My name is John H. Morris. I am a resident of Three Bridges, New Jersey and am employed as a Senior Engineer Associate for Environmental Pollution Control by Merck & Company, Inc. of Rahway, New Jersey. Today I represent The Chemical Industry Council of New Jersey serving as Chairman of the Environmental Affairs Committee.

So far we have seen drafts of S-1397 and S-1409 and have had a limited length of time in which to evaluate them. Rather than attempt a detailed analysis we are offering some general commentary on them. We urge the Legislature to pause and reflect before approving these bills which could have major effects on the environmental affairs of New Jersey. It is our general conclusion that this legislation is premature and probably inappropriate for any state including New Jersey. Our reasons for so concluding are as follows:

- 1) To our knowledge no such legislation is in effect in any other state which puts the first state, in this case New Jersey (if it passes such legislation), in a position of serious economic disadvantage.
- 2) A large part of this legislation has been or will be in the near future covered by Federal laws and regulations. It will therefore be duplication, unnecessary, and may even conflict with several Federal regulations.
- 3) This legislation will add serious economic burdens to New Jersey industry at a time when economic conditions are less than favorable.

In summary therefore we wish to register strong opposition to the position of these bills, S-1397 and S-1409, at the present time.

#####

SPILL COMPENSATION AND CONTROL ACT

A. 1903--S. 1409

COMMENTS FROM:

JOSEPH A. HOFFMAN, COMMISSIONER
DEPARTMENT OF LABOR AND INDUSTRY
JUNE 2, 1976

The Spill Compensation and Control Act, Assembly Bill 1903 and Senate Bill 1409, represent a concept that I support. Consistent with my support for the expeditious development of this nation's gas and oil resources is the need to protect citizens, their jobs and the economy, from the adverse impacts associated with the exploration and production of gas and oil.

As we the Nation and the State share in the benefits of the development of oil and gas from frontier areas, such as the stability of our Nation's industrial base and maintenance of the comfort and lifestyle we have enjoyed in this country as a result of available energy supplies, the State of New Jersey, absent federal protection from accidental harm done as a result of the exploration and extraction of gas and oil must have in law the protection from the threat of economic disaster that an oil spill could present to our shore communities.

The State and the Nation needs the gas and oil until new technologies and recyclable energy resources can be introduced. In the meantime, the State must, absent vitally needed national protective legislation, seek to protect its tourist industry from any adverse impacts associated with OCS activities, otherwise potential property damage to our resort communities could dramatically depress the economy of the southern portion of our State.

The State of New Jersey is energy vulnerable, reliant on expensive and easily interrupted supplies of fossil fuel. Our State is 68% reliant on petroleum and 28.4% reliant on natural gas. The concentration of the petrochemical industry and the age of the existing New Jersey industry and housing stock further contributes to oil reliance.

The seasonal nature of the tourist economy cannot be left vulnerable and uninsured as the State has been left vulnerable to energy supplies fluctuation.

The 2¢ per barrel tax on hazardous substances available to compensate for both direct and indirect damages caused by a major spill resulting from a facility or transport would best be levied on a national basis. Yet, New Jersey sees no such federal protection at this time. The State must provide for the risks associated with the exploration, production and transportation of such substances that potentially endanger the economy and the quality of life in New Jersey communities especially as a result of Outer Continental Shelf activity.

Gulf Oil Corporation

GOVERNMENTAL RELATIONS DEPARTMENT
EASTERN REGION

John R. Galloway
DIRECTOR

Three Parkway, Suite 1820
Philadelphia, PA 19102

June 14, 1976

Honorable Donald Stewart
Chairman
Committee on Agriculture and Environment
The State Assembly
Trenton, New Jersey

Re: Proposed Spill Compensation
and Control Act

Dear Mr. Stewart:

We have recently reviewed the proposed Spill Control Act and Hazard Tax (A-1903) which we understand will be considered by your Committee in the near future. We feel that there are several important matters which should be brought to your attention. First I want to assure you that Gulf is a strong supporter of clean environment and of the responsibility of industrial operators to pay any societal costs that are associated with their particular operation. We feel that the proposed bill goes far beyond the needs of the community since it duplicates existing state and federal laws and regulations. Such duplication we feel is not only unnecessary but may well be counterproductive when viewing the total needs of New Jersey.

The imposition of the proposed tax has as its foundation the assumption that all methods of transporting petroleum products are equally hazardous. This assumption is inaccurate and discriminates against the proven safety of pipeline transportation. It ignores the extraordinarily fine record that has been compiled in the operation of petroleum pipelines.



Historically, there has been a great disparity in the rate of spillage between pipeline and marine transportation of petroleum products. The draft Environmental Impact Statement of the U. S. Department of Interior for OCS Sale #40 forecasts spillage from pipeline transfers at .00145% vs. .417% for tanker operations. In other words, the expectation of risk is 300 times less for pipeline transfers than for marine transfers. These forecasts and experience buttressed by the very stringent and comprehensive federal regulation of the pipeline industry support a strong suggestion that pipelines should be eliminated from A-1903. This would in effect mean that because pipelines have such a small likelihood of accidental spills and leaks, and because they are operated by financially substantial organizations, that they should be exempted from the payment of the 2¢ per barrel "Hazard Tax" and that they should further be exempted from any other operation of the act.

The State of New Jersey may derive a very positive impact from the deletion of the pipelines from the aforesaid legislation, since by this act the state would signal the fact that new pipeline construction in New Jersey is welcomed. It is not too difficult to envision a situation wherein pipelines unfairly subjected to a Hazard Tax of 2¢ per barrel to protect other forms of transport would look elsewhere for the construction of any new lines. Good business practice dictates that pipelines be located in areas where no financial penalty is attached to their operations. Your Committee's action in exempting pipelines from the "Hazard Tax" could certainly have a salutary effect on the construction industry which I understand is badly in need of new work.

Our opinion that A-1903 duplicates existing protection under state and federal laws is based upon a review of the New Jersey Water Quality Improvement of 1971 which indicates that your Legislature has already mandated the removal of petroleum products and hazardous substances from the waters of the state and the imposition of a positive responsibility on the discharger for the cost of said removal. Further, there is no doubt that the law of New Jersey also provides that anyone who purposefully or negligently causes damage to another shall be liable in monetary damages to that party. In addition to your state laws, the Federal Water Pollution Control Act provides for elaborate regulation of possible petroleum discharges. It provides for federal cleanup of such spills in specified waters which cover most any body of water in or around New Jersey. Further, the act requires a national contingency plan and a federal spill prevention control measure and controls system. Supplementing those above cited requirements are a series of federal regulations for outer continental shelf operations which include bonding requirements, permitting requirements and control of operational practices. There are also specific federal regulations for pipeline transport which cover the existing product lines in the state.

Should you have any questions or require any expert testimony from either the pipelining industry or the regulators of those lines, I would be happy to have such testimony provided for your Committee.

Very truly yours,

John R. Galloway

JRG:ag



SUN OIL COMPANY 240 RADNOR-CHESTER ROAD, ST. DAVIDS, PENNSYLVANIA 19087 (215) 972-2000

June 4, 1976

The Honorable John F. Russo
Senate Chamber
State House
Trenton, New Jersey 08608

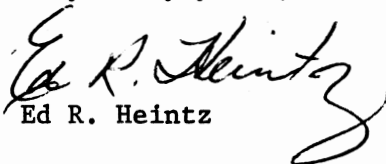
Dear Senator Russo:

Sun Company, Inc., did not participate directly in the public hearing held on June 2 by the joint Senate-Assembly committee to discuss New Jersey S.B. 1409 and A.B. 1903, spill compensation and control bills. However, it is our understanding that the record for accepting written testimony is still open.

I appreciate the opportunity to submit for your consideration my company's position on the bills (attached). Copies have also been sent to your colleagues on the joint committee.

If you have any questions on any of the material submitted, I would be pleased to try to answer them.

Very truly yours,


Ed R. Heintz

ERH:jes SG21
Attachment

SUN COMPANY, INCORPORATED

STATEMENT

ON

NEW JERSEY SENATE BILL 1409

NEW JERSEY ASSEMBLY BILL 1903

FOR

SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

ASSEMBLY COMMITTEE ON AGRICULTURE AND ENVIRONMENT

JUNE 8, 1976

The Sun Company opposes New Jersey Senate Bill 1409 and Assembly Bill 1903 as currently written. We urge New Jersey to support the national "Superfund" bills (S. 2162 and H.R. 9294) as supported by the Administration. Sun believes that a monetary fund with a mechanism to compensate citizens damaged by oil or hazardous material spills, should be enacted at the national level. A national bill is preferable for the following reasons:

1. Companies operating in several states would comply with one law rather than comply with numerous and possibly conflicting state laws.
2. State citizens would be provided with greater financial protection through a larger national fund than any one state could justify.
3. Administrative expense would be less for one national fund than 50 or more funds covering individual states and U.S. territories.
4. One national "Superfund" would be far more economical because information reporting and financial responsibility data would be required for one entity rather than 50 or more entities. Also, the total nationwide tax or levy per barrel would be much less to provide the same degree of protection using a national system.
5. Company costs and consumer prices would be less using a national "Superfund" as opposed to each state establishing their own Superfunds without sacrificing economic protection from oil or hazardous material spills.

Notwithstanding the Sun Company's strong preference for a national Superfund bill, as opposed to individual state bills, we have identified several provisions within the New Jersey bills which may place undue burdens upon companies operating in New Jersey, or create administrative problems.

Our specific concerns with the New Jersey bills are:

1. "Discharge" Definition: The definition would outlaw land-farming of petroleum and similar waste materials. Frequently, landfarming is the optimal environmental method of disposing of many waste products. In general, the definitions in the bills are extremely vague in the areas of "hazardous substances" and "major facility". Although "major facility" is defined, the bill uses the term "facility" in what appears to be more instances than "major facility." Nowhere in the bill is "facility" defined.
2. Hazardous Substances: The bill would establish an unneeded and duplicative regulation and recordkeeping requirement upon products currently covered by Federal legislation.

3. Major Facility Information: Most, if not all, information required of a "major facility" is currently furnished in SPCC plans prepared pursuant to Federal law or will be prepared for hazardous substances when the Federal EPA promulgates hazardous substances regulations.
4. Unlimited and Strict Liability: Only major facilities are held accountable for unlimited and strict liability, although lesser facilities may equally threaten the environment. Furthermore unlimited liability will create substantial operational burdens including questionable insurance coverage and the threat of financial ruin.
5. Damages:
 - a) The damage section apparently copied the proposed Federal bill, but failed to distinguish between damages directly caused by property damage and damages caused by indirect property damage (applicable if 50% of the claimants' earning capacity is from the property).
 - b) The damage section does not limit damages to net income, and claimants are not required to mitigate damages where possible, thereby, creating the possibility of abuses of the law.
6. Defenses of the Spiller: The only defense afforded to a spiller is a spill caused solely by war. A "spiller" who has exercised all reasonable care and diligence should not be subjected to unlimited liability from spills caused by acts of God, sabotage, vandalism, undeclared war or similar occurrences.
7. Claim Settlement: Expenditures from the fund should have some checks and balances to prevent unreasonable awards. Preferably, claimants should be required to negotiate with the spiller, and contributors to the fund should have some review of payments out of the fund.
8. Size of the Fund: The fund should have a definite upper limit, rather than continue the funding throughout the year in which the fund exceeds \$50,000,000. In addition, the limit of the fund is far in excess of the amount needed for cleanup operations as experienced in other coastal states.
9. Use of the Fund: Distributions from the fund should be limited to cleanup, damages and expenses directly related to discharges of products upon which a tax is paid. Otherwise, the contributors to the fund may subsidize an unlimited variety of environmental cleanup operations. As an example, fish kills and beach closures in New Jersey have resulted from municipal related discharges. The fund should not be used to clean up and/or compensate for municipal discharges unless they contribute their fair share to the fund.

From the standpoint of taxation, we have several specific objections that should be pointed out. They are:

1. There are many inconsistencies in the bills leaving much doubt as to who is responsible as a taxpayer. As an example, Page 6, Section 9A in both bills indicates the tax shall be determined on the barrels transferred to major facilities. Section 9C of Page 6 indicates the taxpayer shall file his report and pay tax on barrels transferred from his facility. The question is, who pays the tax (shipper or receiver)?

Sun estimates the proposed 2¢ per barrel transfer tax would cost us about a half million dollars at the four principle terminals which we own and operate in Newark, Paulsboro, Piscataway and Hackensack. In addition, we lease two terminals to distributors in Atlantic City and Trenton. Product is sold to these distributors f.o.b. Marcus Hook, Pennsylvania. We presume the distributors would be responsible for the transfer tax.

2. These bills are, to the best of our knowledge, the first of their type to tax pipeline movements (and in some opinions might even tax out-of-state truck deliveries into New Jersey).
3. The bills indicate the state will tax product only once, regardless of the number of movements. It will present real problems at the time of audit, in attempting to prove that we previously paid tax on a product and are entitled to move the product a second time without tax. In addition, if we are able to prove tax has already been paid, we will still be taxed a second time by any other state having a similar tax when we take the product into that state (as is the case in Maine). Federal taxation of this type, rather than state action, seems to be the only equitable answer.



THE
COMMITTEE
FOR A
BETTER
ENVIRONMENT,
INC.

P. O. BOX 209, HOLMDEL, NEW JERSEY 07733

Senator John F. Russo
Chairman, Committee on
Energy and Environment
State House
Trenton, N. J.

June 8, 1976

Dear Senator Russo:

The Committee For A Better Environment, Inc., was unable to send a representative to the "Spill Compensation and Control Act" hearings conducted on Wednesday June 2, 1976. We wish to make some comments regarding this legislation. We request, if possible, that they be added to the testimony received on June 2.

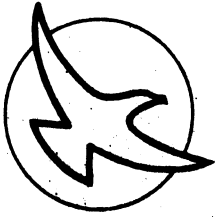
Generally the S1409-A1903 bill is a very positive first step in establishing a satisfactory procedure and fund for compensating losses to property owners and businesses. While the cost of the fund will be born by consumers, we believe it is more equitable for all consumers of oil products to share equally in paying for the risks associated with oil drilling, transport, storage and refining operations than for those individuals living or working in the vicinity of these operations to bear the entire risk. For this reason we strongly support the concept of this legislation. We would like to make the following recommendations about specific sections of the legislation: 1. Section 2, lines 1-3 change "lands and water" to "land, water and air"

2. Section 3h, line 25 change "waters" to "air or waters"

3. Section 3j, line 42-44-the arbitrary limit of 400,000 gallons storage capacity should be more specific. A 400,000 gallon facility with very rapid throughput could produce far more total spill than a larger facility with limited throughput.

4. Section 5 subsection c(2)-the time period of one hour is vague. By jet aircraft that could mean up to 500 or 600 miles. The limit should also specify weather and traffic conditions.

5. Section 7 line 28-the word "detergent" can encompass a very narrow range of materials or very broad depending on the situation. A more specific definition of what materials



THE
COMMITTEE
FOR A
BETTER
ENVIRONMENT,
INC.

P. O. BOX 209, HOLMDEL, NEW JERSEY 07733

are to be included is necessary.

6. Section 8, line 14-replace "including" by "or".

7. Section 8, line 16-we see no need for a limit but if necessary it should at least be much smaller (10%). The 50% limit would probably lower property values, particularly summer rental facilities.

8. Section 12, line 2-extend the limit to 10 years rather than 6.

9. Section 12, line 8-should permit additional claims in situations where additional damages are discovered which the claimant was not aware of at the time of the original claim.

10. Section 12-there should also be an additional provision to permit interim claims and payment to keep individuals or businesses solvent while the full extent of the damage is assessed.

11. Section 14, line 2-insert after "determined", for the source can be determined but the alleged discharger has not settled a claim within 60 days after submitted."

12. Section 15h, line 57 and 58-Extended judicial proceedings could produce situations where a claimant can not collect on a claim until several years after he has lost his home or business. The bill should instead provide for prompt payment of all claims upon certification. In the case of pending judicial proceedings provide notice to claimant of proceeding and then, if the amount of the award is reduced, the claimant will have to make a refund to the fund.

In addition we would like to see included in the legislature a compensation provision for damages produced over a long period of time by chronic low level discharges of oil.

Sincerely,

J. Douglas Sinclair
J. Douglas Sinclair
Chairman

JUN 8 1976

CAPE MAY COUNTY
Chamber of Commerce



P. O. Box 74

Crest Haven Road and Garden State Parkway
Cape May Court House, New Jersey 08210

Phone: (609) 465-7181

June 4, 1976

Steven J. Picco, Administrative
& Legislative Review
N. J. Dept. of Environmental Protection
Trenton, New Jersey 08625

Dear Mr. Picco:

Thank you for your letter of May 7, 1976 and attached copy of Bill S-1409 - SPILL COMPENSATION & CONTROL ACT. Our Environmental Affairs Committee and Board of Directors have both reviewed and discussed the bill at great lengths. They are offering several suggestions for additions and clarification.

We were somewhat disappointed that we were not notified of the hearing held on June 2nd, by the joint legislative committee. We, therefore, ask that this letter and summary be entered into the official hearing testimony.

On page #3, line 69, definition of TRANSFER. We question "How many miles off shore of New Jersey does this bill's jurisdiction carry?"

Also on page #3, lines 76-79, we feel the Delaware Bay, inland waterways should be included.

On page #4, line #1, does HAZARDOUS SUBSTANCES mean sewerage wastes and solids; chemical wastes, nuclear waste?

On page 5, line 27-29, we feel need re-defining and suggest that a great time lag could occur waiting for the commissioners authorization for cleanup with detergent. We assume you mean Commissioner of Department of Environmental Protection. A time limit clause could be added here.

At the bottom of page #5, lines 11 thru 18. Greater detail is needed here to spell out clearly who is/what is covered.

Page #6, line 19, loss of tax revenue to Local Level, should be included strongly. What about relief to local taxpayers who may not be able to pay property taxes due to economic loss from an oil spill, either their job or business.

Our Chamber feels strongly that a tax on Natural Gas be included in the bill. We have been told by professionals that they expect to find more natural gas than oil. A tax per cubic feet under pressure or B.T.U.'s, equal to per barrel of oil. A natural gas well blow out can be as bad as an oil spill.

There is also no provision for any spill during initial drilling and exploration, when no fund would exist or transfer tax be collected.

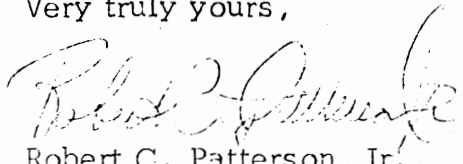
We also feel that the fund should not be limited to \$50 million dollars, but that the excess be distributed to New Jersey Coastline Counties, including earned interest. It will be the coastal counties that bear the brunt and burden of problems and they will need financial help.

On page #10, lines 10 thru 17, it is our strong position that the New Jersey Legislature should control the sums and expenditures, personnel costs, etc., not the D.E.P. The Legislature has already given up too much power and authority to the bureaucrats. We strongly urge that the ELECTED officials retain control over the administration, payment of cleanup costs, settlements, rules, regulations, repeal, amendments and enforcements.

I am enclosing a copy of the bill with our proposed changes, deletions, additions and comments, written in the margins, as outlined in this letter.

Thank you for your consideration.

Very truly yours,


Robert C. Patterson, Jr.,
Executive Director

RCP:jem

encl:

cc: J. Cafiero, J. Hurley, J. Chinnici
D. Lynch & L. Sterenberg

