

P U B L I C H E A R I N G

before

ASSEMBLY COMMITTEE ON AGRICULTURE,
CONSERVATION AND NATURAL RESOURCES

on

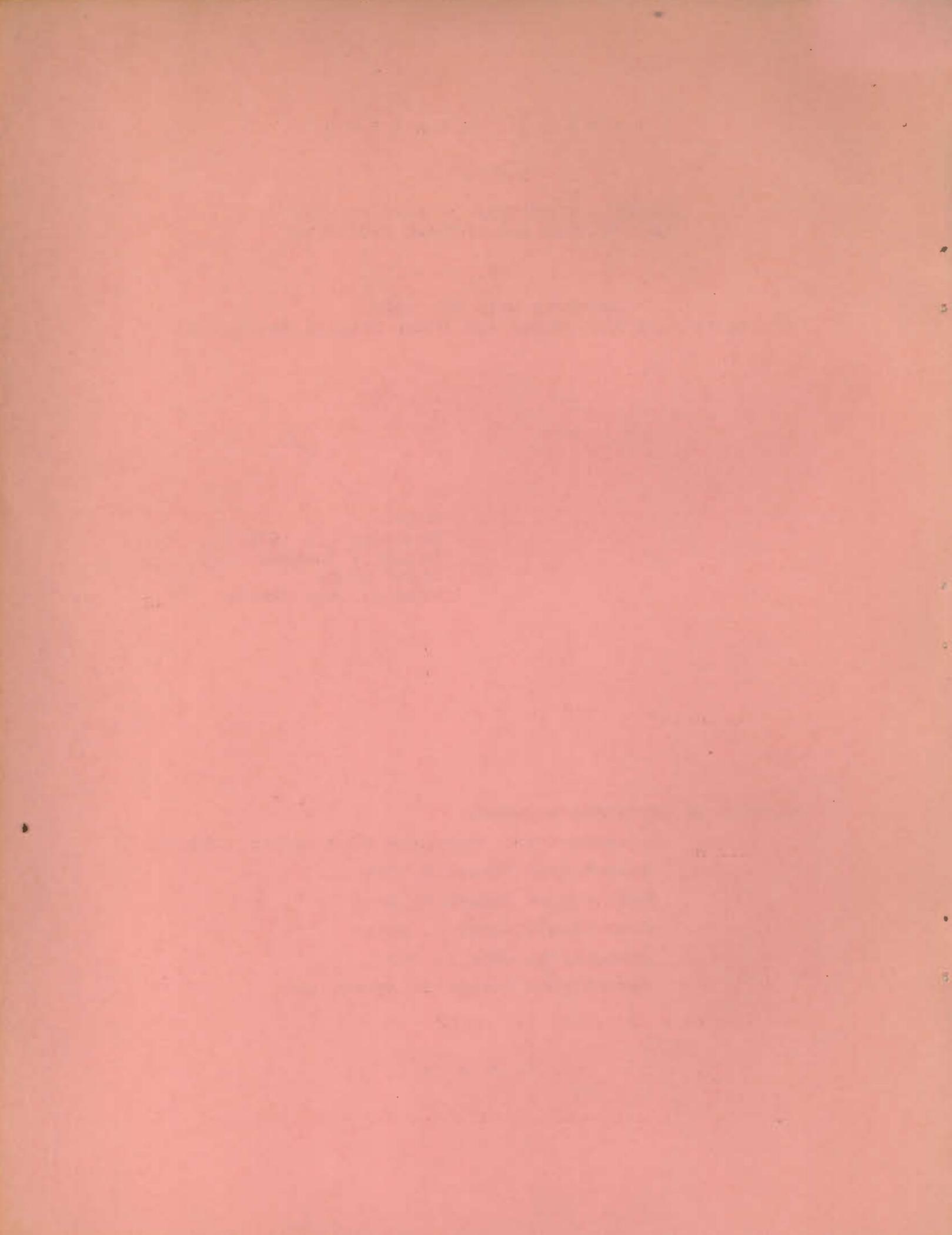
ASSEMBLY BILL NO. 1268
(Protection of Air, Water and Other Natural Resources)

Held:
February 11, 1971
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

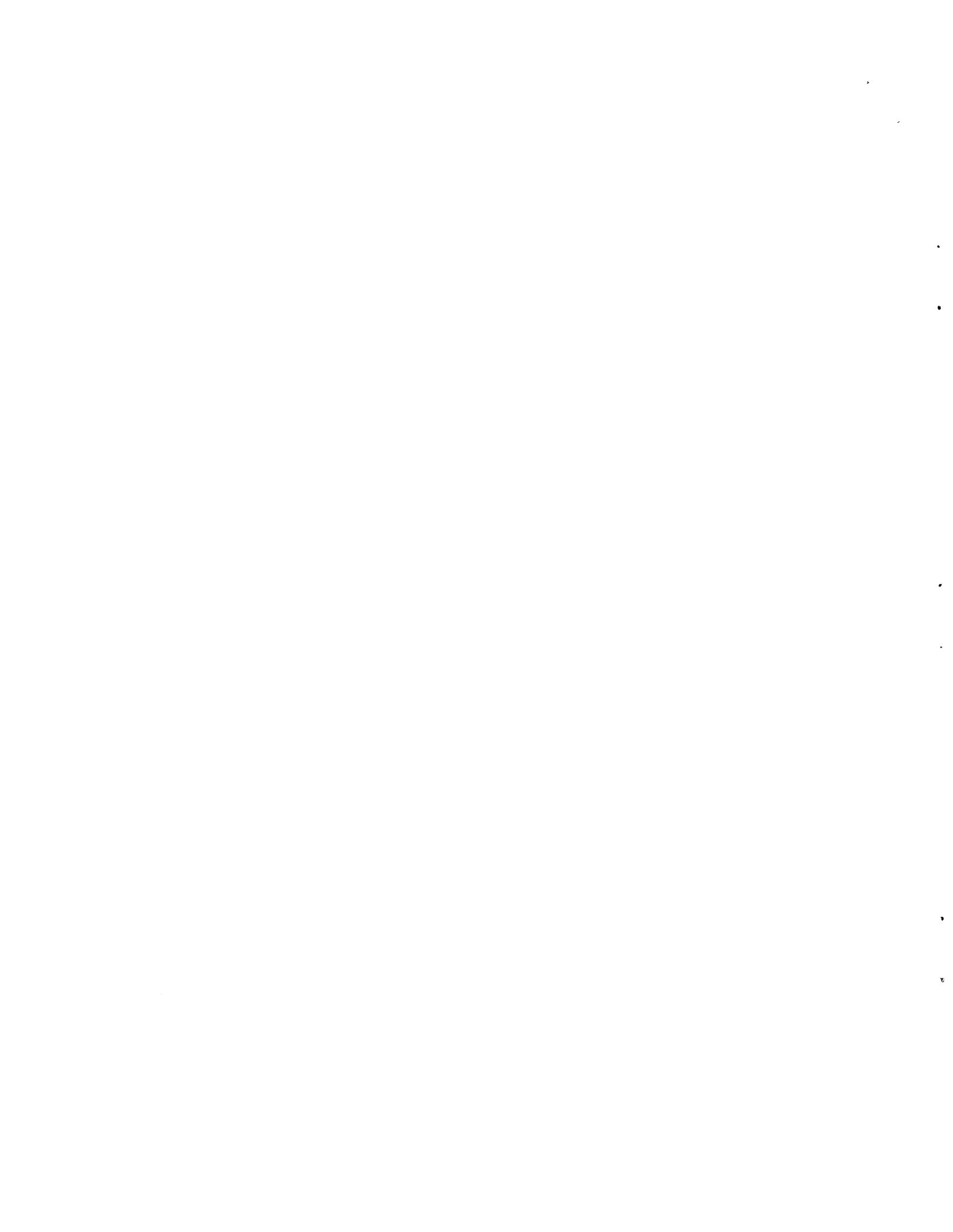
Assemblywoman Josephine S. Margetts (Chairman)
Assemblyman Samuel A. Curcio
Assemblyman Joseph H. Enos
Assemblyman Henry F. Gavan
Assemblyman John J. Horn
Assemblyman Joseph E. Robertson

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ASSEMBLYWOMAN JOSEPHINE S. MARGETTS (Chairman):

Good morning, everyone. The hearing will please come to order. I hope you will bear with me. I have a cracked voice this morning and I tell you it's very frustrating for a woman not to be able to talk, especially a woman politician, but I hope you can hear me.

This public hearing is being conducted by the Assembly Agriculture, Conservation and Natural Resources Committee to consider and hear testimony on Assembly Bill 1268. We have a list here of persons who have indicated their desire to testify this morning and if there is anyone here in the Chamber who has not registered, would you please do so now.

I am Josephine Margetts, Chairman of the Committee, and seated here with me are members of our Committee. On my right, Assemblyman Horn; on my left, Assemblyman Robertson; and next to me is Assemblyman Curcio.

When you are called upon, I would like you to please come to the microphone in the front and state your name, your address and your organization, if you represent any organization. I would further request, if you have any written statements that you would make copies available to the members of the Committee and to our court reporter here. I also want to announce that we will keep this transcript open for two weeks to permit any additional statements to be included that you might want to submit because there was a rather short notice of this hearing and I appreciate that.

This Assembly Bill, 1268, permits an individual or organization, or state or local unit of government to sue a polluter of our air, water or natural resources in behalf of the public good. Michigan has recently enacted similar legislation into law.

We will now start the testimony and I will call on Mr. Russ Kramer of the Chamber of Commerce. Mr. Kramer.
C. R U S S E L L K R A M E R: Mrs. Margetts and gentlemen, my name is C. Russell Kramer and I am a member

of the Law Firm of Smith, Kramer & Morrison, 810 Broad Street, Newark, and I appear here today on behalf of the New Jersey State Chamber of Commerce to present its views on Assembly Bill No. 1268.

The State Chamber recognizes that sound, sensible, enforceable laws are needed to control pollution. The State Chamber recognizes further that neither this proposed law, nor any series of such laws, will give instant relief from the long years of inertia in this field. But any new law, in our opinion, must be workable and based on sound legal principles, or it will deter, rather than hasten, the improvement of our environment.

The State Chamber is not opposed to pollution control legislation as such. This is evidenced by its support of constructive legislation which now exists relating to air pollution, water pollution, and solid waste disposal. The State Chamber feels, however, that Assembly Bill No. 1268, as now drawn, is unsound legislation and contains two very basic weaknesses, neither of which has anything to do with pollution.

First, it intrudes upon the constitutional separation of powers between the executive and judicial branches of the State Government. Under Sec. 1 (b) of the bill it grants the courts the power to determine the validity and reasonableness of any standards for pollution or any anti-pollution devices or procedures fixed by any State or political sub-division of the State agency, and it further gives the court the power to direct the adoption of a standard fixed by the court where it finds that the standards established by any agency are deficient. Under present procedures judicial review of administrative regulations is limited, and rightly so, to the proposition whether such regulations are in keeping with the underlying grant of authority delegated to the agency by the Legislature, and whether or not there has been an arbitrary or capricious exercise of the power so delegated. Sec. 1 (b) of the bill gives the Court the power to substitute its

judgment for that of the agency, and direct the adoption of a higher standard, without being obligated to give the administrative agency or other affected parties a chance to be heard. The Court may, under Sec. 5 (a) permit the administrative agency or other affected parties to intervene in the action, but it is not compelled to do so. It is highly conceivable, in our opinion, that different trial courts could establish different standards for the same type of activity, which would create confusion and uncertainty until the issue was determined by the Supreme Court.

In our view, not only is such a scheme of court reviews unworkable through its lack of standards to provide reasonable guidance for a court, but it is unreasonable on its face since it would inject the Judiciary directly into a framework of administrative regulation established by the Legislature. To enact this bill would be a tacit admission by the Legislature that the regulatory schemes established by existing pollution control legislation are unworkable and, in order for private citizens, individually or as a class, to gain relief, intercession by the Judiciary is necessary.

The second basic objection is that Assembly 1268 departs from the long-established principle that to maintain an action a party must establish that he is being harmed in some way. He may be a member of a class which is being harmed, and may bring an action on behalf of others similarly situated. But A-1268 permits anyone, without showing harm to himself, to seek relief. A resident of Bergen County could bring an action against a business in Cape May alleging air pollution in Cape May which would never affect him in Bergen County. Or a resident of California could bring an action against a New Jersey resident without being part of the public in New Jersey which might be affected by some act of pollution. Should our courts be burdened with such actions, and should the State, its political subdivisions, and citizens be burdened

with defending such actions? This bill could open Pandora's Box to suits purely for spite or harassment purposes.

This proposed act would supersede every established procedure now being followed relative to pollution control, and would shift all of this to an individual action on each individual case in a court of law. The burden upon the already over-burdened court system is impossible to anticipate and the cost to all parties concerned, as well as to the State, is beyond the ability of anyone to estimate at this time.

Enactment of this bill would be a substantial deterrent to any future coordinated industry-government efforts to abate pollution. The greatest practical gains in industrial pollution control have been made through cooperation between industrial companies and regulatory officials in working out effective programs based upon reasonable timetables. To have the Legislature encourage civil litigation on these problems rather than cooperative efforts would appear to be counter-productive.

The Federal Government and the State of New Jersey now have well-staffed pollution control agencies which are actively working to reduce pollution of the air and water, and to control the disposal of solid waste. These agencies are staffed by many technologically competent scientists, engineers and specialists who devote full time to the study of pollution and its abatement. In many instances, pollution control agencies and various industries have cooperated to work out programs under which pollution abatement will be accomplished over an acceptable and reasonable time. To allow the well-thought-out regulations, pollution standards and plans of these agencies to be disrupted by law suits brought by well-meaning, but technologically uninformed, citizens would harm the overall pollution abatement program and the interest of the general public. In like manner, it is impossible for a judge, learned in the law though he may be, to be

as well informed on pollution matters, and as capable of making fair and reasonable decisions concerning pollution, as one who has devoted his education and professional life to pollution abatement.

Essentially, this bill, which is patterned after a recently enacted Michigan statute, is designed to afford the right to any one to bring a court action when he is dissatisfied with the progress being made by governmental agencies in their efforts to clear up the environment, or is dissatisfied with the results of their efforts. He need not first pursue any available administrative remedies, and need only demonstrate to the court that the conduct of the defendant is either polluting or is likely to pollute the air, water, or natural resources, and obtain an immediate restraint. The burden of proof is shifted to the defendant to show there is no feasible alternative to his conduct.

Traditionally, the Attorney General is the representative of the public interest in public causes. This bill permits any one to by-pass the Attorney General if he feels he is not vigorous or imaginative enough in representing the public interest.

If these broad rights are granted to the public in the area of environmental protection, it could be logically argued that similar rights should be granted in the areas of education, consumer protection, and civil rights, which are also current subjects of great public interest. If the principle established in this bill were extended to other areas, we could well have a breakdown in the orderly process of the Executive and Legislative branches of the Government.

In our view, A-1268 will not be helpful in producing a cleaner, more congenial environment for the citizens of New Jersey, but rather would have the unfortunate effect of hindering earnest efforts in that direction.

I thank you for this opportunity to present our views.

ASSEMBLYWOMAN MARGETTS: Are there any questions of Mr. Kramer?

ASSEMBLYMAN HORN: I have one question.

You make mention in your brief that this program would harm the abatement program. In your opinion, how could this piece of legislation harm the abatement program at this time?

MR. KRAMER: Well, we have an abatement program which has gone through the regulatory agency. This bill would give any citizen the right to come in to court and say, we don't like this or we want a higher standard, and then we're going to have the court, by a judgment, declare a higher standard for this particular thing without going through the orderly process of having a hearing through an administrative procedure with all parties in interest being heard. The court is empowered here, under the bill, as I read it, that if it feels that a standard which has been already adopted is deficient it can order a higher standard which the court may think is more appropriate. And in that way the court is interfering, in our opinion. In other words, we could have one case in North Jersey on a certain set of facts and they may say he may need three-tenths parts of pollution in a million parts of water; we may have another court in South Jersey with a different judge saying five parts. We may have the same company involved in both cases and we'd be subject to two different standards, depending on how the judge looked at it in each particular case. And if this is so, then we don't have it resolved until it goes through the appellate process, the Appellate Division and the Supreme Court, so we have a standard fixed by the court which is uniform throughout the State.

ASSEMBLYMAN CURCIO: Do I understand, Mr. Kramer, that the Chamber of Commerce, your firm, feels that we are doing enough by way of legislation in this field, or do you

have some alternative to this proposed bill?

MR. KRAMER: We have no alternative to this proposed bill. In other words, what we're talking about here has nothing to do with pollution. We say that this is a wrong procedure to install in the State of New Jersey, to permit anybody, without showing any particular harm, to jump into court representing public interest. We say this is a function, and traditionally the function, of the Attorney General, representing the public. Now, if we let anybody come into court, without showing any special harm to themselves, we're going to have all kinds of litigation, it seems to me. That's our one problem. And the other is that where we give the court the right to independently determine whether a proceeding of an administrative agency is a good standard, and substitute its judgment for the agency's, we think this is a very dangerous procedure. We think this should come up through the agency --

ASSEMBLYMAN CURCIO: Aren't courts doing this all the time, substituting its judgment?

MR. KRAMER: Only when it comes up through the agency, where there's a contention that the agency acted in an arbitrary or capricious manner, or there was no basis in the facts presented to the agency to support its finding. Therefore, there it is reviewing the agency's action. In this case it could independently find it's own standard. It's not obligated in any way to even bring the agency into the case. It has the right to do so but it's not mandatory. It may invite the agency in or it may refer the whole matter back to the agency to be heard and report back to the court.

ASSEMBLYMAN CURCIO: Isn't the primary concern of the Chamber that this would lead to all sorts of suits by crackpots and other people who maybe have a kick on getting companies to do a lot more than they're doing?

MR. KRAMER: I think this is a very great danger, very great.

ASSEMBLYMAN CURCIO: Isn't that really the meat of your objection?

MR. KRAMER: That's one of them, because these people have not demonstrated any harm in a case. In other words, as I indicated, I can be in North Bergen and say, "I don't like the Atlantic City Power and Light Company. They're belching smoke." Now they may be wrong. But this could lead to spite suits - I don't like this utility, or I don't like this company, I'm going to do a little harassing. It opens the door. Now nothing prevents the suit from being started and, whether it has any merit or not, somebody is put to the expense of coming in to defend it. They may even have it dismissed on a motion as unfounded, but you are putting people to this additional expense and you are overburdening the court.

ASSEMBLYMAN CURCIO: Well, there's nothing to prevent anyone from starting an action against any company today for some alleged injury or harm.

MR. KRAMER: That's right, if they show that they are being harmed. This one, you don't have to show any harm.

ASSEMBLYMAN CURCIO: Well, I can start a suit today or tomorrow against any company and put them to the expense of having an attorney come in to court and show that I have no cause of action.

MR. KRAMER: Yes, but unless you have some harm, you see, that could be dismissed almost immediately.

ASSEMBLYMAN CURCIO: You're saying for me to maintain my action, I must show harm.

MR. KRAMER: That's right, under today's law.

ASSEMBLYMAN CURCIO: Right.

MR. KRAMER: Under this law, you wouldn't, there's just pollution. In other words, the basic thing here, what this bill is saying is every citizen has a right to clear air, clear water and preservation of natural resources.

ASSEMBLYMAN CURCIO: We can't deny that.

MR. KRAMER: We can't deny that. By the same token

we can say every citizen has a right to good government.

ASSEMBLYMAN CURCIO: We can't deny that either.

MR. KRAMER: We don't like what the Legislature has done so we run into court and say the Legislature - we think this is poor government, what you're doing, you come in and explain why. The same thing could be true in an education matter. As you know, all education disputes are now referred to the Commissioner's office before they get to the court; unless it's solely a question of law, they don't come into court. If the theory of this bill was applied to education, good education, good government, - if it's applied to pollution, why shouldn't it apply to everything else? It seems to me we are going to break down our orderly processes which we now have for handling these things. The remedy is there, if you show harm today.

ASSEMBLYWOMAN MARGETTS: Mr. Kramer, don't you think this would be a deterrent to polluters?

MR. KRAMER: Well I don't think people are purposely polluting. I mean, I think one of the purposes of this bill is probably to hurry the process, like necessity is the mother of invention - we don't think this company is moving fast enough. I think a lot of businesses know they're polluting and they're determining ways. I had one instance pointed out to me not so long ago, in discussing this bill, where - you know the sulphur content of fuel oil was established at 3% and companies have gone out - it has to be a special refining through the oil company to get this, yet they have a five year contract. Well, their concern is, suppose somebody says, all right, you're still polluting and it goes to court and they say now you only have to have 1%. They have five year contracts that this is based on.

It seems to me that we have technological people, through your agencies, to do this, and I think it's much easier and much better in an administrative way. We're not bound so much by the rules of evidence, where you can discuss

in an administrative hearing, all your experts. You know, you get in a court of law and have the rules of evidence and many times you don't get the feel and all the information that you would like to have. And we feel that this belongs in the administrative agency, first of all, subject always, of course, to review by the court. But we don't think the court should come into it first.

ASSEMBLYMAN HORN: Doesn't Section 3(a), on page 2, give the protection necessary for these kooks that you speak of?

MR. KRAMER: Well, apparently all you have to show is that pollution exists, you see, under that.

ASSEMBLYMAN HORN: Don't they have to establish the proof to satisfy the court? Doesn't the court then have the right to look over that proof and either dismiss the case at that point or, if there is sufficient evidence, to proceed on? In other words, if some kook is trying to get at some company because of maybe some smoke coming out of a stack, doesn't that person who filed that suit have to go further than just prove that there is smoke coming out of that stack, to the satisfaction of the court?

MR. KRAMER: I would think so, but at this point we have a law suit started and the court, of itself, doesn't move to dismiss it. Somebody has got to come in to move to dismiss that action saying it doesn't state a cause of action, on a motion and hearing and saying you haven't got sufficient proof to have this case go any further. It should be dismissed without a hearing on its merit. That's your first step. If at that point they say there is some doubt, if there is any question of fact at all. You accept everything in the complaint as true for the purpose of this type of a motion, you see. So they can allege pollution. I would think they would have to have something more specific in their complaint, but you attack it and the court says if there's any allegation of pollution in here which could be supported at a later date, we'll go to final hearing on it.

ASSEMBLYMAN CURCIO: This can be done by a simple affidavit, can't it?

MR. KRAMER: Oh, no.

ASSEMBLYMAN CURCIO: I mean, at the first level?

MR. KRAMER: No, it cannot. In other words, what you have to do is have a motion for summary judgment, as we call it, with briefs that are submitted to the court --

ASSEMBLYMAN CURCIO: Yes, I know this.

MR. KRAMER: -- and then it's argued as a matter of law.

ASSEMBLYMAN CURCIO: Yes, but the plaintiff could maintain his action, or defend against a motion for dismissal, on the basis of a simple affidavit.

MR. KRAMER: Oh, yes. There has to be somebody say there is pollution. That's a factual question and so it would be maintained, it wouldn't be dismissed at that point.

ASSEMBLYMAN CURCIO: Right.

ASSEMBLYWOMAN MARGETTS: Any further questions?

(No questions)

Thank you, Mr. Kramer.

Mr. George Shindler? Is Mr. Shindler here?

(No response)

Mr. Charles Stein.

C H A R L E S S T E I N: Good morning. My name is Charles Stein. I am an Attorney from New Brunswick, New Jersey and I am speaking in behalf of the Raritan Valley Environmental Council which is a newly formed organization comprised of persons active in many organizations concerned with the environment, such as The Franklin Township Conservation Club, Boy Scouts of America, Rutgers Environmental Political Action Committee, Sayreville Conservation Commission, Morgan and Bayview Manor Improvement Association, Raritan Valley Zero Population Growth, Weston Mills-Farrington Lake Watershed Association, several Explorer Posts, Franklin High School Conservation Group, Middlesex County Area Sierra

Club, Center for Transportation Studies, Conservation Education Center, Boy Scout Groups, Sayreville High School Ecology Club, and other organizations including the East Brunswick Garden Club.

We feel that the great dangers to our health, to our environment from pollution remain outstanding and are increasing and that the present laws and procedures are not adequate to check the growth of pollution and the danger that it has to our health and welfare for the people of New Jersey.

We feel that this legislation is very urgent and very important to the people of New Jersey, and the issue is not whether or not this bill should be passed, this bill must be passed; the issue is how to strengthen this bill and how to adopt companion legislation to provide for the public interest. This law does not cover damages, compensatory or punitive damages, to polluters who are damaging our air and water, our dwindling water supplies, and destroying our open spaces.

Our present laws governing penalties are totally inadequate and are no deterrent to the polluters. The fines, 90% of them, can be rebated within a year. And we feel that the present laws are inadequate concerning penalties and deterrents. And, of course, this law does not have any provision concerning penalties whatsoever.

The underlying purpose of this law is to secure the public trust in our air and water resources. And this public trust or public interest is not presently fully protected. And it's immaterial whether a person has individual harm or not. The harm is to the people, the air we breathe, the water that we drink. This is a harm to all of the people. And whether a person from Cape May files a suit or whether a person from Bergen County or even a person from California, the issue is whether our air and water sources are being damaged or polluted. The welfare and health of New Jersey is paramount. And the old common law

precedents and the proprietary theories of law which were formed back in the middle ages should not govern a great state like New Jersey, which is attempting to secure its health and to prevent the destruction of our air and water supplies.

We feel that this law must be adopted now, but we also suggest certain other things. The original Michigan law, upon which this bill is based, contained a provision whereby a master or referee could be appointed, and this provision was included in the original bill, on page 2, after line 14, as a separate paragraph. And this provision which was omitted from this bill provided as follows: "The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his findings to the court in the action."

Our organization feels that the impartial referee's report and record is a vital necessity in cases where the persons seeking equitable relief are prevented from obtaining information and records concerning the actual facts of pollution or other destruction of the public resources in air and water. A polluter can just deny these facts, can withhold the facts as to the pollution or sampling or can take a position that it does not want to cooperate or in other ways can prevent the taking of these hard core facts. The impartial referee or master would be able to secure these facts and information and I am sure that the drafters of the Michigan law placed this provision in the law for a very good purpose.

And I think also it answers the position of industry, which I noted in the Newark News yesterday and I think Mr. Kramer mentioned, that the courts are ill constituted to hear these matters, that they're not qualified to consider matters of expertise. Well, we have a great faith in the judiciary of New Jersey and we feel that the device of the master or the referee will be an aid to the court,

whereby the court can secure the necessary technical expertise, engineers or other environmental experts, to aid the court to make these decisions. And we feel that this provision should be reinstated in this bill and it will greatly strengthen the validity of this bill and the ability of this bill to really cope with the problems or pollution. I don't think any of us want an illusory bill or law which cannot cope with the problems and cannot give the tools to the court to benefit the people of New Jersey, the tool here being a master or referee's report and the technical testimony as an aid to the court.

Now there is another provision that we think will enhance the effectiveness of this bill, that is concerned with paragraph C, on page 2 of the bill. Paragraph C provides that upon completion of such proceedings - and it refers to the administrative proceedings where previously in the bill the court would be authorized to remit to the administrative agency for hearings, various proceedings. And paragraph C provides that upon completion of such proceedings the court shall then adjudicate the impact of a defendant's conduct.

Now one of the problems that we find in this field is that the administrative agency, Mr. Sullivan's agency in Trenton, may enter into a consent agreement or consent order with a polluter and give the polluter, for instance, a year to comply with the order. And I have in front of me an order entered into by the State of New Jersey Air Pollution Control Organization, Department of Environmental Protection with American Cyanamid Company. And this order directs American Cyanamid to take certain action to halt pollution in various areas. However, it says in the order that "it is further ordered that a delay in the performance of actions required by this order shall not constitute a failure to comply herewith or give rise to the imposition of penalties if such delay is occasioned by events beyond the control of American Cyanamid Company." And it further

states that, "if at the end of the year, of the period, there is a violation by American Cyanamid - I'll quote from the order - "The Department" that is, the State of New Jersey "shall seek its remedy by commencing an action in the Superior Court of New Jersey."

So, some of these consent agreements by the agency with the industry may be totally ineffective to protect the public interest. They may be excused by so-called events beyond their control, and that may be a valid point and yet, again, it may not in another situation, it may be a delaying tactic.

So what we say here is that the law should have a provision so that the court may adjudicate or review a consent agreement between the State agency and a polluter. In other words, the people should not have to wait a whole year to see whether the polluter is going to comply, because that year will be wasted if the only remedy of the State is after a year of pollution, destruction of air and water, to start a suit at that time. The court, by having continuous jurisdiction over this matter can review this consent agreement immediately to fully protect the interest of the people.

I agree with Mr. Kramer in one respect. He refers to the fact that the intervention, paragraph A, is only permissive by the court. Perhaps it should be mandatory. I'm talking about page 3, paragraph 5 A of the Bill which says that: "Whenever administrative, licensing or other proceedings, and judicial review thereof are available by law, the agency or the court may permit" and it goes on, to intervene various people. We feel, at least, that intervention should be stronger and especially before the administrative agencies. I know of organizations where the people should have the right to intervene before an administrative agency, and at the present time they have no standing. The public interest may be completely not represented between the State of New Jersey Environmental Agency and the polluter. And I think that intervention should be mandatory

before the administrative agency where there have been no prior interventions. In other words, where the only parties before the administrative agency are the State of New Jersey and the polluter, then I think an organization or a county or some group thinking to advance the public interest should have the right, not the permission, to intervene at that point.

I think one of the main problems that I indicated previously, and I will be very brief here, is that the present bill has no provisions whatsoever concerning penalties. I am sure this Committee realizes that our present law concerning penalties is very weak. And I think it's a good thing, where industry can cooperate and does agree to do things. I think it's wonderful that this can happen. However, there have been cases of repeated pollutions and violations of orders and I think in that situation there should be provisions where the penalties could be imposed by the court in suits, civil actions, instituted under this bill. And we feel that any penalty or fine permitted by law, that the trial court hearing these citizen actions under this bill, Assembly Bill No. 1268, - that the trial court should have the right to give as part of its judgment penalties and fines, as permitted by law. And we have laws on the books concerning penalties and fines and he should have that right to do so.

Briefly these are the remarks that I have to make in behalf of these organizations. We feel that the law should be strengthened but, in any event, it should be passed as soon as possible to secure the public trust, the interest of all of the people of the State of New Jersey in our dwindling air, water, and open space resources.

Our society's obligation to protect the health and rights of its citizens in this area requires the precise, authoritative articulation and front-rank support which in the past has been devoted to outerspace and to civil rights and to our activities in other areas. And we feel that this Committee has a mandate from the people of New Jersey, that

it should feel that it has this mandate to proceed with this bill to forcefully adopt this bill as soon as possible to supplement and compliment existing legislation, not to take the place of our existing environmental regulatory agencies but there is a need to supplement and compliment so that the war against pollution and our dwindling resources can be won.

Thank you very much for this opportunity to be heard.

ASSEMBLYWOMAN MARGETTS: Thank you, Mr. Stein, for your excellent testimony.

Are there any questions of Mr. Stein?

ASSEMBLYMAN CURCIO: Mr. Stein, you state that this bill does not provide for any penalties. Well, doesn't the court, to which the action is brought, have jurisdiction to impose whatever relief it feels would be appropriate, including penalties?

MR. STEIN: Well, the argument may be made by skillful lawyers for industry to the effect that no provision for penalties having been specified here that, therefore, there is no right to impose penalties. However, if it simply could be stated that the court may impose these penalties, it will strengthen the bill and take away this argument.

ASSEMBLYMAN CURCIO: I just wondered if the language in the bill, lines 6, 7, and 8, page 1, say: "in any court of competent jurisdiction having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief."

MR. STEIN: That may not include penalties. And I think if I were on the other side I could make a very good argument that this bill does not cover penalties and what the Legislature meant by "equitable" is to restrain and prohibit pollution and not the imposition of penalties, especially statutory penalties.

May I just make one further short point in

answer to something Mr. Kramer said, which should not, I think, be left unsaid. I think there are many precedents in the State of New Jersey where courts have acted as statutory agents and agents of the Legislature. I'm referring, I think, to our Park Commissions and park jurisdiction, where our courts have sat as agents of the Legislature and have determined matters concerning parks. And there are many other areas where, by statute, the courts have been given jurisdiction. So the argument made that the courts should not be burdened with this area - I mean, I think there are many precedents for it and I think the public health dictates the need here, which is very important.

ASSEMBLYMAN CURCIO: You also mentioned, Mr. Stein, that you felt that the court should review set agreements with industry or polluters, as you called them, and the State.

MR. STEIN: Yes.

ASSEMBLYMAN CURCIO: Then are you stating that any-time an agreement is entered into between the Department of Environmental Protection and an industry, who may or may not be a polluter, that anybody could bring an action to have that agreement tested in the court as to whether it's proper or valid or invalid, whether it contains sufficient provisions to protect the public?

MR. STEIN: Yes.

ASSEMBLYMAN CURCIO: Would this result in a multiplicity of suits, number one, and, number two, would it not simply invalidate any agreement? Why not simply have the Court prepare the agreement then?

MR. STEIN: Well, in a situation such as the one I mentioned, it is possible that the consent agreement may be totally inadequate.

ASSEMBLYMAN CURCIO: In the determination of one individual? In other words, any time an agreement is entered, if one dissatisfied person or one person who sees this agreement and is not very happy with it, he goes into

court and tries to get the court to substitute his judgment for the negotiated agreement between the parties, the State and the industries. Is that correct?

MR. STEIN: Yes, but he would have the burden of proof to establish that. Of course, if he couldn't sustain that burden of proof, it would be thrown out.

I think one thing also is important here. I don't foresee any great flood of litigation coming from this at all. To institute any kind of a suit such as envisioned by this litigation, you need resources. The average person --

ASSEMBLYMAN CURCIO: \$60.00.

MR. STEIN: Well, their attorney's fees. And attorneys, in a suit like this it could run anywhere from \$1,000 to three or four thousand or more. The average person does not have these resources. And as Professor Howard P. Green of George Washington University, a Law Professor, has said, concerning this type of litigation, "In any case," he says "it is seldom easy to build up a case on which to base an environmental law suit because of the complexity and expense." Said Green: "The unhappy fact of the matter is that members of the public generally do not feel sufficiently threatened by environmental insults to join morally and financially in resisting them at a sufficiently early date. Even where plaintiffs do emerge, the litigation is a David vs. Goliath affair with dubious prospects for success, since the meager resources of the plaintiffs are pitted against the powerful, economic and political interests which seek to use the environment for their own purposes."

So I don't see any flood of litigation by crackpots or others at all here. An investment must be made in this and I think the paramount interest is the public trust in our air and water. This is the most important thing.

It's the same with our criminal law. Sometimes the law takes the point of view, it's better to let a

guilty person loose than to deprive someone of their civil rights. It's better for the State of New Jersey to suffer a law suit or two, to clean up our environment, than to see to it that our open spaces and our water supplies are protected. This is the risk that we must take for our children and grandchildren, we feel.

ASSEMBLYWOMAN MARGETTS: Are there any other questions of Mr. Stein? (No questions)

Thank you very much.

MR. STEIN: Thank you for the opportunity to be heard.

ASSEMBLYWOMAN MARGETTS: I would like to introduce two members who have just come in, Assemblyman Gavan, on my left, and Assemblyman Enos, to my right.

We will hear now from Mr. William Brown, Griffin Pipe Products Company. Mr. Brown.

W. W I L L I A M B R O W N: Mrs. Margetts, gentlemen of the Committee, I find myself in a rather awkward position. I've been 38 years in the Boy Scout program and now I'm going to sit here and oppose our last speaker. I was sitting there wondering how far off it would be before we stop the Boy Scouts from building camp fires or camping out alongside of our streams. And I hope that this is never brought about just in the interest of stopping all pollution. Cigars in committee meetings - if I'm opposed to it, it appears that the law would also permit me to bring suit against this too.

Speaking for Griffin Pipe, we're in complete agreement with the brief presented by the Chamber of Commerce representative, Mr. Kramer, but we cannot over-emphasize the point that we must exclude any provision which would allow the courts to overrule the Department of Environmental Protection.

We have just expended hundreds of thousands of dollars to prove that we were good neighbors to the citizens of New Jersey, as well as our neighbors across the river in

Pennsylvania. Our company has a reputation for this in all of the plants that we operate. We haven't waited for legislation to force us into this position but we have taken this stand because we recognize our responsibility in keeping our air and our water clean.

We designed and engineered equipment to meet the standards, as proposed by the Department of Environmental Protection. This hundreds of thousands of dollar equipment was presented to them for their approval and we received the approval saying that this would meet the standards.

The regulations of the Department of Environmental Protection require a certificate to operate, granted by the Department, which is under and within the statutes which created this Department. This is a certification that the controlled pollution source is within the law already.

Now, for the amount of money that we have expended - and our thoughts now are that should this law come into effect and a judge in one end of the State, or another, promiscuously say these laws must be tightened up, we're faced with abolishing all of our equipment and it's not something that you can do tomorrow. There is an 18 months lag for any equipment that we buy. It takes just so long to engineer, redesign, regardless of the amount of money that we're expending. We are updating our equipment in Council Bluffs, Iowa, to the tune of \$880,000 just to improve on what we have. This puts a tremendous burden on the plant there. Our plant here has new equipment, as I say, it has just been put in in the last year, and we are meeting the tests and requirements of the State Environmental Protection.

It is, therefore, incongruous to us that a law should be passed that would allow one law to negate a portion of this other law which has established the Department of Environmental Protection.

This is our stand. We feel that this bill should

not be passed.

ASSEMBLYMAN CURCIO: Mr. Brown, I live in South Jersey and it is called to my attention every day when I travel along the Delaware River that that river is one stinking mess. Now, are you saying that you would oppose this bill to prevent me from instituting an action against any company that is polluting that Delaware River, because I feel that I'm being hurt.

MR. BROWN: No, I don't say this. This should be stopped. I think what we're saying is that we don't think the court should overrule an organization that has already been set up by the State, and I imagine by the Assembly here. Now, I'm no lawyer and I am not going to be able to talk in legal terms but I imagine the Assembly set up the control organization. We are trying to abide under the law. We want to be law-abiding citizens. We want to know what we have to do to comply and we want to be well within those. We don't want to be borderline.

I personally would like to have a chance to go into court but I don't know but that a citizen doesn't have this right already. As I said earlier, maybe in jest of the Boy Scouts, what's to prevent me from bringing suit against any neighbor I have who builds a bonfire in his backyard, who doesn't have a proper muffler on his car, to what extent? I mean, we're talking polluters as only great industries or is it everyone?

ASSEMBLYMAN CURCIO: Everybody.

MR. BROWN: Sure. So what I'm saying is, this is a right guaranteed by the Constitution, to take our problems to court. Our objection is, we can't have the court overruling an organization that's already set up.

ASSEMBLYMAN CURCIO: They do that every day, don't they?

MR. BROWN: Are we going to have to take our plans to a court to have them approve them before we build? Before we engineer, should we take them to a court and say, rule on

this before we spend our thousands or millions of dollars? This is the question that we have in our mind. If the Department of Environmental Protection is the one to approve this equipment and say, go ahead, it will meet the standards of the State of New Jersey, we feel that they should be the ones to regulate it. Now, they've been rough on us. Don't think they haven't. They haven't coasted on this thing. But I'm saying fairly. They haven't said, do it today when they know darn well we can't get the equipment in, that somebody is building us a new motor or a new blower in this equipment and it is taking a ten week lag. They made us comply every way we can and do the best we can while we're waiting for it, knowing that we are trying.

ASSEMBLYMAN CURCIO: Maybe you should have been trying earlier.

MR. BROWN: Well, we can only try when we put the equipment in.

ASSEMBLYMAN CURCIO: I mean, done something sooner rather than wait until the State tells you you've got to do it.

MR. BROWN: When we put our cupola or our melting unit in, we put the equipment that the State approved - that day it was on, it did not operate properly. This was a malfunction of equipment.

ASSEMBLYMAN GAVAN: Did you run any pilot test before you did that?

MR. BROWN: No. The only way you can run a pilot test is - as I say, all of the State engineers --

ASSEMBLYMAN GAVAN: Did you run any pilot test - I'm familiar with pilot tests - before the equipment went on?

MR. BROWN: The only way we can check this emission control equipment on a cupola is to fire it up and try it.

ASSEMBLYMAN GAVAN: But you didn't have any pilot test run at all.

MR. BROWN: You mean the actual test.

ASSEMBLYMAN GAVAN: A pilot test. Were there any

pilot studies done before you turned this equipment on into full production?

MR. BROWN: There is no way to test it. There is no way to turn them on partially.

ASSEMBLYMAN GAVAN: No way whatsoever?

MR. BROWN: No. Everything was built according to the equipment that we went around and saw in operation.

ASSEMBLYMAN GAVAN: In other words, the equipment was tailormade equipment.

MR. BROWN: Yes. We went around to every plant we could find that had comparable equipment. We examined equipment from all different suppliers and we picked what we thought was the best and would meet the code, be well under the code. And now, because of one feature or another that hasn't been -- as I say, to everyone's engineering knowledge, it should have met the code. It turned out that we had to put in after-burners, it turned out that we had to buy a larger motor, a larger blower, an extra hundred to a hundred and fifty thousand dollars. Now, the cost wasn't the point. The point was that it was something that we had to do to comply, but we had to put it in operation to find out. Now, we weren't that far - our tests showed that we were in compliance but we still weren't - I mean, we were within the code.

ASSEMBLYMAN GAVAN: How many years had that operation been in process before you came up with these plans?

MR. BROWN: We had been using electric induction furnaces.

ASSEMBLYMAN GAVAN: For how many years?

MR. BROWN: Four years.

ASSEMBLYMAN GAVAN: Four years prior to this?

MR. BROWN: Yes. Now the company has been in operation since the 1800's

ASSEMBLYMAN GAVAN: You mention electric induction furnaces.

MR. BROWN: Yes.

ASSEMBLYMAN GAVAN: Now how many years prior to that electric induction furnace?

MR. BROWN: They have been in operation with cupolas sometime in the 1800's. When Amstead Industries bought this company, as I recall in '64, they ran the cupolas for a couple of years, put the induction furnaces in and then we went back to the cupolas last January, a year ago. It was at this point that we put in brand new equipment designed for the cupola that we had, a larger cupola, and, as I say, designed and approved by the engineers of Environmental Protection.

ASSEMBLYMAN GAVAN: They can only approve what you give them, isn't that correct? They can only approve the plans as you present them. Isn't that correct?

MR. BROWN: Approve or disapprove.

ASSEMBLYMAN GAVAN: As you present them.

MR. BROWN: Yes.

ASSEMBLYMAN GAVAN: Right? They cannot do consulting work for you. Isn't that correct?

MR. BROWN: This is right.

ASSEMBLYMAN GAVAN: All right. So, therefore, it's up to you to find the necessary ways to make the corrections.

MR. BROWN: Yes.

ASSEMBLYMAN GAVAN: So what's your objection to this law, this proposed bill, then? You were talking about Boy Scouts in the beginning and you're going hither and yon. Now you're talking about a profit-making organization. Boy Scouts aren't a profit-making organization so I don't see how you draw the analogy.

MR. BROWN: No, I wasn't drawing an analogy, I was just saying --

ASSEMBLYMAN GAVAN: You made a statement to that effect.

MR. BROWN: No. I separated them. I say the Boy Scout pollutes just as much, on his individual thing, as we do.

ASSEMBLYMAN GAVAN: In other words, you feel the Boy Scouts are polluters?

MR. BROWN: Sure they are. I spent 38 years in --

ASSEMBLYMAN GAVAN: You spent 38 years as a violator of the proposed laws, then, is that correct?

MR. BROWN: As this is proposed, yes.

ASSEMBLYMAN GAVAN: What did you do that for? You weren't a good Boy Scout then.

MR. BROWN: Have you ever made a camp fire?

ASSEMBLYMAN GAVAN: I don't recall.

MR. BROWN: Have you ever smoked?

ASSEMBLYMAN GAVAN: Did I ever smoke? That's a good question. I never smoked in my life.

MR. BROWN: He's a good Boy Scout. You're on my side.

Now the opposition that we have to the thing is the matter of not letting the judge overrule the Department of Environmental Protection, and that's our chief concern. We hate to design to one set of criteria and then another department or group tear it down. If another law came in next year, it might be someone else who made the decision, and we cannot operate under those conditions.

ASSEMBLYMAN CURCIO: Well, doesn't this happen every day. We think we're in compliance with the law today and then comes a new Legislature with new ideas, more progressive ideas, and says, now we are changing the law today, from now on this will be the standard the people of New Jersey must comply with.

MR. BROWN: I didn't attend the hearing yesterday on this new proposed code that the Department is coming out with, a tighter code. We're not particularly in objection to the code. We feel they are taking steps to improve the air and the water of New Jersey. We know there are time limits that are going to be set to allow us to build these things in and comply under the new code. But, again, this if the Department regulating the thing and not a judge who

does not understand the technical aspects.

ASSEMBLYMAN CURCIO: But that's a risk we run every day. Automobile manufacturers make automobiles that pollute the air. We operate every day. We're polluting the air every day, every moment. Yet, we can pass new laws requiring more stringent requirements for automobile manufacturers. Maybe they will have to get into new fuels, get the fuel industry into difficulty. But these are the penalties we all pay for living in this country, or living in this world, isn't it?

MR. BROWN: If the laws are passed, people comply with the laws.

ASSEMBLYMAN CURCIO: As they exist and they have to comply with the laws as they are promulgated for the future.

MR. BROWN: What we're saying is, we're willing to go to court under the laws that now exist. If they say this is the code and you're not within the code, we're willing to say if you strengthen the code we have to meet the code and we will meet the code. We are willing to go to court and be found under a judge's direction whether we are guilty or not guilty based on our code, upon our compliance with the code that has been set up. We are willing to accept the changes in code, we just don't think that a judge should sit and overrule a code that has been established as part of our rules. That's what we have the rules for, so that we can all abide by them, not to have someone sitting on the bench say, I don't think that was right, and say, I think that rule was wrong and, therefore, I rule that you're guilty. This is our complaint.

ASSEMBLYMAN ROBERTSON: Mr. Brown, if the bill were to grant immunity to any plan that had been approved by the Department, would you then find the bill objectionable? I see your point. You make a valid point, where you present a plan to the Department and spend hundred of thousands of dollars and they approve it and you install it and along

comes somebody and they file suit and the judge says that that's not proper. I frankly don't see that as a possibility in the law. You evidently do. So if rules or plans that are approved by the Department were granted immunity from this particular law, would you find it acceptable at that point?

MR. BROWN: I think it would be far more palatable.

ASSEMBLYWOMAN MARGETTS: Thank you very much, Mr. Brown.

We will hear from Mr. John Reed, New Jersey Builders Association.

J O H N R E E D: Mrs. Margetts and gentlemen, I thank you for the opportunity of hearing from our industry. I live in Morris Township myself and I am a layman in real estate and home building. I am not a lawyer. I am not a chemist or an engineer, and perhaps this is important.

Our industry early recognized that the requirement for clean air and streams was as much in our interest as anybody else's. Our industry cannot thrive unless we conserve resources. We cannot build future developments if we're going to run out of underground water. We obviously cannot live with pollution. It would be pretty hard selling homes unless we are also selling some clean air and good countryside along with it.

From the inception of the laws now in the State of New Jersey, we formed our environmental committee, at that time named Clean Air and Stream. Its purpose is twofold, one to educate our members as to what would be required of them and, number two, as far as possible to help them in their solutions. In the course of this, I have perhaps, as a layman, attended over 1,000 hours of seminars, meetings and conferences. And in the course of this I have learned how little I know.

This is an extremely complex, technical field that requires the best expertise of chemists, biologists, professional engineers and others. It is an overlapping,

interlocking field. You cannot change the handling of waste material without involving air, water and other means because what you don't bury you might burn.

We are involved with a new technology to a lot of us and the state of the art is still rapidly advancing. Our industry has from the beginning tried to anticipate and work with various administrative bodies. Two years ago we set up a soil conservation committee, before there were soil erosion ordinances, to work for the soil conservation districts in Morris County and the rest of the State of New Jersey.

We have since the inception met with Mr. Sullivan, who was then Director of Clean Air and Stream. We still continue to meet at regular intervals with him to discuss the mutual problems.

There are massive federal, state and local investments required in sewer plants, regional, central and otherwise.

In the course of our seminars that we've held jointly with the Newark College of Engineering and Department of Health, we all learned some things that now, in this bill, give us cause for worry. For example, inherently, a stream contains what you might call pollution. Every time it rains, where there is wildlife and pets, some of the excrement from dogs and birds and rabbits is washed into those streams, and you are going to have there a so-called contamination that under this bill apparently a layman could take us to court on.

Phosphates and nitrates are something that gardeners and homeowners sprinkle on lawns and gardens. When it rains it goes out the storm drain into these same streams. I do not believe that there is a stream without something that a layman could call a pollutant in there, if he so desired.

As we understand this bill, the judge would have to hear a known fact that there is some pollutant in the

stream. The action could endanger millions of dollars of investments, state and federal monies, the developer's money, because a lot of the sewerage is done in conjunction with and with the aid of private industry. These are projects that are not done overnight, they take a year or so in design and, under the present system we have worked out, with the administrative bodies, in a long series of conferences, sometimes a year or more, a mutually agreeable plan whereby sometimes we support a portion of the cost. Fortunately, we have found our relations with Commissioner Sullivan and others to be good and they have learned our problems as we have learned theirs. I personally fear that this bill could endanger this work. It is not unusual in our industry for us to work as a catalyst to bring together municipalities, perhaps a county as well as towns, to join in the plans for regional plans. These are probably a five year project.

We have the problem, where there is a state warning or, in some cases, a court ban due to the problems of overloaded or otherwise inadequate plants, of how to rebuild. This is a state with a known housing shortage. Usually these are worked out in rather involved lengthy conferences. And I frankly fear the thought of a lay person, not a participant to these discussions, stepping in and perhaps dumping down the drain our year's effort. We, in every way we know how, are trying to work with and for clean air and streams; we are also working with and for, every effort that we know how to cut down on soil erosion. Again, in any stream, after any rainfall, there is sediment there, whether there is development upstream or not. You can look at the river as you cross the bridges in New Brunswick in the middle of the winter and check and find no activity of private industry upstream but you still have a brown river. That is pollutant. I have to look at the possible premise that there is pollutant that a layman can find in some sense everywhere. Unfortunately, we probably can never have 100 percent clean stream or clean air.

For a judge, who possibly knows less than I do about this environmental and ecological subject, to have to sit in and set a standard to me does not seem realistic - a little bit unfair to the judge. There would be rather considerable advice available to us in the industry and we're hard-put to keep up with each new standard and the standards are being constantly upgraded.

Through our association with other states, through the National Association of Home Builders, we believe that New Jersey is rather well in the lead in doing an excellent job, advancing as rapidly as feasible in these pollution problems.

We listened to Mr. Kramer from the Chamber of Commerce, who has said pretty near everything that could be said, and we heartily concur with him. We merely wish to stress the hazard as our industry sees it and we, therefore, must speak against this bill.

Thank you.

ASSEMBLYWOMAN MARGETTS: Are there any questions for Mr. Reed?

ASSEMBLYMAN ENOS: Mr. Reed, are you the President of the New Jersey Builders Association?

MR. REED: No, sir. I am the Chairman of the Environmental Committee.

ASSEMBLYMAN ENOS: I understood you to say you are not an attorney but a layman. Have you read this bill?

MR. REED: Yes, sir.

ASSEMBLYMAN ENOS: And, do you have a copy of it before you now?

MR. REED: I believe I have it in my pocket. Yes, sir.

ASSEMBLYMAN ENOS: Looking at page 1 of the bill, paragraph A, beginning: "The Commissioner of Environmental Protection" - and then it goes on and says everybody may sue everybody, even including themselves; the Attorney General may sue the Attorney General. Do you understand

from that, this paragraph, as a layman, that you, individually, would have the right of action against the sewer authority or the municipality with the sewer plant discharging waste into a stream? Do you think that you, individually, would have a right to action against your own municipality?

MR. REED: Yes, sir. That's the way I understand it.

ASSEMBLYMAN ENOS: Do you think that organizations, such as the Chamber of Commerce or Rotary Clubs or anybody of that nature, would have that same right?

MR. REED: Yes, sir.

ASSEMBLYMAN ENOS: And as you read this, do you see any restrictions whatsoever on any individual, firm, partnership, corporation, or any private entity other than a municipal entity or a county entity or a state entity? Do you see any limitations on anybody to sue anybody in here?

MR. REED: I'm not sure I understand what you mean by limitations, sir.

ASSEMBLYMAN ENOS: Well, any restrictions against them.

MR. REED: No. As I read it, I see a very broad scope which, in a sense, would allow a newly formed organization to enter into this picture and start a suit. I also see the possibility of even worse, unfriendly businesses attacking each other.

ASSEMBLYMAN ENOS: I understand that you are not an attorney, and that is precisely why I am asking the questions that I'm asking now.

If you turn to page 2, paragraph numbered B, lines 15 and 16, just one sentence and it's about a line and a half, it has to do with apportionment of costs. As a layman, what do you understand that to mean?

MR. REED: I would have difficulty understanding that. It would sound possibly that a interpretation could

be to have a municipality share the cost of private enterprise, but that would just be one of many possible interpretations I could take from that, sir.

ASSEMBLYMAN ENOS: Well, as an Attorney, I'll say that's very, very close to being exactly right that the court would have the right to apportion costs even to somebody who is unable - and, by the way, as a statement for the record, I would like to state that in my opinion - it has been mentioned before by Mr. Stein that it's unlikely that there would be a multiplicity of suits because of the cost involved - or somebody mentioned that from the stand. Now I can tell you this, if you are destitute and you don't have funds, you can file a complaint, a \$60.00 complaint, because the court will permit it. And in a suit like this, if you make a prima facia case, whether you can substantiate it or not, the court - and you state in your complaint that you can't afford to put up the \$60.00, the court will entertain that complaint. So that anybody who is disgruntled, in my opinion, would be able to bring a suit like that. And one thing that I fear is, this absolute multiplicity of suits, which we don't have the likelihood to encounter under our present legislation.

Now, as a layman, I call your attention to page 3, Mr. Reed, and ask you if you understand what that means, line 20, paragraph c: "The doctrines of collateral estoppel and res judicata may be applied by the court to prevent multiplicity of suits." You don't understand that, do you?

MR. REED: No, sir, I do not.

ASSEMBLYMAN ENOS: And if you had a suit that you wanted to bring, would that have any effect upon whether you brought the suit or not?

MR. REED: Not understanding it, certainly not.

ASSEMBLYMAN ENOS: And if you went to an attorney and asked his opinion as to whether or not you should bring a suit, would you feel that he would be guided, or rather that you should be guided by what he told you the law meant,

or that he should be guided merely by the fact that you wanted to do something and he would tell you whether you could lawfully do it or not?

MR. REED: Yes, sir, I would take his professional advice. That's what I'm paying for.

ASSEMBLYMAN ENOS: Good.

ASSEMBLYMAN CURCIO: There are many people who don't take their lawyer's advice.

ASSEMBLYMAN ENOS: I wish more of them would.

ASSEMBLYWOMAN MARGETTE: Any further questions?

ASSEMBLYMAN ROBERTSON: I don't know whether they are questions or not but perhaps they are comments. Mr. Reed, on page 2, 3A, second line, showing that the conduct of the defendant -- in other words, you brought out several points that you seem to fear in the bill that I don't see as problems. In other words, erosion of soil and so on and so forth. You certainly have no control over the rains, the water, and so forth, so I am not sure that that creates a real problem for your organization.

MR. REED: May I explain it, sir?

ASSEMBLYMAN ROBERTSON: Yes.

MR. REED: Anybody downstream of a private or municipal sewer plant can prove that there is a contamination downstream because it is almost always there. In other words, the phosphors, nitrates, or other materials are inherently in the stream and yet they are the pollutants you look for from a malfunctioning sewer plant. Once it's in the stream it takes rather good expertise to decide who is putting the pollutant in there. We have streams with more than one sewer plant. I am sure there are some with as many as seven on it. And, again, with phosphates, with nitrates and other things, just dead earthworms being in the stream as they wash in are contaminant, and yet they look like the effect of human excrement in the first stage. It takes a very expert chemist to tell the difference between human and other. You, after all, do have in New Jersey farms

the duck farms, chicken farms and whatnot, and any wash downstream from them would look like a malfunctioning sewer plant at first test, it's a very elementary test. So, since there is a contamination inherent there, I do not believe that we can entirely eliminate, some of it is natural. There seems to be, under this bill, grounds for a lay person to start a suit, enough grounds to get them in court and not thrown out, since the contaminant is there.

ASSEMBLYMAN ROBERTSON: Do you feel that the plaintiff doesn't have to show cause?

MR. REED: Well, if they can show contamination existing in a stream, I'm afraid the court might consider that cause.

ASSEMBLYMAN CURCIO: Don't you believe, under this act, the claimant would have to show who is contaminating?

MR. REED: I'm afraid in most cases we would be put on the defensive, guilty or not guilty, if there is pollution in the stream.

ASSEMBLYMAN ENOS: Mr. Reed, in your experience in the building trade, have you had any experience with construction of sewage treatment plants?

MR. REED: Yes, sir.

ASSEMBLYMAN ENOS: And who, at the present time, is charged with the responsibility of seeing that these sewage treatment plants are functioning according to law?

MR. REED: They are under Commissioner Sullivan's Environmental Department, sir.

ASSEMBLYMAN ENOS: And, to your knowledge, if you know, does Commissioner Sullivan have the power to take legal action against those developers or municipalities or sewage authorities to compel them to live up to the law?

MR. REED: He certainly does, sir. We have nine communities that have been shut down in Morris County now for about two and a half years by the courts in Jersey City. We have court orders in Ocean County. We have one,

I believe, in action now that we've been expecting for some time, in the Cherry Hill area affecting 26 municipalities. For a while we had 5,000 homes held up in Gloucester County over what fortunately turned out to be a relatively minor technicality to straighten out in a cooperative manner with funds from the builders to correct some ailing plants. And we have this almost constantly, sir.

ASSEMBLYMAN ENOS: Thank you. That's all.

ASSEMBLYMAN ROBERTSON: These plants you mention, had they been approved by Commissioner Sullivan prior to the installation?

MR. REED: Probably not, sir. Most of them are as much as twenty years old. In the case of Jersey City or some others, they are probably antique plants, prior --

ASSEMBLYMAN ROBERTSON: I'm talking about the newer plants.

MR. REED: New plants, as far as we know, sir, have relatively little difficulty other than the initial stage. On the initial stage of a development, on a very light load, a brand new plant is difficult to settle in because if the design load is, say, 800 homes, your first 50 homes are difficult for the plant to handle. Other than for that transient or passing period, the newer plants seem to be doing a very excellent job.

ASSEMBLYMAN ROBERTSON: What I meant, is there any approval required by the State of these plans, or is it strictly local approval?

MR. REED: Oh, no, sir. They have State approval. Every sewer plant is state approved and constantly inspected and reported upon, weekly and monthly reports and every other.

ASSEMBLYMAN ROBERTSON: Right. That was my point. They are approved by the State before you install them.

MR. REED: Yes, sir.

ASSEMBLYMAN HORN: Could you relate to the Committee here the statement that you just made with respect to Cherry Hill and 26 communities what is the problem there?

MR. REED: This is an area in which we are attempting, - I say "we" in the over-all sense of the State and others - to form a regional sewer plant area. Under the present law, the Commissioner has only powers of persuasion. He has very strong negative powers but very little positive power. So he must rely on persuasion in an attempt to form a region of various municipalities. The region, in a sense, is predetermined by the contour of the land or sewer basin, and sometimes when you try to get municipalities together, one of them will say, well, we don't need it, or we don't have the money, or what-not. Under the present law, the Commissioner only has this power of persuasion to which, not infrequently, the builders add their powers wherever they can. And this is a slow and difficult process.

ASSEMBLYMAN HORN: Isn't the problem in Cherry Hill not the fact that the construction or the pollution problems that may exist out of the new plant that's supposed to be built in Gloucester but really out of the problem of municipalities which do not want to join the regional sewage authority?

MR. REED: That is the most common problem.

ASSEMBLYWOMAN MARGETTS: Thank you very much, Mr. Reed.

MR. REED: Thank you.

ASSEMBLYWOMAN MARGETTS: We will hear now from Mr. Robert Gresl, from E. R. Squibb & Sons.

R O B E R T G R E S L: Thank you, Madam Chairman and members of the Committee. My name is Robert Gresl. I am representing E. R. Squibb & Sons of New Brunswick, New Jersey. I am also a licensed Professional Engineer in the State of New Jersey.

I would like to register our objections to this proposed legislation, Assembly Bill No. 1268, as currently written. I would also like to apologize for not having a prepared statement but I will keep my comments brief.

Environmental control is not an issue which is foreign to a concern such as Squibb & Sons, since the standards that were established by Edward R. Squibb in 1858 were the foundation stones for many of the current federal regulations that have been established to maintain high standards in the pharmaceutical area. So this is nothing new to us.

But returning to Assembly Bill 1268, we feel that there are certain aspects of this bill that will not bring additional clarity and in turn expedite solutions to the vital problems that currently face us in this area of environmental control.

Specifically, we feel that the citizen suit aspect of this proposed legislation will not measurably contribute toward the further upgrading of our environment. On the other hand, it could measurably contribute toward the dilution of vital effort that could more profitably be applied toward the upgrading of the situations in question.

Currently the federal and state agencies responsible for the environmental control areas have been very instrumental in bringing a much greater degree of clarity to this very vital area and to the establishment of well-defined standards. These standards are vital as guides to industry in order to insure that they can equal or better these standards in their operations.

As a company, Squibb has and is continuing to work diligently with the New Jersey State Department of Environmental Protection and other federal agencies to insure that our installations meet these recently upgraded standards. And we feel that the people in these areas have been of very vital assistance toward bringing the clarity necessary in order to assess and establish our goals.

That, basically, summarizes our objection to one small aspect of this legislation. And, in closing, I would like to express our appreciation for this opportunity to express our opinion, which is an area of vital concern

to all of us as responsible members of the New Jersey Community.

Thank you.

ASSEMBLYWOMAN MARGETTS: Thank you, Mr. Gresl.

Are there any questions?

ASSEMBLYMAN GAVAN: How long have you been employed by Squibb?

MR. GRESL: I've been with them about four years.

ASSEMBLYMAN GAVAN: Four years? During your four years of employment with Squibb, do you know if they have ever been cited by the New Jersey State Department of Health or the Department of Environmental Protection for any violations of the air pollution control code of any sort?

MR. GRESL: We have been filing applications for new equipment.

ASSEMBLYMAN GAVAN: That's not my question. Have you ever been cited for any violations?

MR. GRESL: I would have to say yes, in answer to that question.

ASSEMBLYMAN GAVAN: Do you know what the violations were or are?

MR. GRESL: Yes. Our Architect in New York did not file the proper papers with the Environmental Protection Agency in New Jersey.

ASSEMBLYMAN GAVAN: Were you fined or reprimanded?

MR. GRESL: It was brought to our attention and we --

ASSEMBLYMAN GAVAN: But no fine was levied against you.

MR. GRESL: No. That was our only exposure.

ASSEMBLYMAN GAVAN: Prior to your four years, do you know if there were any citations against your people, E. R. Squibb?

MR. GRESL: I do not know of any, personally.

ASSEMBLYMAN GAVAN: No further questions.

ASSEMBLYWOMAN MARGETTS: Thank you very much, Mr. Gresl.

Mr. Ian Walker of Stony Brook-Millstone Watersheds Association.

I A N W A L K E R: Mrs. Margetts, gentlemen: I have a brief informal statement and will file a formal statement.

My name is Ian Walker. I am Executive Director of the Stony Brook-Millstone Watersheds Association, located in Pennington, New Jersey.

I would like to make a comment this morning about the concern expressed by several previous speakers about citizens running into court and the courts being jammed by citizens coming in with suits.

We have been involved in many environmental problems, and many of our members, of whom there are over a thousand, call us daily on problems in their communities throughout our 285 square mile area.

Our procedure is this: We suggest to them first to see their local officials, local board of health and local agencies that may have jurisdiction to find out what the local codes are. Then we suggest that they then contact state agencies, the Department of Environmental Protection, and usually give them the name and phone number of the person involved in either air pollution, water pollution, or what-have-you. So that first the reliance is on going through the system and the agencies involved, either local, state and sometimes it leads to federal agencies, quite often it does.

Now the local organizations and agencies, whether planning boards, zoning boards, boards of health, in New Jersey have their limitations. These are well recognized. The State Department of Environmental Protection, under Commissioner Sullivan, has been recently reorganized and we are pleased to see that, for instance, water supply and water pollution are much closer together, those involved in it. But there are many additional problems which I think

the Department recognizes, for instance, problems of personnel, of administrative procedures, and especially funds.

Now the environment in New Jersey has been neglected for so long that we haven't manned the departments up to the job that must be done. For instance, often a citizen of the State will call in with a question or a problem to find that the State of New Jersey or a particular bureau will have one, two or three, or a half dozen inspectors to cover the entire state. So the result of this is that, by necessity, they cover or handle those problems which are most serious or on which there are the most complaints. So the response is frequently - if it's not stated, it's pretty apparent, - number one, has someone complained? and, number two, who complained?

Now, our Association has, as I said, more than a thousand members. We know generally what many of the laws are, the administrative procedures, we know what is supposed to be done and we have a full-time staff to do this. It's relatively easy for us, or it is easier for us than it is for the individual. In other words, the special interest group or the pressure group, whether it be the Chamber of Commerce or the industry, or whether it be a conservation group, if it's large enough, if it has the money and the staff and the resources, it has a say.

But, getting back now to my original point here for the individual, the individual does not run into court, or at least this is our experience; the individual attempts, through his local, state and federal agencies, to get the job done and invariably what he finds is that because of the limitations in staff and money and so on, he will meet with delays and frustrations which ultimately culminate in contempt and a loss of confidence on the part of the individual citizen. So I see this as not an opportunity for everyone to run into court but as a safety valve as a last recourse for the individual who has exercised his

rights as a citizen and his obligation to go through the process and go through the system and when he finds it does not work then this gives him recourse.

So, again, I will file a formal statement but we are in general support of this bill or this type of bill.

ASSEMBLYWOMAN MARGETTS: Thank you, Mr. Walker.
Any questions of Mr. Walker?

ASSEMBLYMAN GAVAN: I would just like to commend Mr. Walker for his statements here this morning. I think you summed it up very nicely.

MR. WALKER: Thank you, sir.

ASSEMBLYWOMAN MARGETTS: Thank you.

Mr. David Lloyd, New Jersey Manufacturers Association.

D A V I D L L O Y D: Chairwoman Margetts, members of the Committee on Agriculture, Conservation and Natural Resources, my name is David Lloyd. I am Secretary to the New Jersey Manufacturers Association Committee for Air and Water Quality. I am here today to present the views of that Committee.

Our Committee has grave reservations about Assembly Bill 1268, in fact we are of the opinion that the over-all concept of the bill may well be harmful to the best interests of the environmental quality in this State. Thus, while we will comment on particular aspects of the bill and will suggest amendments to correct the more serious errors, we believe there is a fundamental error in the entire approach taken by this bill.

Employers have no argument with the concept that any citizen may institute court proceedings to halt pollution. The mandamus procedure is already available to force a governmental agency to do its job - in this case, the Department of Environmental Protection. Our objection is to the notion that due process, in an effective statewide pollution control program, can be sacrificed to facilitate the illusion of immediate pollution controls. We are

convinced that A-1268 would undermine the orderly pollution control procedures now employed so effectively in this State; replacing them, for all intents and purposes, would be a case by case approach which is, at best, haphazard and, at worst, chaotic.

A-1268 would substitute judge-made pollution control law to the expertise of regulatory and enforcement officials of the State's Department of Environmental Protection. Such judge-made law runs the risk not only of being sorely lacking in technical competence but also of being as varied as the number of judges in this State themselves.

Citizens and polluters alike would rush to place themselves before judges most likely to agree with their respective viewpoints. Instead of pollution control standards, we would surely end up with just the opposite or no standards at all.

Company decisions to implement comprehensive pollution control programs may well be held up pending the outcome of private litigation. No company is going to spend millions of dollars only to have a program wiped out by an adverse decision. Such delay, we feel, would certainly take its toll of the quality of our environment.

For those who may think that court action would achieve pollution control at a faster rate than the Department, we refer you to the already congested conditions of the court calendars in this State. In some cases a suit can take as long as two or three years to make its way up through the appeals procedure. We submit that the Department has a better track record than that.

At this point, I would like to refer briefly to two principles of constitutional law which we feel would be affected by the passage of this legislation.

Since the bill does not provide any standard capable of objective application, strict, clearly established standards can be overruled by a judge who can then impose

his own standards. This, we submit, does not comply with due process of law requirements.

We are also troubled by a procedure which would permit an alleged polluter to be found guilty of an act which at the time committed was entirely legal. This ex post facto judicial legislation is a procedure no legislature can or should establish.

One final comment seems appropriate. A-1268 was apparently borrowed from the recently enacted Michigan Law which went into effect on October 1st of last year. The circumstances surrounding the passage of that bill in Michigan differ, in at least one very important respect, from those surrounding the passage or no passage of this bill.

The State of Michigan apparently has no department of environmental protection or any other single such all-powerful pollution control agency. The Michigan law was passed to fill a particular need. We submit that no such need exists in the State of New Jersey since we have the Department of Environmental Protection.

In summary, again while we consider the entire approach taken by this bill to be erroneous, we recommend that if the legislation must, in fact, be passed, that the following amendment be made:

1. Delete sections of the bill which would authorize a judge to overrule standards set by the Department of Environmental Protection; provide, instead, that compliance with established regulations would constitute a complete defense.

2. Provide that the costs of a suit be assessed the loser; that the surety bond become mandatory and that it be in an amount no less than \$1,000.

3. Provide further that parties intervening in other proceedings, as permitted in section 5, be held to similar surety bond requirements.

4. Require that the plaintiff prove at least a

prima facia case, based upon competent evidence against an alleged polluter before temporary equitable relief can be granted.

Thank you for this opportunity to present our views. If you have any questions, I will try to answer them.

ASSEMBLYWOMAN MARGETTS: Are there any questions?

ASSEMBLYMAN CURCIO: Mr. Lloyd, do you recommend that the State of New Jersey be assessed cost - Is that what you said? - if the State of New Jersey through one of its departments or any of its subdivisions is the plaintiff and does not succeed?

MR. LLOYD: Well, who would pay for the cost of a court proceeding?

ASSEMBLYMAN CURCIO: I'm asking you, sir.

MR. LLOYD: Well, I think if the State is the one that introduced the proceeding and the proceeding goes against the State, I think there is no other way. I can't see assessing a defendant costs when the suit is not successful for the plaintiff.

ASSEMBLYMAN CURCIO: No further questions.

ASSEMBLYMAN ENOS: Mr. Lloyd, I took some notes on what you gave as recommendations but I didn't get them all. If you will get them before you, please. The first one, I believe, was that you wanted to change or delete this section of the bill which gives the judge the power to override rules of the Department of Environmental Protection.

MR. LLOYD: Yes, sir.

ASSEMBLYMAN ENOS: He already has that because, if standards are set by an administrative body and those standards are questioned in the court, the court always has the right to decide whether those standards go beyond the legislative permission to establish those rules. As a matter of administrative law, that's a fact. So that the judge would have that right even without having it

in the bill, in my opinion.

MR. LLOYD: Yes, sir.

ASSEMBLYMAN ENOS: Then, will you please state that second one you had there, sir? I didn't have all of these.

MR. LLOYD: Well, first, let me say, I think your point is well taken and really what we're asking is that you delete the provision which would permit the court, upon finding a standard deficient, to direct a standard, the adoption of a standard approved and specified by the court. In other words, to substitute the court for the rule-making agency.

Now, the second, - I'm not sure whether you mean the second part of the first recommendation.

ASSEMBLYMAN ENOS: No. Right now I want to make a comment on what you said there. As a matter of legal philosophy, I don't go for the ability of the court to fix the rules; I feel that it is the function of the court to determine whether the rules are proper or not proper under the law. And, as I say, I am not in favor of judicial legislation.

Now, on the second point that you had there, sir.

MR. LLOYD: Well, providing the cost of the suit?

ASSEMBLYMAN ENOS: Yes.

MR. LLOYD: Well, just that the cost of the suit be assessed the loser rather than - I think this would constitute a deterrent to a harassment of any kind; if the provision were made that the one bringing the suit had to be sufficiently sure of his ground, that he would be willing to forfeit whatever bond he had to put up in the event he lost.

ASSEMBLYMAN ENOS: Thank you. And the other one, just briefly, because I didn't have a chance to copy that down.

MR. LLOYD: I will submit a written statement.

ASSEMBLYMAN ENOS: You'll submit that? Thank you

very much. I have no further questions, Mrs. Margetts.

ASSEMBLYMAN GAVAN: I just have one. Are you a lawyer?

MR. LLOYD: Yes, sir.

ASSEMBLYMAN GAVAN: Have you ever represented any members of the New Jersey Manufacturers Association in court on these air pollution cases?

MR. LLOYD: No, sir.

ASSEMBLYMAN GAVAN: None of these matters whatsoever?

MR. LLOYD: No.

ASSEMBLYMAN GAVAN: O.K. No further questions.

ASSEMBLYMAN ROBERTSON: Mr. Lloyd, in essence, are you asking that the rules set up by the Department be granted court immunity? In essence, is that what you're requesting or suggesting?

MR. LLOYD: I'm not sure what you mean. I think what we're after here is to provide that the certainty of established regulations be respected. I think that immunity is a difficult word.

ASSEMBLYMAN ROBERTSON: Well, you stated that you wanted to delete the right of a judge to overrule and establish.

MR. LLOYD: Right.

ASSEMBLYMAN ROBERTSON: Now, Assemblyman Enos mentioned that that is there now.

MR. LLOYD: Well, does the judge have the right to establish his own standards? This I don't think he does and this we would not want him to do, and this is what the bill would allow him to do.

ASSEMBLYMAN ROBERTSON: In other words, it's paragraph --

MR. LLOYD: It's line 20 of the bill.

ASSEMBLYMAN ROBERTSON: Lines 20 and 21.

MR. LLOYD: Right.

ASSEMBLYMAN ROBERTSON: Thank you.

ASSEMBLYWOMAN MARGETTS: Thank you very much,
Mr. Lloyd.

MR. LLOYD: Thank you.

ASSEMBLYWOMAN MARGETTS: We will hear from
Assemblyman Kean at this time.

T H O M A S H. K E A N: Mrs. Margetts and members
of the Committee, I thank you for the opportunity to
appear before you today.

In 1536, a judge in England handed down an
exceedingly important decision. He ruled that no individual
may sue to abate a public nuisance unless he has suffered
harm different from that suffered by other members of the
public.

In essence, the ruling said that if everyone
suffers, no one has a right to seek relief in the courts.
The only persons with any legal standing in such cases are
public officials.

Incredibly, this decision promulgated before the
birth of Shakespeare, is still being followed by our courts.

Even the most meritorious cases continue to founder
on the rocks of this 16th Century law. In fact, as late as
this past year, the courts have ruled that "no case has
been cited where a court has even for a clearly publicly-
motivated group made an exception to the ...requirement which
for so long has been a feature of the law of public nuisance."

The courts have continually refused to address
themselves to the contention that the ordinary citizen should
be allowed the legal means to attack the problem of pollution.

The situations which can be drawn would be comical,
were they not so deadly serious.

If, for instance, a man's next-door neighbor is
raising pigs, the man knows he is protected under municipal
law and he knows to whom he can turn for action to alleviate
the situation, - he can go to the courts.

But, if a factory in his town is daily poisoning the
air of the entire neighborhood, he must stand helpless.

The results of this refusal by our courts are obvious. The general public feels frustrated --- and justifiably so --- at the inability to move the system. At a time when it is essential to give the individual a feeling of involvement in the governmental process, we have frozen him out.

It is small wonder that the average citizen feels increasingly suspicious of public officials. He knows that historically, with a few notable exceptions such as our present Commissioner, these officials have not demonstrated any great enthusiasm for the job of environmental protection.

The legislation before the Committee today offers the hope for a dramatic legal breakthrough.

This legislation recognizes that every citizen has a right to a decent environment. In this legislation, the rights of the public take precedence over the traditional rights of those who exploit our natural resources. This bill reasserts that the principal purpose of government is to promote the welfare of the general public.

This bill would empower any person or organization to sue any private or public body and to obtain a court order to restrain conduct that "is likely to pollute, impair, or destroy the air, water or other natural resources or the public trust therein."

A plaintiff, under the terms of this bill, must introduce evidence to substantiate his claim that a violation has occurred. The defendant in any such action must demonstrate that there is no feasible nor prudent alternative to his conduct and that it is consistent with the promotion of the public health, safety and welfare.

The Committee might be interested to know that we in New Jersey are not alone in considering legislation of this kind. I am aware of similar bills moving through the legislatures of New York, Pennsylvania, Colorado, Massachusetts and Tennessee. An almost identical bill is currently pending in both houses of the United States Congress.

Legislation of this type is now law in the state of Michigan. Interestingly enough, among the first users of this law there have been public agencies who view it as an additional and valuable weapon in the fight against pollution. It has enabled them to enlist the efforts of interested and informed citizens to supplement their own limited staffs.

I might say also, as an aside, that the experience in Michigan, so far, with this law indicates there is no multiplicity of suits.

Here in New Jersey, our environmental problems are the worst in the nation. In terms of density, our population exceeds that of Japan and India. Our scientists tell us that our rivers are among the most polluted and that the poisons being pumped into the atmosphere daily are shortening the lives of our urban citizens. Our vast resort industry--an industry responsible for the livelihood of thousands of New Jersey citizens---stands in great peril from rapid uglification, from pollution of the ocean, and from the seeming inevitability of oil spills.

To arm the average citizen with this type of legal power will not in itself restore the purity of our air, water and living environment. Nor will it supplant the need for strong action on other fronts. Administrative regulations will go on; legislative standards will continue to be set; task forces and advisory panels will continue to engage in both long range planning and some degree of specific dispute management. Our courts serve only to supplement and invigorate these activities by making clear that there is another avenue of redress for the citizen.

Unless we in the Legislature act dramatically and quickly to supplement and enhance the efforts of the Department of Environmental Protection, our children will not want to live in this state.

This legislature has a responsibility to insure that in the next century, the decade of the 1970's will not be known as a time when our cities were poisoned by air and water, strangled by congestion and deafened by noise.

Simply put, if we lose the battle on the conservation front, our efforts on all other fronts - no matter how vigorous - will be in vain.

I will be glad, of course, to answer any questions the Committee may have.

ASSEMBLYWOMAN MARGETTS: Are there any questions of Assemblyman Kean?

ASSEMBLYMAN ENOS: Assemblyman Kean, how long has that law been in effect in Michigan?

ASSEMBLYMAN KEAN: The effective date, I believe, was the 1st of October.

ASSEMBLYMAN ENOS: Of last year?

ASSEMBLYMAN KEAN: Yes.

ASSEMBLYMAN ENOS: So that with respect to the multiplicity of suits, that is probably absolutely correct now, is that not so?

ASSEMBLYMAN KEAN: Yes, sir.

ASSEMBLYMAN ENOS: There is no multiplicity of suits now.

ASSEMBLYMAN KEAN: There is no multiplicity of suits. As I say, very few have been filed and most of those have been filed by public agencies.

ASSEMBLYMAN ENOS: Do you think that very many people know that it is in existence, that is, people generally, as the private citizens you mentioned before?

ASSEMBLYMAN KEAN: This bill was the leading legislative issue in the State of Michigan this past year. I doubt if anybody who would be interested in filing such a suit did not know of its passage. It received a great deal of publicity not only in the Michigan press, but it was written

up in Time and Newsweek and the New York Times and other mass circulation publications.

ASSEMBLYMAN ENOS: I have no further questions.
Thank you, Assemblyman.

ASSEMBLYWOMAN MARGETTS: Assemblyman Kean, is it correct that Michigan has no suitable agency through which regulations would be promulgated, such as our Department of Environmental Protection?

ASSEMBLYMAN KEAN: I am not sure of the governmental setup in the State of Michigan. I know they have an agency but what its powers are, I just don't know.

ASSEMBLYWOMAN MARGETTS: Are there any further questions? [No response.] Thank you very much.

We will hear now from Mr. Donald Amunson, Employers' Legislative Committee. Is he here? [No response.] Mr. Amunson was here earlier.

We will go to Mr. Robert Walsh, Cartaret Industrial Association.

R O B E R T W A L S H: Madam Chairwoman and gentlemen: May I preface my remarks by saying that the industries in Cartaret have, I believe, a notable record in the prevention of air and water pollution. Millions of dollars have been invested in corrective devices.

Our fear, upon passage of this bill, is that the door will be open to numberless suits of harassment that arise from nothing but irritation. Let me give you a recent example. On the 20th or the 30th of October, 1970 - the prosecution was not sure of the date - a charge was leveled against one of our plants for emission of an odor. This was first detected by a gentleman sitting on his front porch, enjoying the leisure given to him under the great society, and he contacted a central agency which presently polices Cartaret, five other adjacent municipalities and one in Union County. They had two investigators on the scene and lodged the complaint in Municipal Court. The day of the hearing arrives,

the panoply of lawyers and witnesses arrives, and I wait for an hour and the case is adjourned. A month later, the same process, because the prosecuting attorney was not available. The case was heard last Wednesday and was thrown out of court. The inspector of this professional agency could not identify the plant which was charged with the violation. He completely overlooked the fact that in the immediate area there were four other sources of possible emission of this odor, and within a reasonable distance, two other possible sources.

It is desirable that we not be harassed like this because the spirit of genuine cooperation is in being between the Department of Environmental Protection and our industries, at least, and corrective measures are in process in many of them. To subject any plant to needless harassment is, we think, futile, and the right given to the individual to so pursue this is a right of dubious value.

I don't want to burden you with any longer statement. If I may, I will file a statement with the Committee before you close your file.

ASSEMBLYWOMAN MARGETTS: Thank you, Mr. Walsh.
Are there any questions of Mr. Walsh?

ASSEMBLYMAN HORN: Mr. Walsh, in this case that you just referred to, I am curious whether or not - and you can probably answer this - whether or not there was an air pollution violation and the only reason that the court did not act was because they could not determine the violator.

MR. WALSH: There may have been. But this is solely upon the testimony of the individual who brought the complaint, who was not competent, of course, to determine its source or its nature, and did not have the ability to describe the nature of the odor or identify the source of origin. So whether or not there was a violation, is problematic.

ASSEMBLYMAN HORN: Thank you.

ASSEMBLYMAN ROBERTSON: Just one question: Was the

plaintiff an individual or an organization?

MR. WALSH: An individual. He called the central agency and they sent two inspectors. But this is only one of numerous cases in the last year. It is needless. It is time consuming and a waste of money.

ASSEMBLYMAN ROBERTSON: Did you construe this suit as being harassment?

MR. WALSH: Definitely.

ASSEMBLYMAN ROBERTSON: Was there an ulterior motive behind it?

MR. WALSH: That I haven't yet been able to find out. The case was only dismissed Tuesday of last week.

ASSEMBLYMAN ROBERTSON: You feel strongly it is possible there was.

MR. WALSH: I do.

ASSEMBLYMAN CURCIO: What central agency are you referring to? You say the complaint went to a central agency?

MR. WALSH: Central Jersey Air Pollution Control Agency.

ASSEMBLYMAN CURCIO: Didn't they investigate to determine whether in fact a violation was occurring?

MR. WALSH: They sent two inspectors to the scene.

ASSEMBLYMAN CURCIO: And actually did the inspectors testify as to what their findings were?

MR. WALSH: The first inspector was not permitted to testify. He didn't qualify. The second man was unable to give any information which would sustain the complaint.

ASSEMBLYWOMAN MARGETTS: Thank you, Mr. Walsh.

We will hear now from Mr. Rex Potter, Rutgers Law School.

R E X W. P O T T E R: First, I would like to say I am very glad to be here. I didn't find out about this bill or this hearing until yesterday and I sat up most of the night trying to read it and find out about it. I am on the Environmental Law Council at Rutgers.

First, I would like to make a comment about the statements by the previous gentleman. If one of the main fears of many of those who oppose this bill is that there will be a flooding of cases against supposed polluters, I think he has shown with his example that courts can discriminate between a frivolous or malicious suit and a justifiable one. Furthermore, generally there has been a lot of testimony that industries are doing a great deal right now for the environment and, if that is so, I just wonder why it is that undergraduates at Princeton refer to Northern New Jersey as the - if you will pardon me - armpit of the nation, because the condition there is appalling and this is rivers, noise, air, what have you. The pollution is just dreadful.

I have prepared a statement here more or less. It is a bit sketchy, but I will read it. I don't think it will take too long.

I first have a quotation from Adlai Stevenson: "We travel together, passengers on a fragile spaceship, dependent on its vulnerable reserves of air and soil; all committed for our safety to its security and peace, and I will say, the love we give our fragile craft."

There are few more politically charged issues today than that of the environmental crisis and the quality of human and natural life generally. Not the war in Indochina, nor law and order or even the state of the economy commands so much constant public attention as man's continuing threat to this "fragile spaceship." This is so for the simple reason that the environment is everywhere; we cannot hide from the environment any more than we can disclaim responsibility for the condition that we find it in today. Environment is the food we eat - Will that can of tuna cause brain damage? - the water we drink - Has the water from that faucet been treated against sewage? - the air we breathe - How soon before we too need oxygen vending machines like the Japanese in Tokyo? - the view out our windows - Will there be any natural beauty left for our next generation to conserve? -

and the noise trespassing all but the thickest walls. Ralph Nader described it as "environmental violence"; surely that is the more appropriate term for wholesale destruction of healthful, civilized life than the more euphemistic "pollution."

When signing into law the National Environmental Policy Act on New Year's Day, 1971, President Nixon summed up the question with, "It is literally now or never." And I second that. The issue that remains is how to attack the problem - or, more specifically, who can best assert the "public interest" and by what institutional means. The answer was once thought to be that quasi-judicial administrative agencies were best suited to this task. But this has proved to be a great disappointment. Agencies charged with the duty to effectively balance opposing priorities, such as purely economic considerations of industries and businesses with larger human needs, such as a healthy environment, have become too closely identified with the very industries and activities they were created to regulate. An extreme, though by no means rare, example of this is found in the Department of the Interior, whose officers are elected by no popular majorities and whose acts are reviewable by no elected representatives. As, I believe, Former Congressman Richard Ottinger of New York pointed out:

"* * * the Interior Department is by design a truly schizoid agency. Despite its environmental responsibilities, however tenuous they might be, the agency is also the biggest developer and exploiter of natural resources in the United States. Among other things, it is the largest single producer of electric power, a licensor of offshore drilling (witness Alaska and California) and a dam builder and developer second only, perhaps, to the Corps of Engineers. It is not surprising, therefore, that Interior's concern for environmental protection is overshadowed by its obligations to the opposition."

That is from 55 Cornell Law Review 1970.

Commenting on this point, Professor Joseph L. Sax of the University of Michigan Law School recently stated, and I quote:

"Official agencies which are created to promote and protect the public interest sometimes become too single-minded. In the past few years, a number of cases have brought home the degree to which important regulatory agencies failed to take into account all the information and all the perspectives which a proper regard for the public interest required."

This is from his testimony before the House of Representatives of Michigan on what became their environmental protection act.

For this reason, many people, particularly legal writers, see private litigation and the active involvement of the courts in the environmental area as the only means of effecting any significant change in agency policy decisions.

Obtaining a judicial determination of the issue, however, is traditionally contingent upon two factors: First, the standing of the plaintiff to bring the suit; and, secondly, the willingness of the court to entertain the action. The doctrine of standing, although supposedly quite flexible and "determined by the specific circumstances of individual cases" does require that a party have a "personal stake" in the disposition of the case. Normally, this means a financial interest. This limitation has created problems for groups not alleging the invasion of a purely private right, such as someone who alleges that the environment is being destroyed generally.

Courts have also been hesitant to take jurisdiction of the subject matter absent a specific legislative authorization, especially where the protection of the interest involved has been conferred on a public agency, as Professor Sax has observed on several occasions.

Since regulatory agencies have failed to protect the public interest, it seems imperative that the public itself be allowed to assert the public interest, through the medium of the citizen suit in courts explicitly authorized to hear such cases and grant appropriate relief.

As we all know, there is such a bill in Michigan now and unfortunately I was unable to find any cases based

upon it so far. But it could be there are cases already, I am sure.

Among the provisions of that bill and this bill also, which are almost identical, is the fact that there are no penalties for the polluters, merely injunctive relief and declaratory relief, thus a polluter will not be fined heavily according to this. He will just be ordered not to pollute, which seems like a reasonable sort of relief.

The fact that the court may apportion the cost, I think will actually help deal with the possible threat of spurious or frivolous complaints.

Furthermore, since costs are the only thing that are at issue here -- Excuse me. I am getting a little disorganized. The real cost of any litigation is that of the lawyer's fees and in the Scenic Hudson Case against FPC, I understand that the lawyers' fees came to virtually \$200,000. Sure the cost of actually filing the case was \$500 or less or something very, very minimal. In any case, the very fact a lawyer must be hired and these things take a great deal of time should guard against the threat of frivolous or malicious complaints.

Furthermore, there has seldom been any real question as to whether courts could have jurisdiction to hear citizen suits from "private attorneys-general." The courts have always been reluctant to do so, and I refer you to the case of Flast v Cohens, in which a taxpayer was held to have standing to sue against an unconstitutional expenditure of funds.

One final word - such a measure, if enacted, will go a long way toward re-establishing legislative credibility with many of the young, particularly college-age people. It will certainly help redirect energies from, in a manner of speaking, the streets back to the courts, and to the Legislature where these energies belong. And I thank you.

ASSEMBLYWOMAN MARGETTS: Thank you, Mr. Potter.
Are there any questions of Mr. Potter?

ASSEMBLYMAN ENOS: Mr. Potter, you are associated with Rutgers University Law School. Is that correct, sir?

MR. POTTER: Yes, I am a first year student.

ASSEMBLYMAN ENOS: You are a student?

MR. POTTER: Yes.

ASSEMBLYMAN ENOS: Thank you. That's what I wanted to know, sir. I was going to ask you whether you were a teacher, professor, associate or student.

MR. WALSH: In view of several statements made by this speaker, may I add to my statement?

ASSEMBLYWOMAN MARGETTS: You will have to wait until we get through with the other people here.

ASSEMBLYMAN ROBERTSON: Mr. Potter, you made an interesting statement, interesting to me, that the regulatory agencies have failed. And as I recall the fiscal '71 budget, there were a few dollars appropriated to the environmental protection agency. And in your mind, they have failed - Commissioner Sullivan has failed - in controlling environmental protection?

MR. POTTER: Well, at Rutgers we think Commissioner Sullivan is a very good guy and we think he has a chance to perhaps somewhat right the heretofore dreadful imbalance in which regulatory agencies have weighed on the one hand the interest of the public against the interest of industry. We think Sullivan will probably do his very best. But on the national level where agencies have been most prolific, yes, I would say they have failed dreadfully.

ASSEMBLYMAN ROBERTSON: I am not concerned about the national agencies; I am concerned about New Jersey's agencies and Commissioner Sullivan and his office. Do you think that he has failed and his office has failed?

MR. POTTER: No, I did not say that I think he has failed.

ASSEMBLYMAN ROBERTSON: In other words, your statement that regulatory agencies have failed was a little far fetched when you made it?

MR. POTTER: I would say it should be qualified.

ASSEMBLYMAN ROBERTSON: Thank you. I might ask one other question. You mentioned vending machines vending oxygen in Japan. This is a fact?

MR. POTTER: Yes, according to the National Geographic.

ASSEMBLYWOMAN MARGETTS: Any other questions?

Thank you, Mr. Potter.

Mr. Henry Schwellenbach, New Jersey Crushed Stone Association.

H E N R Y S C H W E L L E N B A C H: Thank you, Mrs. Margetts.

Gentlemen of the Committee: My name is Henry Schwellenbach and I am here representing the crushed stone industry as well as the asphalt paving industry. These two industries extend from North Bergen County all the way down to South Cumberland County. There are over 150 plants involved. Quarries are located by necessity where the source of stone is. We cannot pick the country or an out-of-the-way place to put quarries. Asphalt plants, bituminous concrete plants, are necessarily located where the product is consumed. This again means that they are where population is, where the people live.

In the last ten years, this industry has spent some \$5 million on air pollution control and water pollution control from their plants. This investment, compared to the total investment that we have other than property is some 10 per cent of the total investment in plant facilities.

I would like to explain some of the problems that we foresee with a bill such as this. First, I want to say that the Department of Environmental Protection is in our opinion doing an excellent job and we know, because we have been cited. Many of our operations have been cited. They have cleaned themselves up. And we have had complaints from citizens ourselves as well as complaints through the Department of Environmental Protection. They, as you well know, have a system set up where any citizen can complain

and I understand from the department that no complaints that have ever come into them have gone unheeded. They have investigated these complaints. So every citizen in New Jersey can call any hour of the day, 24 hours, the Department of Environmental Protection and he can be heard and his complaint will be investigated.

New Jersey is number one in the United States as far as pollution control is concerned. There are several particular areas which are more severely controlled, but statewide, New Jersey is the number one state as far as pollution control is concerned.

I just returned from two days of public hearings on four new chapters of the Air Pollution Code. These, I know, are going to be stricter than in any state in the United States and this including the Los Angeles area.

So the Department of Environmental Protection is protecting the citizens of New Jersey. They have experts in the field. They have many employees, many inspectors. They have training courses that are given at Rutgers University for these people. They have industrial hygienists. They have professional engineers. They have many other employees of similar categories to administer the very strict laws that they have composed in the last year and even before that.

We are worried that a bill like this could put amateurs determining whether our industry is polluting the air or whether it isn't. And we think that our costs in defending ourselves could run into many, many thousands of dollars because we are located in 150 different installations in the State of New Jersey.

I don't know whether an amateur can determine the difference between a plume of steam coming out of a stack or a plume of particulate matter. I don't know whether an amateur can differentiate between sand in a stream or harmful sediments.

Our industry is regulated by Federal laws and not

only by one department in the Federal government, but by many: The Department of Interior, the Department of Labor and now the Department of Internal Revenue through their Alcohol and Tax Bureau. We are, of course, regulated by many departments in the State: the Department of Environmental Protection, the Department of Labor and Industry. We are also controlled by county regulations, by municipal ordinances, and we are wondering how much further can our industry be controlled.

One last item that we fear greatly, and this is the action brought by an owner of property next to one of our operations. We are getting a lot of harassment from these people now, in spite of the fact that many - in fact, most - of our operations do meet the pollution control codes or chapters of the Department of Environmental Protection. But these people are interested in selling their property and they see a good way to sell it and to get a good dollar for it. In fact, some of our companies have offered to buy the properties next to them of people complaining, but they set a price two and three times the value of the property. We think that this would be another method where these people could just keep the harassment up until our members or the owners of these quarries just had to do something and pay these outrageous prices for the properties next to them for buffer zones, which is what we call them.

This is, in general, what I had to say. We will prepare a formal statement and submit it to the Committee.

[See page 86 of this transcript for statement submitted by the Crushed Stone and Bituminous Pavement Industries of New Jersey.]

ASSEMBLYWOMAN MARGETTS: Assemblyman Curcio has a question.

ASSEMBLYMAN CURCIO: Mr. Schwellenbach, I gather from what you are saying that everybody is doing a wonderful job to control pollution, the Department of Environmental Protection, industry, and everybody else. Is that right?

MR. SCHWELLENBACH: The facts are, sir, that the

air over New Jersey is better now than it was five years ago. These are facts from the Department of Environmental Protection. The air is better now than it was five years ago and it was better five years ago than it was ten years ago. And the air is improving.

ASSEMBLYMAN CURCIO: How about the water?

MR. SCHWELLENBACH: I can't say too much about the water. I am not familiar with it.

ASSEMBLYMAN CURCIO: The answer to the question I asked was that in your judgment everybody was doing a wonderful job.

MR. SCHWELLENBACH: I think they are doing a job to the best of their ability with the equipment available today. That is, most of the industry is right now meeting the state of the art type of control.

ASSEMBLYMAN CURCIO: How do you account for the fact, in my judgment anyway, that the air in North Jersey stinks - that's the only way to describe it - and that the water, particularly the Delaware River water, is horrible? How do you account for that if everybody is doing such a wonderful job of cleaning up pollution?

MR. SCHWELLENBACH: I can speak for our industry only. I am not an expert on the other industries. But I say that our industry is doing an excellent job and doing a job that is approved by the Department of Environmental Protection.

ASSEMBLYMAN CURCIO: In other words, do you feel that we are doing all we can?

MR. SCHWELLENBACH: I believe the Department of Environmental Protection is doing more than they can really. Because they right now are proposing chapters to the air pollution code, which there is no equipment possible to meet their requirements. The equipment isn't there yet. So if these chapters go into effect, everybody will have to operate on variances and this is not right. We don't want

to operate on variances.

ASSEMBLYMAN CURCIO: Well, which is better, to operate on variances or violate the codes or that we all poison ourselves?

MR. SCHWELLENBACH: Well, I don't think we are all poisoning ourselves. I think the air is improving, sir.

ASSEMBLYMAN CURCIO: Where do you get this information that the air is better now than five years ago and five years ago it was better than ---

MR. SCHWELLENBACH: These are facts from the State plans for the implementation of the ambient air quality standards. They are seeking a standard of 65 micrograms per cubic meter and there are areas in New Jersey today that are less than 65 micrograms per cubic meter, but there are areas, of course, that are more.

ASSEMBLYMAN CURCIO: Well, down in Atlantic County I hope they are less, but I would dare say up in some of the northern counties they are probably more because I wouldn't want to go in there, let alone live there.

MR. SCHWELLENBACH: I don't have the plans here. But if you check with the Department of Environmental Protection, these are facts.

ASSEMBLYWOMAN MARGETTS: Mr. Schwellenbach, isn't it true that the air in northern New Jersey is unsatisfactory and listed as unsatisfactory since the first of the year, at least?

MR. SCHWELLENBACH: Yes. What unsatisfactory means, nobody seems to know. I have asked for this criteria but nobody seems to know what unsatisfactory means or what satisfactory means. These are figures that are picked out of the air. New York City says they are unsatisfactory. New Jersey does not classify air that way.

ASSEMBLYWOMAN MARGETTS: But New Jersey is really part of the metropolitan area. At least northern New Jersey is part of the metropolitan area.

MR. SCHWELLENBACH: Northern New Jersey is part of

the Connecticut and New York Metropolitan Air Regional Control.

ASSEMBLYWOMAN MARGETTS: Are there any further questions of Mr. Schwellenbach?

ASSEMBLYMAN ROBERTSON: I just have a couple of comments. All your asphalt paving plants, asphalt plants - plans for those plants have to be approved by the State. Is that correct?

MR. SCHWELLENBACH: Yes, all control equipment or any equipment that has a source of pollution and any control equipment to control pollution must be approved by the Department of Environmental Protection.

ASSEMBLYMAN ROBERTSON: Would you feel better about this bill if any plans that had been approved by the Department of Environmental Protection would be immune from this law? Would you feel better about the law then?

MR. SCHWELLENBACH: I am afraid I can't answer that really because if I understand the law correctly, the judge does not necessarily have to assume that because someone meets the requirements of the Department of Environmental Protection, that they are immune to action or injunction. In spite of the fact that fines are not included, injunctions are very expensive to an industry such as ours.

ASSEMBLYMAN ROBERTSON: You do readily admit that the Environmental Protection is doing a good job.

MR. SCHWELLENBACH: Oh, definitely. We feel very strongly so. We differ sometimes with them, but they are doing an excellent job.

ASSEMBLYMAN ROBERTSON: Would I shock you if I told you Commissioner Sullivan favored this legislation?

MR. SCHWELLENBACH: Well, I don't know.

ASSEMBLYMAN ROBERTSON: I don't know either. I am going to ask Assemblyman Kean shortly. But would that have any bearing on your opinion of the bill since you have spoken so highly of the Commissioner?

MR. SCHWELLENBACH: No, it wouldn't at all.

ASSEMBLYMAN ROBERTSON: Thank you.

ASSEMBLYWOMAN MARGETTS: Thank you very much,
Mr. Schwellenbach.

We will hear from Mr. George Shindler, New Jersey
Sierra Club. (No response).

Mr. Charles Fields, New Jersey Farm Bureau.

C H A R L E S H . F I E L D S : Mrs. Margetts, members
of the Committee:

My name is C. H. Fields, Trenton, New Jersey. I
appear here today to speak for the New Jersey Farm Bureau,
of which I am executive secretary.

After consultation with legal counsel and careful
consideration of Assembly Bill 1268, we believe that if it
should become the law of this state, it could have a far-
reaching and serious impact on agriculture, specifically on
farmers, as well as other business segments of our economy.

We strongly oppose the passage of this bill for the
following reasons:

1. We see no urgent or present necessity for this
kind of legislation. We believe this Legislature has al-
ready placed in the statutes ample authority for preventing
and controlling air and water pollution, and that this addition-
al legislation is not required to clean up our environment.

2. We believe this bill would serve to slow down
the effective control of pollution, rather than speed it up.
It is our judgment that this bill would result in so much
widespread and irresponsible litigation and so much inter-
ference by the judicial system into administrative pro-
cedures that it would create an attitude on the part of the
executive branch of government that the control of pollution
is principally the job of the courts.

3. The language in this bill is so broad and all-
encompassing that it will likely result in wholesale liti-
gation, further clogging up an already crowded court system.

4. This type of legislation is highly experimental. So far as we can determine, it has been adopted in only one other state. We believe it would be wise to wait for a while to see the results in that state.

5. As we understand this bill, any instrumentality of the State, any political subdivision thereof, any person, partnership, corporation, association or other legal entity may bring suit in a court of competent jurisdiction to prevent or stop any other person or legal entity from polluting the air or water, even though such person or legal entity is not directly affected or harmed. We view this as unreasonable and highly impractical. So far as we can determine from reading the bill, even if a person or other legal entity were abiding by the law, carrying out to the best of his ability practices required by law or regulation, he could still be a victim of a lawsuit and would have to go to the expense of defending himself on the charges alleged in the suit.

6. We believe this bill would greatly usurp the constitutional authority and responsibility of both the legislative and executive branches of government, and place entirely too much administrative authority in the hands of the judicial branch of government. All laws and administrative regulations are subject to review in the courts as to reasonableness and constitutionality; but to provide that any person, political subdivision or other legal entity can go directly to the courts, bypassing normal administrative procedures, is a proposal that should not be adopted by this Legislature without a lot more study.

We have feared for some time that the current environmental movement would lead to extreme proposals. We Americans are prone to go too far when we set out to correct an ill. In our zeal to stop air and water pollution and to improve the environment, we need to stop and think before going too far too quickly.

We believe this bill is a good example of going too far, when such an extreme measure is not needed. We are well on the way towards cleaning up our air and water. The administrative agencies of the State and Federal government are beginning to do an excellent job. What we need now is steady progress along the line we are heading.

We urge this Committee to give an unfavorable report on this bill.

We appreciate the opportunity to present our views.

ASSEMBLYWOMAN MARGETTS: Thank you Mr. Fields.

Are there any questions?

ASSEMBLYMAN ENOS: Mr. Fields, I understood you to say that you had consulted an attorney or attorneys before you prepared this statement, is that correct?

MR. FIELDS: That is correct.

ASSEMBLYMAN ENOS: I call your attention to paragraph 6 on page 2 where, after the semicolon on the last clause there...."but to provide that any person, political subdivision or other legal entity can go directly to the courts, bypassing normal administrative procedures, is a proposal that should not be adopted by this Legislature without a lot more study". Now, calling your attention particularly to the normal administrative procedures: Is it your understanding that the courts now require that before the courts will intervene in a matter involving administrative procedures that you must first proceed normally and exhaust your administrative remedies before you seek redress in the courts?

MR. FIELDS: I think that is my general understanding. That is the normal procedure that, in many instances, we are familiar with.

ASSEMBLYMAN ENOS: That has been your experience in your practice, has it not? As an officer in the New Jersey Farm Bureau?

MR. FIELDS: Right. That is where the law provides

for administrative procedures and it has been my experience that ordinarily you go through the administrative hearings and procedures before you go directly to the courts on these matters.

ASSEMBLYMAN ENOS: That's right and as a former teacher of Administrative Law at Rutgers I would say that that was one of the things that I taught. You first go through your administrative procedures and then after that you take redress in the courts. As a matter of fact, and our student will recall this if he has had administrative law, that the courts will often refer the case back to, or remand the case, back to the administrative department to see that that is carried out first and then it will take over after the administrative procedures have been completely exhausted.

I have no further questions, thank you.

ASSEMBLYWOMAN MARGETTS: Thank you Mr. Fields.

Mr. Len Rupert, Petroleum Council. [no response]

Mrs. Blair Hunter, Citizens For Clean Air.

Assemblyman Kean, may we ask you one question before you leave?

ASSEMBLYMAN ENOS: Assemblyman, has Commissioner Sullivan taken a position on this bill?

ASSEMBLYMAN KEAN: I've talked it over with him but we have talked it over informally. I haven't asked him and he hasn't said one way or the other. He knows of its progress.

ASSEMBLYWOMAN MARGETTS: Thank you, Assemblyman.

Mrs. Blair Hunter is not present.

Mr. Bob Hughes, New York Sierra Club. (no response)

Mr. George Shindler. [no response]

Does anyone else wish to be heard? If not, this public hearing is concluded and I want to thank all of you for coming and testifying. I also want to thank the members of our committee.

Could I ask you to wait just one minute; Mr. Walsh would like to make a remark.

MR. WALSH: I will take only a brief minute because I know you want to adjourn.

I refrained from bringing to your attention the fact that the courts of New Jersey are glutted and unable to handle the case load now. It would seem to me unnecessary to burden the courts with trivia such as many of these cases are.

Let me say that I am not a stranger to this problem. I served for four years as Director of Administration Health and Welfare in a township of 20,000. I instituted local ordinances for air and water pollution control. I had trained inspectors for this purpose. I can testify to the frivolity of some of these complaints but I don't want to take your time. It doesn't take a learned member of the Supreme Court to decide what should be done with some of the complaints that come to a local department. The local Departments of Health have done the best they can within their limitations. It was only within recent years that it became acknowledged that this thing was too great a job for local Departments of Health and the State Agency was created thereby.

I also, if I may, would like to point out to you the controlling role that economics plays in this. This pollution didn't occur overnight and it cannot be corrected overnight. Every expense that goes into it is reflected, ultimately, onto the consumer.

For example, the Public Service in my section of the State had to spend thirty one million dollars more for low sulfur content fuel this year. This has been immediately reflected in the \$20.00 average bill to the average household.

I won't attempt to come to a conclusion again but simply wanted to add those facts and say that I speak not out of just recent knowledge of this but I have played a part in the enforcement of pollution control, and am all for it. All we ask is reasonable treatment and not a lot of unnecessary

harassment. Thank you for your attention.

ASSEMBLYWOMAN MARGETTS: Thank you, Mr. Walsh.

CHARLES STEIN: My name is Charles Stein, I spoke previously---

ASSEMBLYWOMAN MARGETTS: Mr. Stein. I think this will be the last speech.

CHARLES STEIN: Yes. One brief final point which I omitted earlier --- There is an area which this legislation cures, a very much needed reform in our environmental laws. I will give you an example.

I represented the Western Mills Farrington Light Water Shed Association concerning an environmental complaint which we had where the City of New Brunswick and Rutgers University plan to sell sixty nine acres of land to commercial interests adjacent to a water shed in Middlesex County which involved a likelihood of pollution. This land, to be used for commercial purposes, bordered the water shed used by the City of New Brunswick and neighboring communities.

We filed a petition with the New Jersey Department of Conservation, asking for public hearings and were told by the Deputy Attorney General of New Jersey that "inasmuch as there is no existing pollution, there is nothing we can do for you; there is a complete absence of jurisdiction". In other words, the Attorney General wanted me to come into the courts and say "look you are pumping raw sewage into this drinking water" and then they would say "now we can help you". It is like saying, when there is a murderer with a gun pointed at you, that you have to wait until he kills you before the law can come into effect.

One of the benefits of this bill is as follows: Page 2, paragraph 3A..."when the plaintiff in the action has made a prima facie showing that the conduct of the defendant has or is likely to pollute"... In other words, "is likely" means we don't have to wait for the pollution to take effect.

This is a much needed reform and for this reason as well as the other reasons, we very strongly support this bill which corrects a loophole in the existing system of regulations.

ASSEMBLYMAN ENOS: Mr. Stein, may I ask you a question? You are an attorney?

CHARLES STEIN: Yes, I am, sir.

ASSEMBLYMAN ENOS: Would you have the whole structure of the law of this state changed to punish somebody or to prevent somebody from doing something? Wouldn't that be a novel approach to our present law?

CHARLES STEIN: Not at all. Where there is a wrong there must be a way whereby the public, if the ordinary regulatory agencies have not cured this pollution, may have a device to supplement the ordinary processes.

ASSEMBLYMAN ENOS: You are not answering the question. I asked you whether you would anticipate and then prevent somebody from doing something which he hasn't already done. Isn't that what you are asking?

CHARLES STEIN: This has been done in Courts of Chancery from time immemorial. You shouldn't have to wait until the damage is done.

Why should a plant be built and industry invest millions of dollars in the plant, if that plant is going to pollute. The industry is going to be saved the money and the people could be saved the pollution if before the investment was made this matter was reviewed by a court of competent jurisdiction.

ASSEMBLYMAN ENOS: Isn't the remedy now in existence for mandatory injunctions? Isn't there a present -- I've got a suit in there now, I just filed it yesterday, and I'm asking the court to prevent the happening of something and to remove what is already there.

CHARLES STEIN: This relief is not available to the public for the protection of the public interest, the public trust and that is why we need this legislation.

ASSEMBLYMAN ENOS: Well now, that is the second question. The other question is this and I asked this before:

You are asking the court to prevent somebody from doing something and I asked you isn't that completely foreign to our present law. Isn't that what the Attorney General told you?

CHARLES STEIN: There is no jurisdiction.

ASSEMBLYMAN ENOS: That's right, until something happens.

CHARLES STEIN: He didn't say he wouldn't like to do something about it he said, "According to existing law I can't help you, Mr. Stein because there is no law until there is actual pollution". He said, "I can't help you at this time".

ASSEMBLYMAN ENOS: Not only pollution but for anything.

CHARLES STEIN: Right. Destruction of open space or pollution of the water, that is true.

ASSEMBLYMAN ENOS: Or assault and battery or anything else, it doesn't make any difference what the prospective damage may be, it is the fact that you can't prevent something that is merely likely to happen. You must also show in all remedies irreparable harm in injunctive relief.

CHARLES STEIN: Don't you feel it's necessary that we shouldn't have to wait until the pollution takes place. Shouldn't we have the right to stop it before it starts?

ASSEMBLYMAN ENOS: Only if it is something that is about to happen positively. But you can't substitute somebody's judgment for somebody else's and say, "In my opinion this is likely to pollute, therefore you can't do it". That is the danger that I see in this thing. It is preventing something which in somebody's opinion, and it doesn't have to be a very good opinion, might cause pollution.

Now understand I'm in favor of the general principle but there are a lot of reservations I have about this bill and that is one of them.

Thank you.

ASSEMBLYWOMAN MARGETTS: Thank you very much.

I now call on Mr. Theodore Schwartz.

T H E O D O R E S C H W A R T Z: Thank you, Mrs. Margetts. I appreciate your giving me the opportunity at this late hour to express some of my views regarding the proposed Assembly bill number 1268.

As you probably know at one time I was with the State of New Jersey as a Deputy Attorney General and responsible for prosecuting all of the pollution laws for approximately four and one-half years. In that period of time there were significant amendments made to the various air pollution laws, water pollution laws and solid waste disposal laws, all with an eye towards tightening up the enforcement machinery and to provide the State with better avenues for enforcement.

As you may recall, last year the Governor signed into law certain bills regarding water pollution and certain bills concerning air pollution which we felt at that time was sufficient for the enforcement machinery of this State in combating these problems.

This bill--and I am speaking here in my own personal capacity from my personal experience with enforcement. I am, as you well know, a supporter of clean air and water and I thought that my comments might be of some value to you.

The bill, as proposed, would in effect give any citizen the right to bring an action against an alleged pollutor or against an administrative agency for not complying with some provision of the law that pertains to the environment. There are presently on the books certain laws which permit citizens the right to sue and in particular they are in the areas of the Passaic Valley Sewage Commission District which encompasses twenty-eight municipalities and four of the most populous counties of the state.

Under one of the provisions of that act a citizen has the right to sue for pollution of the Passaic River. I don't think there has ever been one suit brought under that provision and the Passaic River, as you probably know, is substantially polluted. I question the desires on the part of the public

to take individual action to bring action to abate pollution.

There is also another piece of legislation that empowers the public to institute suit for the discharge of sludge acids into various waterways from refineries and oil processing plants. This statute provides for bounty to be paid to the person instituting the action, where they would keep half of the fine that was collected. I don't know if any suit has ever been filed under that statute, at least there has been none to my knowledge.

This bill is an outgrowth of a bill that was passed in the state of Michigan, I believe, and if you look at the enforcement machinery within the state of Michigan -- I am familiar with this since when I was a Deputy Attorney General I had occasion to work with the various attorneys general throughout the United States and particularly in the area of pollution control. Michigan was one of the states substantially behind the state of New Jersey in the enforcement of the pollution laws. I would say that in the state of Michigan there were probably be a need for a bill like this but in the state of New Jersey, I think, we have one of the finest enforcement programs of any state in the country. I think we have the most stringent laws of any other state in the country with regards to the standards for emissions on air pollution and water pollution.

This bill, to me, is a slap in the face to the present administration in that you are saying to them that they are not capable of carrying out the enforcement of the pollution laws and therefore we have to rely on the general public to help in this battle. I don't think that is the case. I think that the pollution program in New Jersey is moving along very well. I think it is very responsive, however, as you probably know, there are some deficiencies in regard to available manpower. I think a more appropriate course of action would be for the Legislature to appropriate more money to the pollution control program so that they may hire and engage additional people to carry out inspections and to carry out the enforcement of the

pollution laws. I think we have probably one of the most outstanding commissioners in the United States in the environmental area and I think that he is carrying out a very successful battle. This bill, I think, is going to hamper the enforcement of the laws in this state and I will give you my reasons why.

First, as you well know, to prosecute any air or water pollution violation in this state requires the availability of a certain amount of expertise and that, for example, would occur in the air pollution field. Let's say we are taking somebody to court for discharging excess solid particles into the atmosphere. I don't think there is any citizen in this state that has the money to pay for the equipment that is necessary to conduct the appropriate tests to determine whether or not there are violations. I don't think there is anybody who is willing to put up the money to hire the appropriate consulting engineers and buy the appropriate machinery to detect water pollution violations or to pay for the cost of laboratory tests that have to be performed in order to determine whether or not there is a violation. I assume that if a person were to bring an action under this particular bill they would use the standards that are presently in existence for air and water pollution and solid waste. In doing so, they would have to prove a violation of these standards and I don't feel that the general public right now is equipped to carry out this function.

Also, from a legal point of view, I think that if actions were started by the general public they would be relying exclusively on materials that have been obtained by the Department of Environmental Protection and, as such, the department would be required to submit to testimony of their particular personnel, submit their records to the courts and have their employees sitting in the court rooms while these cases are being carried out and the polluters, meanwhile, are going on merrily without anybody watching them. I think

that if you review the number of people that are employed in the environmental program in this state, you will find there is a very significant shortage. I think this bill is going to further reduce the availability of these people to conduct inspections and investigations to determine violations.

I am also fearful of the fact that a citizen may bring a suit and not be able to prove the case. If there is a decision rendered against the plaintiff and, let's say, the department wants to turn around and bring a suit, I think there would be a serious question as to whether or not the doctrine of res adjudicata would apply and the department would be barred from charging or instituting a suit for that particular violation.

I also think that if you are familiar with the pollution control laws in this state you will find that the inspectors are permitted to enter premises to conduct inspections and determine whether or not there are violations. Now, this is going to be a serious problem for them. How are they going to get into a plant to determine whether or not a violation is occurring? How are they going to get permission to perform stack tests? In other words, how are they going to be able to file a suit from the practical point of view if they don't even know what the violation is, because they can't go in and make the appropriate tests?

There are a number of other deficiencies -- I shouldn't say deficiencies -- but misgivings about this bill. I think that you should give the administration, the Department of Environmental Protection, more time to carry out their program to enforce the laws.

Another problem which I have with this bill, and I have the utmost respect for the courts, is that it is implied in this bill that the courts may have the opportunity to fix standards. Now, I think that this is a very significant departure from the separation of powers doctrine that exists in our government and if you are at all familiar with the

process that must take place before regulations are adopted in this state, you will find that you have to be quite an expert in order to be able to sit down and figure out what the numbers are. I don't think that this burden should be placed upon the courts. I think they have more matters to contend with that are clearly within their purview and I think this particular matter, which involves technical expertise, is best preserved in the existing administrative process.

I think my ten minutes are about up and if you have any questions, I will be more than happy to answer them.

ASSEMBLYWOMAN MARGETTS: In what capacity are you appearing here today?

MR. SCHWARTZ: I am appearing as a former Deputy Attorney General and a person that is interested in preserving the enforcement machinery that presently exists and not to develop inequities in that process. I am a great admirer of the present commissioner, I think he is doing a great job and I think he will continue to do a great job. I think that this bill is going to hamper his activities and I don't think that is what this committee wants.

Thank you.

ASSEMBLYWOMAN MARGETTS: Thank you very much, Mr. Schwartz.

I think we will again conclude our public hearing

[Hearing Adjourned]

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CHARLES E. STEIN, ESQ.
Appearing for
Raritan Valley Environmental Council
92 Bayard Street
New Brunswick, New Jersey 08903
(201) 545-8778

MEMORANDUM OF RARITAN VALLEY ENVIRON-
MENTAL COUNCIL CONCERNING
ASSEMBLY BILL NO. 1256

The Raritan Valley Environmental Council is composed of persons active in environmental affairs in the Raritan Valley area of Central New Jersey comprising Middlesex, Somerset and parts of Monmouth, Mercer and Union Counties. Persons active in or representing the following organizations have assisted in the organization of the Council: Franklin Township Conservation Club, Boy Scouts of America (Middlesex County), Rutgers Environmental Political Action Committee, Sayreville Conservation Commission, Morgan and Bayview Manor Improvement Association, Raritan Valley Zero Population Growth, Weston Mills-Farrington Lake Watershed Association, Explorer Posts, Franklin High School Conservation Group, Sierra Club, Center for Transportation Studies, Conservation Education Center -- Boy Scouts, Sayreville High School Ecology Club, Delaware-Raritan Tuberculosis Association, East Brunswick Garden Club.

The Raritan Valley Environmental Council supports and urges the adoption by the New Jersey Legislature of

Assembly Bill No. 1268, an act concerning actions for protection of our natural resources and the public interest therein.

However, the Council respectfully suggests that this Bill be strengthened in several areas in order to achieve the stated aims of the Bill to protect the public interest in our natural resources.

1. The Council urges that the Bill be amended to include a provision that the Court may appoint a master or referee to take testimony and make a record and a report of his findings to the Court. This provision was included in the Michigan Law, Public Act 127, upon which Assembly Bill No. 1268 is based. The Michigan law provided as follows: "The court may appoint a master or referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his findings to the court in the action."

The impartial referee's report and record is a vital necessity in cases where the persons seeking equitable relief are prevented from obtaining information and records concerning the actual facts of pollution or other destruction of the public interest. The remedies provided in Assembly Bill 1268 may be illusory where the Court is prevented from securing necessary information and findings necessary to protect our natural resources and

the interest of the public. The suggested provision should be included on page 2 of the proposed Bill after line 14 as a separate paragraph, the same as in the Michigan Act.

2. Paragraph C on page 2 of the proposed Bill should be amended. The necessity for an amendment is dictated by the fact that the administrative proceedings, before their completion may result in a Consent Order. The Consent Order may be totally ineffective to protect the public interest and may result in continuing pollution with dangerous consequences to our air and water and therefore to the public health.

Paragraph C should be amended to provide that the Court may review any Consent Order, interim order/^{or}agreement made by the administrative, licensing or other agency, prior to the completion of such proceedings.

3. Paragraph 5a of the Bill on page 3 should be amended to provide that the administrative or licensing agency shall permit intervention where no prior application for intervention has occurred and where the application for intervention is made to seek protection of the public interest in the environment.

4. To ensure the aims of the proposed bill, it is further suggested that a provision be added to the bill whereby the Court could impose such fines and penalties

as may be permitted by law. The damage and destruction of our environment has reached dangerous proportions. The polluters and despoilers of our environment can be influenced by their pocketbook. The inclusion of a provision for penalties will strengthen the Bill immeasurably and give the Court the necessary power not only to secure compliance but also to telescope the proceedings and deter future violations.

5. The Bill should also include a savings clause in the event that ~~anyone~~ paragraph is determined to be illegal.

The Raritan Valley Environmental Council wishes to thank the Committee for its consideration of the proposals made by it. The Council supports Assembly Bill No. 1268 and urges its prompt adoption into law.

Respectfully submitted,

RARITAN VALLEY ENVIRONMENTAL
COUNCIL



By CHARLES E. STEIN
92 Bayard Street
New Brunswick, New Jersey
(201) 545-8770

Statement of
E. R. Squibb & Sons, Inc.
On Assembly No. 1268
Before The
Assembly Committee on Agriculture,
Conservation and Natural Resources
In The
Assembly Chamber, State House, Trenton

Assemblywoman Margetts, and members of the Committee, this is to present the views of the management of E. R. Squibb & Sons, Inc., who work and reside in New Jersey, in opposition to Assembly Bill #1268.

We believe that this bill, which would allow individuals to sue in court to establish anti-pollution standards, would dilute and undercut the cooperation of business and state regulatory agencies in attacking the problem of pollution. In this connection, we feel that such suits or actions would;

- 1) Divert the energies of businessmen into fighting harrassing suits rather than toward constructive programs.
- 2) It would seem counterproductive for a court to determine appropriate standards of pollution control while the expertise of the administrative agencies is by-passed.
- 3) It would seem that the confidence of the regulatory agency would be shaken by the threat of a possible individual suit so that it would be reluctant to work out reasonable solutions with industry and, therefore, be less effective in doing its job.

We at Squibb are firmly committed to solving the problems of pollution and we will join in sponsoring any legislation that makes a contribution toward resolving this problem. We are not in favor of this bill because we feel it does not foster the kind of cooperation that is required between government and industry to solve these problems.

1268

STATEMENT PREPARED FOR THE ASSEMBLY COMMITTEE ON AGRICULTURE,
CONSERVATION AND NATURAL RESOURCES
BY THE
CRUSHED STONE AND BITUMINOUS PAVEMENT INDUSTRIES OF NEW JERSEY
REGARDING ASSEMBLY BILL 1268

On behalf of the New Jersey Crushed Stone and Bituminous Pavement Industries, we would like to present to the Assembly Committee on Agriculture, Conservation and Natural Resources our views on Assembly Bill 1268.

Our industries are an integral part of the two billion dollar construction industry in the State of New Jersey. There are more than 150 installations extending from Northern Bergen County to Cape May County and the location of the quarries are governed by the location of the raw material, and the location of the bituminous plants are governed by the area of need for the product.

We believe that it is evident that New Jersey has developed one of the most stringent pollution enforcement programs in the United States. New Jersey was the very first state to have a state-wide air pollution control law. Our water pollution laws date back to the late 1890's, and since that time there has been little material change in these laws due to the original sweeping powers contained therein.

In 1967, the Division of Clean Air and Water within the State Department of Health was established in order to better

coordinate the enforcement activities as regards our pollution control laws. Simultaneously, the present Air Pollution Control Act was enacted which, we believe, is the toughest air pollution control regulatory scheme in the country. With the creation of the Division of Clean Air and Water, a whole new approach was evolved as concerns the enforcement of pollution control laws.

The first Director of the Division of Clean Air and Water and the present Commissioner of the Department of Environmental Protection is Richard J. Sullivan. Through his wisdom and guidance, Commissioner Sullivan has breathed new life into environmental programs in this State. His energies have resulted in a vigorous enforcement of pollution laws and the adoption of strong, meaningful policies. Previously untouched areas were met head on and new remedies and procedures were evolved at both the administrative and judicial levels in order to combat pollution of our environment. New Jersey has become known as a model state and as such has assisted many other states in formulating solid pollution programs. Since the creation of the Division of Clean Air and Water, thousands of cases have been processed with optimum results obtained in almost every instance. The whole approach of conciliation and persuasion has been substituted in its stead an approach of strict and even-handed enforcement.

Our industries are well aware of the public's desire to see that every avenue is explored which will protect our environment. However, we should not attempt to act in a hasty manner or in a manner which will lead only to the creation of new and more serious problems. We believe that Assembly Bill 1268 is that type of legislation. We believe that it will not improve the environment around us, but will rather act as a deterrent to significant steps taken in our industry to protect the environment. We know that it is the responsibility of government to protect the public health and welfare of the citizens of this State. When the power of protection is turned over to the general citizenry, we must assume that the governmental processes have failed and that the general public must act in place of responsible government. We view Assembly Bill 1268 as saying that the governmental processes in pollution control have failed. We strongly believe that this is not the case.

We have pointed out earlier the status of pollution control in New Jersey. We note further that only last year the Department of Environmental Protection was created, which effectively amalgamated all governmental responsibilities in the environmental area. This significant step provided cabinet level status for the agencies responsible for combatting existing environmental problems. While in one short year it is difficult to tell what is being accomplished, it is apparent already that more pollution cases than ever are being handled and prosecuted by the new Department.

We note that there are already a number of statutes in New Jersey which provide for citizen participation with regard to environmental problems, namely, the prevention of pollution in the Passaic River and the prohibition from discharging sludge acids from oil refineries into the water ways. (N.J.S.A. 58:14-33 and N.J.S.A. 58:10-23). It is interesting that, although these statutes have been on the books for many years and given significant publicity, not a single action to our knowledge has ever been instituted under them.

The Committee probably knows that the Department has already established a mechanism to handle complaints from New Jersey residents. The Department has created a telephone service which is manned on a 24 hour seven day a week basis, and we have been informed that all citizen complaints are followed and reported on.

Any individual familiar with the enforcement process knows that a significant amount of technical knowledge is necessary in order to successfully gather evidence against an alleged polluter. The equipment available for detecting air and water pollution costs thousands of dollars and must be operated by trained and experienced technicians. The general public does not have within its wherewithal the ability to obtain the technical equipment and the technical expertise necessary to operate said equipment. To ascertain whether air or water pollution exists, one must be able to obtain appropriate samples

of the discharges, have them analyzed at approved laboratories and obtain the necessary technical personnel to review the analysis in order to reach a determination as to the effect the discharge may have on the atmosphere or water way. Rather than divert energies towards citizens' pollution suits, additional resources, both financial and otherwise, should be provided for existing state environmental control programs.

The institution of private suits could have a disastrous effect upon the enforcement activities of the Department. There exists in the law the doctrine of res judicata. This doctrine could easily be applied and hamper the enforcement processes of the Department. If a private citizen were to institute a suit under this Act, which suit resulted in a judgment for the alleged polluter and subsequently, the Department desired to prosecute the same offender, the matter might well be barred by the doctrine of res judicata. Moreover, under the proposed Bill, Department records, investigations and personnel could undoubtedly be subpoenaed in a court action. This would take away significant investigatory time from responsible Department officials. Unfortunately, the environmental control departments of this State are understaffed and there is a need to obtain greater staffing and even more qualified personnel. Citizen suits would increase the problem in this regard rather than lessen it as it is necessary.

In effect, what Assembly Bill 1268 would do in many instances would be to place the Judiciary in the position of promulgating various environmental standards. We recognize the excellence of the New Jersey Judiciary. However, we feel that their proper role in pollution control is as it now stands, that is, in reviewing the actions of administrative agencies such as the Department of Environmental Protection. To ask the Judiciary to now become the promulgator of pollution standards would be to place an unnecessary burden upon our already over-burdened Judiciary. Moreover, despite the excellence of the New Jersey Judiciary, we are certain that they do not possess the technical expertise and training to establish such standards. Pollution criteria result from many years of research and investigation. The New Jersey Judiciary is just not in a position to provide this investigation and research.

Our industries are presently regulated in their operations by three separate departments of the Federal Government, the Department of the Interior, Department of Labor and lately, the Department of Internal Revenue has issued regulations regarding the use of explosives. We are regulated by various agencies in this State in all disciplines of our operations and in many instances we are subject to county and municipal regulations. This Bill would subject our operations to yet another area of regulation "The Citizen." In view of our comments, we feel this additional area of regulation is unnecessary and unwise.

Our industries are presently subjected to continuous harassment at the local level by neighbors, who are not particularly interested in pollution problems, but only in their own selfish interests. This Law would add another area of harassment that the individual could pursue for these same selfish interests.

We strongly urge this Committee to take a long, careful look at Assembly Bill 1268 in view of the above comments. Our industry is most desirous of continuing every effort to improve the environment for New Jersey citizenry. It is with that in mind that we look most favorably on the coordinated efforts of government and industry to abate pollution. We feel the present Department has refined this approach to an extent where New Jersey industry and government are now working toward the same goals. To in fact undermine the Department's wonderful efforts to date by allowing citizen suits would, we believe, have the unhappy effect of abating the pollution control program in New Jersey. We do not believe that this Committee and the sponsors of Assembly Bill 1268 had this in mind.

Box 323, Route 4,
Washington, N.J. 07882

Feb. 20, 1971

Assembly Committee on Agriculture,
Conservation and Natural Resources
State House,
Trenton, N.J.

Gentlemen:

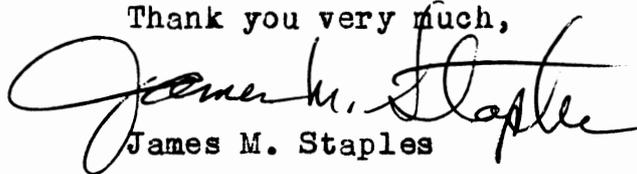
I am writing as an interested citizen of our state and not in any way connected with my professional life.

Regarding Assembly Bill 1268, the so-called "Michigan Law" which underwent public hearing by yourselves on Feb. 11, 1971, I would like to urge addition of a paragraph which a witness, Mr. Charles Stein, of New Brunswick, said is contained in the Michigan Law as adopted, but which is not included in the proposed New Jersey legislation. It reads:

"The Court may appoint a Master or Referee, who shall be a disinterested person and technically qualified, to take testimony and make a record and a report of his findings to the court in the action."

Whether or not this in reality is included in the Michigan Law appears beside the point to me. I would think it a most valuable provision in such a law, and would ~~xxxxxxx~~ add expertise to serve the judiciary in coping with technological or scientific questions, as well as in reaching any decision involving changes of existing pollution control standards.

Thank you very much,


James M. Staples

STATE OF N.J.
LEGISLATIVE
SERVICES
71 FEB 22 AM 9 43

NEW JERSEY CITIZENS for CLEAN AIR, INC.

SUITE 405, 144 SOUTH HARRISON STREET • EAST ORANGE, NEW JERSEY 07018 • TEL.: (201) 672-1816
18 February 1971

Mr David C Matek
Division of Legislative Information and Research
Room 90
State House
Trenton New Jersey 08625

71 FEB 18 PM 4
STATE OF N.J.
LEGISLATIVE
SERVICES

Dear Sir:-

I am authorized to present the views of the New Jersey Citizens for Clean Air anent the enactment of "An act concerning actions for declatory and equitable relief for protection of air, water and other natural resources and the public interest therein."

Inexperienced as we are as regards the penetration of the complicated deviousness of legal language, nevertheless we can see nothing in this proposed law that adds to the rights of citizens beyond the laws already in effect.

Any citizen who has suffered damage at the hands of any other citizen or combination of citizens is presently entitled to sue the ones who caused or are causing the damage, under present laws, providing this citizen can afford to retain an attorney and post a bond to cover the costs or judgement against him.

Why put this additional law on the books? We think there are too many laws now. The problem seems to be the lack of enforcement. The citizen can now complain to the Department of Environmental Protection concerning pollution but they appear not to have sufficient personnel to investigate all complaints.

This proposed law apparently allows the citizen to sue the State in the case of damage through pollution of air, water et al. The State has the authority to enforce the present laws regarding pollution. If they do not have a sufficient force to do this, we fail to see what this new law will do to help this enforcement. What it will probably do is to throw additional work on the now over-crowded courts.

We, the New Jersey Citizens for Clean Air, question the necessity for this law.

Very truly yours,

(Mrs Blaine Hunter)
Trustee

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Mrs. Robert I. Ballou, President • Mrs. Robert Fraser, Mrs. Melvin C. Shuttlesworth, Vice Presidents
Mrs. Richard F. Vreeland, Secretary • Mr. Charles M. Volpe, Treasurer



HERCULES INCORPORATED

POLYMERS DEPARTMENT • PARLIN, NEW JERSEY 08859

February 22, 1971

The Honorable Josephine S. Margetts
Blue Mill Road
New Vernon, New Jersey 07976

Dear Assemblywoman Margetts:

We are submitting Hercules Incorporated's statement on Assembly Bill 1268 to be added to the record of the Public Hearing held on February 11, 1971, by the Assembly Committee on Agriculture, Conservation and Natural Resources.

Realizing the Assembly is in a recess period, we have also sent a copy of our statement to each of the other members of your committee.

Respectfully yours,

Plant Manager

MBerman:jat
Attachment

cc The Honorable Samuel A. Curcio
241 Bellevue Avenue, Hammonton, N. J. 08037

The Honorable Joseph H. Enos
39 Cooper Street, Woodbury, N. J. 08096

The Honorable Henry F. Gavan
2109 Orchard Terrace, Linden, N. J. 07036

The Honorable John J. Horn
375 W. State Street, Trenton, N. J. 08618

The Honorable Robert E. Littell
15 Jenkins Road, Franklin, N. J. 07416

The Honorable Joseph E. Robertson
1107 Wall Road, Spring Lake, N. J. 07762



HERCULES INCORPORATED

POLYMERS DEPARTMENT • PARLIN, NEW JERSEY 08859

February 22, 1971

The Honorable Josephine S. Margetts
Blue Mill Road
New Vernon, New Jersey 07976

and

Members of Assembly
Agriculture, Conservation and Natural Resources Committee

Dear Assemblywoman Margetts:

We appreciate the opportunity to express our viewpoints on Assembly Bill 1286.

As you are probably aware, Hercules Incorporated is a diversified chemical company with four (4) plants in New Jersey and thirty-seven (37) plants in twenty-two (22) other states.

As a major employer for nearly sixty (60) years in New Jersey, we share the same concern as other citizens in protecting the environment. In the Parlin area alone, we have committed \$4,000,000 for pollution abatement projects to meet current and future state pollution regulations. We are also spending a considerable sum in pollution abatement at our other operations in New Jersey.

We believe the following comments on the bill are in the best interest of the people of New Jersey:

1. Section 1 (b) should be stricken. Section 1 (b) allows the courts of this state to overrule a pollution standard set by experts in the New Jersey State Department of Environmental Protection. To allow a judge to substitute his judgment for that of many capable scientists on a complex scientific matter is simply not wise. To allow Section 1 (b) to pass is, moreover, an admission that the dedicated members of the New Jersey State Department of Environmental Protection are not competent to do their jobs. We think they are competent and have done a good job to protect the public health and safety. We would also remind you that industry has no control over the Department of Environmental Protection. This is evidenced in Hercules' case by the fact that the Department has moved against us several times in the past. We feel that there is in existing law a proper standard for judicial control over administrative agencies.



The Honorable Josephine S. Margetts
New Vernon, New Jersey

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2/22/71

2. Section 2 should be amended by striking "in an amount not to exceed \$500.00" and substituting therefor "in an amount deemed reasonable by the court". The possibility of a high bond might deter the "crackpot" type of plaintiff from bringing an unwarranted action.

3. Section 3 (a) should be stricken and rewritten. The section is imprecisely drawn. The section allows the plaintiff to make a prima facie case by showing merely that "the conduct of the defendant has, or is likely to pollute, impair, or destroy the air, water or other natural resources or the interest of the public therein". As presently worded almost any conduct of the defendant would be included under Section 3 (a). For example, exhaling into the air is arguably "conduct...likely to...impair...the air".

4. Sections 4 (b) and 4 (c) should be stricken. These sections, which allow the courts to override administrative standards in the area of licensing, are subject to the same objection raised with regard to Section 1 (b).

We believe that the changes we have recommended will serve the best interests of New Jersey. We are confident you will give these proposals careful consideration.

The continuing cooperation between industry and government in New Jersey is the only way we can assure the necessary protection of our environment.

Very truly yours,

Plant Manager

MBerman:jat

