

Public Hearing

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before

SENATE ENVIRONMENT COMMITTEE

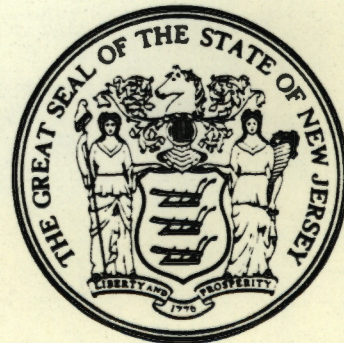
"Reviewing the implementation of the 'Water Pollution Control Act,' the 'Water Quality Planning Act,' and other laws relating to the water quality of New Jersey"

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

DATE: October 13, 1994
1:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Henry P. McNamara, Chairman
Senator William E. Schluter, Vice-Chairman
Senator Robert W. Singer
Senator Byron M. Baer
Senator Gordon A. MacInnes



ALSO PRESENT:

Raymond E. Cantor
Judith L. Horowitz
Office of Legislative Services
Aides, Senate Environment Committee

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



HENRY P. MCNAMARA
Chairman

WILLIAM E. SCHLUTER
Vice-Chairman

ROBERT W. SINGER
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New Jersey State Legislature

SENATE ENVIRONMENT COMMITTEE
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PUBLIC HEARING NOTICE

TO: MEMBERS OF THE SENATE ENVIRONMENT COMMITTEE
FROM: SENATOR HENRY P. MCNAMARA, CHAIRMAN
SUBJECT: PUBLIC HEARING - October 13, 1994

The public may address comments and questions to Raymond E. Cantor or Judith L. Horowitz, Committee Aides, or make scheduling inquiries to Theresa Ricci, secretary, at (609) 292-7676.

Any member of the public may submit written testimony by submitting at least 10 copies of their written testimony for distribution to the Committee.

The Senate Environment Committee will meet on **Thursday, October 13, 1994 at 1:00 P.M. in Committee Room 9, Legislative Office Bldg., Trenton, NJ.**

The Senate Environment Committee will conduct the first of several public hearings to be held for the purpose of reviewing the implementation of the "Water Pollution Control Act," the "Water Quality Planning Act," and other laws relating to the water quality of New Jersey. The first public hearing is intended to be an overview of the various water pollution and water quality programs and issues relating thereto. The committee has invited the Commissioner of Environmental Protection as well as several other interested parties to present testimony.

Issued 10/06/94

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

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SENATOR HENRY P. McNAMARA (CHAIRMAN): I'm going to call the meeting to order. Roll call, please.

MS. HOROWITZ (Committee Aide): Senator McNamara.

SENATOR McNAMARA: Yes.

MS. HOROWITZ: Senator Schluter.

SENATOR SCHLUTER: Yes.

MS. HOROWITZ: Senator Singer.

SENATOR SINGER: Yes.

MS. HOROWITZ: Senator Baer.

SENATOR BAER: Here.

SENATOR McNAMARA: We're starting a great democratic process. I waited to start the meeting until you were here. Welcome to today's meeting of the Senate Environment Committee. This public hearing will be the first of several meetings the Committee will hold as it begins its review of New Jersey's water pollution control laws.

Those of you who are familiar with my legislative philosophy or who are involved in the Committee's deliberations involving the Industrial Site Recovery Act and the Site Remediation program know that I am a firm believer in legislative oversight. We intend to conduct hearings and to continue the process in an effort to improve the manner in which this State controls the discharge of pollutants into our waters. Although we are aware of a number of issues that have been raised concerning the NJPDES program, we are beginning the process with no preconceived notions of the changes that will be made.

The law is complex and important to the State's quality of life, as is the Water Pollution Control Act, and needs to be reviewed by the Legislature on a periodic basis. I would like to assure those in attendance that it is not my intent to weaken the State's water pollution control laws. Anyone familiar with the serious environmental conditions that led to the adoption of the 1972 Federal Clean Water Act or of

the environmental problems being faced in Eastern Europe or Mexico realize what could happen without adequate water pollution control laws.

We are also aware of the progress the Department of Environmental Protection has made in recent years to make the NJPDES program more efficient and effective. We applaud their efforts. We are hopeful that our efforts will further the progress that has been made. However, I believe that even the best run program can be improved. We need to consider if the program is properly funded, if our enforcement and compliance program is achieving its goals, and if our environment is being improved. In this age of limited resources, we also need to investigate, as a government and as a society, if we are getting the best results for the money being spent.

We plan to listen to all of the testimony that will be presented over time, in order to determine if there's a need for legislation. If it turns out that the program is perfect, and our job will be easy, then we will turn our attention to other matters. If, however, as I suspect, improvements can and should be made, it is my intention to draft legislation to address those problems and to have this Committee continue its oversight function.

Having set the agenda, I would like to explain how the Committee will function. Although it is our intention to hold several hearings on the various topics involving water pollution and to allow all who wish to testify to do so, today, however, we have a set agenda. Several speakers will provide an overview of the current problems, as well as successes of New Jersey's approach to NJPDES, permitting, and other water pollution control programs.

Commissioner Shinn will begin the hearing today. We are particularly pleased to see the Commissioner here, because it demonstrates that he recognizes the importance of the work this Committee has before it. Additionally, we realize that

the best legislation is crafted when all parties share information and work together toward a common goal. I look forward to working with the Commissioner, his staff, and with the administration.

Also testifying today will be Senator Larry Weiss. Larry headed the committee that reviewed NJPDES and recommended a number of reforms, some of which are already adopted. The hard work of Larry's committee will be useful throughout the course of our hearings. Hopefully Larry will help us avoid reinventing the wheel and enable us to see what progress, if any, has been made since the committee issued its report.

In addition the Committee will hear testimony today from other members of the Department, the environmental authorities, Business and Industry Association, Sierra Club, and the Public Interest Research Group. With that, I would like to ask if any of the other members would like to make opening remarks?

Senator?

SENATOR MacINNES: No. Sorry, I'm late.

SENATOR McNAMARA: They explained and we waited, quite frankly, as long as we could.

SENATOR MacINNES: I'm sorry, I apologize.

SENATOR McNAMARA: In fact, you're not going to miss anything. The only thing you missed was the opening remarks. But I included you in it with the pronoun we. Hopefully we continue that through the whole system.

SENATOR MacINNES: Maybe I can get a private recitation afterward?

SENATOR McNAMARA: Commissioner Shinn.

COMMISSIONER ROBERT C. SHINN, JR.: Thank you, Mr. Chairman, and members of the Committee, and it's not perfect.

I enthusiastically welcome the opportunity to appear before you today and to initiate the process to review, update,

and improve the laws and regulations affecting our water quality in the State of New Jersey.

Today, along with Dennis Hart, Director of the Division of Water Quality, and Ron Tuminski, Assistant Commissioner of Management and Budget, I would like to outline some ideas, which I think contribute to the process. In addition, we would like to briefly review the status of the water program and to advise you of some initiatives which the DEP is or will be taking to improve our operations and efficiencies in this program.

On both the State and national levels, the statutes protecting our water resources have generally been acknowledged as among the most successful of our environmental laws. We, as a State, can be proud of the efforts that have taken place to protect and restore our most vital resource. If one were to compare snapshots of our waters of 20 years ago with those of today, the differences would be astounding.

However, this is not the time to rest on our laurels because, if that same person were to compare the increase in the complexity and extent of government regulation over that same period, the results would be equally as astounding. Furthermore, over that time our level of scientific and technical knowledge has expanded exponentially. We continue to find out there is much left to be done.

By calling this hearing today, you are raising the question of whether we are doing the best job possible in utilizing our resources to protect the environment and public health and if there are ways in which we can improve in terms of efficiency and effectiveness. I am here to respond that I totally concur that it is time to ask some serious questions about how we protect and restore our water resources and to initiate reform where necessary. I look forward to a joint, comprehensive effort of the legislative and executive branches working together, along with the other stakeholders represented

in this room, to evaluate what we are presently doing, what we should be doing, and how do we get to there from here.

As a matter of fact, this hearing and the initiation of a process for reform could not be more appropriately timed. As you are aware, for all intents and purposes, Congress adjourned last week. In the long list of unfinished business of the 103rd Congress were reauthorizations of the Clean Water Act and the Safe Drinking Water Act. While the 104th Congress will be starting from scratch on both of these acts in January, this past session did provide much debate and potentially set the groundwork for the next session. As such, we in New Jersey will be able to know the direction Federal law may be taking, but, at the same time, we will have a unique opportunity to shape our own program and perhaps impact the dialogue at the Federal level in the future, as well.

As I see it, there are three broad areas of improving the program around which our reform efforts should revolve:

First, I would strongly recommend that our review and reform lead to a much more comprehensive and integrated program than we have had in the past. Water resource protection throughout the nation is moving towards a watershed-based approach. This approach -- which considers everything from a holistic and integrated perspective within a single watershed basin -- is being tried on a pilot basis in New Jersey. Our experiences in this pilot may provide a framework for some of the statutory and regulatory reform efforts we are discussing here today, so I am bringing this to your attention.

The terms comprehensive and integration apply in several areas. First, we need better coordination of municipal laws which the DEP is required to administer. While the primary legal authority under which the water pollution control program operates is the New Jersey Water Pollution Control Act, the program is also answerable to no less than nine other State

acts, three Federal laws, and six State bond acts. These laws were enacted to address specific needs and problems and have developed independent lives of their own. Each statute has its own layer of regulations thus producing a piecemeal, uncoordinated approach to water pollution control. A thoughtful evaluation of our water program must include a thorough examination of all of our laws to determine how we can better integrate our financial resources to provide for a well-planned program for water pollution control.

Another aspect of how our efforts must be comprehensive is the various levels of government which need to be considered. All too often, decisions are made in Trenton without adequate consideration of impacts to local and county governments. This effort must involve all those affected government units, as well as the other affected stakeholders, at the earliest discussion phase.

Lastly, our comprehensive approach must include all of the waters in the State and the interrelationships between the waters themselves, their usage, and the limitations placed on them by pollution. A watershed-based approach is the prime example of how all of these considerations are being merged and intergrated.

The second overall theme that I would like to touch upon is funding of the program. Specifically, I am referring to the water pollution control program's reliance on NJPDES fees and enforcement penalties. Some of the people who present testimony here today will be providing a great deal of detail, as well as horror stories, on this subject, but I would like to give you some of my own initial thoughts on the issue.

As Commissioner, I have made it a primary goal to reduce the Department's dependence on fees and fines and to search for ways to put more of the programs back on budget. While fees are necessary to support our budget and we must continue to convey a heavy, strong, enforcement message, I

firmly believe this extraordinary dependence drives the Department and its programs in exactly the wrong direction.

This heavy dependence on fees and fines took many years to accomplish, and it will take some time to rectify. But I want to assure you that we are taking steps and evaluating different ways to head up in the right direction. In fact, I am glad to point out that after years of steady escalation, we have stabilized our NJPDES fees over the past two years. Now, I am again looking for opportunities to reduce these fees, to again make New Jersey competitive from a fee standpoint in the marketplace.

Dennis Hart will provide you with some information on efforts which are being undertaken to improve the operations of the NJPDES program. He will also provide an overview of the recommendations of the NJPDES Fees Task Force Report and the status of implementation of those recommendations. As we have talked briefly before the meeting, Senator Weiss did an extensive amount of work on the NJPDES Task Force, and we have used a lot of those documents and are in the process of doing a full upgrade of that report, and you will hear some comments about that. Ron Tuminski will then present a brief review of the agency's financing, focusing on how the trend towards increasing dependence on fee and fine revenues has impacted our management of the water pollution programs. He will also summarize the department-wide budget initiative to reduce our dependence on fees and fines so that more of our costs are on-budget.

Before I turn the microphone over to these gentlemen, I'd like to conclude by highlighting the third and final area that is directly linked to the first two. That of increasing the efficiency and effectiveness in the use of our resources. While a prime concern of mine, of course, is to maximize the use of the department's resources, I strongly urge that our review and reform consider all of the State's resources,

whether they be public or private. They should all be evaluated as to whether they are being put to the greatest amount of risk to public health and to the environment.

The Department has embarked on numerous projects to increase our efficiency. We are evaluating privatization in many areas. We are strengthening our computer and data processing capabilities to enhance information handling and disseminating abilities. We are reviewing our regulations to see if there is room for delegation of certain regulatory functions or even permit-by-rule.

While these efforts are revealing substantive, tangible benefits, administrative fixes will bring us only so far; therefore, I welcome this opportunity to work with the Legislature, so that our regulatory efforts dovetail with statutory reform, so that our program is geared to move into the next century.

I'm available to answer any questions you might have.

SENATOR McNAMARA: Anyone, any questions at this time?

SENATOR BAER: Do you have additional copies?

COMMISSIONER SHINN: No, I don't. I've marked these up because we put these together at the last minute, but I will get you copies of my marked up version. I apologize for not having copies, but there were some diversions this morning, and I didn't get to the review point that I needed to be. So, I will get you copies later today.

SENATOR McNAMARA: I had the same problem, Commissioner.

SENATOR MacINNES: Commissioner, you said that you wanted to make New Jersey competitive with other states in terms of its fees and fines. I understand that there's a feeling, because the Department is so heavily financed by fee and fine income, that there's an incentive given to regulators to find problems and assess fines where in other cases that

might not happen. Is that the source of the difficulty or is that a fair statement of what you see the problem to be?

COMMISSIONER SHINN: I don't think so. I think the Weiss Report pretty much put their finger on the problem with escalating fees. The Department, particularly in recent years, began to rely on fines and fees in an excessive level. Last year we had a \$248 million budget, 51 percent was comprised of fines and fees.

I was discussing with the Chairman and Senator Weiss previously -- I admit that I was part of the problem, sitting in the Legislature voting on budgets. We had budget problems year after year, and we were driving the Department more toward fines and fees. In my mind, we built ourselves into a corner. I think the Department's image became impacted by that, both from the private and public sectors. I think the relationship with the Legislature certainly didn't improve. I think the Department had more of a command and control image and more of a punitive image.

I think that we, like many other countries in this world, found that you don't get to where we need to be strictly command and control. You get farther in a compliance mode setting overall goals, backing those goals up into permit standards, and giving adequate notice on where you need to be in a time frame and benchmarks to get there. I think, generally, we're trying to proceed in that direction.

What we're looking at statewide is how we fit into the various fee proposals, so that we're competitive, from a fee aspect, with other states. We're in the same framework. If we're competing for a major facility that's looking at national locations, we need to be in the competitive mode to attract that kind of industry. New Jersey is not out there looking for industries that have a high impact on the environment, so we're more selective.

If you're going to be more selective, you have to be more competitive, and you can't have other states creating horror stories that have some basis about New Jersey's elevated NJPDES permits of five hundred and some thousand and how horrendous that is. You create an atmosphere of a state that really doesn't want to attract additional low polluting industry or business. I think we've got to improve that image, and I think Senator Weiss' effort was directed in that area. I think that we need to pick up that gauntlet and move it forward.

SENATOR MacINNES: Thank you.

Thank you, Mr. Chairman.

SENATOR McNAMARA: Thank you, Senator.

Anyone else? (no response)

Thank you, Commissioner. Thank you very much for your time.

COMMISSIONER SHINN: Thank you.

SENATOR McNAMARA: I think we'll be seeing a lot of each other.

COMMISSIONER SHINN: I'm sure. (laughter)

SENATOR McNAMARA: Senator Larry Weiss, Chairman of the NJPDES Task Force. An old friend -- I mean that in time, Larry, not in deference to one's age. (laughter)

L A U R E N C E S. W E I S S: I wasn't sure. Mr. Chairman, members of the Committee, it seems rather unusual to be sitting on this side of the table.

SENATOR McNAMARA: I waited for a long time to get into this position, Larry. (laughter)

MR. WEISS: Mr. Chairman, you have me. I don't have a reply for that one, except to say to you it's all in the seat, wherever that is.

SENATOR McNAMARA: It's all in the chair.

MR. WEISS: Whatever.

Thank you very much, Senator, for having me down today. I haven't been here now for three years, but my love of

the organization is as it was the day I left. I don't have a problem addressing that. It's nice to see faces from my past, not yours, however, Gordon, Byron, Bill, and Bob. Now that we made -- I made sort of an informal introduction here, why don't I go on with my problem or my presentation, which could be both.

The Commissioner was very kind. He followed up on a report that our Committee made, so a lot of what I said would probably be redundant. You heard it from him. I must compliment the Commissioner on his astuteness and his staff, of course, in doing what should have been done years ago -- follow a report that was done by a responsible committee. I thought sometime back that this would end up like the old Cahill Report on the finances of the State, on the back shelf someplace where no one read it. I was very much impressed when I received a report on the report from the DEP. I just glanced at it. I just got it about 2 weeks ago, maybe even less than that. I found things in it that our committee worked on.

If you will indulge me, Mr. Chairman, for just a minute or so, I've never had the opportunity to thank those who worked on that task force. I never really had the opportunity to thank them. I'd like to do that here, if I may read their names and their organizations, okay?

SENATOR McNAMARA: Absolutely.

MR. WEISS: Okay.

Let me start with Jack Alexander, from Hoffmann-La Roche; Renee Bobal, from Hoffmann-La Roche; John Burke, from DEP; Ellen Gulbinski from the Association for Environmental Authorities; Deborah Hammon, from DEP; Dennis Hart, John Weingart, Linda Damico, and Ron Tuminski -- I think a couple of them are in the room -- they're also from DEP. Dave Keller, who I think is over in the Governor's Office now; Drew Kodjack, from PIRG; Mark Antonio Lopez, (phonetic spelling) from Dames and Moore; Al Pagano, from DuPont; Rick Sands, (phonetic

spelling) from Dames and Moore; Mark Strickland, who is here from PSE&G; and Hank VanHandle, from Bayway Refining. These people are very able, very dedicated, and made my life a lot easier. As a matter of fact, I couldn't make a couple of the meetings and they handled them beautifully. There was a set of minutes from each meeting that were thorough and readable. I will quote from some of those minutes at some later time in my presentation.

The thing that I found, and I'm going to have to talk personally on this thing -- I don't know that everybody agrees with me because the minutes reflect that there was some contention about some of the things that we were doing and rightly so. That was the purpose of the meeting; however, you've given me my moment in the sun, and I may as well take advantage of it.

As far as the Department goes, my particular observation was that it needed a lot of personal control by someone. I think that someone is the present Commissioner. I think he's doing a great job at it. I think he has controlled it, and I think he's going to do all those things that a manager would like to see done, even in his own business, and the State's business is his own business. It's your business and my business because we're the taxpayers, even you are--

SENATOR McNAMARA: Better believe it.

MR. WEISS: Especially you, and you. (laughter) I don't know what you are all paying, so it's paramount that we look after the expenditure of the State. I think he's doing that. I think that he's going to bring this whole thing together and settle a lot of questions that were kind of hanging in midair.

I don't want to overlook Commissioner Weiner, who started this Committee and who was foresighted enough to indicate that there was something wrong with the Department. John Weingart, I do believe, and Dennis Hart were very instrumental in putting this together. We had a number of

meetings indicating that, yes, there are some real problems with the Department. Let's get people together and see what we can do. I think that we have done that in our report.

The closer management area is very important. The Commissioner and/or his assistants have to know what is going on at the lower levels. I don't think in the past that they knew. I don't think in the past that they may have cared, but I don't think that they took the effort to find out what goes on at the lower levels. I have some personal experience with it, and I could talk from that, but that's a war story. We're not here to hear war stories.

It seems to me at the moment that with what I read in the report on our report that the Department put out, that they are, in fact, traveling in the right direction. They've done something that I thought should have been done many years ago, something very important, and that is to network all the computers, so that each computer talks to each computer. If there's confidential information in the computer, certainly that can be locked up by a password, so that it doesn't go anyplace else.

But I've personally had the experience of calling one department and being somewhat, not exactly threatened, but close, about what we were or were not doing. I said, "Well the problem is over in another department; they haven't yet issued a permit for this particular situation." I'm not going to mention any names. The thing went back and forth a few times, and we finally got the two folks in DEP together, and the problem was solved.

But I know with networking computers that is going to happen less frequently than it has in the past. There's another part to this thing that was a pet peeve of mine and still is, that's the Legislative Procedures Act. I'm sure you're all familiar with it, especially the legislators. When you have something passed in both Houses, and the Governor

signs it, the bill goes to the particular department. You go back and read it a year later, you wouldn't recognize it as the original bill that passed either House.

Because the prerogative with the department to change that bill is there. All they have to do is publish it in the "New Jersey Register" and there, in 45 days, if you're asleep, there goes your whole deal, right down the tube.

That's been a long time peeve, if memory serves me right, I think Senator -- I guess memory isn't going to serve me. (laughter) However there was a bill that, I think, got as far as the Governor's Office doing something with the Procedures Act that was either vetoed or not signed. I'm not sure which. But something should be done about that.

Something should be done about the way we write our environmental laws. I don't think that we should be affected by-- I read part of this in the paper the other day and it triggered it in my mind. I don't think that we should be affected pretty much by what California does. California has its own problems.

The prevailing wind is from west to east, the jet stream is from west to east. So starting with Pennsylvania and going west, we have to prevail on someone, maybe the EPA, to make the laws more stringent. They burn coal out there; they have high stacks; here in New Jersey we've eliminated most of the stacks. In fact, I think that the district that I used to represent had more stacks in it than any other in the State, but I saw the last one near my home go down about a year ago. It was a sight to see, but it was a pleasant sight to see.

So I think what we should do, in part, in this exercise is to somehow get some legislation or talk to our people who can do the legislation -- like in Congress -- to get the people west of us to clean up, because everything, all the residuals from all those stacks and from all the chemical

plants that are west of us, arrive here in New Jersey at one point or another. So that ought to be handled.

I would get to the financial part of this thing. Mr. Chairman, I know we're pressed for time, you mentioned that to me earlier.

SENATOR McNAMARA: I thought I dropped that hint, but I'll allow you the leeway that you're entitled to. Right after that, the rules start. (laughter)

MR. WEISS: Thank you.

I think that in this -- in some progress of bettering the financial situation over in the Department, I think everyone ought to be included in permits and that includes schools. They put out a lot of contaminants, a lot of pollution, and yet, they're not considered in the permit area. I think that all schools should be, to some extent, involved in the cleanup of this State. I think, too, doing that and publicizing it would then enhance the position of our children. When they grow up they'll understand, yes, their school is clean. The State should be clean. I do think that it would help.

The other part is that the State of New Jersey should pay its share. It hasn't been doing so. They probably put out half the-- Fifty percent is half, isn't it? Fifty percent of the pollution in the State comes from roads -- streams that are contaminated by run offs. The State institutions themselves have hundreds, if not thousands, of tanks in the ground. I don't know that they're ever inspected. When I held my last meeting in the Legislature, as a matter of fact it was in this room, there was a bill up for \$32 million to do the State tanks, removal and installation thereof. I really don't know what happened since then. It has been three years. Hopefully something was done about it, but I don't think so. I see you're shaking your head and I--

SENATOR McNAMARA: You're right, it wasn't.

MR. WEISS: Nothing was done about it. If the public has to carry its load, I do believe that somewhere in that General Fund they should find enough money for the State to carry its load, not throw it all on the Department of Environmental Protection, as the Commissioner indicated also, through fines and fees. It makes living in the State of New Jersey, from a practical point of view, just as a citizen with a home -- who incidentally uses oil and might have a leak at some time, but I took the precaution of getting insurance on mine -- and industry, it puts them in a very, very awkward position. Yes, they want to keep the environment clean. I want the environment clean. It's my environment too.

I grew up in the Town of Carteret. It had nothing in it but industry, and, I think 5000 people when we lived there. I used to see men come home from the fertilizer factories with white powder all over them. Sometimes it was so bad you couldn't see across the street, so I appreciate, from my misbegotten youth, that something should be done, in fact, about the environment.

I don't object to anything that's reasonable. When I was in the Legislature, I did the best I could, but I was in a position where I held back on a lot things, because I thought they were not right. The environment is one thing that belongs to all of us, each and every one of us, to our children, to our fathers and mothers when they were alive, and if they're alive, it belongs to them even to this day. So the responsibility for a lot of this goes to the State. They should handle their part as we on the outside handle ours. Since they're policing us, I think a little bit of self-policing wouldn't hurt in this area.

I would recommend two things that are really important. These are probably two of the reasons that I feel sorry that I'm not back in the Legislature. I'm going to take

advantage of your hospitality and I'm going to unload them on you.

The first is--

SENATOR BAER: A lot of us are sorry, too, with no reflection on your successor.

MR. WEISS: I understand. I thank you very much. However--

SENATOR McNAMARA: Well, if we had a choice--

MR. WEISS: Let me get back to business before I get embarrassed and start blushing.

One is that -- and no one's going to like this in the Legislature, but had I come back I would have done it. I think, Mr. Chairman, that you attempted to do it, perhaps not in the same amount, but I think you attempted to do it. I think that there ought to be instituted in this State a-- I'm going to call it a fee, because it's going to make it a little bit easier for everyone, but either pay it this way or you're going to pay it some other way, and that goes for the folks outside too. A two cent tax on gasoline or motor fuels, there's a mixture. Half of it divided between the expenditures to the State and the other half going to the Department to handle all these permits. A penny was worth -- and I think it's still about in the same way -- a penny on a gallon is worth about \$40 million to \$45 million?

SENATOR McNAMARA: About \$40 million to \$45 million, right.

MR. WEISS: Okay, 2 cents is \$90 million, the State gets \$45 million.

I'm going to say something else that I was always against. Seventy percent of the New Jersey State Budget, perhaps a little bit more, is dedicated, and no one can touch that, legally. That goes for the Legislature; that goes for the Governor's Office; it's dedicated. Like the casino fund dedicated to education and so on -- senior citizens. I know

you can't touch those, right Bob? I'm going to propose that this 2 cent tax, and it should be put on in even increments, not in mils like, you know, one and a half. I'll explain that later, or at a later meeting, if you call me back.

SENATOR McNAMARA: Later meeting.

MR. WEISS: Okay, this two cent tax should go on and serve a good purpose. I think the time to do it would be when everyone is raising their prices. Now I've spent my lifetime in the gasoline and oil business. I'm a little bit aware of what goes on there, not too much these days, but I'm still a little bit aware. With the new type of gasoline -- oxygenated -- I think there are three or four types coming up. The price can go anywhere, and it has in North Jersey. It has gone up six cents or seven cents a gallon, all the way up to 30 cents a gallon. I don't think that the end result of that product is what it's cracked up to be. From what I understand there may be carcinogens in it. I know when I drive behind a car, if it's using oxygenated gasoline, I get a headache. I know others do too and various other afflictions that prove to them-- But I would recommend to them, certainly, that a two cent tax be instituted on motor fuels to do precisely what I just expounded on.

Other things--

SENATOR McNAMARA: I hope you took the hard thing first, if there's two things you suggested.

MR. WEISS: The next one is easy. I've chaired this Committee over in the Department of Environmental Protection. I've also had personal experience. I can't tell you that the personal experience wasn't costly. I think, Mr. Chairman, you had the same experience at one point in time, where it may have been costly.

SENATOR McNAMARA: Underground storage tank.

MR. WEISS: I didn't hear you.

SENATOR McNAMARA: That's okay.

MR. WEISS: That's okay. At any rate, what-- Now if you go to the Department, you're given a permit. It takes a long time to get it. There's really no one there to help you. There are some people, if you can find them, that will help you, but generally, it isn't so. People are frozen into regulations and they don't move too much from there, because everything or many things are mandatory and they can't move. But I would like to see appointed to the DEP, as in the EPA, an ombudsman, to take care of those who come down or take effort to come down, write, call, or however they contact them.

To have someone help alleviate their problems, someone to pick up the slack, someone who can walk into an office in DEP and say to whoever's in charge, "I got this complaint," or "Can I get this thing straightened out?" or "Are we going to put this man out of business to harm him?" There are many that have gone out already. I think that someone with his heart in the right place appointed to a position such as that would do the State of New Jersey a world of good, it really would.

It would help our citizens out there. I know you're all working for them, your constituents. Having had your experience, I know how you feel about these things, especially the two cents tax. It's a dirty word, I understand that. But you look at me and see what happened, so you know the future. But I want to tell you something, gentlemen, it comes to a point--

SENATOR McNAMARA: That's all right, you might be better off.

MR. WEISS: It comes to a point where you have to make hard decisions. That was a hard decision to make. It will be a hard decision for as long as Legislatures are around, as long as there are governors in office, or presidents, or anything. It's a tough decision and someone has to bite the bullet sooner or later. Better sooner than later because, again, in this case it's our environment, and we have to breathe that air out there, bathe in that ocean, and replace the sand that's missing

down the shore, things like that. You need money to do it. If you don't have the money, you can forget the whole project. Because one person by himself is not going to be able to do it.

SENATOR McNAMARA: Larry, I'm going to have to ask you to try and conclude in the next two minutes.

MR. WEISS: All right.

SENATOR McNAMARA: Since I bent the rules to the maximum allowed and even beyond that, I did promise some of my Committee members that we would be done at a certain time.

MR. WEISS: Okay. Fair enough. I think I've touched on the major points that I have, Mr. Chairman. I don't have a problem with that. I will conclude there by indicating to you, that again, I thank the Commissioner. I thank him for myself and for my committee for the effort that he's put in to making that bill come to life.

SENATOR McNAMARA: Well, I thank you very much, Larry, for giving us the time because, quite frankly, hopefully, we're going to start a new trend. That just because something was accomplished in one administration, which your task force was, doesn't get shelved. We can take that and use it as a basis to build from. Quite frankly, I think everybody-- If the members of the Committee have not been forwarded a number of the reports, I want each and every one of you to get it and go through it, because it's a great, great basis to start with.

MR. WEISS: I think, Mr. Chairman, that the Department must have 4000 copies. They don't throw anything out. They don't dare to because of the recycling program involved. (laughter)

SENATOR McNAMARA: You got it.

Are there any questions of Senator Weiss?

MR. WEISS: Do you have any questions for me?

SENATOR SINGER: Just briefly, Senator, first of all, the concept of an ombudsman or one-stop shopping, as you know,

has been bandied around for a long time. I know the Department is supposedly heading in that direction. I find from my point of view of dealing with the Department, if one person is assigned to the particular permit and they're in the field or not in that day, everything stops. You can't get any answers to anything. It's very, very difficult. I don't know if we have to produce more funding or if they just have to take somebody and make them business friendly there?

Hopefully, through the Department of Commerce, they're pushing in that direction. I know Commissioner Medina is pushing to see that happening from a business aspect. I think it's important. It simplifies things. We've heard from the private sector yesterday with the Governor that, again, they want simpler forms, easier to fill out, and less duplication, which we hear constantly.

Just on one last point, the point about where the money is going to come from. That's probably one of the most troubling things. I know that the Chairman led the battle last time for us to vote for a gas tax to fund the cleanup of underground storage tanks, which was essential to this State, because probably the lion's share of those tanks are in governmental hands. Whether it's schools or governmental buildings, unfortunately, we did not have the support of the Governor-elect at that time, now the sitting Governor. I would tell you that I think that will probably be the most difficult thing to do, to get a tax through unless the Governor asks for that tax.

MR. WEISS: Well, were I governor I would ask for it, but I'm not. The Governor will have to make her own evaluation of whether it's important enough to go for it or not. My personal view is that it's something that -- I'm going against a lot of my former thinking--

One, it should be dedicated.

Two, that the environment belongs to all of us, not just me.

SENATOR McNAMARA: Larry, that's what makes it so-- I'm convinced of your commitment to it, because for you to suggest a dedicated fund is the reverse of what I listened to you preach for nine years. So now I'm glad you're coming around to my way of thinking. (laughter)

MR. WEISS: I recall that I used to argue with you all the time about those things. But when you have all the numbers at your fingertips, and you recognize that most of the revenue that comes into this State is, in fact, dedicated, and you only have like 30 percent or 35 percent to work with and 7.5 million people out there trying to get that 35 percent, you recognize that there is a problem. But this problem, Mr. Chairman, if I may just take a minute, is unique. It's our future. It's our health. It's the health of our children and the health of our grandchildren.

SENATOR McNAMARA: It's either pay now or pay much more later.

MR. WEISS: So you pay now or you pay a hell of a lot more later.

SENATOR McNAMARA: Senator Schluter.

MR. WEISS: Strike that last word.

SENATOR SCHLUTER: Thank you.

Senator, I've enjoyed your comments. You spoke about an ombudsman. As a former environmental consultant and then a legislator, I have a real problem with ombudsman -- ombudspersons in the Environmental Protection Department -- because the permit project managers hold the key, and they can expedite, hold up, or make these decisions. I'm not just -- I'm afraid that just might be another layer of bureaucracy

Excuse me, let me make a point. Could you comment on an ombudsman versus legislators doing their job representing constituents, going to DEP without this extra layer of an ombudsman and going right to the permit managers and the bureau chiefs and so on?

MR. WEISS: Well, Senator, let me put it this way, I don't believe this, but I'm going to say it anyway. This is a part-time job. I never found it as such, so either way I win on this one. I don't think there's time for a legislator to go over to DEP and try to go through the maze that they have over there. Whether the maze is intentional or not really doesn't matter. But it's there. It may get straightened out, but people are protective about their particular area. It's just like a territorial marking by whatever. They stay with it.

As far as the ombudsman is concerned, I'm not talking about just an ombudsman who can reach because we've given him, the Legislature that is, has given him the power to do it. The power to, if necessary with the cooperation of the Commissioner, to override one of these folks. That's what you really need over there.

Yes, there is a tremendous amount of independence on should we issue it today, should we issue it tomorrow? They come in one day -- I don't know if this is so but it seems to me like it could be -- where they take the pile and turn it upside down. So they start number one from the bottom one day, number one from the bottom another, if they're that astute. But I think what they do is, the bottom one stays on the bottom, and they work from the top down, which is really not the way to do it. But I do mean an ombudsman who can do something for somebody and has the power, if you so empower him, to do that.

SENATOR McNAMARA: Thank you, Senator.

Senator MacInnes.

MR. WEISS: Did I put you to sleep?

SENATOR MacINNES: Never. It's just a repose, Larry. Just a repose.

SENATOR McNAMARA: Thank you, Senator. We will have you back again when we get on more specific issues, you know, as we go through the process.

MR. WEISS: I thank you very much for your tolerance and for asking me up here. Nice to see you again and the members of the Committee, who are long time friends, and I'm not even going to say old, just long time.

Thank you. Thank you again.

SENATOR McNAMARA: Take care. Thank you very much, Larry.

Next, from DEP, Dennis Hart and Ron Tuminski.

Now we start the rules. I am going to try to hold it to a maximum of 10 minutes each. Quite frankly, the late start of the meeting kind of hurts us a little bit, but let's get right into it.

Which one of you wants to kick off?

D E N N I S H A R T: Do you have a preference, Senator?

SENATOR McNAMARA: Dennis, be my guest.

MR. HART: Thank you, Senator, and members of the Committee. It gives me great pleasure to appear here today. My name is Dennis Hart. I am the Director of the Division of Water Quality.

The Division conducts three main functions, one being the implementation of the New Jersey Pollutant Discharge Elimination System, known as the NJPDES permitting program, which is delegated to this State from the Federal Environmental Protection Agency from the Federal Clean Water Act.

The second is the operation of the Municipal Wastewater Financing Program, which gives zero interest loans to municipalities wishing to build sewage treatment facilities. The third program is our permitting of the construction of wastewater treatment plants, sewer lines, sewer extensions, and the operation of the State's Sewer Ban Program.

Undoubtedly, you have probably read numerous stories about the beleaguered NJPDES program. By 1991, the program was almost at 100 percent backlog, with no prospects for any future of the program. However, in the past few years, through a

number of reform efforts that have been going on since 1991, we have dramatically improved the outputs of the permitting program and have significantly reduced the backlog. We developed an entire new framework for dealing with permittees, and we have laid the foundation for significant regulatory reforms. We have also developed a good working relationship with the municipalities and industries we regulate, and we have addressed several major problems, including both the speed of permit issuance and the quality of permits in terms of accuracy and reasonableness.

These improvements resulted in only three major permittees requesting hearings on their permits last year. Two years ago, 100 percent of all the major permittees requested a hearing on their permit. Not only has this led to better, more efficient, and reasonable environmental protection, but it has also dramatically lowered our transaction costs. Although it is recognized that there are still things that need to be done in the program along the lines of developing a new fee system and reducing other program inefficiencies, most of the stories you may have heard do not relate to our present situation.

I will be handing out a report after my testimony. That report will give you some of the highlights of the reform efforts, and we will be able to give you a more detailed picture of where the program was, where it is today, and ideas for the future.

The review and restructuring of the NJPDES program has proceeded with a significant level of public involvement. An Interested Party Review document was published in the "New Jersey Register" on February 1, 1993, which outlined the broad changes that the Department was considering, as well as various options for implementing those changes. Two public round-table discussions and several more public discussions were subsequently held. Substantial written public comment was received regarding the general proposals. Members of the team

assigned to this project met frequently with both technical staff and management from affected programs to develop a package of regulations that would address the current deficiencies and provide a sound blueprint for future work. Recommendations from the NJPDES Task Force were also included in this work.

On October 6, 1994, this document appeared in the "New Jersey Register." The document spells out the Division's plans for shifting the NJPDES permitting program toward a watershed-based program. Public comments will be accepted until the end of November 1994, after which the Division will propose the actual rule amendments incorporating any comments. The summary document also fulfills, in part, an Agreement of Settlement entered on January 17, 1991 in the Appellate Division of the Superior Court of the State of New Jersey, and a petition for rule making submitted to the Department on December 5, 1990 by the Association of Environmental Authorities. Furthermore, the AEA filed a Notice of Appeal challenging the readoption of the Surface Water Quality Standards. The Division of Water Quality intends to address AEA's issues and the watershed permitting process in a rule adoption before June 27, 1995. This Committee's hearings are an opportune point for our ability to comment to you as to our ideas on the future, and vice versa, the Committee's opportunity to comment on the rules.

Under the Administrative Procedures Act, the NJPDES rules will expire on June 27, 1995. They were given a one-year waiver from the sunset provision by Governor Whitman, so that we could go through this process. Any changes to that expiration date will require another extension, as well as an agreement from the petitioners to modify that schedule.

In the area of pretreatment facility permitting, the Division's role in regulating significant industrial users has been reduced and streamlined. These are industries that

pretreat their wastewater prior to a discharge into a municipal treatment system. Prior to February of 1992, the Department issued all the permits for all industries discharging to local sewer plants. In February of '92, we adopted regulations delegating our permitting authority to those local authorities that have the ability and have been delegated that authority. That way we eliminated having to permit hundreds and hundreds, if not thousands, of significant industrial users in this State, and it is delegated currently to 23 local sewage treatment plants that run their own programs. Our staff was taken off of most of those projects and reassigned to other projects. In the next three years, we hope to delegate another 10 pretreatment programs.

In addition to delegating a portion of the pretreatment programs to local agencies, the Division has convened a Pretreatment Task Force since the early '80s to help develop pretreatment regulations. This Task Force, comprised of industries, local government agencies, and environmental groups, is helping to develop recommendations to the Water Pollution Control Act. I know they are interested in also providing their recommendations to this Committee and their thoughts on this significant industrial user program.

The Department has met with the Environmental Protection Agency, and, as recently as last month, we signed an agreement with them developing a strategic plan for New Jersey's water program. At this point, the strategic plan basically outlines all the different pieces of New Jersey's water program, and puts together what each of those pieces are. This committee will provide valuable input to the Department as we try to tie those pieces together as what should be New Jersey's water program, not just for the NJPDES program, but the overall water program.

The NJPDES Fee Task Force is made up of a number of people who have not only the skills in fees, but are some of

the most brilliant people in the State as far as understanding how permits are written, how regulations are written -- Federal and State regulations -- and how they all interreact. Our fee system is based on pollutant discharges. This committee understood that, and they made a number of recommendations.

Would you like me to go through their recommendations and what we have done to date, or hold that for another time?

SENATOR McNAMARA: No, I think that that, since each member-- Do you mean the ones that you have adopted?

MR. HART: Yes.

SENATOR McNAMARA: Yes, briefly.

MR. HART: Okay. As Commissioner Shinn has said, the NJPDES Fee Task Force recommended that the Department not issue fees in total greater than \$5.3 million until State appropriations are put to the program. We have stuck to that agreement. The highest amount of fees we have ever collected was \$13.5 million. This year's fee assessment will be \$11.2 million.

General funds should provide partial support for the NJPDES program. Commissioner Shinn announced, for the first time, that that is being attempted in Fiscal Year--

SENATOR McNAMARA: Ninety-six.

MR. HART: Ninety-five. Until General Fund revenues are provided, NJPDES fees should be offset by excess Clean Water Enforcement Act penalty moneys, and the appropriation of \$3 million from the Clean Water Enforcement Act to the General Treasury should be stopped. That has not been dealt with to date.

NJPDES fees should be based upon the cost of permit issuance and administration provided by law to gather environmental impact. At present, there are severe fee inequities, some permittees paying excessive fees, while others pay significantly lower costs.

Assistant Commissioner Tuminski is going to get into the particulars of the fee system, but we are at the point, in this fiscal year, of working with the Task Force to go further on their recommendations for the actual fee system itself. All dischargers should be assessed fees, and schools should not continue exemption, and we have not acted on-- Right now, schools are exempted from paying NJPDES fees, and we have not changed that.

NJDEP should develop a mission statement and should publish policy manuals. Under the Environmental Management Accountability Act -- which we call the Doria package of legislation -- the Department publishes technical manuals for every single permit we write. In the NJPDES program, we have a number of technical manuals that, if you picked them up, you could reasonably understand what kind of permit you are going to get.

Finally, I just want to say that we have done a number of management reforms in operating the program, such as having permittees write their own permits. We do a lot more general permits. Someone raised a question, before, do we try to raise permit fees to raise money? If you look at the last few years, most of our permitting activities have been going toward reducing revenues to the program from fees. We are trying to write more general permits. Every general permit we do, we charge \$500, as opposed to an individual permit, which costs many times that amount.

At this point I will stop, in the interest of time.

SENATOR McNAMARA: Thank you very much, Dennis.

Ron?

R O N A L D S . T U M I N S K I: Thank you, Mr. Chairman and members of the Committee.

I would like to take the time afforded to me by the Committee to provide a brief overview of the Department's funding, as well as the transition that has taken place in

terms of our growing reliance on fees and fines in particular. I would then like to focus on how this funding approach has specifically impacted the water pollution control programs such as the NJPDES. Finally, I would like to summarize information gained from other states in terms of how they fund their environmental programs, again with particular attention paid to NJPDES.

In terms of some funding background--

SENATOR McNAMARA: Can you do all that in 10 minutes?

MR. TUMINSKI: Well, I will skip some things. I have copies of my testimony I can leave with you.

SENATOR McNAMARA: Okay. Thank you.

MR. TUMINSKI: Since the inception of the Department in Fiscal Year 1970, its appropriations have grown from \$16 million to some \$236 million in the current year. Up until Fiscal Year 1989, approximately one-half of the Department's operating budget had come from General Fund dollars. Specifically in Fiscal Year 1989, of the agency's \$193.7 million operating budget, \$91.7 million, or 47 percent, was provided from the General Fund. In contrast, by Fiscal Year 1994, when the agency's budget had grown to some \$243.2 million, only 17 percent, or \$41 million, was provided from the General Fund. At the same time, the agency's dependency on fees and fines had grown to \$122.8 million, or 51 percent, of its operating budget.

The current fiscal year -- Fiscal Year 1995 -- finds the Department with an operating budget of some \$236.8 million. However, the point I want to emphasize regarding the current year's budget is that it represents the first time in some six fiscal years that our General Fund appropriation has been increased. I am, of course, referring to the \$4.5 million that was put in the '95 Appropriations Act in order to stabilize the Department's land use, such as freshwater wetlands permitting programs and fees, as well as the \$4.3

million that is appropriated to stabilize the Department's NJPDES fees. The total of \$8.8 million is, indeed, from the General Fund. FY 1995 also marks another turning point in that decision not to increase fees in such areas as stormwater and solid waste, and is reflected in a \$18 million decrease in fees when compared to the agency's original budget submission in the fall of 1994. Accordingly, as the Commissioner pointed out, Fiscal Year 1995 marks the first year in which the trend toward a heavier reliance on fees and fines has, indeed, been reversed.

In terms of the major factors that have led to the growth in fees and fines, there are three that I would like to highlight quickly:

First, over the past decade, numerous environmental laws, such as A-901, Clean Water Enforcement, Medical Waste, etc., were enacted into law with the provision that those programs be funded by dedicated fees and fines. These laws, in effect, codified the "polluter pays" approach.

Between Fiscal years 1989 and 1994, the Department witnessed the loss of some \$50 million in General Fund appropriations. While these reductions served to balance the State's fiscal needs, they, at the same time, resulted in fee increases in order to maintain essential service levels in those programs impacted.

Increases have also been necessitated due to the requirement that DEP's fee and fine programs assume certain costs, which in the case of a General Fund program, such as Parks and Forestry, are covered by Treasury. Accordingly, whether it be the Clean Water Enforcement Program, the NJPDES program, or the air program, each is expected to cover all costs associated with: DAGs, the Office of Administrative Law, fringe benefits, indirect costs, as well as any costs of living or merit increases for its respective employees. In the current Fiscal Year 1995, these types of costs on DEP's fees

and fines programs in particular, are going to consume more than \$50 million in those resources.

The impact on water pollution programs: The budgetary influences, which I have just summarized at the Department level, have likewise impacted the agency's water pollution programs, especially NJPDES and Clean Water Enforcement.

As noted by the NJPDES Task Force, chaired by Senator Weiss, the shift to a predominant reliance on fees and fines has placed the Department in a position where these water pollution programs have been, up until this fiscal year, completely financed from fees and fines assessed or levied on the regulated community.

During the course of DEP's funding transition, or between Fiscal Years 1990 and 1993, General Fund appropriations, previously available to these two programs and amounting to better than \$5.5 million, were eliminated. These reductions impacted such areas as: lab analysis, the funding of enforcement positions, and the ability to carry out water monitoring functions. These costs, coupled with the implementation of the Clean Water Enforcement Act and the requirement to cover negotiated cost of living increases, fringe benefits, and indirect costs led to a total NJPDES fee budget amounting to \$15.3 million by FY 1992, as contrasted to a \$7 million budget in Fiscal Year 1988.

The above trend was noted in the NJPDES Task Force -- Chaired by Senator Weiss -- report, when it commented that funding New Jersey's NJPDES program totally from fees does not recognize the impact that the general public has on the State's waterways, nor does it account for the benefit they derive from protecting those waterways. Accordingly, the Task Force recommended that minimally 25 percent or up to 50 percent of the budget should be funded from the General Fund. With the current year's appropriation of \$4.3 million provided to the

program from the General Fund, we now stand at approximately 25 percent of the budget from General Fund moneys.

In terms of the overall budget, the Department recently adopted and billed for its Fiscal Year 1994 water pollution control budget. The total program was \$25.1 million, and included \$15.3 million in NJPDES costs and \$9.8 million for Clean Water Enforcement. Work effort assigned included 70 personnel for Clean Water Enforcement and 181 for NJPDES.

The Fiscal Year 1994 NJPDES budget of \$15.3 million was adopted based on assessing only \$11.2 million in the form of fees on the regulated community. Accordingly, \$4.1 million, or 26 percent, was to be provided from sources other than direct billings. Specifically, these offset moneys came from Clean Water Enforcement penalty dollars, carryforward balances, as well as prior year billables received in Fiscal Year 1994. The point to impress upon you is that while the billing was \$11.2 million, these moneys which offset the need to bill at the total \$15.3 budget were not General Fund dollars. It is, in particular, Fiscal Year 1995 where we have, for the first time, General Fund dollars available to offset NJPDES fees. Similarly, in Fiscal Year 1993, while the total NJPDES budget amounted to \$16.1 million, \$2.5 million was offset from fine moneys available from Clean Water Enforcement.

The allocation of fees: The \$11.2 million recently billed for Fiscal Year 1994 was allocated among discharges in the following manner. I will just cover some of these, and you can see them in my written comments.

In the case of municipal surface water dischargers, of which there were 226, \$4.4 million was assessed of the \$11.2 million budget. Industrial surface water, 649 dischargers, and they were billed \$5.4 million. Pretreatment facilities, 67, and they were billed \$302,000.

Of the 220 municipal surface water dischargers, 11, or 5 percent, were billed greater than \$100,000, or 71 percent of the total billing, which came to \$3.3 million.

More importantly, of the 641 industrial surface water discharges, 10, or 1.6 percent, were billed greater than \$100,000, and comprised 57 percent of the overall industrial surface discharge budget.

Some other facts regarding the NJPDES budget: The major components of the budget include \$7.6 million in salaries; \$2.4 million in fringe; \$3.3 million in indirect costs; and \$2 million in operating.

While the overall FTE for the program was down by 18 from the prior year, these savings were offset by \$1.9 million in increased costs from such components as fringe benefit rates, cost-of-living increases, and indirect costs.

In the current Fiscal Year 1995, the General Fund offset of \$4.3 million will serve to stabilize the fees at their FY 1994 levels, while efficiencies achieved in the program will offset increases brought about by cost-of-living increases.

I want to touch quickly on how New Jersey does--

SENATOR McNAMARA: You're down to-- You've got about a minute and a half.

MR. TUMINSKI: That's fine.

How does New Jersey compare with other states? Achieving the Governor's goal of placing New Jersey in a competitive position with other states in order to both retain existing, as well as to attract new business and industry, has been the thrust of recent program and budget initiatives within the Department. This direction has been forged in a manner wherein we are fully cognizant of where we stand versus other states. For example:

In a November/December 1993 survey released by the Council of State Governments in its publication "ECOS," New Jersey was portrayed in the following manner: In terms of the percentage of General Fund support, New Jersey ranked with 33 other states in terms of receiving less than 25 percent of its

budget from the General Fund, while 17 states received 25 percent or more. In contrast, New Jersey was ranked with only 18 states in terms of receiving 50 percent or more of its funding from special revenues, in particular fees and fines, while 32 states received less than 50 percent of their moneys from these sources. Finally, while 35 states received greater than 25 percent of their budgets from Federal moneys, New Jersey was among 15 states that received less than 25 percent from Federal sources. Accordingly, New Jersey was, indeed, on the higher end in terms of its dependency on fees and fines.

In December of 1993, the National Conference of State Legislators conducted a survey of State wastewater -- NPDES -- permit fees. As pointed out by the survey, NPDES fee revenues were generally found to account for no more than 25 percent to 33 percent of a state's wastewater discharge permit program's operating budget. The balance, in most cases, was made up with dollars from General Funds or from Federal grants.

SENATOR McNAMARA: Ron, do you have the copies of your report?

MR. TUMINSKI: We will have copies available.

As the survey demonstrated, New Jersey had the largest ratio of its budget from fees, as well as the largest range and the highest fees. In contrast, states such as New York, Ohio, and Pennsylvania, while having programs similar in financial size, only covered from 25 percent to 50 percent of their respective programs from fees generated.

Accordingly, as pointed out by Commissioner Shinn in his early remarks, the Department is looking to build on the progress made in this fiscal year in terms of reversing DEP's reliance on fees and fines and striking the balance so necessary to restore New Jersey's standing as a State that is, indeed, "Open for Business."

Thank you.

SENATOR McNAMARA: Any questions?

SENATOR SINGER: Just basically. What my concern is-- We are hearing from you that the competitive states for business, such as New York State and such, are only using 25 percent of their operating costs for fees. That means, in essence, that businesses have an advantage in moving there, as opposed to here, based on what you are telling me.

Have you done a study on the competitive states, tracking business, not just New York, Pennsylvania, Connecticut, but all around, again, comparing all their fees where the company is the same size and paying in our State? How does that breakdown?

MR. TUMINSKI: We are in the process of trying to refine these numbers further, updating those in terms of getting specifics. But I think some of the people who might testify after us, or during the course of these hearings, have done comparisons where their companies are, in fact, located in various states.

SENATOR SINGER: That is what I am curious about. In other words, a company located, for argument's sake, in Connecticut, doing the exact size manufacturing, what are their costs of operation compared to that same company in New Jersey?

MR. HART: I don't have some of those particulars. Ron is correct, some other people do have that. But if you look at the work that the Council of States put together-- Interestingly enough, in New Jersey, if you are a small facility, you have a competitive advantage being in New Jersey, as opposed to Delaware, New York, and some of the other states in our general locale. If you are a large facility, you are at a disadvantage. Our smaller facilities pay a much smaller fee than, say, the State of Delaware's smaller facilities.

SENATOR McNAMARA: One of the reasons-- If you look in your folder, there is a chart of NJPDES facilities and fees paid. In 1988, you had some companies that were paying

\$30,000, which in 1992 were paying \$703,000. So, obviously, the lion's share is being carried by the larger concerns--

MR. HART: Yes. The decision in the late '80s--

SENATOR McNAMARA: --rather than--

MR. HART: A number of small facilities were saying, "Our fees are too high," and the burden was shifted totally in the opposite direction.

SENATOR McNAMARA: Which is hard to justify, other than the fact that the Legislature was also taking out funds and using them to pay operating expenses, and not supporting the Department. So it's a--

MR. HART: The fee system, right now, is totally based on pollutant loading. So the larger facilities have the larger loading, and pay the larger percentage.

SENATOR McNAMARA: Byron, do you have a question?

SENATOR BAER: No, thank you.

SENATOR McNAMARA: Gordon?

SENATOR MacINNES: No.

SENATOR McNAMARA: Senator Schluter?

SENATOR SCHLUTER: Thank you.

Would you mind, Mr. Hart, commenting on something I have heard from publicly operated treatment works. Under the Clean Water Enforcement Program, they are spending in excess of five times the amount of funds, through consultants, time, and everything else to negotiate permits, than they used to. Is this a cost-effective program from that standpoint? Does it bring results in a cleaner environment which are commensurate with that additional level, plus the fact that the permits are always in limbo, and things like that?

MR. HART: A couple of years ago, as the Clean Water Enforcement Act came into account, everybody went into a panic that statistically they were going to have a violation every once in awhile. So, in the past, people used to get their permits, and honestly, they would admit they never really read

them; they rarely even compared the numbers they got until they got a violation, and we would work it out with the Department.

When the reality hit that as they looked at their permits it was important what it said, because once you came to enforcement action, if you had not commented or worked on it, your chances of fighting that penalty would be nil. A lot of people in the early '90s spent a lot of money.

Right now, though, the way we do municipal permits-- As I said in my statement, we are down to only three major facilities that asked for a hearing on their permits, and they were not for big issues. We write all our major municipal permits in a class, we call it. In the beginning of each fiscal year, we will call in all the treatment operators for that year whose permits we are going to do. We tell them, "Here is what we are going to think about for your permits." Throughout that year, we will meet with them as a group, show them the drafts we have put together, and say, "Is this your facility? Have we made any mistakes?" so that when the time comes, most of the problems have been ironed out, and you don't need a lot of consultant and expensive legal time. That is where the transaction costs-- You don't need a lot of time to get in there in that 30-day public comment period.

There was a time in the past where someone hadn't gotten a permit in years and then received a document to give him 30 days to respond, and they spent a whole lot of money for a lot of overtime to respond. Those days are behind us now. I think we have pretty much solved a lot of those issues.

SENATOR SCHLUTER: So you're saying -- if I may, through you, Mr. Chairman -- that the extra costs and the extra work in negotiating these permits have pretty well been managed and worked out, and that the standards have not been lowered, and the standards are worthwhile?

MR. HART: Right. When we come to a standard in a permit right now, everyone understands why we did it and how we

did it. Then, if we still want to go on to adjudicate that, then I think everyone-- We just have differences of opinion, and we get on with them.

SENATOR McNAMARA: Thank you both for your time. I am sure that along the route we will see both of you at another time.

MR. HART: Thank you, Senator.

MR. TUMINSKI: Thank you.

SENATOR McNAMARA: The Business and Industry Association, Bill Hamilton.

For the record, both of those gentlemen were invited, and that is why they were given 10 minutes each.

JAMES SINCLAIR: We're going to take 10 minutes.

SENATOR McNAMARA: You're only getting 10. We are going to get two for one here.

MR. SINCLAIR: Right. We are going to be brief. We are going to hand out copies of Mr. Hamilton's testimony.

SENATOR McNAMARA: Is it Bill Hamilton?

WILLIAM P. HAMILTON: Bill Hamilton, yes.

MR. SINCLAIR. I am Jim Sinclair.

SENATOR McNAMARA: I know who you are.

MR. SINCLAIR: I am from the New Jersey Business and Industry Association. With me is Bill Hamilton. There are three things I want to say about Bill: He is the Director of Environmental Affairs for Merck and handles all of their environmental matters in the State of New Jersey; he is a highly qualified world-class engineer and very knowledgeable in the scientific and engineering field; he is also the Chairman of the New Jersey Business and Industry Association's Environmental Quality Committee, and is here speaking for the Association. The fourth thing is, Bill, since Commissioner Dewling was Commissioner, has been working with the Department in a cooperative manner in helping to improve the permitting process, mainly on the air side, but on numbers of issues. So

he understands the problems of implementing and running a regulatory program.

The last thing I want to say is, we at the Business and Industry Association -- and speaking for the entire business community -- are happy that this Committee is addressing this issue. I think it is important, Senator, that we resolve the water issues. We know you can do it. Having put the ECRA reform together and fashioning a bipartisan program, water is going to be a lot easier, because I think you will see that--

SENATOR McNAMARA: You've got to be kidding.

MR. SINCLAIR: I think there is a lot more common ground on this. We have the experience of using politics as levers to accomplish goals that are not really related to the environment. We have the history of that now, and now we can go back and try to make the system work.

We look forward to a bipartisan bill that is going to go through the Legislature.

Bill?

MR. HAMILTON: Mr. Chairman and members of the Committee, thank you for inviting me here today.

The New Jersey Business and Industry Association is the largest statewide employer group in the nation, representing over 13,500 individual businesses in New Jersey that collectively employ over one million workers.

Many NJBIA member companies have been adversely impacted by the New Jersey Water Pollution Control Program. The New Jersey Water Program goes far beyond the Federal standards, resulting in a program more burdensome to New Jersey industry than that faced by competitors in other states. No program more clearly highlights this inequity than the Clean Water Enforcement Act.

The Clean Water Enforcement Act is a law to enforce a law and should more appropriately be titled the "New Jersey

Water Permit Compliance Act," in that the law mandates compliance with permit conditions at any cost, regardless of the technical validity or administrative reasonableness of those conditions.

The law also mandates the Department to perform regular site inspections, regardless of the need or merit of such inspections, and the law mandates the assessment of penalties for noncompliance, regardless of the environmental impact, or lack thereof, resulting from the noncompliance.

The Clean Water Enforcement Act was implemented with the intent of improving permit compliance. While its aims were noble, it made the faulty assumption that strict permit compliance would automatically lessen environmental harm. The fact is that defining, in scientific terms, the environmental impact of a discharge is an inexact science that involves the use of common sense and sound professional judgment.

Before the Clean Water Enforcement Act, permit limits were developed as goals, not as absolute compliance triggers, because of the uncertainty of what constitutes best professional judgment. Thus, the exceedance of a permit limit of an individual parameter has no direct relationship to environmental damage. Now, under the Clean Water Enforcement Act, these goals set using best professional judgment are now absolute compliance triggers and enforced as if they were developed using concrete scientific fact.

Numerous administrative requirements were built into permits without concern as to the management burden this created, but failure to strictly comply with these administrative requirements is also the subject of mandatory penalties. The Clean Water Enforcement Act changed the rules on the Department, the permit writers, and the permitted community without adequate time to change the permits to reflect this new initiative, and eliminated the DEP's ability

to use discretionary authority to reduce or eliminate penalties commensurate with true environmental harm.

The Clean Water Enforcement Act takes the Department "off the hook" for acting in a responsible manner. Since the Department is prohibited from using its discretion, it is no longer held responsible for using reasonable judgment in resolving compliance issues. The result is that the permittee is helpless and totally vulnerable in an enforcement situation. This is what is frustrating and discouraging to the New Jersey business community.

The law requires DEP to treat each permittee on the same level as the most egregious and irresponsible polluter in the State. The result has put the water permit and enforcement process into a legal/administrative conflict, instead of a cooperative environmental improvement effort. Although New Jersey may currently have fewer permit violations than in 1989, we suggest that this results from better permits, better paperwork, richer attorneys, and richer consultants.

We also suggest that the environmental benefits have been minimal, and have been achieved at an unreasonably high cost.

Again, this is an example of how New Jersey's environmental laws put the State at a competitive disadvantage with the rest of the country. No other state mandates penalties for administrative violations; no other state prohibits the use of discretion in establishing the need for or magnitude of penalties; and no other state mandates the annual inspection of facilities, regardless of their potential for causing environmental impact.

A summary of the NJBIA recommendations are as follows:

- 1) NJBIA urges the Legislature to provide greater flexibility for State agencies and not impose mandatory penalties on statistically irrelevant levels of exceedance, and that some rationality be added to the existing citizen suit process.

2) We have to stop treating all manufacturers as potential criminals. We need to return to a cooperative regulatory system. Excessive fees and automatic penalties do not promote a healthy, cooperative business climate.

3) As a general principle, the degree of regulation and the severity of penalties should reflect the potential for environmental harm or benefit.

4) Expanding the right of citizen suit to past violations which have since been corrected serves no regulatory or environmental purpose.

5) Companies have learned that it is an absolute requirement to challenge and appeal their permits to assure with absolute certainty that they can satisfy the often burdensome permit conditions. Although this confrontational approach is an expensive and time-consuming process, such legal challenges are a clear implication of the existing Clear Water Enforcement Act.

6) NJBIA urges the Legislature to eliminate mandatory penalties.

7) NJBIA urges the Legislature to allow DEP to compromise penalties below the 50 percent limit.

8) Administrative paperwork violations should not be subject to mandatory penalties.

9) Significant noncomplier definitions must be revised to be more realistic.

10) Third-party appeals should be eliminated. This was accomplished for all other environmental statutes last year.

11) A cap on legal fees in "citizen suits" should be established.

12) The Water Permit Program must be streamlined to reduce fees by use of certification and electronic reporting.

13) Unnecessary and costly mandatory annual inspections should be eliminated.

14) Establish a "good actor" policy that treats the members of the regulated community that are making a "good-faith" effort to comply with the environmental statutes as environmental protectors and partners with the community in attempting to build a better State and economy.

15) Eliminate the requirement that an appeal bond or security be posted to appeal a civil administrative penalty that has been assessed by an administrative agency.

I would like to thank Senator McNamara and the Committee for this opportunity to testify, and I would be happy now to take your questions.

SENATOR McNAMARA: Senator Baer?

SENATOR MacINNES: Mr. Hamilton, after listening to DEP get kicked around for years by representatives from the Business and Industry Association and other business groups, your testimony suggests that the problem is with the Legislature, not with the DEP. Is that a statement you would agree with, that the mandatory fines and the lack of discretion are really at the heart of much of the difficulty faced by businesses in New Jersey?

MR. SINCLAIR: I would like to take exception to that. I don't believe that we have ever kicked around the Department of Environmental Protection.

SENATOR MacINNES: I will withdraw it. I have heard different from the business community.

SENATOR McNAMARA: I don't think the Senator was talking about the Business and Industry Association.

SENATOR MacINNES: Well, from the business community I have heard complaints.

MR. SINCLAIR: Oh, okay.

SENATOR McNAMARA: I'm sure you don't take exception to that.

MR. SINCLAIR: The answer to your question is, yes, we believe in this case that the Department's hands have been tied

so tightly that they don't have the ability to exercise professional discretion. Really, sort of the bottom line is, where we think we are going with reform of the process, is to build a system that makes sense; that encourages people to go out and make environmental improvements, to take risks. We used to, when I was in the Department of Environmental Protection, tell people in their permits, "Take this limit, because we think you can get to it," you know, to try to get to it, to achieve, instead of developing this legalistic system that tries to make the real world look like a legal contract, when it doesn't. The physics and science of the world are not that exact.

What we would like to do is encourage companies like Merck to start up additional facilities in the State of New Jersey, and to have a climate here to do so.

The people in the Association and on our Environmental Committee are all good environmentalists. They are people who know how to run the program. There are some bad actors out there, and that is why we need laws; that is why we need penalties; that is why we need enforcement. But everybody is not a bad actor. It is not just industry that is caught up in this. It is authorities, municipalities, and average citizens. I think we need to change the tone, change the focus to really go toward going that extra mile that we have to go to improve the environment, because in many areas we have gone as far as we can by ratcheting down, by the command and control.

So I think this is really a great opportunity for us to do the things that need to be done and to change the system, change the message out there to the world.

SENATOR McNAMARA: Back to you, Senator MacInnes. Did he answer your question?

SENATOR MacINNES: Well, yes, and several others, apparently, none of which I had on my mind. But I will try to play "Jeopardy," and see if I have the right question. (laughter)

How many third-party suits are we looking at in New Jersey? This is a part of your testimony, that third-party suits should be eliminated as a possibility under this Act. Is that a frequent occurrence? Is that a rare occurrence? I am just not familiar with the record on that.

MR. SINCLAIR: I think overall it is a fairly rare occurrence. We will provide the Committee with documentation that we have access to.

SENATOR MacINNES: Do you have one case in mind that you can recall that led to this recommendation, for example?

MR. SINCLAIR: I don't, but we can provide that.

SENATOR MacINNES: So it might not be much of a problem? You are against the principle, even if it is not exercised or creates difficulties for specific businesses in the State?

MR. SINCLAIR: It does, it has. If you need the horror stories, we have a file on them.

SENATOR MacINNES: No, no, but you are in the business, and I would think you would remember the worst case you can recall in the last couple of years of problems coming about because of third-party litigation.

MR. SINCLAIR: Our legal counsel, who was going to be here with us today, has that in his testimony. I do not have the answer here.

SENATOR MacINNES: Okay.

Thank you, Mr. Chairman.

SENATOR McNAMARA: Anyone else? (no response)

Thank you, gentlemen.

MR. SINCLAIR: Thank you, sir. We look forward to working with you.

SENATOR McNAMARA: The Association of Environmental Authorities, Ellen Gulbinski, Executive Director.

E L L E N G U L B I N S K I: Mr. Chairman, we are a twofer also. I would like to introduce Dennis Palmer, President-Elect

of The Association of Environmental Authorities, and Executive Director of Landis Sewage Authority. He came along today in case any of the members have questions of a manager of an authority facility.

SENATOR McNAMARA: I'm glad you owned up to it before we had to point it out that you are a twofer.

MS. GULBINSKI: Sure.

D E N N I S P A L M E R: We will stay within the 10 minutes.

MS. GULBINSKI: We will, yes.

Thank you very much for beginning this process. Certainly, from the comments that have already been given to you with reference to AEA's petition for rule-making and so forth, I think you can gather that this is a very, very important issue for the municipal utilities authorities. We look forward to participating in whatever way we can.

As Dennis Hart mentioned in his beginning remarks, too, the program was very broken in 1991 and permits were not being issued. This was the inspiration behind The Association of Environmental Authorities getting involved and trying to reform the process of permits at DEP.

We did many, many years of talks with the Department. I would say that we entered this process even before the Clean Water Enforcement Act was enacted. For six years, we began this process. We tried to do this in a partnership mode, but, unfortunately, that was not successful. It wasn't until water quality standards regulations were promulgated that were neglecting a great many of the issues that we felt needed to be addressed, that it was necessary for us to file a court appeal. That litigation process spurred the discussions and brought us to the point where we sat down and realized that, in many cases, we could help each other out.

The process was very costly to my Association. We spent in excess of \$270,000 in direct professional expenses, and the volunteers, if we added up the hours of these dedicated

officials, in many cases attorneys and engineers who were all so supportive in this method, I think we could easily say half a million dollars was dedicated to reform of the permitting process. Then, in fairness to the Department of Environmental Protection, they probably could match that figure with another half a million. So together, let's say, we have had to spend that kind of money.

My point in raising this is to say, as you look over this process, please consider putting a mechanism in place so that we never let this program become so broken again. I think that is very important; that there is an open process between the Department and the permittees, that we constantly have an exchange, that we make this program as efficient and cost-effective for our citizens as possible.

A great deal of credit needs to go to Dennis Hart and to John Weingart because of the fact that they dedicated a great deal of time administratively. They made tremendous administrative changes within the Department. They found there was an awful lot that could be done, aside from regulations, aside from the law -- a lot that they could do to streamline the process, and they did. That has been very helpful. So we are not in the demise we were in in, let's say, 1991. Definitely, there have been great improvements. So this makes your job a bit easier, to build on the success of the moment and move from there.

There are four elements in the NJPDES process: There is planning, standards, permits, and enforcement. Now, progress has been made greatly in the permits department; a lot in standards, although there is some that still remains. But enforcement and planning need to be brought into all of this as well. I think that is the future challenge still existing within that program. Those four elements are not all in sync. Perhaps as you address the issues involved in this program, you

will want to concentrate on ways to get those elements to talk cross section.

There are some instances, as I understand it -- and as was brought out in the NJPDES Fee Task Force report -- where the Department has suffered from the fact that personnel are dedicated to specific grant programs and specific sources of money, and individuals are precluded, then, from crisscrossing and talking to each other, exchanging talent, exchanging information. Perhaps something could be done in this regard. It would help this playing process and bring everything into sync to move along as it does.

My understanding is that in some cases, Civil Service requirements and this type of funding mechanism by grants are a problem. This is one of the reasons that, as a member of the NJPDES Fee Task Force-- That committee and The AEA also agree that more money needs to be dedicated from the General Fund into general tasks, so that general practitioners within the Department, or professionals within the Department, can move over programs to give their expertise to those programs. That would be very helpful.

The paper I have supplied you with is straightforward. There are three pages of conceptual information, and three pages of some specific language that might go into the existing law to make those conceptual ideas come about. That is what we have presented you with today.

The administrative process needs to be looked at. The petition-making process, although that was the alternative that AEA used to set forward ideas, needs to be looked at carefully, because the process, as enacted by the Legislature, says that within, I believe it is 90 days, the Department says yes, no, or we will consider it. Well, they considered for six years. We kind of thought that consideration would move a little faster along. I think the process and the permitting system

would have benefited from the fact that there was some way to move that process along faster. So that is another suggestion we have.

At this point, I thank you very much for the opportunity to comment. If you have any questions--

SENATOR McNAMARA: Dennis, do you have any comments to make?

MR. PALMER: I guess five years ago, Ellen and I spent hundreds of hours up here working with the committees, I guess at that time Assemblyman Bennett's workshop committee. It was more of a workshop, rather than a formal committee. We are certainly available for the next few hundred hours, if you want to provide them over the next year or so, to bring our resources here.

SENATOR McNAMARA: This Committee, I am sure, would like to see it done in less than a few hundred hours.

MR. PALMER: I certainly hope so.

SENATOR McNAMARA: After today, I am going to have a tough time keeping them all focused in.

Any questions? (no response)

Thank you very much.

MR. PALMER: Thank you.

MS. GULBINSKI: Thank you.

SENATOR McNAMARA: I am sure we will revisit you as time goes on.

Drew Kodjak, New Jersey Public Interest Research Group.

So it really should not be a last or a least, why don't we also have the Sierra Club, Tim Dillingham. Both of you come up, and you both have 10 minutes. There will be no pressure here to hold you to those 10 minutes. (laughter)

D R E W K O D J A K, ESQ.: My name is Drew Kodjak. I am an environmental attorney with the New Jersey Public Interest Research Group. Thank you for the opportunity to testify today.

Senator McNamara, it is good to see you again, after your hiatus from this lovely city.

I have written testimony that I should pass out. Hold on a moment. I will summarize my testimony as quickly as I can and then answer questions. Then we will move on to Tim Dillingham.

We have tried to divide it into point sources and nonpoint sources as a way of breaking out our testimonies.

The first of my comments is to say, New Jersey should be proud of its investment in water quality over the years. It has some of the toughest and strictest water quality standards in the country. That is largely because we have a tremendous amount of industry here, and also a very, very dense population. In looking at the trends, we have done fairly well in protecting -- or improving the quality of a lot of our degraded watersheds and our degraded rivers. We can see fish now coming back into the Passaic River, that were not there for a long time. However, there is a decline in the water quality of some of the more pristine water bodies, and we should be very careful in protecting those. I mention those specifically: The Pompton, Rockaway, and Ramapo Rivers have declined in quality from swimmable to nonswimmable status since 1977. Those are all waters that we draw drinking water from. So there is a shifting of cost when we let our water quality degrade from the businesses that are actually polluting these waters to the taxpayers, because there is an increase in the amount of treatment costs necessary to clean up the drinking water.

My second recommendation is that we deal with nonpoint source pollution. I will defer to Tim's talking on that, but in large respect I should just say that New Jersey PIRG is very, very supportive of a watershed-based approach. That is being tried in a number of different states throughout the country, North Carolina being one of them, Florida being one,

Wisconsin being another, Maryland being another, to greater or lesser extents. New Jersey is also moving that way, and this Committee should, I think, look at that approach as a way of dealing with point source and nonpoint source discharges.

Combined sewer overflows and storm sewers are a large problem in this State, especially in urban areas. That is something they were dealing with in the shore area with the Sewerage Infrastructure Improvement Act. That is a terrific example of a law that provides moneys for municipalities to actually map out their storm sewers and then deal with the problem. My understanding is that some of the funds that were going to fund the actual remediation after the mapping was done have been taken to balance the budget. I would hope that this Committee would take a look at that program and provide funding for the good work that has already been completed under the Sewerage Infrastructure Improvement Act.

I'll talk a bit about the Point Source Program -- Dennis Hart -- and that has certainly been a focus of the NJPDES program. My understanding of the findings of that committee, which I was on, were basically two: One was that there is a subsidizing going on between the large corporations that are paying \$500,000 a year for their permits, to the small corporations -- the dry cleaners -- that are paying \$500 per permit. One of the complaints of these large industrial dischargers was, "We are subsidizing the smaller folks, and that is not fair."

It is also arguably illegal under the wordings of the Act. My understanding is that there is a draft proposal that DEP has put together that will actually make sure that at least the administrative costs are covered in even the minimum permits, so that the \$500 would be raised to something around \$1200, and that should cover the administrative costs for all the smaller permits. That should shift some of the burden off the larger dischargers.

But I should be clear on one thing: The way the permit program works and the way they allocate their costs, is that they try to do it based on the amount of environment degradation that is caused by the discharge. So they look at two factors: They look at what types of pollutants and the volumes of pollutants that are discharged by each individual discharger, and they also take a look at the water quality into which it is discharged. They figure out, based on that calculation, what types of degradation are being caused by which dischargers, and then allocate the costs accordingly.

That, I would argue, is exactly the way we want them to do it, because it creates an incentive for corporations that are discharging to actually reduce the amount they are discharging to minimize the environmental impact.

SENATOR McNAMARA: But would you also look at the fact that maybe some of their fixed expenses don't belong in their fixed expenses, because the public benefits by a cleaner environment? Also, nonpoint sources are large contributors to what pollution is there. Maybe part of the problem is that the base of the fee is so high.

I hear what you're saying, and I can buy that argument, except that if you are starting out with a front-end loaded, heavy, fixed expense, you know, the fees are going to be astronomical. I think government has an obligation to provide certain things, you know, like the building, the lights, and the air-conditioning in that building for people to work. I mean, I am not so sure that all the things that are built into that fee structure are really legitimate. You know, if that is backed out, the impact on the ones that are not contributing would be less, you know, the lower priced permits, and also we could still follow the same formula that they are following, which would discourage pollution.

SENATOR SINGER: By the way, just one aspect of that: If we followed it through at the municipal level and charged

for a dog's license everything that went into the operation of the municipality, it would cost you \$500 for your dog license.

MR. KODJAK: Okay.

SENATOR SINGER: What I think we're saying is, the way the fee is based is that certain things are a given that states should provide. It should not cost business for providing that service.

MR. KODJAK: Okay. Let me just address that issue. What we are talking about is not per se, I think, how we calculate the fee, but how much of that should be on the burden of the actual polluters, for lack of a better word, and how much should be the burden of the State, which is different from how we should calculate it.

SENATOR SINGER: Right.

MR. KODJAK: Okay. So I think the concern of the environmental community, however we cut the pie, is that there is a sufficient amount to actually fund the program so that administrative costs -- so we will be able to administrate these permits in an effective manner. That is what we are looking for from an environmental perspective. If there is a shift from permit fees to general funds to subsidize some percentage of the program in order to lower whatever parts of it you would like, there need to be some types of guarantees that then after two or three years, that piece of the pie will not be sliced as well, and we will have a program which becomes ineffective. And we will have permits that are rubber stamped because there is no one there to review them. That is the concern, and I think the legitimate concern from the environmental perspective.

SENATOR McNAMARA: I recognize that concern. After seeing the Hazardous Waste Trust Fund completely taken from a \$200-and-some million balance down to zero dollars in the previous administration, I can understand your concern. But that does not justify penalizing others also. There has to be that balance.

I recognize the concern. I think it is very legitimate.

MR. KODJAK: Okay. Let me deal very briefly with the Clean Water Enforcement Act, which passed in 1990. Every year one of the requirements is that the Department has to actually publish an annual report. Those reports have indicated, in our view -- and I will release a report in the next two weeks -- that compliance has increased. They rank compliance in any number of different circumstances from significant noncompliance to permit schedules and those types of things. Compliance has increased anywhere from 14 percent to 96 percent, depending on the category. Total aggregate penalties that have been assessed are actually declining, so you are looking at a program that is not only becoming more effective in protecting the environment, but is also becoming less burdensome to industry because penalties -- because the aggregate amount that is assessed is actually declining.

You will also find, in reading these reports, that the fees and the penalties that were assessed to those companies that were violating were used to offset the fees of those companies that were basically not violating, which I would argue is a very realistic and legitimate way of using the moneys. Those moneys, however, that were collected in penalties will run out eventually, probably sooner rather than later because of a lot of them being taken again to balance the budget. At that point, there would also be pressures to increase the penalties, because they have been subsidized, in part, by a lot of the penalty moneys that have been collected in the past. It does not look like those funds are going to be replenished. So that is another issue that this Committee should be aware of.

SENATOR MacINNES: A question, if I may: What is your reaction to the suggestion that the mandatory character of some of the fines for corporations that are good actors, where there

is no damage to the environment, where there is a late report by someone who has reported on time for five years -- that the mandatory character of those fines be eliminated and that discretion be restored to the Department, which presumably might have an effect on the level of income collected by the Department? Do you have any reaction to that?

MR. KODJAK: My understanding is that penalties based on late reporting are now very, very small. I think the compliance rate is 96 percent. That is my understanding. So I don't know how that actually comes into effect. I will look into that for you, Senator, and get back to you on whether or not I think that is an actual issue.

As far as tying DEP's hands, one thing that is always missed in the Clean Water Enforcement Act is, the minimum mandatory penalties only kick in for either significant violations or a pattern of significant violations -- a series of violations, as it is defined.

SENATOR McNAMARA: I am not so sure that that-- Maybe in theory that is correct.

SENATOR MacINNES: I am not so sure that is true.

MR. KODJAK: Well, anyway, the issue is with the law. If the issue was the regulations, we could deal with that separately. But the law states that serious violations will trigger the minimum mandatories; minor violations will not. They will not trigger the minimum mandatories. Those are defined in statute as either 20 percent or 40 percent over the permit limit, depending on if it is a hazardous or nonhazardous substance. That is how they are defined. Well, anyway, that is how it is written.

There is a penalty matrix that DEP has under regulations. That is their own way of calculating things that perhaps would bear looking at, if you think that there is some type of circumstances where that does not apply, or that minimum mandatories are applied for all violations.

SENATOR McNAMARA: It looks like the matrix is too small.

MR. KODJAK: I'm sorry?

SENATOR McNAMARA: It looks like a ticktacktow board, the matrix.

MR. KODJAK: Yes, it does.

The last point I would make: For the annual inspections, when a violation is found, the corporation, or whomever they are reviewing, is provided with a Notice of Violation, which provides them with some time to actually come into compliance, if it is a minor violation, before a penalty is assessed, something along the lines of what is being termed a "grace period" in current legislation that is being reviewed. That is already happening under the Clean Water Enforcement Act.

My last point: There are no protections right now for our drinking water resources. There are no special protections for drinking water resources. There are no special protections for our rivers, streams, and reservoirs that actually provide us with drinking water resources. We have a lot of very, very good drinking water companies in this State -- New Jersey American, Elizabeth, Hackensack -- all of which have a tremendous body of information, as well as the water authorities we have -- North Jersey Municipal Water Authority--

I would suggest to this Committee that that is a tremendous amount of untapped resources that we could use to help monitor and improve some of our most precious drinking water supplies.

Thank you.

SENATOR McNAMARA: Thank you.

Any questions? (no response)

Tim?

TIMOTHY P. DILLINGHAM: Thank you, Senator.

My name is Tim Dillingham. I am the Director of the New Jersey Chapter of the Sierra Club.

I want to be a bit more prospective, I think, in terms of my comments today. I also agree with all of the earlier speakers that this is a very timely and appropriate process that the Committee is about to undertake. There have been tremendous strides both in our understanding of ecological systems and water systems, both in their natural characteristics and the impacts and ramifications of some of the modifications that we, as a society, have made on them, but also on the state of the art of water resource management. So it is a good time to go back and reexamine these laws that we have on the books and see how they are playing out.

This afternoon, I guess this is sort of the first round, the opening session of these discussions. I want to focus on some of the water quality planning side of the equation, rather than the technical and funding issues which have been kind of the heart of some of the discussions earlier. I think a lot of the broader and prospective concerns of the environmental community are tied to those issues. I think if we are about to undertake a process where we are reexamining our water programs in the State, this is a good opportunity to try to put some of these issues on the table.

I have also provided the Committee with written testimony. I won't go through all of this, but my four main points are: We think there needs to be much greater emphasis placed on the management of nonpoint sources of pollution, both in and of themselves, and also in terms of the interaction between point source regulation and nonpoint source management. Senator Weiss, earlier on, I think characterized it as being the State's contribution to the pollution problem. It, indeed, is much more difficult to find out exactly where those pollution sources originate. It is our sense that DEP programs that are in place now, as well as programs on the

municipal and county levels, are not as geared up to deal with nonpoint source issues as they should be. I think that as we go through and start to examine the limits that are placed through the water quality standards and through the permit requirements on the municipal authorities, as well as on the other dischargers, that we are going to hear more and more that those limits are influenced greatly by the nonpoint source contribution, which seems, to me, to say that we need to start dealing with that side of the program at the same time, and not simply leave it for another day.

The second point is, I think we would like to see in this discussion the development of water resource management programs which are based on, and reflect ecological characteristics such as the watershed management approach the Department is currently pursuing. We very strongly support that approach and we want to see it improved on, and see the statutory basis for it, as well as the regulatory programs geared to reflect the findings and some of the conclusions they are reaching through their pilot projects.

A nonregulatory issue, in part at least, is trying to get onto the agenda the idea that protecting and preserving the existing natural systems in environmentally sensitive areas, in watersheds, can play an acute role in our whole water resources management program. Things like: the protection of actual watershed areas, drinking water reservoir sheds, stream corridors, and headwater systems all ultimately have an influence on the other half of the equation, which is when we get into regulatory processes and setting permits. Again, this is not a piece of the puzzle that is very well dealt with.

Lastly, addressing cumulative and secondary impacts of land uses and development decisions within the water resources and development decisions within the water resources programs the Department deals with or administers.

As far as the nonpoint source issue goes, clearly what we need to do is recognize, within the statutes and within DEP's programs, the linkage with land use, and recognize that, for the most part, municipalities have the jurisdiction over land use decisions which create a fair proportion of the nonpoint sources of pollution. I think that any changes that this Committee may discuss in State law need to deal with the nonpoint source pollution issue, but they also need to start to consider mandatory requirements for municipalities to address some of those issues through their land use programs, whether it is through master planning, zoning of subdivision ordinances, as well as a reexamination of things like Soil Erosion Control Act, the Stormwater Act, the Flood Hazard Control Act, and the Freshwater Wetlands Program.

This effort needs to be complemented by a change in the water quality planning process that DEP conducts, as well, I think, as a new and expanded role for the Department regarding technical resources, technical information development, and guidance to municipalities. But I think we are going to have to tackle that issue somewhere through this process.

In terms of the ecosystem and watershed management, we strongly support the direction that DEP has been moving in. Clearly, as they go through that process they are learning more and more about what some of the problems and the challenges are that they face there. We think it provides a logical context for carrying out some of the more fundamental resource management functions which need to be strengthened within the program, such as data collection and monitoring, data assessment, modeling, policy development, making decisions on how we apply implementation mechanisms, which may be both regulatory and nonregulatory.

We also think the question needs to be considered as to whether or not the Department needs clear and specific

statutory authority to go ahead with that program on a more broad basis. That, I think, would be something appropriate for this Committee to consider.

Preservation of natural systems: Again, as Drew said, there are problems in terms of how we protect naturally sensitive areas; how we bring the resources and the programs we have to bear on those in a coordinated and strategic fashion. I would like to talk about this as our natural infrastructure side of the question, and would like to see that issue discussed in your deliberations.

Finally, the issue of cumulative and secondary impacts. According to a draft working paper out of DEP, they concluded that a frequent criticism of the Water Quality Management Planning Program is that, while it is intended to be a long-range regional planning process, it has not adequately addressed cumulative and secondary impacts on water resources, primarily because it has been geared to react to individual permit applications, individual amendments to the water quality plans and wastewater planning, in and of itself, rather than on a broader scale as to what some of the secondary impacts of those decisions are.

This is probably going to be one of the toughest decisions around, but I think, clearly, as we recognize the growing contribution of nonpoint source pollution to the equation, we have to figure out some way to deal with the ramifications, secondary and otherwise, of the decision-making process.

I would like to thank you very much for the opportunity to contribute to these opening deliberations. We look forward to continuing to participate and contribute, hopefully throughout.

SENATOR McNAMARA: Thank you very much.

Any questions?

SENATOR SINGER: Just one point: If you are going to do anything with municipalities to work with them, and you do not provide the money, it is going nowhere.

MR. DILLINGHAM: I agree. I think that is part of the--

SENATOR McNAMARA: I was waiting for you to say that, Senator. I anticipated that as soon as he made the statement. You are absolutely right.

MR. KODJAK: Tim's a very wealthy man, and he will provide all funds for municipalities in the future.

SENATOR SINGER: Including \$500 boat licenses, right?

MR. KODJAK: Exactly.

SENATOR McNAMARA: Any other questions?

SENATOR MacINNES: Just one: Tim, very briefly, could you just-- Everyone seems to be in favor of this watershed management idea for dealing with water pollution. Tell me, quickly, what is the advantage of that? I am aware of the Whippany River demonstration that is going on now. In terms of the regulatory process, what is the big advantage of the watershed approach?

MR. DILLINGHAM: Well, because the permit levels within the regulatory process are based, in part, on an assessment of the conditions of the waters, the classifications which are established, and the goals that are there, that more broad policy issue is not captured in a specific permit decision. An example of that is: If you have a specific discharger who is negotiating limits with DEP and the concerns are about the inability to bring the river, or the water body into compliance, what does not get factored into that, or may not get factored very effectively into it, is that if you have a development of old septic systems, let's say, which is downstream which may be contributing to bacterial contamination or other types of contamination in the water body, that may be a significant portion of the problem you are trying to solve by

ratcheting down on the permit or focusing only on the permittee, because he is who you have a handle on.

A watershed approach gives you an opportunity to go out and, as a very first step, characterize what the various contributions are. We hear a lot in this debate about the contribution of new development versus old development to environmental problems. This gives us another opportunity to go out and look at what the relative contributions of both of those sources are, and to take appropriate measures to try to deal with that problem.

The other part of that, clearly, is simply that there is a watershed and there is a river system. All that factors into that one ecological system, and it makes much more sense than trying to regulate it on a site-specific basis or on the basis of political boundaries, which do not recognize the natural system boundaries.

SENATOR McNAMARA: I want to thank everyone for their attendance and for their attention. I want to thank the Committee for their attention. And I thank both of you.

MR. DILLINGHAM: Thank you.

MR. KODJAK: Thank you.

SENATOR McNAMARA: Thank you very much.

(HEARING CONCLUDED)

APPENDIX

Division of Water Quality

Program Improvements

1991 to Present

October, 1994

Introduction

This document describes some of the reforms the Division of Water Quality has instituted over the past three years and improvements taking place at the present time.

The Division conducts three main functions. One being the implementation of the New Jersey Pollutant Discharge Elimination System (NJPDES Permitting Program), the second is the operation of the Municipal Wastewater Financing Program, and third is the Wastewater Construction Permitting Program and the Sewer Ban Program.

Undoubtedly, you have probably read numerous stories about the beleaguered NJPDES program. However, innovative and creative reform efforts, that have been on-going since 1991, have dramatically improved the outputs of the permitting program and have reduced the backlog. We have developed an entire new framework for dealing with permittees, and we have laid the foundation for significant regulatory program reforms. We have also developed a good working relationship with the municipalities and industries we regulate, and have addressed several major problems, including, improving both the speed of permit issuance and the quality of the permits in terms of accuracy and reasonableness. These improvements resulted in only 3 major permittees requesting hearings on their permit limits last year. Two years ago, 100 percent of the major permittees requested hearings. Not only has this lead to better, more efficient, and reasonable environmental protection, but it has also dramatically lowered our transaction costs. Although it is recognized there are still things that need to be done in the program along the lines of developing a new fee system and reducing other program inefficiencies, most of the stories you may have heard do not relate to the present situation. Those stories were probably true three years ago, but are no longer valid today.

This report gives you some of the highlights of the reform efforts and we are available to give you a more detailed picture of where the program was, where it is today, and ideas for the future.

The review and restructuring of the NJPDES program has proceeded with a significant level of public involvement. An Interested Party Review (IPR) document was published in the New Jersey Register on February 1, 1993, which outlined the broad changes that the Department was considering, as well as various options for implementing those changes. Two public round-table discussions and several more public discussions were subsequently held. Substantial written public comment was received regarding the general proposals. Members of the team assigned to this project met frequently with both technical staff and management from affected programs to develop a package of regulations that would address the current deficiencies and provide a sound blueprint for future work.

On October 6, 1994, the division published a rule summary document for public comment in the New Jersey Register. This document spells out the division's plans for shifting the NJPDES permitting process toward a watershed based program. Public comments will be accepted until the end of November, 1994 after which the division will propose the actual rule amendments incorporating any comments. The summary document also fulfills, in part, an Agreement of Settlement entered on January 17, 1991, in the Appellate Division of the Superior Court of the State of New Jersey and a Petition for Rule Making submitted to the Department on December 5, 1990 by the Association of Environmental Authorities (AEA). Furthermore, the AEA filed a Notice of Appeal challenging the readoption of the Surface Water Quality Standards. The Division of Water Quality intends to address the AEA's issues and the watershed permitting process in a rule adoption before June 27, 1995. Any extensions beyond this date would require an extension of the current NJPDES rules at N.J.A.C. 7:14A and a new agreement with the petitioners.

In the area of pretreatment facility permitting, the Division's role in regulating significant indirect dischargers (SIU) has been reduced and streamlined. These are industries that pretreat wastewater before discharging it to a municipal sewer system. Twenty three local agencies were

delegated the authority to issue SIU permits to dischargers in their service areas. The Division plans to delegate permitting authority to an additional ten local agencies over the next three years.

In addition to delegating a portion of the pretreatment program to local agencies, the Division has convened a Pretreatment Task Force since the early eighties to help develop pretreatment regulations. This task force, comprised of industries, local government agencies, and environmental groups, is helping to develop recommended revisions to the Water Pollution Control Act.

Finally, the Division met with the Environmental Protection Agency last month and finalized a strategic plan for managing New Jersey's water programs. This effort will, for the first time, begin the process of integrating the goals and responsibilities of each water regulatory program into one comprehensive plan. The plan will assure the future water needs and objectives for New Jersey are met.

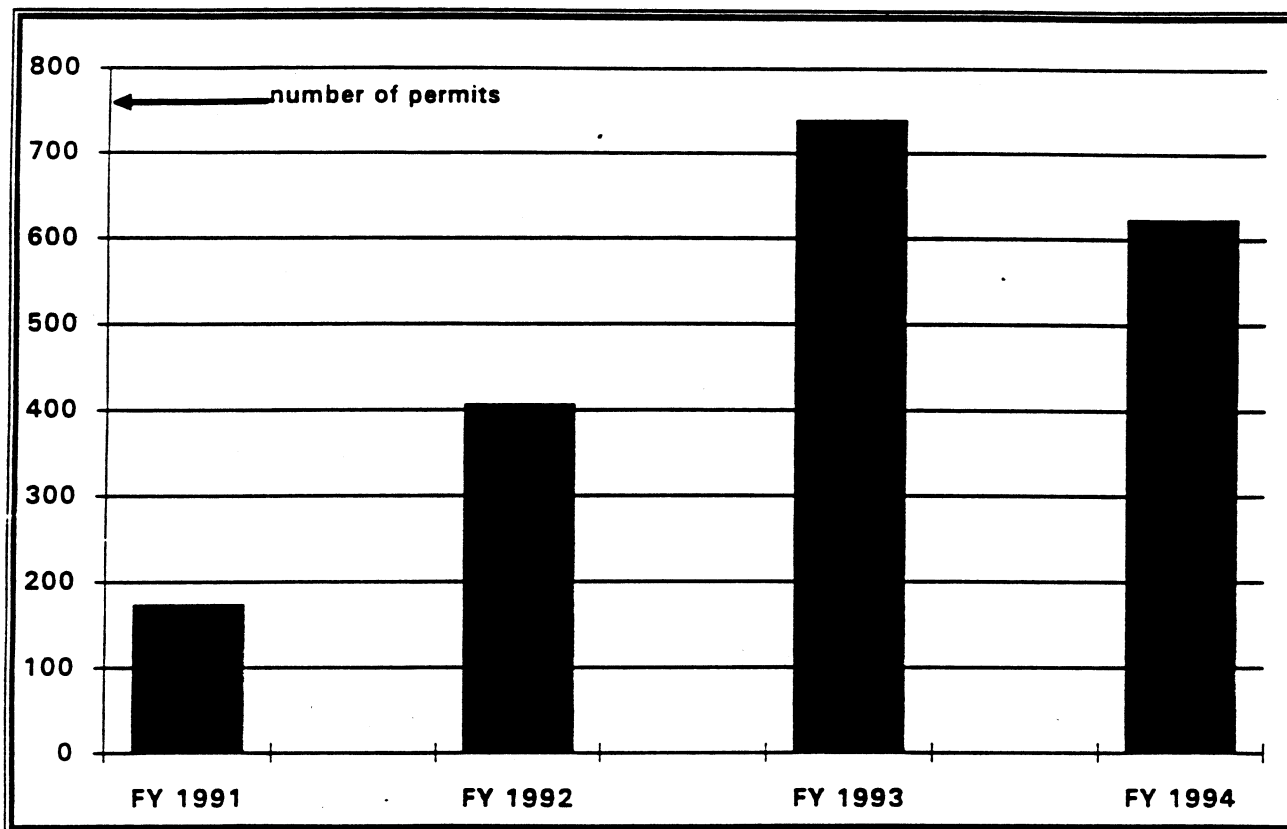
If you have any questions regarding the Division of Water Quality's programs or regulations, please contact Dennis Hart, Division Director at (609) 292-4543.

Program Reforms

Permit Outputs

Major reforms are underway in the Division of Water Quality. These changes have resulted in the program more than doubling its final permit actions from FY 1991 to FY 1992 (FY 1991 - 173, FY 1992 - 406). In FY 1993 permit outputs again dramatically increased to 739, which exceeded the previous three years combined. FY 1994 was another high output year with 623 permit outputs. The program is hopeful and confident that this trend will continue until the permit backlog is eliminated in approximately one year.

NJPDES Final Permit Actions



Permit Fees

The NJPDES permit program is funded with annual fees in accordance with the Water Pollution Control Act. The current fee assessment methodology requires each permitted facility to pay their share of the NJPDES program budget based on a complex environmental formula, which evaluates the quantity of pollutants discharged, plus a nominal administrative fee. Because of the ever increasing complexity of NJPDES permits, the program recognizes that the present fee methodology may not be equitable for all permittees and has been evaluating various possible amendments.

The Department's Water Pollution Control Program consists mainly of NJPDES permitting, permitting enforcement, monitoring, data management and planning activities. Last year's Water Pollution Control Program budget was approximately \$25 million: \$13.5 million from NJPDES fees; \$11 million from Clean Water Enforcement Act penalties; and approximately \$2 million from various EPA grants.

The NJPDES fees have been the subject of controversy for a number of years. The fee system used to calculate individual NJPDES fees is analogous to a local property tax system. Each year the Department develops a Water Pollution budget then decides how to fund that budget. The amount of money not paid for by penalties and EPA grants is raised through NJPDES fees.

Individual fees are calculated based on the environmental impact of each of the dischargers in the state relative to one another and the overall budget. For example, each discharger's data reports are reviewed and an environmental calculation is made to count the number of environmental units being discharged from that facility. They include the total amount of pollutants plus the toxicity of each pollutant. The number of environmental units then determines, much like a property assessment, the relative percentage of the budget the permittee will pay. Therefore, someone having a very high number of environmental units, i.e. large number of pollutants or large toxicity or both will pay more of the budget relative to someone who does not have the same environmental impact. This system, although it worked very well in the early to mid-80s, began to break down as dischargers completed upgrading their treatment plants and the quality of their discharges improved.

One of the problems is, as discharges improve, the relative cost of the program shifts to other dischargers to make up for lost revenues. Permittees cannot predict their fees from one year to the next, nor can they guarantee improving their treatment will lower their fees.

Other problems with the budget occurred in the late 1980s. First, there was a loss of state appropriations, and second, the fee structure at that time required small dischargers to pay a larger percentage of the budget than they do now. Their complaints resulted in the Department, over a two-year period, removing certain factors in the formula - calculations known as cube roots and square roots that had the effect of evening out and dampening down the high fees paid by small dischargers. However, when this formula was modified, large dischargers fees went up tremendously. Despite these increases, it is important to note that while the formula modification distributed fees differently, it did not increase the overall NJPDES budget. Therefore, complaints about fees going from \$20,000 in one year to \$150,000 the next year, to \$500,000 the following year, are mostly due to shifting fees from small dischargers to large dischargers, not a rise in the program's budget.

To evaluate the fee situation and assess needed changes, a NJPDES Fee Task Force was formed by former DEPE Commissioner Weiner in July, 1992. Former State Senator and Joint Appropriations Committee Chair Laurence Weiss was appointed to chair the Task Force, which included members from industry, municipal governments, large NJPDES dischargers, and public interest groups. The Task Force and the Division have been working together to develop a new fee assessment structure that would cover the costs of administering permits, while maintaining a fee that is reasonable and predictable. In its report to Commissioner Weiner, dated March 30, 1993, the Task Force, among other things, recommended that the Division increase minimum fees and obtain federal and state funding for the NJPDES program. The Task Force is advocating the use of state and federal monies to fund a portion of the NJPDES program, because some of the costs borne by permittees are for activities that benefit the general public.

As a result, the Division plans to propose a new fee assessment methodology for wastewater dischargers during the FY94 billing period. The new methodology should result in a much simpler fee schedule. For example, certain types of minor dischargers may only be assessed a basic administrative fee. Major facilities, which represent a greater environmental risk and require more of the Division's time to regulate, will be assessed a fee commensurate to the complexity of their discharge.

These positive changes should make the fee assessment process more equitable and predictable.

Finally, and most importantly, the Department feels that the best way to fund the Water Pollution Program is through a one third, one-third, one-third split, i.e. one-third of the program funded from fees, one-third funded from state appropriations and one-third funded from federal grants.

The Department, a number of years ago, decided not to aggressively pursue federal grants for funding the Water Pollution Control Program and to only seek grants for specific purposes. However, that decision is being revisited and the Department is actively seeking federal funding for a greater portion of the Water Pollution Control Program.

NOTE: The NJPDES fee system is calculated and issued as a rule proposal every year. The process is 1) a budget is developed, 2) individual fees are calculated, and 3) rules are proposed to implement the budget and fees.

Fee proposals are noticed in New Jersey Register and public hearings are held. Prior to adoption, all written and oral comments are addressed. After adoption, individual fees are assessed and permittees are notified.

Permits Drafted by Permittees

To allow permittees to take a more active role in developing their NJPDES permit and to save the Division labor costs, a new procedure has been implemented which allows permittees to prepare the first draft of their permit. This concept has been well received by the regulated community because it fosters a more cooperative climate in which to develop NJPDES permits, resulting in faster permit reviews and fewer contested permits. Ultimately, this approach has led to quicker improvements in water quality.

New General Permits

General permits are used by the program to streamline processing time for specific classes of wastewater discharges. In issuing general permits, processing time is greatly reduced because a standard set of conditions specific to a discharge type are developed and issued at one time (rather than issuing individually tailored permits for each discharger).

On October 29, 1993 the Division's general permit for General Petroleum Product Cleanups became final. This permit authorized approximately 190 dischargers. The Division has also renewed its general permit for non-contact cooling water discharges, authorizing another 70 dischargers.

In addition, the Division recently issued general permits for automobile dealerships with retrofitted carwash rack operations and combined sewer overflows. The general permit for automobile dealers will authorize approximately 50 dischargers, while the combined sewer overflow permit will authorize approximately 300 dischargers.

The Division is continuing to expand the use of general permits into other discharge categories. Some of the categories presently under development include potable water systems (hydrant flushing), campgrounds, mobile home parks, well development/testing, and construction dewatering.

Advance Permit Notice

To help permittees plan for the review of their draft NJPDES permit (when issued), the Division is providing advance notice to holders of "major" DSW (Discharge to Surface Water) permits as to the review schedule for their permits.

This procedure is being implemented in FY 1994 in response to comments received by permittees regarding the lack of time available to review and comment on their permit. The Division understands that the current complexity of NJPDES permits makes it difficult for permittees to schedule review time with their staffs, consultants, and attorneys on short notice. Hence, the Division has begun to notify permittees well in advance of the issuance of their draft permit. At the same time, permittees will be invited to meet with the staff of the Wastewater Facilities Regulation Program to discuss any issues concerning their permit. This advance notice has better enabled permittees to coordinate the review effort needed for their draft permit.

Electronic Reporting

The Division is working to improve and speed up required permit reporting by reducing the high volume of paper that is presently used and eliminating redundant data keypunching. The present system requires Discharge Monitoring Reports (DMRs) to be used for reporting a wastewater discharger's effluent data to the Division, while Ground Water Monitoring Reports are used to report the effects that a discharge has on ground water. These reports allow the Division to assess compliance with NJPDES discharge permits. At present, the information on these report forms must be manually keypunched into the NJPDES database and then stored in a file room. This operation is very labor intensive and it also stresses the Division's finite file storage space.

To cut down on the transfer of paper, the Division is working with an Industry Work Group to bring electronic reporting to the NJPDES program. Electronic reporting or "computer-to-computer" reporting will eliminate the storage problems associated with the current system of filing hard copies of the reports, and will also eliminate duplicative data keypunching.

To evaluate current data reporting procedures, resolve potential problems, and to implement direct "computer-to-computer" reporting, several pilot projects have been initiated.

The Division is hopeful that electronic reporting will allow the program to maintain the costs of processing DMRs and ground water data.

Program Newsletter

The Division introduced a new newsletter covering the wastewater program in May, 1993. The newsletter, which is mailed to permittees, consultants, environmental groups, and other interested parties, contains information about the program's policies, procedures, rules, and permitting requirements. The publication has been well received by the regulated community and the Division plans to continue its publication on a quarterly basis.

Information Exchange Meetings

In May, 1993, the Division began meeting with permittees to discuss generic permit issues. These meetings have been very useful in that they allow permittees to discuss possible problems and concerns in advance of the issuance of their discharge permit, which helps to avoid future points of contention (after the draft permit has been issued). NJPDES permittees have enthusiastically supported this new concept and the Division will continue to hold such meetings whenever planning to review a group of permits with common issues.

Privatization

To help reduce the NJPDES permit backlog the Division awarded a contract to a private vendor for the preparation of 114 draft Industrial Discharge to Surface Water Permits. This effort will be evaluated, and if deemed successful, will be expanded into other permitting areas.

NJPDES Program Improvements

The wastewater program began a comprehensive initiative to improve the processing and tracking of the entire NJPDES permitting process. This effort is being undertaken by five teams of employees in the following areas: 1) workload prioritization, 2) formation of a program-wide administrative review unit, 3) reviewing all program forms for clarity, redundancy, consistency, consolidation, and/or elimination, 4) database reforms, and 5) personnel issues.

To date, the work teams have made substantial progress in each of the identified areas. Not only has this process improved division wide communication, it has also boosted morale by allowing employees to take part in reforming the program.

"Second Chance" Financing Program

A new financing option was included for the first time in last year's Wastewater Treatment Financing Program. This option provides municipalities and authorities, independently pursuing wastewater construction projects, a "second chance" opportunity to participate in the Financing Program. Eligible participants, which are "fast tracked" through the financing process, must be substantively through the project approval/permitting process to qualify. This option has expanded the scope of the traditional program and made loan monies available to more environmentally beneficial wastewater treatment projects.

Legal Authority and Program Rules

The Division of Water Quality operates under the following legal authority:

■ Federal

33 U.S.C. 1251 et seq.
42 U.S.C. 300F et seq.
42 U.S.C. 6901 et seq.

Clean Water Act
Safe Drinking Water Act
Solid Waste Disposal Act

■ State

N.J.S.A. 58:10A-1 et seq.
N.J.S.A. 58:11A-1 et seq.
N.J.S.A. 58:11-49 et seq.
N.J.S.A. 58:10-23.11 et seq.
N.J.S.A. 58:11-64 et seq.

N.J.S.A. 13:1D-1 et seq.
N.J.S.A. 13:1E-1 et seq.
N.J.S.A. 58:4A-4.1 et seq.

N.J.S.A. 58:12A-1 et seq.
N.J.S.A. 58:25-23 et seq.

P.L. 1976, c.92
P.L. 1969, c. 127
P.L. 1980, c.70
P.L. 1985, c.329
P.L. 1989, c.181

P.L. 1985, c. 306

New Jersey Water Pollution Control Act
Water Quality Planning Act
Pretreatment (no official title)
Spill Compensation and Control Act
Water Supply and Wastewater Operator's
Licensing Act

DEP Act of 1970
Solid Waste Management Act
Well Drilling (no official title)
Sealing of Abandoned Wells
Safe Drinking Water Act
Sewage Infrastructure Improvement Act

Clean Waters Bond Act
Water Conservation Bond Act of 1969
Natural Resources Bond Act of 1980
Wastewater Treatment Bond Act of 1985
Stormwater Management and Combined Sewer
Overflow Abatement Bond Act of 1989
Pinelands Infrastructure Improvement Act of 1985

Recently Adopted Rules

NJPDES - Clean Water Enforcement Act

On February 1, 1993, the Division adopted amendments to the NJPDES regulations (N.J.A.C. 7:14A), which incorporated Clean Water Enforcement Act (CWEA) requirements, and also Federal Pretreatment requirements and program policies. The following are among the most significant changes incorporated through these amendments: 1) provide for third party adjudicatory hearings on NJPDES permitting decisions, 2) require the Division to include chemical specific toxic limitations in

delegated local agency (DLA) permits, 3) require DLAs to conduct annual inspections on facilities they have permitted, and 4) require DLAs to submit a comprehensive annual report to the Division.

One of the most positive aspects of the new amendments is the termination of significant indirect user permits in areas served by DLAs. This action was based upon the passage of the CWEA, which grants delegated local agencies sufficient enforcement powers, and in so doing, eliminates the need for dual permitting by both the Division and the DLA. This provision has benefited the Division by reducing permitting and enforcement responsibilities, and it has also decreased administrative costs for permittees, who now only report to the DLA. The program reduced the SIU permitting staff level from 7 to 2 as a result of this amendment.

Treatment Works and Sewer Ban Program Rules

The Division adopted amendments to the Department's sewer rules on July 6, 1994. These rules regulate the construction and operation of domestic and industrial treatment works such as wastewater treatment plants, sanitary sewer lines, pumping stations, and wastewater holding tanks. They also set forth the regulations governing the sewer ban program.

Design Standards

The treatment works design standards, which specify how sewer lines, pumping stations, or treatment plants are to be built, have not been revised since 1970. As a result, many of the technological advances of the past 24 years have been added to the rules.

Other major areas of the rule were changed - when a Treatment Works Approval (TWA) is needed for the construction of a sewerage system and several major amendments to the sewer ban program. Both of these sections of the rule were discussed in a program review paper entitled "Working Paper on Sewer Bans and Treatment Works Approval Programs" which was released in January, 1992. The Division also invited written comments from the regulated community and interested parties and obtained oral comments at two public meetings which were held in March, 1992. These comments were considered during the development of the rule amendments.

Treatment Works Approvals

In the past, a TWA was needed for any sewer line serving a single building through which 2,000 gallons or more of wastewater per day will be conveyed. This quantity of flow is relatively small, equating to a 16,000 sq. ft. office or retail building. In practice, the 2,000 gallon flow threshold has resulted in the Division having to review many small projects that were of negligible environmental concern. As a result, the Division adopted a change which raised the cutoff to 8,000 gallons per day. Also, major changes to simplify the Industrial Treatment Works permitting process have been adopted. Both of these changes should reduce the current TWA workload by about 35 to 40 percent, which will allow the program to redirect staff resources toward issues of greater environmental concern such as the NJPDES permit backlog and the Capacity Assurance Program (a program that helps wastewater dischargers to plan the future treatment needs of their service areas).

Sewer Bans

The sewer ban program was also in need of significant changes because it was excessively stringent and has failed to consider important factors such as a wastewater's impact on the environment, the degree of non-compliance, and the willingness of the discharger to correct the problem.

Sewer bans are put into effect when the water being discharged by a wastewater treatment plant exceeds the limits set forth in its New Jersey Pollutant Discharge Elimination System (NJPDES) permit. Whenever a permit limit is exceeded (averaged over three consecutive months) the owner of the treatment facility is required to impose a sewer ban. This ban essentially prohibits the connection of both residential and commercial facilities into the sanitary sewer system. The purpose of the ban is to prevent additional harm to the environment that would result if more wastewater from new sources was sent to the non-complying treatment plant.

Sewer bans can have a very harsh economic impact upon an affected community, because construction activities for all types of facilities (housing, industry, shopping centers, office buildings, health care, etc.) cannot go forward until the problems at the treatment plant have been corrected and the ban has been lifted, which can take many years. While, on the surface, sewer bans may appear to be a perfectly justifiable action given the possible harm to the environment, they have not penalized polluters in an equitable manner and have often delayed the construction of socially beneficial projects. With the passage of the Clean Water Enforcement Act in 1990, polluters became subject to both the mandatory fines and penalties imposed by the law and the inequities of the sewer ban program. This created an imbalance between protecting the environment and preventing socio/economic hardships.

To address the above issues, the ban regulations were amended to provide more flexibility and discretion. Since all permit violations do not impact the environment in the same way, the Division adopted regulations that penalize polluters based upon the level of severity, rather than applying the same punishment to every situation.

Sewer Ban Exemptions

In addition to the problems of the sewer ban imposition process, many projects fulfilling an overwhelming social need for New Jersey's residents could not be built because the ban rules did not contain a specific exemption to accommodate them. Projects providing service for the ill and disabled, and other community services such as volunteer ambulance and fire squads were excessively delayed due to bans.

Based upon the Division's experience with the sewer ban program over the years, new ban exemptions have been adopted to insure that non-profit projects that provide much needed social services can go forward when the situation warrants such action.

Rule Revisions Currently Underway

Major NJPDES Rule Reforms

The current NJPDES regulations were adopted and became effective on March 6, 1981, and have remained largely unchanged since that time, except for some changes necessary to implement the Clean Water Enforcement Act. The current rules have not kept pace with changes made to statutes, rules, policies, and procedures (both federal and state). As a result, the permitting process has become inefficient, the program's effectiveness in improving water quality has not been adequately monitored and measured, and many legal disputes have arisen. In addition, the current NJPDES rules are not

well coordinated with the Department's Surface Water Quality Standards (SWQS), N.J.A.C. 7:9, or the Water Quality Management Planning Rules, N.J.A.C. 7:15, to address water quality issues, particularly aspects affecting water quality over an entire watershed or basin. To resolve these problems, the Department has undertaken a comprehensive review of the existing rules, policies, and procedures, and is in the process of preparing a proposal to substantially change the NJPDES program.

One major feature of the proposal involves the development of a watershed approach to permitting in order to alleviate the lack of coordination among programs, provide a sound scientific basis to assess and evaluate pollution problems from all sources (agricultural inputs, municipal discharges, industrial discharges, ground water inputs, storm water, etc.), and make decisions regarding the most effective ways to control the pollution from all contributing sources. Such a coordinated approach will assist the Department in identifying the pollution problems affecting both human health and aquatic biota that currently exist, establishing priorities for addressing those problems, and issuing discharge permits that are tailored to adequately protect and conserve the state's environmental resources. A watershed approach to water quality studies and permitting will allow the Department to more efficiently develop a sound scientifically-based watershed management program encompassing both point source and nonpoint source loadings, and to issue water discharge permits in a more efficient manner.

A watershed approach, as opposed to the current site-specific approach, will enable the Department to focus attention on specific pollutants in each waterbody and to better evaluate the impact of various control measures. The first step in such a process is to determine which watersheds or portions of watersheds need further attention and to determine the assimilative capacity of each through the development of comprehensive water quality models. Thereafter, the available capacity will be allocated among the pollutant sources within the watershed. This approach will also better enable the Department to work with local governments toward environmentally sensitive land use planning. When the allocation process is complete, the Department will be in a position to include water quality-based effluent limitations in discharge permits. The goal of water quality-based effluent limitations is to protect the instream water quality and instream uses, such as drinking water and aquatic life propagation. In addition, the allocation process will allow the Department to develop applicable Best Management Practices (BMPs) for stormwater and nonpoint sources of pollution. While the effort to restructure the NJPDES rules focuses on the need for and benefits of a watershed-based approach to NJPDES permitting as well as other possible improvements to the permitting program, watershed permitting could be one part of a broader effort to incorporate a watershed-based approach into the Department's overall water quality and quantity protection efforts, and to integrate those efforts into one comprehensive, watershed planning and management program.

The changes necessary to move to a watershed permitting process will take substantial time and resources to implement, particularly in identifying the existing water quality problems, assessing the extent of those problems, and evaluating the options available for their control. In the interim, the Division plans to significantly increase the number of permits that it issues. However, these permits will not contain water quality-based toxics limitations for existing dischargers. Rather, toxics limits for most dischargers will be determined using a technology-based approach for each parameter based on activated sludge/precipitation technology. As the expired permits are reissued utilizing the technology-based effluent standards, the permittees will also be assigned water quality goals and will be required to conduct pollutant reduction studies directed towards reducing pollutants in the effluent.

The new rules will also implement major administrative reforms to make the permit application and issuance procedures more efficient and flexible. These include:

- Allowing permittees the option of submitting their applications in the form of draft permits which the Department can then review and, if acceptable, offer for public comments. Also

permittees may perform ~~some~~ other permit related actions such as issuance of public notices and making arrangements for public hearings;

- Expanding the scope of changes to existing permits that can be accomplished through minor modifications;
- Providing for automatic renewal of permits where a new review would not provide any environmental benefit, e.g. where standards have not changed since the permit was issued;
- Allowing for concurrent review and processing of water quality management plan amendments and NJPDES permit applications; and
- Increasing the use of general permits and permits by rule.

The review and re-structuring of the NJPDES program has proceeded with a significant level of public involvement. An Interested Party Review (IPR) document was published in the New Jersey Register on February 1, 1993, which outlined the broad changes that the Department was considering, as well as various options for implementing those changes. Two public round-table discussions and several more focused public discussions were subsequently held. Substantial written public comment was received regarding the general proposals. Members of the team assigned to this project met frequently with both technical staff and management from affected programs to develop a package of regulations that would address the current deficiencies and provide a sound blueprint for future work.

On October 6, 1994, the division published a rule summary document for public comment in the New Jersey Register. This document spells out the division's plans for shifting the NJPDES permitting process toward a watershed based program. Public comments will be accepted until the end of November, 1994 after which the division will propose the actual rule amendments incorporating any public comments.

Groundwater Rules

The Bureau of Operational Ground Water Permits is currently working on major revisions to the NJPDES/DGW regulations to make the state ground water program more consistent with Federal requirements as well as to implement more appropriate permit requirements on specific types of facilities. For example, certain types of facilities typically generate similar wastewater (both in volume and pollutant characteristics) such that they can be grouped together as a single type of discharger. These facilities (i.e., potable water treatment plant filter backwash lagoons, sand dredging operations, etc.) can be issued General NJPDES/DGW permits rather than separate, individual permits for each facility. Another regulatory mechanism being emphasized is the Permit-by-Rule, which requires discharges of no significant environmental consequence to submit an annual inventory to the Department as a certification of what the discharge consisted of and where and how the discharge occurred.

The General Permit and Permit-by-Rule are a much more effective and efficient means for the Department to regulate specific groups of facilities. These types of permits will have a reduced fee schedule, require less sophisticated application requirements, and will generally require a uniform, less rigorous monitoring program. As such, these permits will impose less of an economic burden on applicants. However, if a facility fails to conform to either the General DGW Permit or the Permit-by-

Rule, the Department can either issue a full-scale NJPDES/DGW permit or require the discharge to cease.

Industrial Pretreatment Regulations

The Bureau of Pretreatment and Residuals is currently drafting Industrial Pretreatment Regulations which will be included within the NJPDES regulations. These regulations will incorporate the pretreatment program requirements currently specified under the federal General Pretreatment Regulations at 40 CFR Part 403; the New Jersey Water Pollution Control Act; and any other applicable regulations, statutes, and current policy requirements. The Pretreatment regulations will also serve to centralize the current pretreatment requirements specified throughout the present NJPDES regulations. These regulations will specify the pretreatment program requirements for both delegated local agencies (i.e. local agencies which have a state approved industrial pretreatment program), and those local agencies without an approved pretreatment program. Consolidation of the pretreatment regulations will allow for easier comprehension of the pretreatment requirements by the regulated community. These regulations will also propose a modified penalty matrix (current matrix included under N.J.A.C. 7:14-8.5) by which penalties will be assessed by either a delegated local agency or the department for indirect discharge violations. While the proposed penalty matrix will result in lower penalty assessments against non-complying indirect dischargers, the matrix will comply with Clean Water Enforcement Act minimum penalties and may also result in a higher number of penalty assessments against non-compliant facilities. Furthermore, the proposed matrix will allow for uniform penalty assessment for violators regardless of their location within the state.

Sludge Regulations

The Department's policy, as stated in the proposed update to the Statewide Sludge Management Plan, strongly supports the beneficial use of sewage sludge. Improving the productivity of our land using the soil conditioning properties and nutrient content of sewage sludge has human health and environmental advantages beyond those that are directly associated with applying sewage sludge to the land. However, to date, it must be agreed that the Division has not proposed any significant changes to make beneficial use alternatives more attractive from a regulatory standpoint.

On February 19, 1993, the USEPA promulgated regulations (40 CFR part 503) to protect public health and the environment from any reasonably anticipated adverse effects of certain pollutants that may be present in sewage sludge. Included in the regulations are requirements for the land application of sewage sludge for beneficial purposes. It is the Division's intent to propose for adoption, through amendments to the NJPDES regulations, most of the provisions of 40 CFR part 503 for land application. In developing the amendments to NJPDES, the Department is carefully considering and placing heavy emphasis on those approaches that will support its beneficial use policy. Adoption of 40 CFR part 503 will also facilitate federal delegation of the sludge management program to the state of New Jersey. A draft proposal of the regulations is currently circulating internally for comment. It is the intent of the Department to have the draft regulations to the Office of Administrative Law for proposal in January 1994.

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COMMENTS REGARDING
HOW DEP IS FUNDED
AND
ITS IMPACT ON THE WATER POLLUTION PROGRAM

BY

RONALD S. TUMINSKI, ASSISTANT COMMISSIONER
MANAGEMENT AND BUDGET

TO THE
SENATE ENVIRONMENT COMMITTEE

OCTOBER 13, 1994

FUNDING OF NEW JERSEY'S WATER POLLUTION PROGRAMS

I would like to take the time afforded to me by the Committee to provide a brief overview of the Department's funding, as well as the transition that has taken place in terms of our growing reliance on fees/fines in particular. I would then like to focus on how this funding approach has specifically impacted the water pollution control programs such as the NJPDES. Finally, I will summarize information gained from other states in terms of their funding of environmental programs, again with particular attention paid to NJPDES.

FUNDING BACKGROUND

Since the inception of the Department in Fiscal Year 1970 its appropriations have grown from \$16 million to some \$236 million in the current fiscal year. Until Fiscal Year 1989, approximately one-half of the Department's operating budget was appropriated in the form of General Fund dollars. Specifically in FY 1989, of the agency's \$193.7 million operating budget, \$91.7 million or 47% was provided from the General Fund, while 26% or \$49.3 million was derived from fees and fines, with the remainder (27%) from Federal, bond and tax funds. In contrast, by FY 1994, when the agency's budget had grown to some \$243.2 million, only 17% or \$41.8 million was provided from the General Fund. At the same time, the agency's dependency on fees and fines had grown to \$122.8 million or 51% of its operating budget.

The current fiscal year - FY 1995 - finds the Department with an operating budget of some \$236.8 million. However, the point to be emphasized regarding the current year's budget is that it represents the first time in some six years that our General Fund appropriation has been increased. I am, of course, referring to the \$4.5 million that is provided in order to stabilize the Department's Land Use (e.g. Freshwater Wetlands) permitting fees, as well as, the \$4.3 million that is appropriated to stabilize the Department's NJPDES fees. FY 1995 also marks another turning point - in that decisions not to increase fees, in such areas as Stormwater and Solid Waste, are reflected in a \$18 million decrease in fees when compared to the agency's original budget proposal, as submitted in the fall of 1994. Accordingly, FY 1995 marks the first year in which the trend towards a heavier reliance on fees and fines was indeed reversed.

REASONS FOR GROWTH IN FEES AND FINES

Major factors which have contributed to DEP's increasing reliance on fees and fines are:

- Over the past decade, numerous environmental laws (e.g., A-901, Clean Water Enforcement, Medical Waste) were enacted with the provision to fund those programs from dedicated sources. These laws, in effect, codified the "polluter pays" approach.

- Between FY 1989 and FY 1994, the Department witnessed a \$50 million reduction of its General Fund appropriations. While these reductions served to balance the State's fiscal needs they, at the same time, resulted in fee increases in order to maintain essential service levels in those programs impacted.
- Increases have also been necessitated due to the requirement that DEP's fee and fine programs assume certain costs, which in the case of a General Fund program (e.g. Parks & Forestry) are covered by Treasury. Accordingly, whether it be the Clean Water Enforcement program, the NJPDES program or the Air, each is expected to cover all costs associated with: DAGs, the Office of Administrative Law, Fringe Benefits, Indirect Costs, as well as any costs of living/merit increases for its respective employees. In FY 1995 these types of costs on DEP's fees/fines programs, are estimated to consume more than \$50 million in resources.

THE IMPACT ON WATER POLLUTION PROGRAMS

The budgetary influences, which I have just summarized at the Department level, have likewise impacted the agency's Water Pollution programs - especially NJPDES and Clean Water Enforcement.

As noted by the NJPDES Task Force - chaired by Senator Weiss, the shift to a predominant reliance on fees and fines has placed the Department in a position where these Water Pollution programs have been, up until this fiscal year, completely financed from fees/fines assessed/levied on the regulated community.

During the course of DEP's funding transition, or between Fiscal Years 1990 to 1993, General Fund appropriations, previously available to these programs and amounting to some \$5.5 million, were eliminated. These reductions impacted such areas as: lab analysis, the funding of enforcement positions, and the ability to carry out water monitoring functions including contracts with the United States Geological Survey (USGS). These costs, coupled with the implementation of the Clean Water Enforcement Act (P.L. 1990, c. 28) and the requirement to cover negotiated cost of living increases, Fringe Benefits and Indirect Costs led to a total NJPDES fee budget amounting to some \$15.3 million by FY 1992 as contrasted to a \$7 million budget in FY 1988.

The above trend was noted in the NJPDES Task Force report, when it commented that funding New Jersey's NJPDES program totally from fees does not recognize the impact that the general public has on the state's waterways nor does it account for the benefit they derive. Accordingly, the task force recommended that minimally 25% or up to 50% of the budget should be funded from the General Fund. With the current year's appropriation of \$4.3

million provided to the program the General Fund contribution will now stand at approximately the 25% level.

FY 1994 WATER POLLUTION CONTROL BUDGET - NJPES/CWEA

Overall Budget

The Department recently adopted and billed for its Fiscal Year 1994 Water Pollution Control Budget. The total program (\$25.1 million) included \$15.3 million in NJPDES costs and \$9.8 million for CWEA. Work effort assigned included 70 personnel for CWEA and 181 for NJPDES.

The FY 1994 NJPDES (\$15.3 million) budget as adopted was based upon assessing \$11.2 million of the total in the form of fees. Accordingly, \$4.1 million or 26% was to be provided from sources, other than direct fee billings. Specifically, these offset monies came from CWEA penalty dollars (\$1.3 million), carryforward balances of \$.400 million and \$2.5 million in prior year billables received in Fiscal Year 1994. Similarly in Fiscal Year 1993, while the total NJPDES budget amounted to \$16.1 million, \$2.5 million was offset from fine monies available under the Clean Water Enforcement Act. As I indicated earlier \$4.3 million in General Funds is provided in the current Fiscal Year (1995) to stabilize NJPDES fees. The availability of these funds is critical since CWEA monies are no longer available to provide an offset to the NJPDES budget.

Allocation of Fees

The \$11.2 million recently billed for FY 1994 was allocated among discharges in the following manner:

	<u>(\$Millions)</u>
Municipal-Surface (226)	\$ 4.447
Municipal Groundwater (499)	.508
Residuals (51)	.135
Industrial Surface Water (649)	5.433
Pretreatment (SIU) (67)	.302
Operating Landfills (34)	<u>.356</u>
TOTAL	\$11.180

- Of the 220 Municipal Surface Water dischargers, 11 (5%) are billed > \$100,000 = \$3,266,349 (71%)
- Of the 641 Industrial Surface Water discharges, 10 (1.6%) are billed > \$100,000 = \$3,104,747 (57%)

Other Facts Regarding NJPDES Budget

- Major components of the budget (FY 1994) included \$7.6 million in salaries, \$2.4 million in Fringe, \$3.3 million in Indirect Costs and \$2.0 million in Operating.

- While the overall FTE for the program was down by 18, these savings were offset by \$1.9 million in increased costs from such components as Fringe Benefits, Cost of Living increases and Indirect Costs.
- In the current Fiscal Year (FY 1995) the General Fund offset of \$4.3 million will serve to stabilize the fees at their FY 1994 levels, while efficiencies achieved in the program will offset increases brought about by Cost of Living increases.

HOW DOES NEW JERSEY COMPARE TO OTHER STATES?

Achieving the Governor's goal of placing New Jersey in a competitive position with other states in order to both retain existing as well as to attract new business and industry has been the thrust of recent program and budget initiatives within the Department. This direction has been forged in a manner wherein we are fully cognizant of where we stand vs. other states. For example,

- In a November/December 1993 survey released by the Council of State Governments in its publication ECOS, New Jersey was portrayed in the following manner with respect to funding its environmental programs. In terms of the percentage of General Fund support, New Jersey ranked with 33 other states

in terms of receiving less than 25% of its budget from the General Fund, while 17 states received 25% or more of their funding from their General Fund. In contrast, New Jersey was ranked with only 18 states in terms of receiving 50% or more of its funding from special revenues - fees and fines, while 32 states received less than 50% of their monies from these sources. Finally, while 35 states received greater than 25% of their budgets from federal monies, New Jersey was among 15 states that received less than 25% from federal sources. Accordingly, New Jersey was, indeed, on the higher end in terms of its dependency on fees and fines.

- In December of 1993 the National Conference of State Legislators conducted a survey of State Wastewater (NPDES) Permit Fees. As pointed out by the survey, NPDES fee revenues were generally found to account for no more than 25% to 33% of a State's Wastewater Discharge Permit program's operating budget. The balance, in most cases, was made up with dollars from General Funds and/or federal grants. As the survey demonstrated, New Jersey had the largest ratio of its budget from fees, as well as the largest range of/highest fees. In contrast, states such as New York, Ohio and Pennsylvania, while having programs similar in financial size, only covered from 25% to 50% of their respective programs from fees generated.

Accordingly, as pointed out by Commissioner Shinn, in his earlier remarks, the Department is looking to build on the progress made in this Fiscal Year in terms of reversing DEP's reliance on fees/fines and striking the balance so necessary to restore New Jersey's standing as a State that is indeed "Open for Business."



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AEA POSITION

AREAS OF DISCUSSION WITH LEGISLATURE REGARDING REFORM IN THE CLEAN WATER ENFORCEMENT ACT, NJPDES AND OTHER AREAS

INTRODUCTION

The Association of Environmental Authorities (AEA) has been contacted by various representatives of the Legislature regarding amendments that can be made to existing laws or the introduction of new laws that will better serve the public sector in terms of sewage, treatment and disposal, and other environmental matters. For example, on May 10, 1994, we had occasion to meet with representatives from the Office of Legislative Services to discuss a broad array of problems which the AEA has experienced and explore possible solutions to those problems. The purpose of this position paper is to very briefly outline the various topics that were discussed in an attempt to maintain a list of areas that need to be addressed and that we should utilize as an agenda for discussions with legislators who are interested in pursuing this matter.

GENERAL

The beginning point of most discussions involves the faulty premise of the Clean Water Enforcement Act. That underlying faulty premise is that any NJPDES Permit violation constitutes a pollution event and should therefore subject the permittee to fines and penalties. The reality is that a permit violation does not necessarily result in a pollution event because of the conservative nature of the permits and the limitations set forth therein. Nevertheless, this premise, coupled with mandatory penalty language for excursions has a cumulative effort on a variety of other programs. For example, the NJPDES Program is in the horrible state that it is because permittees must examine permits from the perspective that it must be able to comply 100% of the time with the terms of the permit. It cannot take the chance that it might violate a permit limitation even if that violation does not cause a pollution event because of the mandatory nature of fines and penalties. This concept is counter-productive because it ties up resources to argue over issues and limits that are not necessarily related to pollution prevention. As a result of all of this activity, enormous resources are expended over limitations that might never be violated.

The problem can be resolved in two different ways. First, the Clean Water Enforcement Act could be relaxed so that the mandatory nature of paper violations does not result in a penalty. Instead, the conditions existing in the stream would be examined as of the date of the paper violation, in order to ascertain whether a pollution event has occurred. If one has not occurred, the entity should not be subject to a fine or penalty. Thus, if a particular loading is violated, but the loading given the stream condition would be double or triple that in the permit and the exceedance does not reach those levels, there should not be a penalty imposed. The other way in which these issues can be addressed, is based upon a restructuring of the manner in which the permit limits are set so that multiple conservative assumptions do not result in a "ratcheting down" of the permit limitation to the point where it is so conservative that its violation might be frequent, but produces no pollution event.

CLEAN WATER ENFORCEMENT ACT AMENDMENTS

The following constitutes various areas of the Clean Water Enforcement Act that could be subject to amendment, depending upon the direction in which the Legislature desires to proceed:

- (1) **Multiple Violations for a Single Excursion.** Public entities can be hit with several violations for a particular event. If one parameter is exceeded, it is likely that others will be exceeded as well and rather than simply being subject to one fine or penalty, multiple penalties can be imposed. Although there are provisions in the Act which allow a violator to argue that a single operational occurrence has resulted in simultaneous violations of various pollutant parameters and therefore that the Department should consider the violation of interrelated permit parameters to be a single violation (Section 6e of Ch. 28 P.L. 1990), the burden is on the permittee to prove it.
- (2) The utilization of excessively conservative criteria such as 7Q10 to establish the permit limitations based upon the worst case conditions of a stream at ten year low flow for 7 consecutive days.
- (3) **The Department has no time period to respond to affirmative defenses of upset, bypass or laboratory error.** The law should be to require the Department to respond in writing on an affirmative defense within a set period of time (e.g 30 days), or the defense will be deemed to have been granted.
- (4) The Department is too involved with delegated local agencies and the administration of their programs. A delegated local agency should have the responsibility, authority and flexibility to proceed in the manner in which it feels it should, subject only to the mandatory federal requirements.

- (5) The ability to impose civil administrative penalties should be expanded to include nondelegated local agencies. In addition, there should be no need to have a local agency (or presently a delegated local agency) go to a DEP enforcement officer and get a preapproval for the imposition of the penalty.
- (6) On the penalty matrix, a public body should automatically be put at the lower level, as opposed to the mid-range.
- (7) The Authorities should be permitted to compromise fines and penalties to much less than the minimum 50% presently allowed by the law.
- (8) It should be clarified that interest is not to be paid by public bodies if they are unsuccessful in appealing a fine or penalty. Although N.J.S.A. 58:10A-10d(5) (Section 5 P.L. 1990 Ch. 28) implies that interest is not due from public agencies (since interest is to run from the date of the posting of security and a public agency does not have to post security), this provision should be made explicit.
- (9) Flow should be removed from the definition of "Serious Violation."
- (10) Eliminate the "Surrogate" section for delegated local agencies [N.J.S.A. 58:10A-7b(3)]. Here, it was thought that a surrogate test would be the bioassays that most treatment plants were performing. However, the Department has now indicated that the acute bioassays are not an acceptable surrogate, forcing the public bodies to expend significant resources in attempting to monitor its effluent. As an alternative, the word "indicator" could be substituted for "surrogate" or specifically provide that the acute bioassay test is an acceptable surrogate right in the legislation.
- (11) The Legislation should be very specific and leave less flexibility in the regulatory agency. Although this philosophy of government might be contrary to the traditional structure, it is important to understand that the DEP has expanded the legislative intent to such a degree that it barely resembles the intent the Legislature originally projected.
- (12) Clarify that wet weather such as occurred in the 1993 - 1994 winter and spring (1994) is an act of God and makes the upset defense a viable defense to violations.
- (13) The Antidegradation Policy should be legislatively established, with an appropriate test to be applied that is sensible.
- (14) Overall, relieve public agencies from large penalty assessments because the imposition of fines and penalties on public agencies simply represents a shifting of the tax burden to another class of individuals. If a public agency is subjected to significant fines and penalties, it is not paid by its stockholders, but

instead by its ratepayers, who simply have to pay higher rates in order to generate additional funds for the State. Although public agencies should not be given a "license to pollute" the imposition of fines and penalties must be tempered with the knowledge that the ultimate source of funds is the same citizen who is supposed to be the beneficiary of these laws.

NJPDES PROCESSING

I had generally outlined the process that a permittee must go through in reviewing its permit and the extensive Adjudicatory Hearing process, which includes the need for a major modification even when a settlement is reached, such that the process could actually exceed the five year life of the permit. The process must be abbreviated, with specific timetables that must be adhered to by the Department or result in a granting of the relief requested by the permittee. Also, DEP should be obligated to act upon a request by the permittee to modify its permit. Presently, DEP is not obligated to act on modification requests at all, or even to respond to them. thus, needed changes at a permit may not be done, or changed circumstances will not be reflected in the permit. Similarly, requests for stays must be handled in the same fashion, where a stay would be considered granted unless denied with reasons within a specific time period.

Overall, the hammer that must be maintained to make the DEP responsible must be one which results in the acceptance of the permittee's position unless a contrary position is asserted by the Department, similar to the approval of an application by default under the Municipal Land Use Law.

Specific suggestions would include a schedule such that permit applications renewal would have to be submitted 12 months prior to the expiration and a continuing timetable such that well prior to the expiration of the existing permit, the process has concluded.

Right now time is on the side of the DEP and not on the side of the permittee. The pendulum must swing in favor of the public entity, at least for the time being.

OAL rules and administrative procedures should be changed to allow consolidation of generic issues among permit holders so that the DEP treats all permittees the same. Presently, there is the lack of equal treatment among similar permit holders. Even the boilerplate language developed by the DEP is not utilized consistently for similar permits.

The DEP must be required to articulate the State's policy when dismissing comments by interested parties.

A law similar to that in Wisconsin can be adopted in New Jersey whereby federally mandated programs do not become permit conditions for a period of three years to allow an implementation period.

It must be clarified that all request for a stay should be granted, when DEP agrees to grant a hearing on a challenged permit retroactive to the effective date of the permit, as opposed to the date that the Department act on the stays. There should be an automatic approval for stays as above-mentioned, if the Department does not act within a specified period of time (e.g. 30 days).

ADMINISTRATIVE PROCEDURES ACT

There are probably changes that could be made in the Administrative Procedures Act. Some of those changes relate specifically to the appeal of the NJPDES Permits and are mentioned above. In addition, with respect to a petition for rulemaking, the rules should be changed to give the Department only two options -- (1) to accept the request and enter into a rulemaking process; or (2) reject the request with specific reasons. The Department should not have the option of taking the same under advisement or giving the same further consideration because the Petition enters an abyss from which it typically never exits.

Moreover, the "sunset" Executive Order for administrative regulations must be strengthened so that agencies cannot simply readopt that which they previously had, especially when they acknowledge that there is a need for major modification of the particular program.

CONCLUSION

The foregoing represents a general outline of various areas of concern that should be kept in mind as we proceed through the process. It is not intended to be an all inclusive list, but does tend to give some direction into the areas with which we must be concerned.

SPECIFIC LANGUAGE RECOMMENDATIONS

SERIOUS VIOLATION DEFINITION

58:10A-3 definitions letter (v). Serious violation needs to have included in this definition a similar sentence as included as the last sentence under (w), significant non complier. Specifically, a sentence should read "A local agency shall not be deemed in "serious violation" due to an exceedance of an effluent limitation established in a permit for flow."

FLOW MODELS

58:10A-6f(1) During the discussions with the Office of Legislative Services, the idea of utilizing something other than 7Q10 should be implemented by the Department. Over the years, the Department has used the 7Q10 flow with other safety factors applied, resulting in a too conservative criteria for developing effluent permit limits. This multiplicity of safety factors has lead to implementation of permit limits which are far too stringent than necessary from either an environmental or economic viewpoint. It is suggested that the Legislature include in the re-write of the Act the use of a 30Q5 for such things as phosphorous or nitrogen series for nutrient control. It is also recommended that harmonic mean flow be utilized for long term human health impacts. In fact, the Delaware River Basin Commission is recommending the implementation of harmonic mean flow for long term human health effects and 30Q5 on other areas. The use of the 30Q5 with perhaps a 10% safety factor would result in a more reasonable implementation of effluent standards without the multiplicity of safety factors. The 7Q10 should only be utilized for Dissolved Oxygen (D.O.) and no other effluent standards.

"SURROGATE"

58:10A-7b.(3) During the original discussions of the Clean Water Enforcement Act, the first sentence was included in one of the drafts. Arguments by the Association of Environmental Authorities resulted in the second sentence and the implementation of the words surrogate parameter for the categorical limits. Unfortunately, this section neglected to identify a threshold for establishing a limit for a particular pollutant. Without same, detection at any level now triggers a permit limit. This whole section outlived its usefulness. Over the last four years since the development of the Clean Water Enforcement Act, both federal and state regulatory bodies have implemented water quality standards that will eventually require all permittees to meet some level of permit compliance for various water quality based parameters. This section limits only those that are delegated local agencies, does not have any reasonable test of environmental impact and uses a shotgun to identify any and all parameters at any level of detection. As noted 58:10A-10d.(1)(b) The Department has adopted a set of rules which primarily includes a matrix for assessing penalties. For those which are local agencies it is suggested that when a penalty is issued against the local agency it would enter the matrix at the low level of each range as opposed to the mid range of each of the matrix categories. It is also suggested under d.(4) that the amount of any compromise penalty could be lowered to somewhere below 50% to perhaps 10%. However, in no case would the penalty be assessed at less than the minimum penalty required by statute.

**HEARING
REQUEST
TIME
EXTENSION**

58:10A-10d.(2) This section requires that after the Department issued an Order, the Ordered party would have only 20 days from receipt of notice in which to deliver to the Commissioner a written request for a hearing. Generally, in other cases, such as issuance of a draft permit, a 30 day period is provided. It would be in the best interest of justice with a fundamental sense of fairness that Ordered parties would have 30 calendar days from the receipt of notice to prepare a request for a hearing. The Department over the years has developed a form that has a series of questions, which requires a substantial amount of research to response to make sure that all rights of the Ordered party are protected. 20 Working days can easily result in 6 weekend days being included in the 20 days; therefore, a 30 day period of time is more reasonable and fair.

**NO INTEREST
ON BONDS TO
BE PAID BY
POTW'S**

58:10A-10(5) This section requires that a person other than a local agency shall post with the Commissioner a refundable bond or other security in the amount of the administrative penalty. In addition, if the amount of the penalty assessed by the Department is upheld in full, after the appeal of the assessment, the Department is entitled to daily interest charge on the amount of judgement from the date of the posting of the security with the Commissioner. Since only those other than a public agency have to post a bond, it appears that a public agency would not have to pay interest under this wording since no bond was posted. However, it needs to be clarified to specifically state that a local agency does not pay interest, only that it would pay the penalty.

**FINES FOR
REPORTING
VIOLATIONS**

58:10A-10.1.d The \$50,000 per month for any discharge monitoring report appears to be draconian in the amount and perhaps some other number should be included here. Given the other penalties that are provided by the statute and the matrix for actual violations, the \$50,000 per month is more directed toward paper violations or omitted parameters from a DMR. Perhaps the amount of \$20,000 or \$25,000 would be a more reasonable number.

**AFFIRMATIVE
DEFENSE
DEPARTMENT
RESPONSE**

58:10A-10.2.g. Additional wording should be added to the end of this section to reflect the requirement that the Department will review and respond within 30 calendar days of receipt of the request for an affirmative defense and that the failure of the Department to respond to the affirmative defense will result in the approval of said affirmative defense. Many authorities and publicly owned treatment facilities have requested affirmative defenses and have not received a response from the Department. This section provides that once the Department responds it would be a final agency action and the permittees would have available to them an appeal to a court of competent jurisdiction; however, due to the lack of response, there is no appeal proceedings and the agencies eventually receive their response in the form on an Administrative Order with penalties and then are thrown into the Administrative law Judge procedure. This is obviously unfair given the fact that the agencies who wish to raise the affirmative defense have to report it within 24 hours and have to submit a written report within 5 days. Again, it is unfair to those who properly follow the very limited and short term time frames of reporting and they would be thrown into a vacuum of no response. A 30 calendar day time frame from receipt of the written documentation is more than an adequate time frame for the Department to review it and respond to the permittee.

**CIVIL ADMIN.
PENALTIES**

58:10A-10.4 This provision of the Act was subsequent to what was know as the Clean Water Enforcement Act and provided that delegated local agencies have the ability to issue summonses to municipal court or issue their own Administrative Orders. Authorities who have used administrative orders, as well as, summonses have found it an effective enforcement tool by a delegated local agency. However, what has been problematic is in section 58:10A-10.5 where a local agency in issuing an Administrative Order has to consult with a compliance officer designated by the Department. The Act requires the imposition of penalties for serious violators within 6 months of the serious violation (see 58:10A-10.1b.). Under 58:10A-6i.(1) All local agencies shall have the ability to impose the same remedies, fines and penalties as authorized pursuant to subsection a. of section 10 (58:10A-10 and 58:10A-10.1). This is the section that requires the 6 month assessment. However, it has been reported by other authorities that they prepared their Administrative Orders and forwarded them to the Compliance Officer at NJDEP and have not received responses, or received late responses which could impact upon the 6 month requirement of imposition of the serious

violation. AEA's suggestions are twofold: the section in the first sentence after the comma "after consultation with the Compliance Officer designated by the Department" be deleted from this section; and, that since the above noted section of the Act deals with all local agencies that the word "delegated" be deleted in that section. Section 58:10A-10.5 should read:

A local agency may issue a civil administrative penalty for any violations for the provisions of... Local agencies would implement the \$1,000/\$5,000 fines for SV or SNC and be complying with the Act.

ISSUANCE OF STAYS

The Act does not provide for a section on how the Department would issue stays on permit conditions, when requested by a permittee after the issuance of a final permit. The Act should require that the Department again act within 30 days of receipt of a request for a stay and that the Department will either grant or deny the stay. Should the Department fail to act at the end of the 30 day period, the stay would be automatically approved.

TESTIMONY BEFORE THE SENATE ENVIRONMENT COMMITTEE
ON THE NEW JERSEY WATER POLLUTION CONTROL ACT
OCTOBER 13, 1994

PRESENTED BY DREW KODJAK, ENVIRONMENTAL ATTORNEY
NEW JERSEY PUBLIC INTEREST RESEARCH GROUP

Good Afternoon. My name is Drew Kodjak, Environmental Attorney with the New Jersey Public Interest Research Group (NJPIRG). Thank you for inviting me to testify today on New Jersey's clean water laws. Before I get into my seven recommendations / findings, I would like to start by saying that New Jersey has a great deal to be proud of in terms of its serious attempts to deal with our significant water pollution problems. We have invested significant amounts of time, energy and resources into protecting our more pristine water bodies and cleaning up our degraded rivers and streams. These investments have improved the conditions of some of our worse rivers, and protected some of our more pristine waters from significant degradation. We should continue the strict enforcement and strong investment of the past in order to maintain and improve the quality of our rivers and streams.

The integrity of our rivers and lakes affects thousands of people who live in New Jersey or who come to New Jersey as tourists. New Jersey has a long tradition of people caring about their waterways. We have hundreds of active organizations dedicated to the preservation of particular water bodies, such as the numerous chapters of Trout Unlimited, or the Federation of New Jersey Sportsmen, or the New Jersey Coast Anglers, or any one of the numerous watershed associations and waterwatch groups throughout the state. These are the people who are relying on this committee -- and the state as a whole -- to protect our state's streams -- both trout-production and otherwise -- and lakes -- both swimmable and non-swimmable -- for their recreation or for their livelihood.

I have reduced my comments down to seven recommendations / findings.

1. New Jersey's waterways Need Protection and Improvement.

At present, DEP estimates that 77% of our water bodies do not support primary contact recreation, such as swimming, wading or bathing.¹ According to the 1990 Water Quality Inventory Report, 70% of our rivers and streams are categorized as NOT meeting the fishable/swimmable standards under the federal clean water act. The trends seem to indicate that while we have done well at improving the condition of some of our most degraded rivers, such as the Passaic which now supports fish in some areas, we have been seeing a degradation of water quality in some of our higher quality rivers and streams.

For instance, the Pompton, Rockaway and Ramapo Rivers, all located in northern New Jersey, have degraded from swimmable to nonswimmable status since 1977.²

2. Deal with Non-point Source Pollution

Non-point source pollution is the last frontier of water pollution control. NJPIRG strongly supports the watershed-based approach as the most comprehensive way of dealing with non-point source pollution. I have submitted a report written by NJPIRG and the Environmental Defense Fund which spells out our view of an appropriate watershed-based approach.³

3. Deal with Combined Sewer Outfalls and Storm sewers.

Combined sewer outfalls and storm sewers are significant sources of water pollution, especially in urban areas. Studies indicate that the "first flush" of storm sewers after a heavy rainfall discharges the equivalent of raw, untreated sewage. Combined sewer overflows are also responsible for releasing raw untreated sewage, along with industrial discharges, into our waterbodies after heavy rains. The solution to these problems will require significant funding, and may require amendments to the bonding capabilities of the waste water fund.

4. Maintain the Point Source Program.

Today there is greater compliance with the federal and state clean water standards than at any time in the past. Total violations decreased, ranging from the lowest at 14% for significant noncompliers to the highest decrease at 96% for violations of compliance schedules between 1991 and 1994, the only years for which we have reliable data.⁴

This is significant progress, especially when compared with the thousands of violations which went largely unenforced in the 1980's.⁵ Between 1984 and 1987, NJPIRG documented 3009 individual permit violations by industry and sewage treatment plants. The NJ DEP and the U.S. EPA responded to only 95 of these violations (3% response rate) with only two fines recorded.

5. Provide Sufficient Resources for DEP to Administer the Water Program

Deal with the NJPDES fees issue but do not allow the DEP's budget to be cut so that it can no longer administer the program in an environmentally-sound manner. Fees are based on the amount of environmental degradation caused by the discharge. In order to calculate the environmental degradation, the DEP factors in the volume of the discharge and the quality of the water body. This system creates an appropriate incentive for dischargers to reduce the volume of their discharges.

I should note that to the extent that the larger dischargers are subsidizing the smallest dischargers, there should be some changes. In other words, the smallest dischargers, who now pay a minimum of \$500 for a permit, should be charged at least the amount it costs the DEP to administer the permit.

6. Balance Permitting Speed with Adequate Review.

Deal with the NJPDES permit backlog but ensure that DEP has sufficient staff and resources to adequately review each permit application. In truth, the NJPDES permit backlog is an environmental concern rather than a business concern. Businesses that do not have their permits renewed simply operate under the old permits which are almost always have fewer parameters and more lenient standards.

7. Protect our Drinking Water Resources

At present, New Jersey has no special protections for its drinking water resources. Water companies are powerless to affect the development plans of upstream communities even when development of the watershed threatens drinking water quality and will most likely raise treatment costs for their consumers. New Jersey is home to a number of responsible and efficient water companies, such as New Jersey American Water Company, Elizabeth and Hackensack. These companies and the water supply authorities established by the state should be tapped as resources in our efforts to protect and improve our.

¹ Third Annual Report of the Clean Water Enforcement Act, (1994), at 50.

² Drinking Waters At Risk, A Strategy to Protect New Jersey's Drinking Water Watersheds (1994), at vi.

³ Drinking Waters At Risk, A Strategy to Protect New Jersey's Drinking Water Watersheds (1994).

⁴ See First, Second and Third Annual Reports of the Clean Water Enforcement Act.

⁵ Polluters Playground: An Investigation of Clean Water Violations in New Jersey, NJPIRG, (1988).

NJPIRG

Summary

The New Jersey Public Interest Research Group (NJPIRG) has completed a comprehensive investigation of water pollution law violations by industry and municipal sewage treatment plants. "Polluters' Playground: An Investigation of Water Pollution Violations in New Jersey," documents chronic and substantial permit violations and a pattern of government inaction that violates federal and state law.

NJPIRG examined discharge monitoring reports, permits, government reports and sewage treatment plant records for the two year period October 1984-October 1986, with follow-up research through February 1987. Based on file research, NJPIRG projects that a minimum of 6,000 violations occurred during the study period.

The study documented 3,009 individual permit violations by industry and sewage treatment plants. The N.J. Department of Environmental Protection (DEP) and U.S. Environmental Protection Agency (EPA) responded to only 95 of these violations (3% response rate) with only two fines recorded (22 responses by EPA, 73 responses by DEP).

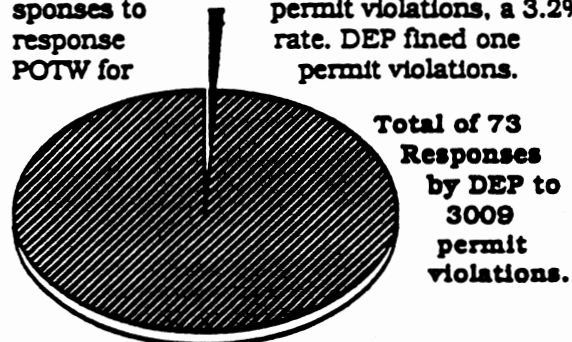
NJPIRG examined monitoring files for one half (78) of the major industrial dischargers in the state, documenting 1,367 reporting and discharge violations. Virtually all companies studied (91%) were found to be in violation. Almost two-thirds (62%) of companies recorded "substantial" violations (50% over permit limits or higher) and half (49%) were classified as "chronic" polluters (4 or more violations in a 6 month period). Over one third (39%) were both chronic and substantial polluters.

The study profiled nine companies in chronic violation. A follow-up study of records through February 1988 found most of these nine companies to be in continuing violation.

DEP and EPA combined responded in only 42 instances to these company-reported violations - a 3% response rate. Only 7 responses appeared to have resulted in companies coming into compliance, an "effective" government response rate of 1%. DEP imposed just one fine for permit violations.

NJPIRG investigated records for the 22 largest sewage treatment plants in the state identifying 1,642 permit violations. All of the sewage treat-

ment plants studied were in violation of permits. Over three-quarters (80%) of treatment plants were chronic violators, and two thirds (63%) were both chronic and substantial violators. Only one treatment plant permit contained limits on the discharge of toxic effluent, even though all 22 plants accept toxic effluent from "indirect" industrial dischargers. DEP made a total of 53 responses to response POTW for permit violations, a 3.2% rate. DEP fined one permit violations.



NJPIRG examined DEP annual audits for treatment plants and municipal records for industries which discharge toxic wastewater into treatment plants. The study documented 1000 "pretreatment" permit violations and spills with few recorded enforcement actions beyond warnings taken by treatment plants.

The report concludes that "The overall picture which emerges from this study is of a status quo reporting system which meets the most minimal requirements of the Clean Water Act without seriously inconveniencing polluters. A clear pattern of industry law-breaking and the laissez-faire approach of government agencies has created a polluters' playground in which chronic and substantial pollution violations are routine."

NJPIRG proposes passage of amendments to state law, the "Clean Water Enforcement Act" which would establish a system of mandatory fines for water polluters, require limits on toxic discharges, and make jail terms mandatory for repeat violators. The study notes the effectiveness of lawsuits filed under the the citizen suit provisions of the federal Clean Water Act and recommends that New Jersey expand citizens' right to sue.

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Testimony of
Timothy P. Dillingham, Director
Sierra Club, New Jersey Chapter
Before
The Senate Environment Committee
on
The New Jersey Water Quality Planning Act
and
The New Jersey Water Pollution Control Act
October 13, 1994

Thank you for the opportunity to comment this morning on these very important environmental laws. It may appear somewhat obvious, but it bears repeating that there is nothing so fundamentally important to both our ecological and environmental health, and our economic well being as the quality of the state's waters; there is no economic system which can function without clean water. In the time since New Jersey passed the Water Quality Planning Act and the Water Pollution Control Act there have been tremendous strides in both our understanding of ecological systems, both in their natural character and behavior and the impacts and ramifications of societal alterations, and in the state of the art of water resource management. Therefore, a reexamination of our approaches to the management of this most important of natural resources is appropriate and timely.

In this opening session of discussions surrounding such a reexamination, I would like to focus on the water quality planning side of the equation, rather than the technical and funding issues which lie at the heart of some of the concerns and criticisms expressed by industry and the regulated community. It is this side of the program which goes to issues of concern to the environmental community, issues which are pressing in New Jersey and must be addressed in the evolution and restructuring of the water programs of the state. They include:

- Management of nonpoint sources of pollution, both in and of themselves, and in relation to the interaction between point source regulation and nonpoint source management;
- The development of water resource management programs which are based upon and reflect ecological system characteristics, such as watershed management approaches;
- The protection and preservation of existing natural systems and environmentally sensitive areas as a key policy element of water resource management programs;
- Addressing cumulative and secondary impacts of development decisions within the water resource management programs;

The current water quality management planning process in place in New Jersey does not adequately address these issues at the present time, although the efforts of the Department of Environmental Protection to move in the direction of watershed management shows great promise.

Management of Nonpoint Sources of Pollution

There is growing recognition that a significant contribution to the impairment of the state's water quality comes from nonpoint sources of pollution, or pollution originating

from non-discrete sources. These sources are associated with various land uses, and are difficult to manage through existing DEP programs because of a general lack of control over initial land use decisions, a lack of regional planning processes which incorporate clearly articulated environmental criteria into local land use planning and decision-making, and the absence of appropriate guidance on management strategies and best management practices. Additionally, other nonregulatory programs within the DEP cannot be brought to bear on NPS problems due to a lack of a coordinated policy and planning context in which to apply them; such programs would include the Sewage Infrastructure Improvement Act, other infrastructure funding and development programs, the stormwater management program, technical assistance programs and land acquisition programs.

Secondly, as I am sure the municipal and county authorities representatives will testify, the impact of nonpoint sources on the regulation of point sources is tremendous, and clear there is an interrelationship between the two which must be addressed in the overall water quality planning context.

The key to beginning to address the problem of nonpoint source pollution must be grounded in a recognition of its relationship to land use, and by extension, the legal jurisdiction of municipalities over land use decisions. Any changes to state law governing water resource management to effectively address the nonpoint source pollution issue must include mandatory requirements for municipal land use planning processes and controls to incorporate appropriate planning, regulatory and nonregulatory approaches. This effort should be complemented by a change in the water quality planning process conducted by DEP, as well as a new and expanded role regarding technical assistance and the development of guidance on appropriate measures.

Ecosystem and Watershed Management

Current planning, plan amendment and consistency determinations conducted by the DEP are primarily driven by permit applications; they are not policy-driven. Further, these decisions take place within a context which is defined geographically by the political jurisdictions of municipalities, not by ecological characteristics. This approach constrains the ability of the Department, or any other management agency, to address issues beyond site-specific proposals. This reactive approach, precludes setting an affirmative planning framework in which issues such as nonpoint source pollution and secondary and cumulative impacts can be addressed. It also limits the ability of the water quality management planning process to devise a meaningful set of policies, identify and coordinate programs around issues which cross program boundaries, and to react to

observed changes and promote appropriate amendments to the plans; all appropriate capabilities for the planning process to have.

We strongly support the direction DEP has been moving in towards watershed management. Not only does this establish an ecosystem basis for the management program, it provides an opportunity to address the limitations mentioned above. Further, it provides a logical context for carrying out fundamental resource management functions which need to be strengthened within the program, including: data collection and monitoring; data assessment and modeling; policy development and planning; application of implementation mechanisms, including permitting but also non-regulatory approaches; and enforcement. We do feel however, that specific and clear statutory authority for the DEP to carry out this approach should be established.

Protection and Preservation of Natural Systems and Environmentally Sensitive Areas

Many of the water quality problems observed in New Jersey may be mitigated against through the preservation of natural systems and environmentally sensitive areas, such as watershed areas, stream corridors, wetland buffer areas and other environmentally sensitive areas. Strategic protection of these key elements of our "natural infrastructure" must be included in any comprehensive approach to water quality protection. Utilizing a watershed approach will enhance the ability of the Department to identify such areas where protection is appropriate, and plays a role in the overall water quality strategy. Two issues arise: whether there are adequate programs for the preservation and protection of these areas currently which can be brought to bear in situations identified through the planning process; secondly, coordinating programs within the DEP to achieve such protection. In the first instance, several important programs are lacking such as stream corridor protection and water supply watershed protection. In the second case, the necessary internal coordination is currently lacking.

Cumulative and Secondary Impacts

A draft working paper out of DEP concluded, "A frequent criticism of the Water Quality Management Planning program is that, while it was intended to be a long-range, regional planning process, it has not adequately addressed cumulative and secondary impacts on water resources and other environmentally sensitive areas of the State. Because the Water Quality Management Planning Program has been geared to react to individual permit applications and project proposals, the project review process assessed consistency with the plans only in terms of the direct impact of individual projects. Such a site-specific impact analysis does not take into account the cumulative impacts of these individual activities. Thus, even though one of the goals ... is to insure that water quality

standards are met, a mechanism for assessing cumulative impacts ... does not exist." We agree wholly with this assessment. The need for the development within the framework of the water quality plans becomes more important in light of the increasing emphasis on nonpoint source pollution problems. This issue returns us to the need for better planning processes which may be able to anticipate the impacts of growth and development, and establish an appropriate context for the review of permit proposals. Much of this process is tied to infrastructure decisions, and the extension of that infrastructure into currently less developed areas. In this regard, the integration and more conscious use of the State Development and Redevelopment plan in the water quality planning process provides an opportunity which should not be missed. We would encourage the exploration of that opportunity in the ongoing discussions surrounding this review initiative.

Thank you for the opportunity to contribute to these opening deliberations on reviewing the water quality programs of the state. We look forward to the opportunity to continue to contribute and participate.

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