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PUBLIC HEARING
before
SENATE ENERGY AND ENVIRONMENT COMMITTEE
SENATE BILL NO. 2787
(The Clean Water Enforcement Act)

October 12, 1988
Brick Township Municipal Bldg.
401 Chambers Bridge Road
Brick, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Daniel J. Dalton, Chairman
Senator William L. Gormley

ALSO PRESENT:

Norman Miller
Office of Legislative Services
Aide, Senate Energy and Environment Committee

* * * * *

Hearing Recorded and Transcribed by
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WILLIAM L. GORMLEY
LEE B. LASKIN

New Jersey State Legislature
SENATE ENERGY AND ENVIRONMENT COMMITTEE
STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625
TELEPHONE: (609) 292-7676

October 3, 1988

NOTICE OF PUBLIC HEARING

The Senate Energy and Environment Committee will hold a public hearing on October 12, 1988 at 11:00 A.M. in the Brick Township Municipal Building, 401 Chambers Bridge Road, Brick, New Jersey.

The subject of the Public Hearing will be S-2787
("The Clean Water Enforcement Act.")

Persons interested in testifying at the public hearing should contact Mark T. Connelly, Aide to the Committee, at (609) 292-7676.

SENATE, No. 2787

STATE OF NEW JERSEY

INTRODUCED AUGUST 4, 1988

By SENATORS PALLONE, VAN WAGNER, PATERNITI,
CONTILLO, COSTA, DUMONT, RAND, RUSSO, LASKIN,
ZANE, GAGLIANO, McNAMARA, GORMLEY, AMBROSIO,
FELDMAN, BROWN, RICE, McMANIMON,
LIPMAN AND O'CONNOR

1 AN ACT concerning water pollution control, creating a Clean
Water Enforcement Fund, and amending and supplementing
3 P.L.1977, c.74 (C.58:10A-1 et seq.).

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

7 1. (New section) This act shall be known, and may be cited, as
the "Clean Water Enforcement Act."

9 2. Section 3 of P.L.1977, c.74 (C.58:10A-3) is amended to read
as follows:

11 3. As used in this act, unless the context clearly requires a
different meaning, the following words and terms shall have the
13 following meanings:

a. "Administrator" means the Administrator of the United
15 States Environmental Protection Agency or his authorized
representative;

17 b. "Areawide plan" means any plan prepared pursuant to
section 208 of the Federal Act;

19 c. "Commissioner" means the Commissioner of Environmental
Protection or his authorized representative;

21 d. "Department" means the Department of Environmental
Protection;

23 e. "Discharge" means the releasing, spilling, leaking, pumping,
pouring, emitting, emptying, or dumping of a pollutant into the
25 waters of the State or onto land or into wells from which it might
flow or drain into said waters, and shall include the release of any
27 pollutant into a municipal treatment works;

f. "Effluent limitation" means any restriction on quantities,
29 quality, rates and concentration of chemical, physical, thermal,
biological, and other constituents of pollutants;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 g. "Federal Act" means the "Federal Water Pollution Control
Act Amendments of 1972" (Public Law 92-500; 33 U.S.C.1251 et
3 seq.);

h. "Municipal treatment works" means the treatment works of
5 any municipal, county, or State agency or any agency or
subdivision created by one or more municipal, county or State
7 governments and the treatment works of any public utility as
defined in R.S.48:2-13;

9 i. "National Pollutant Discharge Elimination System" or
"NPDES" means the national system for the issuance of permits
11 under the Federal Act;

j. "New Jersey Pollutant Discharge Elimination System" or
13 "NJPDES" means the New Jersey system for the issuance of
permits under this act;

15 k. "Permit" means an NJPDES permit issued pursuant to
section 6 of this act;

17 l. "Person" means any individual, corporation, company,
partnership, firm, association, owner or operator of a treatment
19 works, political subdivision of this State and any state or
interstate agency. "Person" shall also mean any responsible
21 corporate official for the purpose of enforcement action under
section 10 of this act;

23 m. "Point source" means any discernible, confined and
discrete conveyance, including but not limited to, any pipe, ditch,
25 channel, tunnel, conduit, well, discrete fissure, container, rolling
stock, concentrated animal feeding operation, or vessel or other
27 floating craft, from which pollutants are or may be discharged;

n. "Pollutant" means any dredged spoil, solid waste,
29 incinerator residue, sewage, garbage, refuse, oil, grease, sewage
sludge, munitions, chemical wastes, biological materials,
31 radioactive substance, thermal waste, wrecked or discarded
equipment, rock, sand, cellar dirt, and industrial, municipal or
33 agricultural waste or other residue discharged into the waters of
the State;

35 o. "Pretreatment standards" means any restriction on
quantities, quality, rates, or concentrations of pollutants
37 discharged into municipal or privately owned treatment works
adopted pursuant to P.L.1972, c.42 (C.58:11-49 et seq.);

39 p. "Schedule of compliance" means a schedule of remedial

1 measures including an enforceable sequence of actions or
operations leading to compliance with water quality standards, an
3 effluent limitation or other limitation, prohibition or standard;

q. "Substantial modification of a permit" means any
5 significant change in any effluent limitation, schedule of
compliance, compliance monitoring requirement, or any other
7 provision in any permit which permits, allows, or requires more or
less stringent or more or less timely compliance by the permittee;

9 r. "Toxic pollutant" means those pollutants, or combinations
of pollutants, including disease causing agents, which after
11 discharge and upon exposure, ingestion, inhalation or assimilation
into any organism, either directly or indirectly by ingestion
13 through food chains, will, on the basis of information available to
the commissioner, cause death, disease, behavioral abnormalities,
15 cancer, genetic mutations, physiological malfunctions, including
malfunctions in reproduction, or physical deformation, in such
17 organisms or their offspring;

s. "Treatment works" means any device or systems, whether
19 public or private, used in the storage, treatment, recycling, or
reclamation of municipal or industrial waste of a liquid nature
21 including intercepting sewers, outfall sewers, sewage collection
systems, cooling towers and ponds, pumping, power and other
23 equipment and their appurtenances; extensions, improvements,
remodeling, additions, and alterations thereof; elements essential
25 to provide a reliable recycled supply such as standby treatment
units and clear well facilities; and any other works including sites
27 for the treatment process or for ultimate disposal of residues
resulting from such treatment. [Additional] Additionally,
29 "treatment works" means any other method or system for
preventing, abating, reducing, storing, treating, separating, or
31 disposing of pollutants, including storm water runoff, or industrial
waste in combined or separate storm water and sanitary sewer
33 systems;

t. "Waters of the State" means the ocean and its estuaries, all
35 springs, streams and bodies of surface or ground water, whether
natural or artificial, within the boundaries of this State or subject
37 to its jurisdiction[.];

u. "Chronic violator" means a person who has a record of
39 recurring serious violations.

1 v. "Recurring serious violations" means four or more serious
2 violations of the same NJPDES or NPDES permit within a six
3 month period;

4 w. "Serious violation" means a violation of the effluent
5 limitations for any pollutant in a NJPDES or NPDES permit by
6 40% or more; except that the department, on a case-by-case
7 basis, may utilize a greater or lesser percentage in determining a
8 serious violation if the department states the specific reasons for
9 the determination based on permit values, test parameters and
10 harm to the environment or the public health. Serious violation
11 includes the failure to submit a completed discharge monitoring
12 report, but does not include contested permit renewals,
13 stormwater runoffs, or acts of God;

14 x. "Stipulated penalty" means a penalty that is payable for
15 each violation of a standard, condition, limitation or deadline
16 prescribed by a schedule of compliance agreed to by a violator.
17 (cf: P.L.1977, c.74, s.3).

18 3. Section 4 of P.L.1977, c.74 (C.58:10A-4) is amended to read
19 as follows:

20 4. The commissioner shall have power to prepare, adopt,
21 amend, repeal and enforce, pursuant to the "Administrative
22 Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.), reasonable
23 codes, rules and regulations to prevent, control or abate water
24 pollution and to carry out the intent of this act, either throughout
25 the State or in certain areas of the State affected by a particular
26 water pollution problem. Such codes, rules and regulations may
27 include, but shall not be limited to, provisions concerning:

28 a. The storage of any liquid or solid pollutant in a manner
29 designed to keep it from entering the waters of the State;

30 b. The prior submission and approval of plans and
31 specifications for the construction or modification of any
32 treatment work or part thereof;

33 c. The classification of the surface and ground waters of the
34 State and the determination of water quality standards for each
35 such classification;

36 d. The limitation of effluents, including toxic effluents as
37 indicated herein;

38 e. The determination of pretreatment standards;

39 f. The establishment of user charges and cost recovery

- 1 requirements in conformance with the Federal Act[.];
- 2 g. The establishment of a civil penalty policy governing the
- 3 uniform assessment of civil penalties in accordance with section
- 4 10 of P.L.1977, c.74 (C.58:10A-10).
- 5 (cf: P.L.1977, c.74, s.4)
- 6 4. Section 6 of P.L.1977, c.74 (C.58:10A-6) is amended to read
- 7 as follows:
- 8 6. a. It shall be unlawful for any person to discharge any
- 9 pollutant, except in conformity with a valid New Jersey Pollutant
- 10 Discharge Elimination System permit that has been issued by the
- 11 commissioner pursuant to this act or a valid National [Pollution]
- 12 Pollutant Discharge Elimination System permit issued by the
- 13 administrator pursuant to the Federal Act, as the case may be.
- 14 b. It shall be unlawful for any person to build, install, modify
- 15 or operate any facility for the collection, treatment or discharge
- 16 of any pollutant, except after approval by the department
- 17 pursuant to regulations adopted by the commissioner.
- 18 c. The commissioner is hereby authorized to grant, deny,
- 19 modify, suspend, revoke, and reissue NJPDES permits in
- 20 accordance with this act, and with regulations to be adopted by
- 21 him. The commissioner may reissue, with or without
- 22 modifications, an NJPDES permit duly issued by the federal
- 23 government as the NJPDES permit required by this act.
- 24 d. The commissioner may, by regulation, exempt the following
- 25 categories of discharge, in whole or in part, from the requirement
- 26 of obtaining a permit under this act; provided, however, that an
- 27 exemption afforded under this section shall not limit the civil or
- 28 criminal liability of any discharger nor exempt any discharger
- 29 from approval or permit requirements under any other provision
- 30 of law:
- 31 (1) Additions of sewage, industrial wastes or other materials
- 32 into a publicly owned sewage treatment works which is regulated
- 33 by pretreatment standards;
- 34 (2) Discharges of any pollutant from a marine vessel or other
- 35 discharges incidental to the normal operation of marine vessels;
- 36 (3) Discharges from septic tanks, or other individual waste
- 37 disposal systems, sanitary landfills, and other means of land
- 38 disposal of wastes;
- 39 (4) Discharges of dredged or fill materials into waters for

1 which the State could not be authorized to administer the section
2 404 program under section 404(g) of the "Federal Water Pollution
3 Control Act Amendments of 1972," as amended by the "Clean
4 Water Act of 1977" (33 U.S.C. §1344) and implementing
5 regulations;

(5) Nonpoint source discharges;

7 (6) Uncontrolled nonpoint source discharges composed entirely
8 of storm water runoff when these discharges are uncontaminated
9 by any industrial or commercial activity unless these particular
10 storm water runoff discharges have been identified by the
11 administrator or the department as a significant contributor of
12 pollution;

13 (7) Discharges conforming to a national contingency plan for
14 removal of oil and hazardous substances, published pursuant to
15 section 311(c)(2) of the Federal Act.

e. The commissioner shall not issue any permit for:

17 (1) The discharge of any radiological, chemical or biological
18 warfare agent or high-level radioactive waste into the waters of
19 this State;

20 (2) Any discharge which the United States Secretary of the
21 Army, acting through the Chief of Engineers, finds would
22 substantially impair anchorage or navigation;

23 (3) Any discharge to which the administrator has objected in
24 writing pursuant to the Federal Act;

25 (4) Any discharge which conflicts with an areawide plan
26 adopted pursuant to law.

27 f. A permit under this act shall require the permittee:

28 (1) To achieve effluent limitations based upon guidelines or
29 standards established pursuant to the Federal Act or this act,
30 together with such further discharge restrictions and safeguards
31 against unauthorized discharge as may be necessary to meet
32 water quality standards, areawide plans adopted pursuant to law,
33 or other legally applicable requirements;

34 (2) Where appropriate, to meet schedules for compliance with
35 the terms of the permit and interim deadlines for progress or
36 reports of progress towards compliance;

37 (3) To insure that all discharges are consistent at all times
38 with the terms and conditions of the permit and that no pollutant
39 will be discharged more frequently than authorized or at a level

1 in excess of that which is authorized by the permit;

3 (4) To submit application for a new permit in the event of any
5 contemplated facility expansion or process modification that
7 would result in new or increased discharges or, if these would not
violate effluent limitations or other restrictions specified in the
permit, to notify the commissioner of such new or increased
discharges;

9 (5) To install, use and maintain such monitoring equipment and
11 methods, to sample in accordance with such methods, to maintain
13 and retain such records of information from monitoring
activities, and to submit to the commissioner such reports of
15 monitoring results [as he may require] at least monthly, as the
17 commissioner may prescribe. Reports of monitoring results shall
be signed by the chief executive officer in charge of the facility
or municipal treatment works. A chief executive office may
authorize another responsible official to sign a monthly
monitoring report only in the absence of the chief executive from
the State for at least a two week period and if a report is
required to be filed during that period of time, but the chief
executive officer shall be liable in all instances for the accuracy
of all the information provided in the monitoring report;

21 (6) At all times, to maintain in good working order and operate
23 as effectively as possible, any facilities or systems of control
25 installed to achieve compliance with the terms and conditions of
the permit;

27 (7) To limit concentrations of heavy metals, pesticides,
29 organic chemicals and other contaminants in the sludge in
conformance with the land-based sludge management criteria
established by the department in the Statewide Sludge
31 Management Plan adopted pursuant to the "Solid Waste
Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) or
33 established pursuant to the Federal Water Pollution Control Act
Amendments of 1972 (33 U.S.C. §1251 et seq.), or any regulations
adopted pursuant thereto.

35 g. The commissioner shall have a right of entry to all premises
37 in which a discharge source is or might be located or in which
monitoring equipment or records required by a permit are kept,
for purposes of inspection, sampling, copying or photographing.

39 h. In addition, any permit issued for a discharge from a

1 municipal treatment works shall require the permittee:

2 (1) To notify the commissioner in advance of the quality and
3 quantity of all new introductions of pollutants into a facility and
4 of any substantial change in the pollutants introduced into a
5 facility by an existing user of the facility, except for such
6 introductions of nonindustrial pollutants as the commissioner may
7 exempt from this notification requirement when ample capacity
8 remains in the facility to accommodate new inflows. Such
9 notifications shall estimate the effects of such changes on the
10 effluents to be discharged into the facility.

11 (2) To establish an effective regulatory program, alone or in
12 conjunction with the operators of sewage collection systems, that
13 will assure compliance and monitor progress toward compliance
14 by industrial users of the facilities with user charge and cost
15 recovery requirements of the Federal Act or State law and
16 toxicity standards adopted pursuant to this act and pretreatment
17 standards.

18 (3) As actual flows to the facility approach design flow or
19 design loading limits, to submit to the commissioner for his
20 approval, a program which the permittee and the persons
21 responsible for building and maintaining the contributory
22 collection system shall pursue in order to prevent overload of the
23 facilities.

24 i. All owners of municipal treatment works [are hereby
25 authorized to] shall prescribe terms and conditions, consistent
26 with applicable State and federal law, upon which pollutants may
27 be introduced into such works, and to exercise the same right of
28 entry, inspection, sampling [and] , copying , and imposing
29 remedies, fines and penalties with respect to users of such works
30 as are vested in the commissioner by this act or by any other
31 provision of State law. Terms and conditions shall include limits
32 for heavy metals, pesticides, organic chemicals and other
33 contaminants in industrial wastewater discharges based upon the
34 attainment of land-based sludge management criteria established
35 by the department in the Statewide Sludge Management Plan
36 adopted pursuant to the "Solid Waste Management Act,"
37 P.L.1970, c.39 (C.13:1E-1 et seq.) or established pursuant to the
38 Federal Water Pollution Control Act Amendments of 1972 (33
39 U.S.C. §1251 et seq.), or any regulations adopted pursuant thereto.

1 j. In reviewing permits submitted in compliance with this act
and in determining conditions under which such permits may be
3 approved, the commissioner shall encourage the development of
comprehensive regional sewerage facilities which serve the needs
5 of the regional community and which conform to the adopted
area-wide water quality management plan for that region.

7 k. No permit may be issued or renewed, or modified so as to
lower any water quality standard or limitation, until the applicant
9 or holder thereof, as the case may be, has paid all penalties and
finances assessed pursuant to section 10 of P.L. 1977, c.74, or has
11 entered into an agreement with the commissioner establishing a
payment schedule therefor.

13 l. Any facility subject to the provisions of P.L.1977, c.74
(C.58:10A-1 et seq.) shall be inspected by the department at least
15 once a year. An inspection shall be conducted within 6 months of
a permittee's submission of an application for a permit or permit
17 renewal, except that if a scheduled inspection cannot be made for
any reason, the inspection shall be rescheduled to be performed
19 within 30 days of the originally scheduled inspection or, in the
case of a temporary facility shutdown, of resumed plant
21 operation. Inspections shall include:

23 (1) A sampling of the effluent at each outfall for each
pollutant regulated by the permit;

25 (2) An analysis of all collected samples by a certified
laboratory other than one that has been or is being used by the
27 permittee, or that is directly or indirectly owned, operated or
managed by the permittee;

29 (3) An evaluation of the maintenance record of the facility's
treatment equipment;

(4) An evaluation of the permittee's sampling techniques; and

31 (5) An inspection of the permittee's sample storage facilities
and techniques.

33 m. The facility of a permittee identified as a chronic violator
shall be subject to an inspection by the department to evaluate
35 the cause of the violation or violations, which inspection shall be
in addition to the requirements of subsection l. of this section.
37 The inspection shall be conducted within 30 days of submission of
the discharge monitoring report, which report shall determine the
39 applicability of the requirements of this subsection. The

1 inspection shall be for the purpose of making recommendations to
2 enable the permittee to comply with permit requirements.

3 n. Notwithstanding any provision of P.L.1977, c.74
4 (C.58:10A-1 et seq.) to the contrary, any NJPDES permit issued
5 or renewed, or any NPDES permit reissued as a NJPDES permit
6 after the effective date of P.L. c. (C.) (now pending in
7 the Legislature as this bill) by the commissioner to an applicant
8 or permittee identified as a chronic violator, shall provide, as a
9 condition of the permit, that any testing of effluents required
10 under the terms of the permit be performed by a certified
11 laboratory, approved by the commissioner, which is not owned,
12 managed or operated, either directly or indirectly, by the
13 permittee.

14 o. To assist the commissioner in assessing a municipal
15 treatment works' NJPDES permit in accordance with paragraph
16 (4) of subsection b. of section 7 of P.L.1977, c.74 (C.58:10A-7), a
17 municipal treatment works with an approved industrial
18 pretreatment program shall perform, on an annual basis, a
19 complete analysis that will, at a minimum, include a complete
20 priority pollutant analysis of the discharge from the treatment
21 works and the inflow to the treatment works. A mass balance
22 analysis based on the data so acquired shall be included in an
23 annual report to be attached to the annual report currently
24 required by the commissioner.

25 (cf. P.L.1988, c.56, s.7)

26 5. Section 7 of P.L.1977, c.74 (C.58:10A-7) is amended to read
27 as follows:

28 7. a. All permits issued under this act shall be for fixed terms
29 not to exceed 5 years. Any permittee who wishes to continue
30 discharging after the expiration date of his permit must file for a
31 new permit at least 180 days prior to that date.

32 b. The commissioner may modify, suspend, or revoke a permit
33 in whole or in part during its term for cause, including but not
34 limited to the following:

35 (1) Violation of any term or condition of the permit;

36 (2) Obtaining a permit by misrepresentation or failure to
37 disclose fully all relevant facts;

38 (3) If a toxic effluent limitation or prohibition, including any
39 schedule of compliance specified in such effluent limitation or

1 prohibition, is established under section 307(a) of the Federal Act
3 upon such pollutant in an existing permit, the commissioner shall
5 revise or modify the permit in accordance with the toxic effluent
limitation or prohibition and so notify the permittee;

7 (4) The commissioner shall modify a municipal treatment
8 works' NJPDES permit whenever necessary to assure that the
9 parameters accurately reflect all pollutants, including toxic
10 pollutants, discharged from the municipal treatment works. The
11 NJPDES permit for a municipal treatment works with an
12 approved industrial pretreatment program shall include
13 parameters for all pollutants listed under the United States
14 Environmental Protection Agency's Categorical Pretreatment
15 Standards, adopted pursuant to 33 U.S.C. §1317, except those
16 pollutants that the municipal treatment works demonstrates to
17 the commissioner are not discharged and will not be discharged
from the municipal treatment works.

18 c. Notice of every proposed suspension, revocation or renewal,
19 or substantial modification of a permit and opportunity for public
20 hearing thereupon, shall be afforded in the same manner as with
21 respect to original permit applications as provided for in this act.
22 In any event notice of all modifications to a discharge permit
23 shall be published in the New Jersey Register.

24 d. Every final determination of the commissioner to grant,
25 deny, modify, suspend, or revoke a permit shall constitute an
26 administrative adjudication under the "Administrative
27 [Procedures] Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
28 seq.), which provides the permittee, or any other party, the
29 opportunity to contest the final determination in a hearing.
(cf: P.L.1977, c.74, s.7)

30 6. Section 10 of P.L.1977, c.74 (C.58:10A-10) is amended to
31 read as follows:

32 10. a. Whenever, on the basis of any information available to
33 him, the commissioner finds that any person is in violation of any
34 provision of this act, or any rule, regulation, water quality
35 standard, effluent limitation, or permit issued pursuant to this
36 act he shall:

37 (1) Issue an order requiring any such person to comply in
38 accordance with subsection b. of this section; or

1 (2) Bring a civil action in accordance with subsection c. of this
section; or

3 (3) Levy a civil administrative penalty in accordance with
subsection d. of this section; or

5 (4) Bring an action for a civil penalty in accordance with
subsection e. of this section; or

7 (5) Petition the Attorney General to bring a criminal action in
accordance with subsection f. of this section.

9 Use of any of the remedies specified under this section shall
not preclude use of any other remedy specified.

11 b. Whenever, on the basis of any information available to him,
the commissioner finds that any person is in violation of any
13 provision of this act, or of any rule, regulation, water quality
standard, effluent limitation or permit issued pursuant to this
15 act, he [may] shall issue an order (1) specifying the provision or
provisions of this act, or the rule, regulation, water quality
17 standard, effluent limitation, or permit of which he is in
violation, (2) citing the action which caused such violation, (3)
19 requiring compliance with such provision or provisions, and (4)
giving notice to the person of his right to a hearing on the
21 matters contained in the order. Within three months of the date
of issuance of an order under this subsection, the commissioner
23 shall determine what steps, if any, have been taken to comply
with the order.

25 c. The commissioner is authorized to commence a civil action
in Superior Court for appropriate relief for any violation of this
27 act or of a permit issued hereunder. Such relief may include,
singly or in combination:

29 (1) A temporary or permanent injunction;

(2) Assessment of the violator for the costs of any
31 investigation, inspection, or monitoring survey which led to the
establishment of the violation, and for the reasonable costs of
33 preparing and litigating the case under this subsection;

(3) Assessment of the violator for any cost incurred by the
35 State in removing, correcting or terminating the adverse effects
upon water quality resulting from any unauthorized discharge of
37 pollutants for which the action under this subsection may have
been brought;

39 (4) Assessment against the violator of compensatory damages

1 for any loss or destruction of wildlife, fish or aquatic life, and for
any other actual damages caused by an unauthorized discharge.
3 Assessments under this subsection shall be paid to the State
Treasurer, except that compensatory damages shall be paid by
5 specific order of the court to any persons who have been
aggrieved by the unauthorized discharge.

7 d. (1) The commissioner is authorized to assess, in accordance
with a uniform policy adopted therefor, a civil penalty of not
9 more than \$50,000.00 for each violation and each day during
which such violation continues shall constitute an additional,
11 separate, and distinct offense. Any amount assessed under this
subsection shall fall within a range established by regulation by
13 the commissioner for violations of similar type, seriousness, and
duration. The assessment shall also take into account and
15 reflect the harm to public health or the environment resulting
from the violation; the economic benefits from the violation
17 gained by the violator; the degree of recalcitrance of the violator
in remedying the violation or violations; and any unusual or
19 extraordinary costs directly or indirectly imposed on the public
by the violation. No assessment shall be levied pursuant to this
21 section until after the discharger has been notified by certified
mail or personal service. The notice shall include a reference to
23 the section of the statute, regulation, order or permit condition
violated; a concise statement of the facts alleged to constitute a
25 violation; a statement of the amount of the civil penalties to be
imposed; and a statement of the party's right to a hearing. The
27 ordered party shall have 20 days from receipt of the notice within
which to deliver to the commissioner a written request for a
29 hearing. After the hearing and upon finding that a violation has
occurred, the commissioner may issue a final order after
31 assessing the amount of the fine specified in the notice. If no
hearing is requested, then the notice shall become a final order
33 after the expiration of the 20-day period. Payment of the
assessment is due when a final order is issued or the notice
35 becomes a final order. A party to a final order issued in
accordance with this subsection may appeal the order to the
37 Appellate Division of the Superior Court upon posting with the
commissioner a refundable bond, or other security approved by
39 the commissioner, in the amount of the civil administrative

1 penalty assessed. Any interest payable on the bond or other
2 security shall be payable to the party posting the security. The
3 authority to levy an administrative [order] penalty is in addition
4 to all other enforcement provisions in this act, and the payment
5 of any assessment shall not be deemed to affect the availability
6 of any other enforcement provisions in connection with the
7 violation for which the assessment is levied. Any civil penalty
8 assessed under this section may be compromised by the
9 commissioner upon the posting of a performance bond by the
10 violator, or upon such terms and conditions as the commissioner
11 may establish by regulation, except that the amount compromised
12 shall not be more than 50% of the assessed penalty, or, as
13 hereinafter provided, the statutory minimum amount that shall be
14 assessed, whichever is greater.

15 The commissioner shall adopt, by regulation, a uniform
16 assessment of civil penalties policy within six months of the
17 effective date of P.L. c. (C.) (now pending in the
18 Legislature as this bill).

19 (2) Whenever the commissioner finds that any person against
20 whom the commissioner is authorized to proceed in a civil action
21 in accordance with subsection c. of this section is also a:

22 (a) A person who has committed a serious violation, the amount
23 of the civil administrative penalty assessed pursuant to this
24 subsection may not be less than \$1,000 per day of violation;

25 (b) Chronic violator, the amount of the civil administrative
26 penalty assessed pursuant to this subsection may not be less than
27 \$5,000 per day for each violation;

28 (c) Chronic violator for more than two consecutive six-month
29 reporting periods, the commissioner, in addition to pursuing any
30 other available remedies, shall petition the Attorney General and
31 the county prosecutor of the county in which the facility is
32 located to bring a criminal action in accordance with subsection
33 f. of this subsection.

34 e. Any person who violates this act or an administrative order
35 issued pursuant to subsection b. or a court order issued pursuant
36 to subsection c., or who fails to pay an administrative assessment
37 in full pursuant to subsection d. shall be subject upon order of a
38 court to a civil penalty not to exceed \$50,000.00 per day of such
39 violation, and each day's continuance of the violation shall

1 constitute a separate violation. Any penalty incurred under this
subsection may be recovered with costs in a summary proceeding
3 pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et
seq.). The Superior Court shall have jurisdiction to enforce "the
5 penalty enforcement law" in conjunction with this act.

f. Any person who willfully or negligently violates this act
7 shall, upon conviction, be guilty of a crime of the [fourth] third
degree and shall be punished by fine of not less than \$5,000.00 nor
9 more than \$50,000.00 per day of violation, or by imprisonment for
not more than one year, or by both. Punishment for a second
11 offense under this subsection shall be a fine of not less than
\$10,000.00 nor more than \$100,000.00 per day of violation[, or by
13 imprisonment for not more than two years, or both] and
imprisonment for not less than 10 days nor more than two years
15 and up to 90 days of community service. Punishment for a third
and each subsequent offense under this section shall be a fine of
17 not less than \$25,000 nor more than \$200,000 per day of violation
and imprisonment for not less than 30 days nor more than two
19 years and up to 180 days of community service. Any person who
knowingly makes a false statement, representation, or
21 certification in any application, record, or other document filed
or required to be maintained under this act or who falsifies,
23 tampers with or knowingly renders inaccurate, any monitoring
device or method required to be maintained pursuant to this act,
25 shall upon conviction, be subject to a fine of [not more than
\$20,000.00 or by imprisonment for not more than six months, or
27 by both] not less than \$10,000 nor more than \$100,000 per day of
violation and by imprisonment for not less than 10 days nor more
29 than two years and up to 90 days of community service.

g. All conveyances used or intended for use in the willful
31 discharge, in violation of the provisions of P.L.1977, c.74
(C.58:10A-1 et seq.), of any pollutant or toxic pollutant are
33 subject to forfeiture to the State pursuant to the provisions of
P.L.1981, c.387 (C.13:1K-1 et seq.).

35 h. (1) Every schedule of compliance shall:

(a) Include provisions for stipulated penalties of not less than
37 \$1,000 per day for each violation of a standard or limitation
required by the permit for which compliance is sought. In
39 establishing an appropriate stipulated penalty, the commissioner

1 shall take into account the duration and extent of, and the
2 toxicity of the discharge constituting, the violation which gave
3 rise to the schedule of compliance. The payment of any
4 stipulated penalties may not preclude, interfere with, or in any
5 way limit the commissioner's use of any other remedy available
6 under P.L.1977, c.74.

7 (b) Require the permit holder to demonstrate to the
8 commissioner the financial assurance, including the posting of a
9 bond or other security approved to the commissioner, necessary
10 to carry out the remedial measures required by the schedule of
11 compliance.

12 (2) A schedule of compliance may not:

13 (a) Exceed 18 months;

14 (b) Be renewed, extended, or relaxed except as a substantial
15 modification of a permit subject to the requirements of section 7
16 of P.L.1977, c.74;

17 (c) Except in the case of a schedule of compliance contained in
18 a currently valid permit, be issued within two years of the date of
19 issuance of that permit;

20 (3) Each permit holder shall be limited to one schedule of
21 compliance for each permit issued.

22 i. A civil administrative penalty imposed pursuant to a final
23 order issued in accordance with subsection d. of this section shall
24 constitute a debt of the violator or discharger. The final order
25 may be docketed with the clerk of the Superior Court and shall
26 have the same standing as any judgment docketed with the clerk
27 of the Superior Court pursuant to N.J.S.2A:16-1; except that no
28 lien shall attach to the real property of a violator pursuant to this
29 subsection if a violator posts a refundable bond or other security
30 with the commissioner pursuant to an appeal of a final order to
31 the Appellate Division of the Superior Court.

32 (cf: P.L.1986, c.170, s.3)

33 7. (New section) Whenever a permittee fails to submit a
34 monitoring report on the date specified by the commissioner or in
35 the permit, the report shall be considered overdue and the
36 permittee shall pay a fine for the submission of the overdue
37 report of \$100 per day for each permit parameter for which a
38 report is overdue. The fine shall be assessed and collected as a
39 civil administrative penalty in accordance with section 10 of

1 P.L.1977.c.74 (C.58:10A-10). A permittee may contest the
application of the penalty provisions of this act by notifying the
3 commissioner within 30 days of the date the monitoring results
were due of the existence of extenuating circumstances beyond
5 the control of the permittee that prevented timely submission of
the report. Fines shall accrue as of the fifth day following the
7 date that the monitoring report was due and shall continue to
accrue until submission of the overdue monitoring report, or for
9 30 days, whichever is the shorter period. Additional fines may be
assessed at the commissioner's discretion.

11 8. (New section) a. The commissioner shall publish at least
annually a report summarizing the following:

13 (1) The total number of facilities in violation of P.L.1977, c.74
(C.58:10A-1 et seq.) in the immediately preceding year;

15 (2) The total number of enforcement actions brought
thereunder by the department in that year;

17 (3) The total amount of fines collected as a result of
enforcement actions;

19 (4) A list identifying all persons having committed a serious
violation within the State;

21 (5) A list identifying all chronic violators within the State;

(6) A list identifying all referrals for civil action and the
23 disposition of each case.

(7) A list identifying all referrals for criminal action for
25 chronic violations pursuant to paragraph (2) (c) of subsection d. of
section 10 of P.L.1977, c.74 (C.58:10A-10);

27 b. The Attorney General shall have published at least annually
a report summarizing the following:

29 (1) A complete list identifying all cases filed under section 10
of P.L.1977, c.74 (C.58:10A-10) in the immediately preceding
31 year;

(2) A complete list of the final disposition of all cases filed
33 thereunder that were completed in that year.

c. The first reports required to be made pursuant to
35 subsections a. and b. of this section shall be published not later
than March 1, 1989 and shall cover the period beginning January
37 1, 1988 through December 31, 1988. Subsequent reports shall be
published on March 1 of each year. The reports of the
39 commissioner and the Attorney General shall be submitted to the

1 Governor and the Legislature and shall be available to the public.

2 d. Within 30 days of publication of the reports, the
3 commissioner shall publish for at least six consecutive days in not
4 less than two newspapers with statewide circulation and not less
5 than two regional newspapers with the widest circulation in the
6 State, a full page advertisement which shall:

7 (1) Identify the owner, trade name and location of all facilities
8 listed as chronic violators pursuant to paragraph (5) of subsection
9 a. of this section;

10 (2) Identify all of the chronic violators who have been assessed
11 fines pursuant to section 10 of P.L.1977, c.74 (C.58:10A-10), the
12 amount of the penalties assessed against, and the amount paid by,
13 each violator;

14 (3) Indicate the availability of the annual reports required
15 under this section, and the address and phone number for securing
16 copies.

17 9. (New Section) a. Any person may bring a civil action in law
18 or equity (1) against any person for past or continuing violations
19 of any provision of P.L.1977, c.74 (C.58:10A-1 et seq.), or any
20 rule, regulation, water quality standard, effluent limitation,
21 permit, or order issued pursuant thereto; or (2) against the
22 commissioner to compel the commissioner to enforce any such
23 requirement;

24 b. Any person may intervene as a matter of right in any
25 administrative, civil or criminal action which the commissioner
26 has brought pursuant to section 10 of P.L.1977, c.74
27 (C.58:10A-10);

28 c. The commissioner, if not a party, may intervene as a matter
29 of right in any action brought under this section.

30 d. The court may award, whenever it deems appropriate, the
31 costs of litigation, including reasonable attorney and expert
32 witness fees, to the parties bringing a successful action under this
33 section.

34 e. No action may be commenced under this section if the
35 department has commenced, and is diligently prosecuting, a civil
36 or criminal action to require compliance with the standard,
37 limitation, or order.

38 10. (New section) There is created, in the Department of
39 Environmental Protection, a "Clean Water Enforcement Fund."

1 All monies from penalties and fines collected pursuant to
subsection d. of section 10 of P.L.1977, c.74 (C.58:10A-10) and
3 section 7 of P.L. c. (C.) (now before the Legislature as
this bill) shall be deposited in the fund. Monies in the fund shall
5 be utilized exclusively for enforcement of the NJPDES program.

11. This act shall take effect immediately.

7

9

STATEMENT

11 This bill amends the New Jersey Water Pollution Control Act
by establishing a tiered response program to violations, setting
13 strict civil penalties and establishing mandatory criminal
penalties for chronic violators. The bill strengthens monitoring
15 and reporting requirements under the act. Dischargers are
required to submit discharge monitoring information on a monthly
17 basis. The Department of Environmental Protection is required
to verify discharge information through independent sampling
19 through annual on-site inspections. The bill requires increased
monitoring of repeat violators and prohibits repeat violators from
21 analyzing wastewater samples at laboratories owned, managed, or
operated by the permittee.

23 This bill tightens controls on discharges of toxic substances
from publicly owned treatment works and authorizes treatment
25 works to use all enforcement mechanisms available under the act,
including criminal penalties, to bring violators into compliance.

27 This bill increases citizen participation in permitting and
enforcement processes by establishing a citizen's right to
29 contest, any final permit decision made by the department and
the right of citizens to bring suit against violators of the act.
31 The bill requires the department and Attorney General to compile
any information, including names and addresses of serious and
33 chronic violators, referrals for criminal prosecution, and fines
assessed and collected under the act.

35

ENVIRONMENT

37

Air and Water Pollution

39 "The Clean Water Enforcement Act."

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SENATOR DANIEL J. DALTON (Chairman): We would like to get the meeting started. This is a public hearing on S-2787, the Clean Water Enforcement. The hearing will be run in the following way: We have the sponsor of the bill here, Senator Pallone, and he will be asked to testify first. Then Norm Miller, to my right, has a list of those persons wishing to testify and it's right up here. If you have not jotted your name on this list--

MR. MILLER (Committee aide): Or on the supplementary list.

SENATOR DALTON: --or the supplemental list, please make sure you do that by coming up and contacting Norm.

On my left is Senator Bill Gormley from Atlantic County, a member of the Energy and Environment Committee. My name is Dan Dalton, from Camden County, and I Chair the Senate Energy and Environment Committee.

What we'd like to do if you could, if you could make your statements as succinct as possible and attempt, if you would, to not be redundant with other speakers. We tell people that -- you know we really are here to listen -- that usually if you say it once, no more than twice, we've gotten your point, or a point. And you can move on to other issues within the context of the Clean Water Enforcement Act.

So with that I'd like to call on Senator Pallone to come on up and provide his testimony.

SENATOR FRANK PALLONE, JR.: Should we have the other three individuals also come up?

SENATOR DALTON: It's totally up to you Frank. Do you want to be joined?

SENATOR PALLONE: Yes, why not?

SENATOR DALTON: Okay. I think we know everyone, Senator Gormley and I know everyone. Why doesn't everyone give their name for the record and the transcript?

SENATOR PALLONE: Go ahead Jean.

J E A N I E J E N K I N S: My name is Jeanie Jenkins, I am a biologist with New Jersey Public Interest Research Group.

C I N D Y Z I P F: I'm Cindy Zipf. I'm Coordinator of Clean Ocean Action.

S T E V E F O W L E R: I'm Steve Fowler, Vice Chair from New Jersey Environmental Federation and Conservation, Chair for New Jersey Audubon Society.

SENATOR DALTON: Okay, great.

SENATOR PALLONE: I wanted to start out by pointing out that part of the reason why these people are up here is because they had a lot to do with putting together this legislation as well as the fact that the legislation is basically a response to a report called, "The Polluters' Playground" that was put out by the New Jersey PIRG as well as the NJ Environmental Federation, which was done last winter -- I guess in February or so.

Basically what that report found is that, of the major industrial plants and also the major municipal sewage authorities, that over a period of, I guess 1984 to 1986, that better than 50% had violated their discharge permits. Yet during that same period, there were only about 3% that had any of the penalties basically assessed against them.

What that indicates very strongly, is that, although New Jersey does have very good legislation pursuant to the New Jersey Water Pollution Control Act to deal with these charges, that in fact it wasn't being enforced; certainly not enforced in any significant way.

And so really what the legislation, the Clean Water Enforcement Act, is all about, is an attempt to increase enforcement which we believe very strongly is the major concern these days. That would be true, I suppose, not only with regard to Clean Water but in a lot of environmental concerns. I don't have to tell this Committee that, because you're all very much aware of it.

But, what we're trying to do basically is to limit the discretion that exists now with regard to the DEP and the types of fines or penalties that they assess against violators. And basically I would say that the heart of the bill is to mandate certain fines -- what I call stiff fines or penalties -- against repeat offenders, and also to mandate jail terms in the most serious circumstances where there have been several and long-term instances of discharge violations, and to say to the DEP that we are not going to allow the discretion that has existed in the past in terms of penalties and fines to be exercised any more. So that there would be mandatory fines, stiff fines, and also mandatory jail terms in certain circumstances where there have been repeat offenses.

The other thing that I think is important is, again, with regard to enforcement, is with respect to citizen action groups. There's been some concern that there are limits in terms of what citizens, or citizen action groups when they are attempting to sue for violations, that they've had certain limitations in terms of attorneys' fees that can be recovered. And also the basic fact that it costs citizen groups a great deal to bring actions against polluters. And as a result of that, the bill sets up an intervention fund of \$1 million basically to provide loans and grants to support citizens' suits and expert testimony at the hearings that would come about because of citizen suits. That money, of course, will be paid into a fund by the polluters themselves pursuant to the fines that are assessed against them.

In the same regard, there's also been concern with regard to enforcement, that in general, pursuant to the Clean Water Enforcement Act, that monitoring and reporting is done by the polluter; the industrial plant or the municipal sewage treatment plant itself. So therefore, there's also an attempt through the legislation to get away from self-reporting to some extent. And there are different vehicles for doing that.

First of all, the legislation is going to require monthly DMRs, or Discharge Monitoring Reports, in all permits for major industrial dischargers.

They're also going to say that, significant or chronic violators, that sampling analysis will have to be performed at a certified lab, not one owned or managed by the permittee. Because we found instances pursuant to the report that was put out last winter, where basically a lot of them are using their own labs.

And finally, the DEP is going to have annual compliance inspections. They're going to be required to include on site inspections. In those situations where there have been repeat offenses also, they'll require on-site inspection within 30 days where there have been four permit violations in a six-month period.

My purpose isn't really to get into all the details of the legislation at this point, but basically to explain why I think it's important. And the reason I feel it's important is primarily because we're seeking to increase enforcement by mandating certain fines and penalties, by increasing monitoring, getting away from self-monitoring whenever possible, and also expanding the opportunities for citizen groups to bring suit and to provide money up-front so that they can bring those actions which would be paid for by the penalties that ensue from this Act.

And I just wanted to end by thanking the Chairman, Senator Dalton, as well as Senator Gormley for coming down for this hearing today. I personally, and I know a lot of people from the environmental community feel that this is a very important piece of legislation, and we appreciate the fact that you're having a public hearing relatively soon after the bill was introduced and that you're, you know, paying the attention that you obviously are, to this legislation.

SENATOR DALTON: Thank you, Frank. Just for the record, and for everyone's benefit, to my far right is Steve Sacks-Wilner. Steve is a Minority staffer to the Republican members on the Committee. Norm Miller is from Office of Legislative Services, which is the nonpartisan research arm of the Legislature and which staffs all the committees in the Legislature.

To my far left, Senator Gormley's left is Madeline Rumowicz the Majority staffer to the Majority members, the Democrat members of the Committee.

Before we question each of you, do you want to give us your presentation and then we would get into some questions?

SENATOR PALLONE: I think that would be best.

SENATOR DALTON: Who's next?

MS. ZIPF: Jeanie's next.

SENATOR DALTON: Okay Jeanie.

MS. JENKINS: We have a clear, demonstrated need for the Clean Water Enforcement Act. The report that New Jersey PIRG released in February of 1988, which examined implementation of the Clean Water Act in New Jersey clearly shows that we have a program that is out of control.

We found that virtually all, 91% of the industrial facilities we looked at and 100% of the municipal facilities we examined, were in violation sometime during the two-year period study, from 1984 to '86. Even more concerning is the number of facilities who routinely violated their permit. We found a third of the industrial facilities were routinely violating their permit with violations that exceeded their permit limits by at least 50%, and two-thirds of the municipal facilities were violating routinely, with violations exceeding 50% of what their permit limits allowed.

This is clearly a very serious problem. Fifty percent over your permit is clearly a higher violation than the EPA

needs, to recognize it as being a significant violation. Beyond that we found very serious problems in non reporting of discharge into rivers. We found that many times facilities were sending in incomplete discharge sheets so that they didn't even let the State and the EPA know what was being discharged into our waterways.

That's a very serious problem in that if you don't even have numbers to work with you have no idea what types and amounts of pollutants are going into our waterways.

SENATOR GORMLEY: Has anybody been indicted as a result of that report?

MS. JENKINS: No.

SENATOR GORMLEY: I'm just curious. Obviously they're required to keep those records -- I'm assuming they're required to keep those records. It's a matter of law.

MS. JENKINS: Yes.

SENATOR GORMLEY: And you have this evidence--

MS. JENKINS: Well, I can--

SENATOR GORMLEY: Who was it handed to? Which Attorney General, at which level, or which prosecutor--

MS. JENKINS: I know that a copy of the report was sent to the Attorney General's office. But beyond that, I do not know.

SENATOR GORMLEY: But you're saying there are existing criminal violations for which no action was taken?

MS. JENKINS: Yes.

SENATOR GORMLEY: And intentionally reports were not filed or prepared?

MS. JENKINS: Yes.

SENATOR GORMLEY: How many instances of this?

MS. JENKINS: I believe there were 247 instances that we recorded.

SENATOR GORMLEY: Two-hundred-and-forty-seven, indictable instances for which no action was taken?

MS. JENKINS: (nods head affirmatively) Another serious problem that we know of is that the inspections by the Department were insufficient in that they did not include independent sampling to verify the information being reported by utilities on what was being discharged into waterways.

This is a very serious problem because if you do not independently verify sampling data, then you have no way of knowing if it is true. If you look at water quality in the State, the water quality has remained virtually unchanged in the last eight to ten years. Only 30% of the waterways in New Jersey are both swimable and fishable. That puts us in a class all by ourselves. And it's definitely at the low end of the class.

But, I think the most distressing thing that we found in the report was the total lack of response of the DEP to all the violations that are occurring. We cataloged 3009 violations and we found that they responded to only 3% of those violations. And their responses included, phone calls, written letters, fines, and orders, any sort of response that we could find at all.

SENATOR GORMLEY: Did you find that they were short of staff?

MS. JENKINS: That is a constant complaint of the Department.

SENATOR GORMLEY: That's their complaint. Do you believe it?

MS. JENKINS: I believe that they do have staffing problems. I think that we have a disagreement on why they have a staffing problem. We've requested that they give us a ballpark number on how many staff they would need to have a skeleton staff in each one of their departments, in each one of their programs. They choose not to set up their Department that way. They would like the mobility to move all of the

staff to a particular emergency situation, or to a program which the staff's not currently assigned.

For instance, their first and major still response to the report, which I'll get to in just a moment, was that they were focusing on groundwater problems during the '84-'86 period rather than the surface water problem. So, they had moved their surface water staff to work on another problem. We find that's a very serious error on their part.

SENATOR GORMLEY: Well, but either way that you look at it, if you say you do it by individual divisions, or by overall Department, there must be a cumulative number -- they have the mobile system, you have the structured system. But what is the bottom line number, if added to the mobile system or added to the structured system? Do they give you a number of people they need cumulatively?

MS. JENKINS: They have not at this point given us that number, and we've been requesting it since February. They say that it's a very difficult number to determine.

SENATOR GORMLEY: But you, do you believe there is a staff shortage?

MS. JENKINS: I believe they could use more staff, yes.

SENATOR GORMLEY: Okay.

MS. JENKINS: It has been eight months since we released the report in February, and since that time we have received a number of comments, written comments, from members of the regulated community as well as the Department, and I wanted to very quickly go through the types of responses we have gotten so that you know what they are in relation to the report.

All of the comments we have gotten have either been to comment on the tone of the report, or to take exception to a particular facility being labeled as a serious or chronic violator, or in some cases taking exception to the data that's

in the report, and I'll go through that. But in no cases have there been any indication that the data is, in fact, flawed in any sort of overall terms or that the final conclusions drawn from the report are inaccurate.

The Department responded on April 4 of this year with a letter from Assistant Commissioner Don Deieso, and he responded on behalf of the Department. In his letter he supplied numbers for responses by the Department for all 1500 dischargers. And we looked at only 100 dischargers. If you multiply out our responses, you find that the level of responses the Department reports is virtually identical with what we found. So that they actually confirm their low level of activity.

We have received a number of comments from sewage treatment plants from publicly owned treatment works, one from Stony Brook Regional Authority. The Executive Director Mike Dimino who's here today, and I have exchanged several phone calls and received several letters and he was concerned about the actual number of violations that we recorded for their facility.

Our data shows that they omitted data for one permit parameter, and when you add in the violations that we recorded for chlorine violations we come up with exactly the same number of violations. So--

SENATOR GORMLEY: You mentioned the 247 violations before, that was 247 within the 100 that you reviewed.

MS. JENKINS: Uh-huh.

SENATOR GORMLEY: Okay.

MS. JENKINS: Within the 100 facilities we reviewed.

SENATOR GORMLEY: Yeah, that's what I'm saying.

MS. JENKINS: Yes, let's see-- Camden County Utilities Authority wrote us to let us know that they actually do more sampling of their influent and effluent than we

recorded, and we determined that it was a mistake in their -- in the DEP's audit of the facility. The audit has since been corrected and of course we'll correct that also.

Hanover Sewage Authority wrote us to tell us that they were surprised at the number of violations they had. They had the highest number of violations of any sewage treatment plant that we examined; that when they went back, they found that many of the violations that they had recorded and sent into the DEP and EPA were not really violations at all, and that it was an error on their part. Their revised discharge data which is submitted by them and not double-checked was submitted to the DEP earlier this year. My understanding is that Hanover has never received any response from the Department as to the revised discharge data and I made five calls to the Department--

SENATOR GORMLEY: Do you have a breakdown on the nature of the violations, because I'm curious about this? How many of the violations can be internally corrected with the existing plant? How many of the violations need a new plant, new infrastructure to be put in place? I'm curious about that. There's a level of violation where if you had been monitoring more closely, correct chemical adjustment, more staff, you'd be able to handle it with your current plant. How many of the violations go into, the only way to be corrected would be heavy capital costs? Do you have any idea of that?

Because you know our part -- and you've seen us with a lot of the bills we've put in, we can put all the bills in in the world, how are we going-- We also have to think of funding sources while we do this, because we can fine people all day long, and they're sitting there with -- well now we need \$50 million in a bond-- It's easy for us to do the press release about it. Where's the cash going to be at the other end?

Do you have a feel for the nature of the violations?

MS. JENKINS: The data I can give you is not from the report, but from citizens' suits that New Jersey has filed.

SENATOR GORMLEY: All right, generally-- All right, fine.

MS. JENKINS: When New Jersey PIRG files a citizen suit, as soon as the suit is filed, the first thing we do is go in to a judge and ask that the judge issue an order requiring the facility to come into compliance in 30 days or they'll be in contempt of court. Now, if a facility had to make major improvements, capital improvements in their facility they would not have to be able to come into compliance within 30 days. What we found is that all the facilities that have been required to do that are able to come into compliance -- or very close to; within a couple of percentage points -- within 30 days and they're able to do that through improved maintenance.

SENATOR GORMLEY: So we--

MS. JENKINS: So that violations--

SENATOR GORMLEY: I'm not trying to be technical.

MS. JENKINS: No.

SENATOR GORMLEY: What's improved maintenance?

MS. JENKINS: So what that means is cleaning out screens, oil--

SENATOR GORMLEY: Okay fine--

MS. JENKINS: Plain old maintenance.

SENATOR DALTON: What is the percentage, again, that you used?

MS. JENKINS: Percentage of what?

MS. ZIPF: How many did you take to court, and how many--

MS. JENKINS: Let's, see, we have--

SENATOR DALTON: No, percentage of how many come into compliance within 30 days?

MS. JENKINS: Well this is based on-- We filed 33 citizen suits and I think in maybe, a third of those cases we have asked -- gone in and asked the judge to bring a facility into compliance immediately, and those cases that has been done.

SENATOR DALTON: So, roughly two-thirds of those cases you--

MS. JENKINS: We did not request that.

SENATOR DALTON: --within 30 days.

MS. JENKINS: Right.

SENATOR DALTON: And yet the bill requires compliance in 18 months. My question to you is that, if in fact an MUA has to make a significant capital outlay to address the standards -- and we all think that they should address the standards -- is that 18 months even realistic?

MS. JENKINS: The bill does not require that the facilities come into compliance for 18 months. What it says is that the Department and the violator cannot have a private agreement for longer than 18 months. It says that after 18 months the process has to be opened up for public comment. And that is the part you're talking about compliance schedules. Yes. And that's the part we're concerned about because at present a permit can be issued, and then the Department and the violator can enter into a compliance schedule or a private agreement that can last for the whole life of the permit, and we are trying to avoid that situation.

We're talking with the Department at present about that particular concern and find--

SENATOR GORMLEY: Are you saying the permit or the order, because I want to be very careful about that. You're saying, effectively, that they can agree to something that allows them to circumvent the law, ad infinitum?

MS. JENKINS: Exactly.

MS. ZIPF: That's for five years.

SENATOR GORMLEY: In other words, you get a five-year exemption from the law.

MS. JENKINS: Right.

SENATOR GORMLEY: Now, I am surmising that they would do that in cases of -- when you'd be looking at capital construction. We're not talking about the maintenance situations.

MS. JENKINS: That's true.

SENATOR GORMLEY: I would hope that that would be the case if it could be dealt with in 30 days, they wouldn't give five years. So, they give the five-year order-- They can go to the outer limit of the five-year when you're talking about circumstances when you're talking about capital construction. Has that been limited to a greater degree because of the limitation of the Federal Clean Water Act and that deadline? Have you seen any greater surge to compliance because of the Federal Clean Water deadlines coming up?

MS. JENKINS: Well, the July '88 deadline--

SENATOR GORMLEY: Yes.

MS. JENKINS: My understanding is that the Clean Water Act did not allow them to write in compliance schedules for the July '88 deadline, and what had to happen was a separate order was written in all those cases.

I mean we're all aware that in some cases, facilities did meet the July '88 deadline. There were a number of facilities -- my recollection's over a hundred -- that did not meet the July '88 deadline.

MS. ZIPF: Right.

SENATOR GORMLEY: Because I have been noticing the ones -- particularly one in my district -- which you know, the case of the small municipality that was going to be independent forever and never would join the county sewage authority, and just because that was home rule in the wrong direction-- Now, they're being fined substantially, a small municipality, and it's a problem because of politics for about 20 or 30 years when they should have joined the county system, they didn't, and now they're stuck with an older plant.

I think it is important to get a perspective on these -- on the Federal Clean Water Act end of this and how the extension or the extensions come to play on this. Would there be, for example, if an order were signed with the Federal government we do have-- Is there a prerogative in the Federal Clean Water Act for extensions to be given by the Federal government? See, I've always taken it as a hard and fast deadline. And I know, compared to ocean dumping it is a hard and fast deadline. So we have to put in the comparison.

What circumstances-- What do you see the Federal government doing in terms of extensions as it pertains to the Federal Clean Water Act?

MS. ZIPF: I think the State--

MS. JENKINS: Yeah, the State has to be at least as strict, but can be stricter. So, the State-- It's a delegated program to the states. Unless there is something illegal--

SENATOR GORMLEY: I understand that, but do you see any action on the Federal--

MS. ZIPF: No.

MS. JENKINS: No, unless you see something illegal, the EPA cannot override the State.

MS. ZIPF: But you would think that a 3% action rate on the part of the DEP, you would think that the EPA, being the parent of the whole program, would have said to DEP, "That's gross implementation of the Clean Water Act, and we're going to reprimand you." But they haven't yet.

SENATOR GORMLEY: How does it compare to other states?

MS. JENKINS: PIRG in other states have looked at implementation of the Clean Water Act and the rates of response are low in most states that we have examined.

SENATOR GORMLEY: In other words, is New Jersey unique, or is this?

MS. JENKINS: No, New Jersey is not unique, but it's definitely not-- Three percent is definitely not sterling.

SENATOR GORMLEY: Which state is better?

MS. JENKINS: We have looked in Ohio and Illinois. The rates of response there are also less than 10%. California, the rate of response is about 50% which makes them a real star. The data that we have from Pennsylvania and West Virginia look like they have very low response rates also; less than 25%, I don't know how low.

SENATOR GORMLEY: This is the last question because you can go on-- I'm sorry for dragging this out. Do they have different water quality standards in the different states in terms of the level of effluent or whatever? In other words, is California's easier to comply with than New Jersey's would be?

MS. JENKINS: No.

SENATOR GORMLEY: I'm just, you know--

MS. JENKINS: The EPA's limits are basis and a state.

SENATOR GORMLEY: In other words it's the same standard for every state.

MS. ZIPF: At minimum.

MS. JENKINS: Yeah, there are minimum standards.

MS. ZIPF: Individual states can get stricter, but there are minimums set by EPA.

SENATOR GORMLEY: Is New Jersey stricter in terms of standards, water standards?

MS. ZIPF: No, in fact they're to get less than the EPA standards right now.

SENATOR GORMLEY: For these plants?

MS. ZIPF: For surface water quality standards. DEP is right now proposing they lower the standards so that permits will be downgraded. In other words, more pollutants would be allowed into the water.

SENATOR GORMLEY: We're talking about the authorities-- We're not talking authorities now, are we?

MS. ZIPF: Yes.

MS. JENKINS: Yes, the standards--

SENATOR DALTON: Those proposed rates were just publicized in the last-- It wasn't that long ago, was it?

MS. JENKINS: No.

SENATOR PALLONE: About a month ago.

SENATOR DALTON: About a month ago.

MS. ZIPF: July, August.

SENATOR GORMLEY: I'm sorry, go ahead.

MS. JENKINS: All right, so very quickly I want to go through the other responses. There are just four other responses.

Besides Hanover, Ocean County Utilities Authority did not write to us, but was concerned about being called a chronic, serious violator. I mean I went over the violations with the Executive Director and we did determine that they did have violations over 40% and that they did have a very serious record of repeat violations at one of their facilities. So our assessment was accurate.

Gloucester County Utilities Authority wrote us to give us further information on a situation where a worker had died from exposure to toxic fumes. And that information was not in the audit or--

SENATOR DALTON: That was proven a person died from fumes at the plant?

MS. JENKINS: Yes, yes, but we did not know that they had identified the source, which they had.

In Passaic Valley, the Sewage Commissioners wrote to correct a serious mistake that is definitely our mistake, which was we reported a number of violators rather than violations in the report for their pretreatment program. And obviously we will correct that.

But none of the letters we received, in any substantial way, changes the numbers that we found, and it definitely does not change the final conclusion. So that, we

feel that there is very clear evidence in this case that we have a program that is not working effectively; that we need to make improvements on immediately, and we need to move in that direction.

SENATOR GORMLEY: Which authority is doing a good job?

MS. JENKINS: We have only looked at the 22 authorities that have substantial amounts of industrial contributions into them. So, first I would not want to comment on that for that reason, because there are 500 sewage treatment plants in the State. And further--

SENATOR GORMLEY: I'm sorry, I thought you looked at 100.

MS. JENKINS: We looked at 100 facilities, 78 industrial and the 22 largest sewage treatment plants.

SENATOR GORMLEY: Okay, fine, of those 100 were any satisfactory?

MS. JENKINS: Well, all of the-- The majority of our data is for the '84-'86 period.

SENATOR GORMLEY: I'm just curious if anybody--

MS. JENKINS: Yeah, during that period there was one sewage treatment plant that had--

SENATOR GORMLEY: Was it in this State? (laughter)

MS. JENKINS: In this State--

SENATOR GORMLEY: Sorry.

MS. JENKINS: Let's see-- There's one sewage treatment plant that had only-- I think, Two Bridges had reporting violations. They did not have any discharge violations from the warehouse.

SENATOR GORMLEY: That's pretty good.

SENATOR DALTON: Cindy.

MS. ZIPF: My role here is to identify why Clean Ocean Action is in support of the bill, and why it's important to the ocean. First of all I want to thank Jeanie Jenkins for doing this research and identifying these problems because without

that we wouldn't have the bill and we wouldn't be as shocked and alarmed as we are about the enforcement of our laws.

We always have had a hint that our laws were not being enforced, but with this alarming data it makes it all so much clearer that the laws that you intended to protect the water environment are being overlooked and basically treated like less than the paper they're written on by industry and municipalities. And I think that it's an unfortunate situation that we as a public and as legislators need to direct the Department of Environmental Protection on how to enforce the law; that we have to specify violations and specify amounts of fines for violations and specifically require them to put people behind bars for violations of the law. But that's the reality with the data that Jeanie has collected.

I also want to thank the both of you for supporting the bill and cosponsoring the bill, and, of course, Senator Frank Pallone for taking the leadership and being the first to introduce the bill into the Legislature and move so strongly on this bill.

Violations of the law mean more toxins and sewage sludge, which means we cannot implement land based alternatives, which means we cannot stop ocean dumping. So violations of these laws that we have, means we have a toxic sludge that we're dumping into the ocean, contaminating the food chain.

One of the ways that we can get toxics out of the sludge is through enforcement of this law. The other way is through legislative efforts that you have already taken which will also reduce the amount of toxics getting into the sludge.

The violation of these laws also means toxics settling out in the dredge material. The reason the dredge material is so contaminated in the inner harbor New York and New Jersey is because there're violations of these laws and the toxics are getting out in the effluents and settling out in the sediments.

To give you an idea of what kinds of dredge material are getting into our ocean, that are passing the ocean dumping criteria -- and that's another loophole because toxics and dredge material have such limited amount of constituents that they look for to ocean dump the material. In other words, they only look for a few contaminants, before they agree that it's allowed to be ocean dumped. Toxics are building up in our oceans through these disposal activities: The dredge material in front of the Port of Elizabeth where there are numbers of refineries and on the opposite side, the leachate from the Staten Island Landfill. In other words, the Arthur Kill and the Kill Van Kull, those waterways pass the ocean dumping criteria for dredge material, and that material is right now being proposed to be dredged and dumped right off our shore in the ocean, six miles offshore.

So, if we can control the number of toxics coming out of these discharge pipes, that will at least prohibit some of those toxics from getting into the sediments, and therefore, clean them up so we don't have to be as concerned about the dredge material as we are now.

If they don't get into the sludge, and the toxics don't get into the dredge material, they wind up in what's known as the Hudson River Plume, which is the water coming out of the Hudson and the Raritan waterways. It is literally billions and billions of gallons a day, including a concoction of municipal and industrial waste, as well as natural river flow, but the billions of gallons are coming out of municipal and industrial facilities each and every day, flow in the waterways and into the estuary.

The Hudson Raritan Estuary is still one of the most productive in the world. However, the fish that live there are under incredible stress. Ninety percent of all fish species need to spend some very critical part of their life cycle in that estuary. And with the toxic concoction that is in there,

they are having difficulties reproducing, they are having cancers, 90% of all cod in the Hudson River have cancer. They've identified a new cancer in flat fish, flounder, such as fluke and winter flounder; cancer along their intestinal wall. And they don't know what percentage is being killed through this cancer. They've just identified it.

As you know the Department of Environmental Protection has actually banned certain waterways from the consumption of fish. Certain areas of the Passaic, certain areas of the Arthur Kill, Newark Bay, are banned against the consumption of any fish or shellfish.

Shellfish are banned in most areas of the Raritan Bay from consumption. Striped bass, bluefish, the American eel, white catfish and white perch all have restrictions or advisories on them because of their contamination loadings of only just PCBs. They haven't really looked in these fish yet for mercury or cadmium or other kinds of contaminants. So, just for one specific pollutant there is a ban and an advisory on those fish in certain areas.

There is a dioxin concern in blue crabs and lobsters in some of the inner harbor areas. These are all concerns that are raised because of the blatant use of our industry of our waterways for their toxic pollutants. And because DEP is not enforcing the laws, more pollutant is getting out there than we can possibly even realize.

The fact that industry has carte blanche to our waterways has made a toxic soup of our estuaries and has affected the commercial fishing and the recreational fishing in the area, and raised serious concerns in the public of whether or not the fish are safe to eat; not to mention the fact the fish are having difficulty surviving.

For those reasons, Clean Ocean Action strongly supports this bill, wants to see this bill moved quickly, and wants to see true violators be given true enforcement actions; that the poisoning of our waterways should not go unpunished. Thank you.

SENATOR DALTON: Thank you, Cindy. Steve Fowler, New Jersey Environmental Federation.

MR. FOWLER: Okay, the Clean Water Enforcement Campaign is a statewide movement of over 60 environmental, community, labor groups spearheaded by New Jersey PIRG and New Jersey Environmental Federation all working together to pass the Clean Water Enforcement Act. This has been mentioned repeatedly all over New Jersey. We may have some of the toughest laws on the books, but they don't mean anything if they are not enforced.

For years citizens all over the State have watched this chronic violation occur in their towns, their streams, their rivers, bays, and the ocean. And oftentimes they've waited for State enforcement which never came.

This frustration statewide was channeled into what became the Clean Water Enforcement Campaign. The 60 organizations that have signed on-- We have groups here in Ocean County such as the Ocean County Citizens for Clean Water, Save Our Oceans, Clean Ocean Action, and New Jersey Shore Audubon Society, just to name a few.

Statewide we have been joined by New Jersey Audubon Society, Anjack (phonetic spelling), Trout Unlimited, New Jersey Environmental Lobby, Communication Workers of America, and many industrial unions as well. Nationally, we have just recently been joined by National Audubon Society, with over 13,000 members in New Jersey alone.

Statewide we have observed letters to the editor, rallies, and press conferences echoing the frustration of not seeing the existing laws enforced. Since April, four rallies were held to call public attention, legislators' and the press's attention to the problems facing enforcement of water discharge permits. The most recent rally, the Clean Water Day rally held July 30, brought over 300 people and legislators and press from over a four-state area as well as national TV news to the Jersey shore.

The Senate Bill, S-2787 already has 25 co-sponsors out of 40 available Senators. On October 20 we will be rallying in Trenton for a lobby day to meet with our Senators and Assemblypeople and encourage them to not allow any tampering with these bills. We expect about 200 people from all over the State to join us next Thursday.

For the record, gentlemen, I'd like to submit a list of all the organizations as of yesterday that have signed on to the campaign.

SENATOR DALTON: Is that it, Steve? (positive response) Okay, Bill do you have any more questions for this group?

SENATOR GORMLEY: A couple things. Steve Sacks-Wilner from our staff pointed out something on page eight, section I. The fines and penalties that are imposed by the local authority, are they to receive the money?

MS. JENKINS: I believe they do.

MS. ZIPF: Yes.

SENATOR GORMLEY: Okay, fine.

MS. ZIPF: So it's a source of funding for the municipality, yeah.

SENATOR GORMLEY: Okay, just so we make sure. It doesn't specifically say it, I thought that was the intent, but I was just asking.

MS. JENKINS: Yes, that is the answer.

MS. ZIPF: It might be a good suggestion to specifically state it.

SENATOR GORMLEY: Just say it. One other point, Frank, do you have a problem if we put something in -- I don't want to hold the bill up with a fiscal note on impact, but what I would like to do is require the Department, or Treasury, or whatever agency we think best, to come up with the fiscal impact on the local authorities in terms of compliance. And I'll tell you why. It's easy-- It's not easy, it's a good

bill, it's a good concept, but there's the other big foot of the cost. That's what's going to happen. They're going to come back and say we have these multiple violations. Here is our problem: It's going to cost \$30 million. We're a municipality of 4000 people, and we will effectively have to declare bankruptcy.

Those things will happen. And I would like to know what it's going to cost to bring them into compliance? Because you have to be balanced to it. It's the same problem we face with every other deadline or every other stringent manner -- stringent bill we put up. We have-- Whether it be mandatory sentencing, then we will have certain people who won't pay for the cells. You've got to-- (laughter) No, it's true.

SENATOR PALLONE: It's very true.

SENATOR GORMLEY: It's the truth. And I have, and Dan has not-- I think in a very nonpartisan manner we have always voted for the funding sources. And certain people vote for the fines and don't vote for the funding sources, they have the best of all worlds there. They're tough tax cutters. Isn't that great?

But, someone's going to have to pay for this because this is going to spur these local authorities, and quite frankly, by and large, I don't think people want to be in violation. I think it's a matter of cost in certain-- Now these people who don't do the maintenance, they--

MS. JENKINS: Well, that's cost, too.

SENATOR GORMLEY: Well that's not--

MS. JENKINS: Smaller cost.

SENATOR GORMLEY: But I think we have to have a mechanism in the bill to get a handle on what is the cost. And we've had some bills come in, you have the revolving loan fund or whatever, but what is it going to cost? I'd like to know that because I think that gives us a balance because what's going to happen, and the simplest way to handle this, sure,

"We'll keep paying the fine, but the State can give us the money to meet the standards that they set in the Federal government." We'd do it. And I think we should do -- or have that review required in the bill within 90 days to try to get a handle on the capital cost to come into compliance.

Because as I said, it's easy for us to say it's wonderful, and it is a good bill, but at that same time you have to have good balance. And I will vote for measures to spend money. But I want to know what we're costing. If we're saying, "Here is the deadline, you have to come up with the stuff." It's like, we've got a deadline for '91. We still don't know where we're going to put the sludge. Everybody is patting everybody on the back about this deadline. Where is the sludge going to go? We still don't know where the sludge is going to go.

I just want it to be as honest as possible from the very beginning. You do, too. And it's not as though-- I think it assists the bill getting an overall perspective.

SENATOR DALTON: One of the things I was going to--

SENATOR PALLONE: How is it going to--

SENATOR DALTON: I'm sorry, Frank.

SENATOR PALLONE: No, I was going to say, how did you want to do it though, Senator?

SENATOR GORMLEY: What I would do is we would require the Department-- I don't want to play the-- I don't want to do the limitation of-- You know, we're saying these fines should be in place, but I think within a 90-day or a 100-day period.

SENATOR PALLONE: After the bill becomes law, you mean?

SENATOR GORMLEY: That's right, as a part of the bill.

SENATOR PALLONE: Or it takes effect.

SENATOR GORMLEY: Not as a delay for the bill.

SENATOR PALLONE: Well, that's fine.

SENATOR GORMLEY: As a part of the bill that we get back the capital cost to come into compliance, you've cited 100 authorities, 247 violations. Some are maintenance, but some are going to relay it right back to-- Sure, give me \$30 million, I have no problem. I'll do it, whatever the number might be. And you know, whenever we get into capital costs in these areas, I've never heard a number less than a million. There isn't a number less than a million. And sometimes they hit 100 million, and we ought to know those costs so we have a better balance, so you have a procedure to encourage compliance if you're going to hand out money.

And we have other measures. We have the Revolving Loan Fund for compliance and whatever. But we're putting the heat on now, and there are a lot of people who aren't on the first list of the loan fund that want to be on the loan fund that won't be in compliance or might have violated-- You have to get a handle on the numbers.

MS. ZIPF: And then what would happen after we got a handle on the numbers? Say a sewage authority said, "It would cost \$30 million for us to comply with the law." Does that suggest that currently sewage treatment plants as they are currently constructed are not--

SENATOR GORMLEY: No, what I'm suggesting is if we don't do it, then we're one step further away from total honesty. Because you're going to say, "Well, you pay for it." Well, my record is I voted to pay for things like that in the past. So, we, by doing it, unless we have the other end of it, I think to a degree -- and I'm on the bill -- but I think to a degree it's like a sludge deadline on the ocean.

MS. ZIPF: Right.

SENATOR GORMLEY: You've got to know what it's going to cost. It's part of the process.

MS. ZIPF: Would there be a way if New Jersey Public Interest Research Group had information that perhaps the sewage authority was not being quite honest with how much it would really cost for them to come into compliance? If there was information from the public that showed that all they needed to do was "X" or "Y", could that get into the--

SENATOR GORMLEY: All I'm trying to get is the real-- Obviously I'd like the lowest number possible because if I say as a legislator I want to pay for it--

MS. ZIPF: Oh I agree.

SENATOR GORMLEY: --I've got to come up with the funding source and we'll sweat out the last four votes, and everybody will be saying, "I'll never vote for another tax," but they want the money spent in their district.

MS. ZIPF: Right.

SENATOR GORMLEY: I would hope that under the measure that the DEP would take input from the authorities and PIRG--

MS. ZIPF: And the public.

SENATOR GORMLEY: --and whatever other groups to get a handle on it. And I think in all fairness to DEP, when they're going over these capital costs, they're going to want to -- you know -- as reasonable as possible, because there's a lot of (inaudible) was found. Can I tell you today what the dollar amount will be -- what the mechanism will be? I don't know, but I'll tell you, they're not going to be in compliance in certain circumstances until you spend the money to do it. And that's called, "Let's lay it all out on the table."

Now, can I tell you what happens after I get that number in? No, I'll probably go, "Oh my God, it's \$2 billion." But if we were talking billions of dollars, and you want that total disclosure of what the predicament is, then we might as well lay it on the table, because I think we're going to come up with a number that will cause certain people cardiac arrest. It's going to be, but we might as well.

What's the sense of having a system that perpetual fines-- Because the fines are incidental from your perspective, because the fines are going to be an inducement to get it done. But if the money isn't there to get it done, the fines go on, but you're fining the environment even to a greater degree.

MS. ZIPF: And this would be for industries as well as authorities.

SENATOR GORMLEY: Yes, we want to know the cost. Now, the question on--

MS. JENKINS: Why would it cover industry?

SENATOR PALLONE: Do you want it to be industry? Or just municipal?

MS. JENKINS: Just municipal.

SENATOR GORMLEY: Well, I'm suggesting it from the municipal perspective. It would be interesting to see the other number. Why not?

SENATOR DALTON: There's a whole-- I mean, there is a whole series--

MS. JENKINS: It's a different situation

SENATOR DALTON: --of cost issues associated with the bill, in any bill where you're tightening up enforcement and environmental regulations. There's no denying that.

And I think what Senator Gormley wants to get at is he's not suggesting that we shouldn't tighten up the regulations, we should enforce them. But we should understand that there's a cost for that just like there is an environmental cost if in fact we ignore these -- the tightening up of the enforcement.

MS. JENKINS: Right.

SENATOR DALTON: One of the issues that I wanted to get into is that. What is expected of MUAs? I've recently had the opportunity to sit with DEP in their meeting with MUAs in

the area that I represent on the failing to meet the Clean Water Act, the Federal standards and the Federal deadline.

One of the things that's happening, and I saw an example of it, is that there is one local MUA that wanted to come into compliance. Obviously, nobody wants to be out of compliance, nobody wants to read their names in the paper, etc., their local residents. But, they literally didn't know how to do it. They searched all over for answers. They searched with the Utilities Association--

MS. ZIPF: Association of Authorities.

SENATOR DALTON: --that's here today and they didn't know how to do it; to come into compliance.

SENATOR GORMLEY: Is there a cost?

SENATOR DALTON: They weren't even concerned about the cost. That was sort of like secondary to them. They were concerned about whether technically, they had the ability with the technology they were presently employing, to come into compliance. I guess that's one concern.

Secondly, under the bill, what you charge the MUAs as doing, is then going out to industrial facilities and having the MUAs tell those industrial facilities what their standards should be. Let me ask you a question, do you feel that the MUAs have the ability to go and do that?

MS. JENKINS: I believe they do. The pretreatment programs that the utilities authorities that we examined currently have. The pretreatment program itself is a delegated program. The Department has already delegated the responsibility to those MUAs to write permits, monitor the permits, and enforce the permits of industrial users. They have the right at present.

SENATOR DALTON: They have the right. I'm not suggesting--

MS. JENKINS: The technical ability. Do they have the technical ability?

SENATOR DALTON: Yeah, that's the question.

MS. JENKINS: I do believe the large MUAs, I mean they're professional organizations, they're not-- They have very well technically trained people on staff. They do have the expertise and in large part, my understanding is that the larger authorities also have budgets that should be able to cover--

SENATOR DALTON: I think we ought to know that answer, whether it's a large, medium, or small MUA, because we're charging them to go and do it, and we ought to have a better answer, then. Perhaps the large ones do. I don't know about the small.

MS. JENKINS: The large ones have the substantial numbers of industrial dischargers going into them. Ninety-five percent of the volume of industrial pollutants going into MUAs is going into the 22 large ones. And they do have the capabilities of taking care of the industrial pretreatment programs. The smaller utility authorities and sewage treatment plants do not have pretreatment programs. They do not have that responsibility. The State, the DEP, is responsible for administering the permits of the smaller plants.

SENATOR DALTON: Okay, and then--

MS. JENKINS: That would not change.

SENATOR DALTON: Okay, if in fact that wouldn't change-- So the power of the length with pretreatment and meeting pretreatment would have to be met by these industrial dischargers, only set up by the DEP. DEP would be the entity that they would be dealing with.

MS. JENKINS: For the small ones.

SENATOR DALTON: Correct? Is that a correct representation?

MS. JENKINS: That's correct, but the vast majority of industrial users are going into 22 large sewage treatment plants.

SENATOR DALTON: When you say the 22 large sewage treatment plants I--

MS. JENKINS: Well, there are 22 sewage treatment plants that have been given the authority to run pretreatment programs that have been delegated authority. And they do receive the majority of industrial waste in the State.

SENATOR DALTON: Are they mostly in the Northeast Corridor or all over the State?

MS. JENKINS: They're all over the State.

SENATOR DALTON: Okay.

MS. JENKINS: I think you have a number of representatives here today.

SENATOR DALTON: Okay.

MS. ZIPF: But they're--

SENATOR DALTON: I didn't want to interrupt you.

MR. FOWLER: Senator, I have worked for two companies, one down here in Ocean County that was forced by court order, forced by the Ocean County Municipal Authority to put in a pretreatment system of their own because they were violating and killing off the bacterial systems.

Also, up in Monmouth County, that again, was forced by the Bay Shore Regional Authority to put in a pretreatment in their system because again they were violating the discharges. That was Charles and Ritz (phonetic spelling), and down here was Fluid Packaging Company.

SENATOR DALTON: Yeah, I'm not suggesting there's not that going on. What I'm suggesting is with regard to the smaller MUAs--

MR. FOWLER: I think they do have power.

SENATOR DALTON: --or the DEP. There again, we want to get a handle on the cost, an issue that was raised earlier, and I wanted to know what sort of data you had developed with regard to the expense that would have to be incurred by the MUA. This is besides capital cost, this is now. We're talking about operating cost, and what we'd have to have or get to the DEP to take this type of enforcement and also technical ability that they would need to implement the Act. That's really what I'm getting at here; that there is a cost, and I think we need good data. I don't think, by the way, all this cost is blatant, that it jumps right out at you. I'm thinking of other ways that there are costs that we haven't even thought about yet. That's why I'm anxious to hear the Utilities Association testify on the bill.

One of the other things that concerns -- that I just want to raise with regard to the bill, is the whole issue of fines. Again, what I'm seeing now is I'm seeing again, a Department that is implementing the standards, the Federal standards. They are entering into AOCs with MUAs, and there is a cost involved usually with upgrading a plant then. Additionally there are fines going on that are being levied against these municipal authorities.

And a lot of times when the Department is entering these agreements on a local level, the municipality is going out and borrowing the money to upgrade the plant and then in turn, they are being fined. So they are going to have to borrow, to pay for the fine as well. And I was wondering what your thoughts are about that?

If in fact we see a MUA that is making an effort, taking steps to meet its standards, and some of them are like that; I'm not saying they're not. They should have met their standards, they were aware of them, now they are being forced to. But in one case, I know of a situation where the upgrading

of a facility is going to cost literally hundreds of thousands of dollars, which the municipality is going to go out and borrow, and at the same time they are then being hit with like \$40,000, \$50,000 in fines and penalties as well, which by the way, they are going to have to borrow to pay their penalty off. Do you see a dilemma there from a local perspective?

MS. JENKINS: Well, we see it from an environmental perspective; that there should be an assurance of penalties when you violate the law. What we have done is set minimum -- the bill sets minimum penalties, not even -- it's not a set penalty. It just sets a floor for what must be assessed. And the Department has complete discretion to assess any penalty between \$1000 and \$50,000, and 5 and 50 depending on the violation.

In terms of being hit with a penalty as well as then entering into a consent order, the facility doesn't have to wait for the Department to discover that they are in violation to ask for a consent order. The violator can come in and say, "I'm having problems. Can we enter into a consent order that will put us on a time schedule to upgrade our facility?" A violator doesn't have to wait to be caught to enter into these agreements. And clearly the penalties are not going to be as substantial if the facility in violation comes in on its own.

SENATOR DALTON: Yeah, I guess I want to look at the bill a little more closely. But, I hope that discretion is in there, is what I'm saying.

MS. JENKINS: Yes, it is.

SENATOR DALTON: I think we need to have that. I think Bill raised the issue of the MUA where you have 10,000 people in a town. He said 4000 and I'll say 10,000. You know, they have to upgrade significantly and then they're getting banged with a fine that is significant as well. And I mean the bottom line is--

SENATOR GORMLEY: Should that go in an escrow account towards the project?

SENATOR DALTON: By the way, we all know who's paying that.

MS. JENKINS: Right.

SENATOR DALTON: You know it's not coming out-- You know, the State ain't paying it.

SENATOR GORMLEY: The tooth fairy's not mailing the money.

MS. ZIPF: Well, that is what's being done with the sewage sludge dumpers right now. The monies that get paid from the fines go into an escrow account and although that's a little bit hard to swallow since it was a 1981 deadline, the fact that the monies are being put into an account and as the years progress, if they don't stop ocean dumping they get less of the money back, that does provide--

SENATOR GORMLEY: As we know that's infinitesimal, and there should be a surcharge over and above that per ton--

MS. ZIPF: Right.

SENATOR GORMLEY: --but the concept is correct.

MS. ZIPF: The concept is.

SENATOR GORMLEY: Can I bring up another point?

SENATOR DALTON: Sure, go ahead.

SENATOR GORMLEY: Section 9, I want to suggest an amendment: "Any person or any party in interest." We have to have some limitations on who can file suit in this State.

SENATOR PALLONE: You want to change it how, Senator?

SENATOR GORMLEY: Yeah, any party in interest.

SENATOR DALTON: No, we're not going to change-- We're not marking up the bill today.

SENATOR PALLONE: No, I realize that.

SENATOR GORMLEY: Well, I'm just suggesting.

SENATOR DALTON: This is a public hearing.

SENATOR GORMLEY: But I'm suggesting it. I mean it's a little broad, don't you think so? I realize who might be filing some of the suits, that you could-- There are obviously residents or whomever that, shall we say, interest groups could represent-- Just to say any person, without having any interest in the matter, is a little broad.

SENATOR PALLONE: Well, Senator what-- You mean you're trying to establish certain standing that they would have to have?

SENATOR GORMLEY: Yeah.

SENATOR PALLONE: In what sense, though?

SENATOR GORMLEY: They are a person serviced by the authority, they are a person affected by the pollution. I mean it's fairly broad the way we have it, we're taking interest in a broad context. But just to provide any person, without any criteria for any person, is somewhat broad.

I don't want it to be limiting. We don't want it to be narrow. We don't want to say there has to be \$100,000 in damage, or anything like that, But just to say any person can bring a suit, is broad.

SENATOR PALLONE: Well, the only thing is, if they have to be a party in interest, you mean they have to be serviced by the sewage authority, or they have to be affected by the plant? Is what you're saying?

SENATOR GORMLEY: I'm saying it has to be something -- affected by the pollution, affected in the service area, somebody affected or who is served by the authority, something of that nature. But to just say, "Any person has standing to file suit," with no basis, is something that I think is a little -- not a little -- it's very broad. Don't you agree?

SENATOR PALLONE: Well, the only problem I would have is that, you know, if you're talking about someone-- Let's forget the municipal sewage treatment-- Let's just assume it's

some sort of factory or industrial plant. Isn't it often going to be difficult to prove damage or to prove that you've been affected, so to speak?

SENATOR GORMLEY: No, no, I'm just saying you're alleging. Obviously you don't have to prove it. Somebody can bring an action who's just alleging -- but somebody at least who can allege. I'm not saying they have to win. All we're saying is somebody who is affected. The way I read this -- and correct me if I'm wrong, I like to be corrected -- any person can come in and file suit; even if they're not affected at all.

MS. JENKINS: I would like to make a point. I'm a biologist, but just in reference to New Jersey PIRG suits, which have all been filed in Federal Court, which is I understand, that this language parallels that and the language of the Clean Water Act, we have to prove standing.

SENATOR GORMLEY: Fine.

MS. JENKINS: It's not in the law, but in order to bring the suit you have to prove standing.

SENATOR GORMLEY: Well, that's all--

MS. JENKINS: And so you have to--

SENATOR GORMLEY: You have to understand, but just looking at it-- By the way, I'm not trying to make it so narrow-- I'm not trying to have standing based on a certain monetary level.

MS. JENKINS: That would be of concern.

SENATOR GORMLEY: But just reading it and then-- By the way, if we didn't clarify it someone would say, "Oh no, even though it reads the same as the Federal level, you don't have the standing requirements."

SENATOR PALLONE: But why is that so important, Senator? Why not just let anybody bring the action? Why does it matter?

SENATOR GORMLEY: Well, I'll tell you Frank, if we-- Why don't we just let anybody bring an action for anything, whenever they want to without standing? And then we can look at that end of the State budget for the court costs that you're going to start to pick up.

SENATOR PALLONE: Yeah, but isn't the standing--

SENATOR GORMLEY: You have to have--

SENATOR PALLONE: Isn't the standing going to be required anyway? In any action you're going to--

SENATOR GORMLEY: Well then, I'm just saying someone could read this to say that prior to this time anybody with standing could have brought it before, anyway.

SENATOR PALLONE: The only reason-- The only problem I have with it is that it would seem to narrow the focus more than currently exists with required standards.

SENATOR GORMLEY: But, if you're saying as a matter of law they have standing anyway, then you include that they have some form of standing. I don't want to limit it, but at the same time, you don't want a measure that allows-- Suppose somebody came in from Utah and felt like filing a suit. They'd have standing.

SENATOR PALLONE: Yeah, I mean if there's a problem, what does it matter if there's a national organization based in Utah, or something?

SENATOR GORMLEY: But, also suppose it's not a national organization. Suppose it's not a credible organization, and suppose you can't kick it out on a standing argument, which you could do. Don't you think there has to be some modicum of relationship to the problem, some affinity to the problem? I mean, I don't think this is a tough standard.

SENATOR PALLONE: My only concern--

SENATOR GORMLEY: You know -- and I appreciate -- I'm the lawyer, and you're clearing up the law for me, and I appreciate it, but you've dealt with this on the Federal

level. I don't see the problem with having some form of standing.

SENATOR DALTON: We're not going to rectify this today, nor are we going to rectify a lot of things today. Okay, but I think you understand Senator Gormley's point and where he is coming from.

SENATOR PALLONE: I understand.

SENATOR DALTON: One of the issues that I think we all have to be aware of is the funding issue. And Cindy, to answer your question to Senator Gormley, is that if in fact this costs a lot of money, does that mean we shouldn't go ahead and enforce the law? Senator Gormley's response was very adequate, he said, "No, I think we have to enforce the law."

MS. ZIPF: Oh absolutely.

SENATOR DALTON: But what we have to do together is come up with a funding mechanism.

MS. ZIPF: Right.

SENATOR DALTON: All of us are in that boat.

MS. ZIPF: I agree.

SENATOR DALTON: Thank you very much, appreciate it.

SENATOR PALLONE: Thank you.

SENATOR DALTON: Let's see, Tom Fagan of the IUE. Well, at this rate we'll be staying at the local Holiday Inn. Does Brick Township have a Holiday Inn?

T H O M A S J. F A G A N: Good morning gentlemen, I appreciate you giving me the opportunity to speak. I've been out-of-state and I was unaware of this hearing until yesterday, so it's kind of a quick notice. My name is Tom Fagan, I'm the President of Local 417 of the IUE, which is the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers. We represent over 1000 workers in Ocean and Monmouth Counties and our Local is comprised of seven different units or shops which includes the Allied/Signal Bendix

Electric Powered Division Plant in Eatontown, Torwico Electronics in Lakewood, the Monmouth County Park System, Belmar, Eatontown and Long Branch Public Works Departments, and the Northeast Monmouth Regional Sewerage Authority. Local 417 is a sponsor organization of Clean Ocean Action and I hold a seat on the steering committee.

I'm speaking here today just to voice labor's support of the Clean Water Enforcement Act. While I'm at it, I'd just like to point out quickly some other New Jersey labor organizations that endorse this bill: the Amalgamated Clothing Textile Workers, Local 1298; the American Federation of State, County and Municipal Employees, Local 2216; the Communication Workers of America, Locals 1033, 1034, 1037, and 1088; the Industrial Union Council which represents some 200,000 workers in the State; the International Brotherhood of Electrical Workers, Local 827; the International Chemical Workers Union, 527; the Office and Professional Employees International Union, Local 32; the Patrolmen's Benevolent Association, Local 120; the United Auto Workers, Region 9; and the United Labor Agency of Bergen County, the AFL-CIO.

In the past, all too often, labor groups were on the wrong side of environmental issues due to concern over loss of jobs. Those concerns are very real and very valid. However, labor's position has evolved to reflect the fact that a clean and healthy environment and good jobs should, and must, go together.

The facts have proven that environmental protection has been good for jobs, often creating new ones and preserving others. The tourism, fishing, boating, and restaurant industries all are vital to New Jersey's economy and are all adversely affected when the environment becomes contaminated. These just must be protected.

Just this morning, I saw on the front page of the Press the fine that was levied against the Asbury Park

Treatment Plant and one of the factors behind that was the lack of maintenance in that plant. Again, had there been sufficient employees, workers on the job to do that maintenance, that situation may not have occurred as it had. Instead we had jobs affected up and down the coast from Asbury Park, the loss of revenues coming into the area. And just for the lack of a few jobs in a plant to perform proper and routine maintenance, the impact affected many other jobs and many other revenues that otherwise would have come into the area.

In the majority of the cases involving pollution of the environment, it is often a worker in the plant or factory that's the first one exposed and placed at the greatest risk by the lax controls over toxic substances. Increased enforcement of our environmental laws can only have a positive effect on the exposure of workers in the workplace.

Organized labor's goal has always been to improve the quality of life of all working people through better wages, benefits, and better working conditions. That concern no longer stops at the plant gate.

The working people of New Jersey live in the same communities, swim in the same ocean as everyone else. Good jobs aren't worth a whole lot if the quality of life in the community and surrounding environment is degraded by pollution.

In brief closing, I just want to state to you that organized labor is behind this Act. Working people in New Jersey want some teeth put into the environmental laws that we have on the books, and working people want to see the quality of life in this State protected, preserved, and improved. Thank you.

SENATOR DALTON: Thank you, Tom. Mike Dimino, Authorities Association of New Jersey.

M I C H A E L A. D I M I N O: Thank you, Senator, for the opportunity to make some brief comments this afternoon. If I can beg your indulgence for a minute to make an analogy as to

where I see this industry and the way it's being looked at by the public.

If we have a human body which is probably the most complex organism in the world, and a doctor is trying to diagnose a problem, he gathers as much data as he can, and he evaluates it. That diagnosis is not foolproof because of the complexity of the situation he's working on.

In a sense, the environment is that human body. It's a very complex set of factors going on. And the regulators are professionals that in a sense serve as the doctor, and they're trying to make a professional evaluation as best they can. Are they going to be right all the time? No. The same as that doctor.

What we're trying to do with this industry, it appears to me, is to regulate every fine-tuned decision that that doctor needs to make. I just think that that is professionally wrong. I'd like to comment on some of the points that Jeanie Jenkins made, particularly with her comments on the Stony Brook Regional Authority.

I am the Executive Director of that Authority. I am very proud to be the Executive Director of Stony Brook. I've been working with Stony Brook about nine years. And she correctly notes that we did have some violations in the 20-month period of the PIRG study.

I would like to put that statement in a different context. We were able to reconcile 47 violations in that 25-month period. Those 47 violations are out of 10,141 sample analyses of our reclaimed water.

And I am not going to apologize to anyone in this room for less than a 1% failure rate. And yet, that is the failure rate that the Stony Brook Regional Sewage Authority is being crucified over.

I really think that any data can be played with any way you want from the viewpoint that you are willing to gain

by it. But I think that I cannot let the record stand on Jeanie Jenkins' statement that the Stony Brook Regional Authority agrees with the conclusion of that report, because the final conclusion of that report essentially says that the Stony Brook Regional Sewage Authority is a chronic violator.

The record stands on its own. The Stony Brook Regional Sewage Authority is one of, if not, the best operated plants in the State of New Jersey. We have State officials who come to our facility for training. We are the model of this industry. And the same can be said for many other POTWs who are being evaluated by the New Jersey Public Interest Research Group.

Some of them are bad apples, and legitimately so. And the Authorities Association I know, shares my viewpoint that the chronic violators that are legitimately classified as such should be seriously prosecuted.

SENATOR DALTON: Mike, the-- Let me just ask you this. By the way, I've given you leeway; I gave Jeanie leeway.

MR. DIMINO: I'm sorry.

SENATOR DALTON: And I've given you leeway. You've responded to her, she made some points about you.

My understanding is that you're here representing the Authorities Association, right? What Bill and I traveled a long way here for today is to talk about the bill. And what I want to do-- I want you and any other person that's coming up here and speaking to us about this bill to be as specific as you can with regard to this bill. That's what we find helpful.

MR. DIMINO: I'm sorry.

SENATOR DALTON: General statements in support or general statements against don't-- Believe me, they really don't help me.

SENATOR GORMLEY: They're like the 30 seconds TV slots.

SENATOR DALTON: Yeah.

SENATOR GORMLEY: We don't pay attention to it.

SENATOR DALTON: We don't pay attention to any of it.
So, go ahead.

MR. DIMINO: There's some provision of the bill we think reiterate a lot of the programs that are already taking place in the State. However, if we feel that we need to formalize, that's fine. For example, the whole mechanism on the State inspections and the kind of things that they should be doing, we tend to agree with. That's a very good part of the bill.

The parts of the bill that need touching up, we feel, are the criminal penalty section. In particular, the significant penalties should be placed against the ultimate decision makers. If an executive director, for example, recommends a \$10 million budget, and the board of directors of that authority only approves 8, well, certainly the executive director cannot be held responsible for any problems associated with a budget shortfall. That is beyond his control.

So, we think the criminal penalties in cases like that should be with the ultimate decision makers. On a municipal, it should be with the mayor and the town council. If the executive director can be shown that he is showing false information, certainly if he's undershooting, there certainly should be grounds for investigation.

SENATOR GORMLEY: I'm trying to figure out how you interpret it that way? Are you saying an under person-- (confers with aide) But that's just the definition of person, that doesn't change what is criminal. Are you saying one could potentially be liable because of an underfunding in a budget? Be criminally liable?

MR. DIMINO: Well, maybe the interpretation that we put together on some of the provisions is wrong. But, it seems to us that criminal prosecutions are prescribed for the operator or chief executive officer.

On page seven, under paragraph five, reports of monitoring results we agree should be signed by the chief executive officer, but it implies that-- I'm referencing the wrong section on the fines, excuse me.

SENATOR GORMLEY: I don't want anybody to be indicted because of a budget, but I don't think that's what we're talking about. And I want to know how that could happen? You gave that example, and if that be the case, then obviously I don't think that that is the intent of those supporting the bill, that approving a budget someone could be held criminally liable. That's not anyone's goal. I just want to know how that could happen, and I would want to correct that.

Listen, it's not that the bill-- This is just a hearing. If you'd like to, why don't you, on behalf of the Authorities -- that particular point I'd like somebody to do a review.

SENATOR DALTON: Yeah, sharpen that up a little.

SENATOR GORMLEY: Sharpen that up because we could go back and forth on that all day. But the key is, if you think there is a broad brush of criminality that shouldn't be categorized as criminal, if you could have counsel to the authority or one of the-- There are enough solicitors to the authorities sitting out there that would be willing to do it -- if they could put that together I'd like to see that because we obviously don't want this to appear to go beyond what its intent is, and obviously somebody approving a budget is not the intent of anybody sponsoring the bill. If you could get that, I'd appreciate it.

MR. DIMINO: The Association doesn't have a formal presentation to make today.

SENATOR DALTON: Mike, this is going to be -- I'm sure you're aware -- a very important bill to you. It's roughly 20 pages. And a lot of these things contained in these pages are a lot of things that you have to do, i.e. the Association. So, we would like a formal statement from you.

MR. DIMINO: I'll take the message back to the members.

SENATOR DALTON: And as specific as possible.

SENATOR GORMLEY: I mean, if you have a committee or whatever I would really get them into this, because I think it's important. I really do.

SENATOR DALTON: Thanks Mike.

MR. DIMINO: Okay.

SENATOR DALTON: The next speaker is Lisa -- and I'm going to mess up this name -- Suhay, Alliance for a Living Ocean.

L I S A S U H A Y: You didn't mess it up at all. My name is Lisa Suhay, and I'm here to speak today for Alliance for a Living Ocean and for President Karen Kiss and for our more than 2500 members.

ALO is a nonprofit citizens' group committed to ending the contamination of New Jersey's coastal waters through efforts in research, public education, and citizen action. The section of the bill that I would like to address is that of citizens' rights.

Under current law, citizens cannot take effective legal action against companies whose discharges are in violation of water quality permit standards. The reason that effective legal action is not always taken is the prohibitive cost of quality legal aid. Whereas many corporations can afford to employ a full staff of high quality legal counsel, there are areas in the State where citizens simply cannot afford competitive representation. I am sure, Senator, that you are aware of the current cap on attorneys' fees that limits the amounts that can be recovered as a result of a citizens' suit. Removal of this cap as specified in the Enforcement Act will give added incentive to lawyers to represent citizens on a pro bono basis in these cases.

Also, the Enforcement Act's establishment of an intervention fund of a million dollars to provide loans and grants to support citizen suits to aid in the provision of expert testimony at adjudicatory hearings will be invaluable. This provision would mean basically that instead of spending thousands of dollars to provide an expert testimony, citizens' groups like ALO, Clean Ocean Action, and others, could receive a grant from the intervention fund and conserve their scarce financial resources for other use.

We have an overburdened DEP which is not coping with its enormous enforcement responsibilities under the current methods. The Clean Water Enforcement Act will give more responsibility to the citizens. Instead of an adversarial relationship between the DEP and the public, this bill will be a way to utilize the power of the citizenry to augment the system.

There must be a mechanism in place for the citizenry to have truly equal representation in the form of the highest quality of legal aid. The Clean Water Enforcement Act will preserve the rights of people of all economic strata to clean water.

Citizen suits are an effective means of getting companies into compliance. Allowing citizens to bring suits for past or continuing violation adds teeth to the Clean Water Act. The reality is that many companies place a priority on a balance sheet rather than the environment. Citizen suits will take away the profit motive the companies have for dumping illegally.

The fines issued to these companies are often insignificant. The possibility of a citizen suit brought for past violations means that if a company has saved \$20,000 a year for the past five years for not treating its waste properly, then citizens can demand restitution for that amount in addition to the damages, and that's incentive.

Granted, citizen suits are time-consuming and they are inconvenient to the companies. However, when you consider and you think about the citizens of the Pine Lake area in Manchester Township, who for months had to travel to get water to drink and to bathe in, you can't help but reach the conclusion that citizen suits, no matter how inconvenient, are necessary. Those people still don't know whether or not those people and their children are walking time bombs due to the chemicals they have already absorbed from the contaminated water.

We realize that industry is necessary to our society. We do not propose to cripple companies in this State, but to hold them responsible for their actions. Industry and citizenry can peacefully coexist in this very densely populated State that has many demands on its resources. Thank you.

SENATOR DALTON: Thank you very much. That provision was in a Committee substitute that you forwarded to me, or-- Is that it? We don't have that before us.

SENATOR GORMLEY: We've been looking for the million dollars all over the place. We cannot find it.

SENATOR DALTON: Thank you very much.

SENATOR GORMLEY: I will grudgingly go along with those increased attorneys' fees.

SENATOR DALTON: Next will be a representative from the New Jersey Utilities Association and Water Pollution Control Association?

J. R O B E R T F L Y N N: Thank you, gentlemen. Let me start by saying I am the incoming President of the Authorities Association. We will have something in writing to you very shortly. I am also Chairman of the Legislative Committee, for the Water Pollution Control Association in New Jersey.

The Authorities Association represents well over 90% of the authorities in the State. But one thing -- one word that is being used very loosely and I think very wrongly at

today's hearing, every time we talk about pollution we say, "authorities" or "MUAs." Keep in mind that there are only about 100 authorities in the State of New Jersey. It was mentioned earlier there are well over 500 sewer plants. So, I would venture to say that the majority of polluters, percentagewise, are municipal-owned utilities, not authorities. Over 500 sewer plants in the State, and only about 100 sewer authorities in the State of New Jersey.

The Authorities Association and Water Pollution agree very strongly with the intent of this legislation. We do have some problems, especially in the definition. We think that -- and I won't pick out individual ones, I'll cover that in my conclusion -- we think the definitions are very vague, very loose, and leave too much to the interpretation of DEP or individuals. We don't think that the responsibility is spelled out in a proper manner.

Mike mentioned earlier about a budget problem. Well, I'll tell you how the superintendent or executive director -- the way this law was written -- would be the guy to go to jail, or get fined if there's a budget problem.

Asbury Park was mentioned earlier and I don't know any of the particulars, only what I read in the papers a short time before the meeting. But there was a statement in that article that said that the sewer cleaning equipment was in disrepair for two years. Whose fault is that? I don't know whose fault it was, but I do know other instances similar to that where the superintendent made a request to the executive director, or the mayor of the town, according to the type of facility, and the governing body, either the board of commissioners of the authority or town council turned that budget down.

I was in a similar occurrence as Director of Public Works about 18 years ago. A politician threatened to take my job away. I went to DEP with my budget, showed them my budget,

and showed them what the politicians finally gave me, and I was found innocent of everything. The board of commissioners in the town I worked for at the time were reprimanded very severely for what went on. So, it can happen because of a budget over which a superintendent really has no control as far as the municipality is concerned and over which an executive director really has no control as far as the utilities authority--

I would ask the gentlemen on this board, would you have the guts to write into that bill, that if such a thing occurred, the mayor would go to jail? I don't think you'd have a hell of a lot of chance of having that bill passed in Trenton if that were the case.

SENATOR DALTON: Only Republican mayors.

MR. FLYNN: Okay, at least we know where you're coming from. I'm very serious about that.

SENATOR DALTON: I know, I'm sorry.

MR. FLYNN: We agree with the responsibility, but don't take that little operator out there, who can't do a thing about it, don't take the executive director who's trying to do the job right, and have a board of commissioners turn it down. I'm not in that situation, so I'm not speaking for myself. But it does happen. There's a lot of politics involved and unless this bill is written in such a way that the real person or groups of persons responsible are going to get fined and go to jail, you're not going to do one thing to clear up the environment. All you're going to do is create a lot of scapegoats out there.

We've met incidentally with the people that spoke first and they seem to be in somewhat in agreement with what I'm saying.

When you mention fines, one part of your bill says it's up to the discretion of DEP. I think that's politics at

its worst. I can see if you've got a DEP Commissioner appointed by the Republican Governor, that the Republican towns and the Republican MUAs are going to be treated significantly different than the Democratic towns or the independent towns, and vice versa.

Write the law, stick by the law, and enforce it 100% and don't leave any discretion in there for DEP. It does say that the way the law is written -- that it's up to the DEP -- the discretion of DEP to interpret who should be fined, who shouldn't be fined.

SENATOR DALTON: You know, that's an interesting point.

MR. FLYNN: That's a damned interesting point if you're in my position.

SENATOR DALTON: Yeah, I suspect if you're in mine as well, having to write a bill that affects so many people, individuals, and authorities. If you have a MUA that's making a good faith effort to address a problem and-- I mean do you feel that fine should be one -- the same as a recalcitrant MUA?

MR. FLYNN: No, I don't. And I was going to mention that a little later on, but now that you mention that, I believe Assemblyman Foy has a bill in the Legislature right now requesting that fines be returned to the violator if the corrections are made within a specific period of time. I'm not sure exactly how it's worded, but I know that's the intent of the bill.

And I think if that if DEP were to determine that a problem to be corrected in 6 months, 12 months, 18 months, and those violations are corrected, that the fine should be reimbursed. An alternative to that would be that the fines went to some sort of fund that's going to do something to correct the environment.

The way all fines are assessed right now, my Authority just paid a \$25,000 fine for a consent order. That fine goes

into the general coffers in Trenton, and it makes the incumbents look good. It doesn't do one thing to clear up the environment. But I think that some alternative should be looked at for the fines. The money should not go to Trenton. It should be used to clean up the environment; that's what the bill's for.

SENATOR DALTON: How about if the money goes to Trenton for DEP enforcement?

MR. FLYNN: Well, I think you have a problem there. You asked a question earlier and you didn't get an answer, probably because there wasn't a true answer. I don't know if DEP is understaffed or overstaffed, but I do know that there are serious questions about the management of DEP. If we had an effective DEP we wouldn't be here with the problems that we're faced with today. I don't know that that's-- It's something that's worth considering, but I don't know that that should be specifically spelled out.

I don't think at this time I'd be willing to make that statement. It should go to DEP for more (indiscernible) I'm involved as-- There are 21 authorities with a lawsuit against DEP questioning the effectiveness of what they're doing and why they're doing it. So, I think it's worthwhile considering, but, the Authorities Association or Water Pollution wouldn't be prepared to say that's the ultimate way to go with that point.

SENATOR DALTON: You want to give us a little discretion on that?

MR. FLYNN: Certainly. We trust your judgment.

SENATOR DALTON: We appreciate that.

MR. FLYNN: I don't think that any fines should be levied for parameters in a NJPDES permit that do not harm the public or the environment. And I'll give you a perfect example: My permit right now says that I can have zero chlorine in my effluent. And this is just one example. There

are numerous other ones and a lot of different permits throughout the State. No chlorine in my discharge, okay? My old permit said that I had to have between one part per million and two parts per million. And I've got letters on file from EPA and DEP severely criticizing me for not having enough chlorine in my water a couple of years ago. Now I got letters in my file saying I've got too much chlorine in the water -- okay? -- substantially less than the parameters that I had on there before.

The parameters on a lot of sewer plants and it's changing as these permits are renewed every five years: The parameters on chlorine are more stringent, or don't allow as much water as, or what is required in drinking water.

In drinking water in the State of New Jersey, you have to have anywhere from two-tenths of a part to four-tenths of a part. Chlorine is the one example, and there are numerous other ones, that if it doesn't affect the environment or doesn't harm the public, then it shouldn't be included on a list of fines.

There were some discussions earlier about outside labs doing the work. I would just suggest that any company that's going to cheat or any municipality or any sewer plant that's going to cheat on its reports can cheat on its test results and can find a lab someplace. There are labs popping up all over the State of New Jersey -- I'm not pointing a finger; I don't know of any offhand -- but I know that ten years ago if I wanted a lab to give me a specific result, it could be done.

What I would suggest is that DEP go back to what they used to do and where you run into a problem, have the DEP do the sampling, have the DEP do the testing. They do have a lab and maybe that's where some of that money should go for the fines. But the DEP doesn't have a big enough lab to do this now. They dropped it for a lack of funds, lack of manpower.

And I would suggest that the work for testing, after you find out you have a significant violation, be in the hands of someone supposedly where the answer would be unquestionable. Don't leave it to outside lab, inside lab, the whole bit.

In conclusion, I would just like to suggest that this bill was written without any input at all from the two major operational organizations in the State; the Authorities Association which represents almost every authority and the Water Pollution Control Association which represents almost every operator in every municipality, every engineer in the State. I would suggest that before any action is done on this, that someone from this Committee sit down with committees representing these two organizations and any other ones you feel should be included to go over item by item the entire bill. Thank you very much.

SENATOR DALTON: We would like your item by item summary of the bill.

MR. FLYNN: You will get one from both organizations within a week.

SENATOR DALTON: That would be great. Thank you very much.

MR. FLYNN: Thank you very much.

SENATOR DALTON: The next person on the agenda is Joshua Weinstein, Coastal Business Coalition. Is Mr. Weinstein here?

UNIDENTIFIED SPEAKER FROM AUDIENCE: He's out in the hallway.

SENATOR DALTON: Jim Sinclair, New Jersey Business and Industry Association. Jim do you want to testify?

J A M E S A. S I N C L A I R: (speaks from audience) No, we're not going to testify. We've requested a meeting with the sponsor. We haven't had that yet. Before we testify in public, we want to talk with the sponsor.

SENATOR DALTON: Is the Chemical Industry Council here? (no response) Mr. Weinstein?

J O S H U A W E I N S T E I N: I'm sorry.

SENATOR DALTON: That's okay.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Mr. Chairman, I'm with the Chemical Industry Council, and I wanted to say that we have no formal statement.

SENATOR DALTON: Just like with all the other speakers here, written testimony is encouraged. Thank you. Yes sir?

MR. WEINSTEIN: Good afternoon, I guess. I'm Joshua Weinstein, not Joseph Weinstein as the paper may have listed. I'm the President of the Ocean Grove Chamber of Commerce, Hotel Division, and similarly President of the recently formed Coastal Business Coalition which is basically Monmouth County as well as Ocean County. The CBC, as it has begun to be addressed, is a group of chamber of commerce members principally from coastal Monmouth and Ocean Counties who share the common devastation originating with the infamous Asbury Park's raw sewage dumping this last July.

Our primary goal is to do all we can to promote public awareness by lending our support to programs, legislation, and education which will once and for all prevent the repetition of this criminal act.

While no one law will be the panacea to the complex water pollution problem facing us, we feel that this bill, the Clean Water Enforcement Act will impact decisively on two major sources of water pollution.

Firstly, pollution generated by industries into our brooks, streams, bays, estuaries, and which ultimately empty into our beloved Atlantic Ocean, will be subjected to meaningful and rigorous compliance making it not only expensive to pollute, but will subject individuals to criminal penalties, including jail terms for commission of a felony.

I wish this bill was law this past summer when raw sewage was dumped by the Asbury Park Sewage Treatment Plant personnel. It would probably never have happened. This of course is the second source of pollution addressed by this bill, the irresponsibly managed sewage treatment plants.

The criminal act didn't impact on kids enjoying the surf, but in fact resulted in economic disasters, the likes of which haven't been seen in these parts since the Great Depression of the 1930s. Several hotels in our region closed, while others are close to foreclosure with little to no chance to sell.

Wholesale efforts to find alternative uses for many have not been successful. Conversions to condos or apartments have reached the saturation point.

In other areas of business, restaurants, boardwalk concessions, wholesale as well as retail, fishing, pharmacies are all feeling the severely and the same as feeling terminally injured by this.

The only way we feel that the public's credibility and these issues will be restored, resulting in their return to the shore is by passage of bills such as these and followed up by a rigorous enforcement policy. The public will not believe glib polished advertising copy, no matter how well done, if it isn't backed up by our government's resolute dedication to prevention. Thank you.

SENATOR DALTON: Thank you very much. Mr. Roy Childers, North Island Beach Business Coalition.

R O Y C H I L D E R S: I'm Roy Childers with North Island Beach Coalition. As usual, if you testify late at a hearing like this, most everyone said what you were going to say, so I won't do any repetition here.

The group I am here to represent really is looking at this bill from the same perspective as Mr. Weinstein was. Some numbers have been thrown around that the Jersey shore lost over

a billion dollars over this past summer. I think when you start to talk about monies that didn't come into the Jersey shore area the notion of financing becomes one of a timely issue as not just the money we have to raise to combat the problem, but the money we're losing within our State by not addressing the problem right away.

In addition, it has severely put pressure on business associations, such as ourselves, that now we have to go out and spend other money from our private sector to counteract a lot of the negative effect of not complying with some of the bills has had.

We're in favor of anything that's going to arm our laws already in existence. We are a cop and robber society. The public wants to know that people are being caught and punished. And that might be the only way to improve the perception from a tourism standpoint. That's about the scope of the comments.

SENATOR GORMLEY: You've obviously been affected by the Asbury Park situation.

MR. CHILDERS: Yes.

SENATOR GORMLEY: One thing, I don't think it would be appropriate to amend the bill, but one thing I'm going to ask staff to do -- one thing I'm getting out of this is we have a group of good authorities or people who are trying, we have a group of business people who are affected, and maybe the bill needs something that will go a little farther.

I'm going to ask staff for a bill for a takeover measure, similar to the schools. And I think that's what's necessary because with the case of these authorities, and I'm not saying, not just one, but you have one hanging out there that affects the whole coast, and what I would do is if we would have a three tier or a multi tiered system with the school takeover bill; have the same type of State takeover and that's what should have happened with Asbury Park instead of all these years of all this consternation.

So, I'm going to ask staff-- That's going to be a little more complex than this, so I don't want to hold this up. But I'm going to ask for that to be prepared, and I'll be introducing that bill, and Asbury Park looks like that's going to be the example around which we structure the bill.

It might help all sides. Because I know the good school districts wanted the school takeover bill because they wouldn't be affected. Just as the good authorities that are trying to do a good job and work in good faith say, "Why don't they get rid of Asbury Park? They're passing this bill that affects all of us."

MR. FLYNN: That's not an authority.

SENATOR GORMLEY: I'm sorry.

MR. FLYNN: It's a municipal utility.

SENATOR GORMLEY: All right, you're right. For that reason my own mistake just proved my case. (laughter) Thank you for verifying, Bob.

MR. FLYNN: Anyplace you want to take over, we would back you.

SENATOR GORMLEY: No, I'm saying when they have reached that level of disregard, the second or third violation or whatever, I think we should have a takeover. Because it's a far greater effect than even the districts, because it goes beyond that one school district. Asbury Park has affected the entire coast of New Jersey, where certain authorities are trying. Thank you.

SENATOR DALTON: Mr. Raymond, Ocean County Citizens for Clean Water.

S T A N R A Y M O N D: I just want to be real brief, but just bring out a couple points that I think the bill needs to address.

First, I'd like to say that the Ocean County Citizens for Clean Water strongly supports this piece of legislation.

We have seen in Ocean County over the last two or three years a amazing amount of groundwater pollution problems that were the result of an ordinance that we helped to get passed by the Ocean County Health Department.

We feel that if a bill such as this was in effect, polluters would think twice before they just indiscriminately dumped toxic waste into the ground and water.

Further, we feel with-- We've been working against the Ciba-Geigy pipe line into the ocean for over four years now. Ciba-Geigy earlier on had a 206 count indictment against them that was more or less waived by the DEP when they came into compliance with their new treatment works.

They since have been indicted -- which was four years ago -- in October of '84; a 35 count criminal indictment against the executive office of the corporation for violations of their permit, a number for indiscriminate dumping into the groundwater, and for lying to get their existing permit at that time.

It has taken now four years for that to get to court. We still don't know how long that's going to be before it actually does come to trial.

And I would like to see some kind of provision within this law that would make for a speedy and quick trial of constant violators. Ciba would have never gotten their permit, had this law been in effect.

I just specifically want to say one thing, and then I'll step down. It is that, on page 10, line 32 says, "The commissioner may modify, suspend, or revoke a permit in whole, or part during his term for cause including but not limited to the following--"

And the second point is, "Misrepresentation or failure to disclose fully all relevant facts upon attempting to obtain a permit." I think that that -- on line 32 that "may" should

be changed to a "shall" so that the Commissioner doesn't have any real leeway in allowing companies with a criminal background, as Ciba is, to get away with things that they have done.

SENATOR DALTON: Thank you very much. Louise Usechak, Monmouth Citizens for S.P.A.C.E.

L O U I S E U S E C H A K: Yes, I speak on behalf of Monmouth Citizens for S.P.A.C.E. which is an environmental group in Monmouth County concerned with sound planning and a clean environment. We would like to state that there is a great deal of genuine concern in the county and a desire for more rigid enforcement of acts which are supposed to protect us, the citizens.

We would like to go on record as approving this bill. It's desperately needed and its efforts to make violating parties truly accountable for their actions is long overdue.

As you may well know, Monmouth County's water situation is desperate, and there is not enough respect for this on the part of companies and even some municipalities. This summer alone we had two theoretically reputable sewage treatment plants pollute our waterways. One, the Asbury Park one, has already been discussed. The other was Western Monmouth Utilities Authority. In this case their pumping station on Route 79 failed. The alarm system failed and the backup pumps failed, and the result was that 50,000 gallons of raw untreated sewage flooded Big Brook and penetrated as far as the Swimming River Reservoir.

If our State is to truly protect its people and its environment, we must have teeth in our laws, as well as good laws. Perhaps if the Clean Water Act were rigidly enforced, companies and municipalities would more seriously consider the risks before engaging in or allowing plans for development to put our waterways and even our potable water supply in this case, at risk of pollution.

In addition, townships might be more conscientious in defining areas which should be environmentally protected. Among other things, our county has one town, Holmdel, which for the sake of ratables has requested a change in our county Wastewater Management Plan to enable them to allow for a number of package sewage treatment plants in close proximity to the Swimming River Reservoir. This is the county's major reservoir, and source of drinking water for more than half the citizens of the county.

The town must co-sign under current DEP guidelines for each plant. But so far, it does not seem to be taking this responsibility with the degree of seriousness that it merits. These plants would lie more than twice as close to the reservoir than the pumping station of Western Monmouth Utilities Authority on Route 79 which recently malfunctioned and polluted.

Intelligent planning should obviously be the first step. But unfortunately, without a clearly delineated set of enforceable laws which hold violators strictly and seriously accountable, companies and even municipalities will test the limit. They will continue dangerous land use or operating practices that place the public welfare at risk. We hope the State will speedily act to provide us with these needed laws.

I also have several hundred petitions and letters from residents of Monmouth County which I want to submit as evidence of concern for the public record in this public comment period. (This material may be made available from the Committee by request) They were obtained by Carol Balmer (phonetic spelling), a Holmdel resident, and they document great concern for adequate protection of our waterways, to preserve them from unnecessary pollution. Please note the cover letter that accompanies them. She also submitted these to the Department of Environmental Protection. Thank you.

SENATOR DALTON: Thank you very much. Who else would like to testify on the bill? Sir?

H E R B E R T K U K A S C H: I think I put my name down.

SENATOR DALTON: Okay, we had you, the Authorities Association of New Jersey.

MR. KUKASCH: Yes, I hope to be very brief. I'm not going to cover any of the ground that's been covered by my predecessors.

I sit in an interesting position. I'm a Commissioner of an authority, I'm a Director of an authority. I've been associated with this about 15 years. I've been in business for about 40 years. I retired from the laboratories and I can say that my experience has been that the people in this business are just as intelligent and honorable and dedicated as anyplace else. There are a few bad actors and everything else.

But I looked at this legislation with some dismay because I found that all of the sudden the authorities were put in the category of the polluter, or sewage treatment plant. And that is not the case. An authority or a sewage treatment plant is an abater of pollution. It is not responsible for what it receives. It can't control what it's receiving. It does the very best it can to remove the pollution and eliminate it and improve the environment that it can.

Now, from personal experience in dealing with other people, it's very very difficult to solve problems and meet a permit all the time. You can spend \$50,000 or \$100,000 attempting to identify the cause of a difficulty and not come up with a solution. This has been done. This can be documented.

I think what this legislation is attempting to do is create a legal solution to essentially a technical problem. And that is, how does one get the sewage treatment plant to function properly all the time? There must be some more research. Something has to be done.

But right now, most of the people right now are trying desperately to meet their permit limits which if you look at it carefully, is elevated. It's intended for the ten-year low

flow consideration and everything else. Those concentrations are designed for seldomly occurring events. So really, if there is a slight diminution of the effectiveness of the plant, it really does not harm the environment because the permit is written for a situation that is not there normally. It is very very difficult.

The legislation also assumes that it is very easy for a treatment plant operator, or the people there, to identify the culprit who are causing that plant problems. It's a bacterial process. The bacteria unfortunately don't pay attention to laws. The bacteria don't pay attention to people. There's no way of communicating. The best that we can do is to attempt to find out now. Sometimes the bacteria become ineffective. They only operate at partial effectiveness. Sometimes they just die and they go away.

Now, it's very extremely difficult to identify the cause of that. You can't go out and find the culprit for that. It's very very difficult. Places are spending a great deal of money in just trying to identify who the cause is. This law is not going to change any of that. You will find the same things happening.

Talking about capital, Senator Gormley before pointed out, because of the administrative consent orders, the cost of treatment plant improvements have jumped 40% in the last few weeks because of the 7/1/88 deadline and consent orders. The number of authorities that are now out in the business of improving and enlarging and doing whatever they have to do-- The contracts-- The bids are coming in 40% over the engineers' estimates. And that's across all engineers. That's something I've been paying attention to for the last month. I've been listening clearly to engineering firms about this, and this is what they're experiencing.

So, if you're worried about financing, it may be a lot higher than you suspect, because there just aren't enough

contractors to go around. And they've had lean years in the past--

SENATOR DALTON: Can I ask you a question on that?

MR. KUKASCH: Sure.

SENATOR DALTON: And it goes to the general area, not how much the bucks cost. Isn't the reason that people are moving to upgrade their plants is because they're in violation of the Federal Clean Water Act?

MR. KUKASCH: In some cases, yes. In other cases they probably would--

SENATOR DALTON: So, what's been happening is DEP is enforcing the law?

MR. KUKASCH: Yes.

SENATOR DALTON: So you said it's a technical problem and these folks over here say it's an enforcement problem. It's probably both, don't you think?

MR. KUKASCH: It's both. I cannot alibi for a plant or an authority or a municipality that's not doing their work properly. I can't do that. It's just not in me. But there are many places that are trying desperately to do the right thing, and they just cannot identify what the problem is.

SENATOR DALTON: Yeah, I'm aware of that. I gave that example myself.

MR. KUKASCH: Yes, that happens.

SENATOR DALTON: It does happen.

MR. KUKASCH: It's very, very difficult. I noticed in the statute something which we've been looking for for years. The regional authorities have very little control. They can't even write any laws at all. You know, at least a municipality, you can do something along those lines. But you can't even -- is to put the fines and penalties and thing like that. I hope those monies go to the authority that does the fining. I don't see that language in there.

SENATOR GORMLEY: Well, we brought that up. That appears to be everybody's intent.

MR. KUKASCH: Yes, but in answer to this, I'm a member of the AANJ legislative committee and we will be looking at this. We have a meeting on the 27th and we will be presenting you with comments.

And if I could make a statement that's personal for me: If the fines and prison sentences work, I think you've got fines that are too small and prison terms that are too short. If that is the solution, I think you're being inadequate about it. I don't think it's going to be the answer to your problem.

SENATOR GORMLEY: Do you-- The suggestion that I made earlier, I appreciate when you're reviewing it--

MR. KUKASCH: Yes.

SENATOR GORMLEY: You mention the few bad actors, or whoever they might be.

MR. KUKASCH: There are some out there.

SENATOR GORMLEY: And everybody knows that some names are legendary.

MR. KUKASCH: Yes.

SENATOR GORMLEY: I mean, that's obvious. Do you see the viability of having a program where you get to those one or two or three, or whatever the worst ones might be in the State, that there would be a takeover of that local agency?

MR. KUKASCH: That might be a very good solution. I hadn't thought of it that way. My first impression is that I would be in favor of that; my first impression. And the fines might-- The DEP has a revolving fund, a loan program, that might be a good place to--

SENATOR GORMLEY: Well, see I would eventually, you know-- You have circumstances where you can have delaying actions for years and eventually it's an arm's length and maybe the precedents with the schools is what's required with those few bad actors that just make use of the system to delay actually getting an order.

MR. KUKASCH: But I would caution you to look at any kind of expansion cost right now because of the situation, and for the next few years I expect it-- I've been looking at expansion for one of the authorities and I'm very concerned.

SENATOR DALTON: Perhaps you can provide us with the data that you've accumulated.

MR. KUKASCH: I'll provide you with some data. I'm currently looking at surveys and they're, if you don't mind Senator Gormley, I'll send you -- you, too, Senator Dalton, I'll send you some of this information. I'm getting some information that tells me how much the average consumer may be paying, the average homeowner may be paying.

You know, if we went to a completely chemical process, it would cost perhaps ten times as much, but we could guarantee the results. Right now we're trying to operate-- I always use the example if you buy a bottle of wine, you're paying four or five dollars for three-quarters of a liter of wine. It's a biological process, the yeast there. And the vintner selected the wine carefully, and treated it properly. All those good things.

You're the sewage treatment plant operator, who has also got a biological process. It happens to be bacteria instead of yeast. But, he can't control his inputs. He can't control his conditions. He's got to do everything within a matter of four, five, six, seven hours. That's the duration of the time that he has -- those orders under his control, as little control as he has. A vintner will have weeks in which he can ferment the things. And what is the average cost? Seventeen cents a gallon is what it costs, what the treatment authorities in the State of New Jersey are currently operating on. Less than two-tenths of a cent per gallon. That's the cost.

Now already people are paying approximately \$400 a year for that. If we make it much more complicated, you'll have the people telling you that they are not happy with the cost of sewage treatment.

SENATOR DALTON: That's right.

MR. KUKASCH: Thank you.

SENATOR DALTON: Anyone else? (no response) I want to thank you very much. We're going to keep the record for this hearing open for two weeks. So, today is the 13th--

MR. MILLER: Twelfth.

SENATOR DALTON: --12th. So the record will be open until the 26th of October. Would you send your remarks to Norman Miller of OLS if you wish to provide written comments? Thank you very much.

(HEARING CONCLUDED)

New Jersey State Library

1911-12-12

APPENDIX



Monmouth Citizens For S.P.A.C.E.
Sound Planning and a Clean Environment

P. O. Box 19
Holmdel, New Jersey 07733

We would like to state that there is genuine public concern and a desire for more rigid enforcement of the acts which are supposed to protect us, the citizens. We would like to go on record as approving this bill. It is desperately needed and its efforts to make violating parties truly accountable for their actions is long overdue.

Our water situation in Monmouth County is desperate and there is not enough respect for this on the part of companies and even some municipalities. We, in Monmouth County, have a unique situation. The need for this bill is critical. This summer alone we have had two theoretically reputable sewerage treatment plants pollute our waterways. Perhaps, had adequate deterrents been in place, the accidents might not have taken place. The first case was that of Asbury park whose plant malfunctioned and polluted the ocean this summer. The second case was that of the Western Monmouth Utilities Authority whose pumping plant on Route # 79 failed; its alarm system failed; and its back-up pumps failed! The result was that 50,000 gallons of raw, untreated sewerage flooded Big Brook and penetrated as far as the Swimming River Reservoir.

If our state is truly to protect its people and its environment, we must have teeth in our laws as well as good laws.

Perhaps if our Clean Water Act were rigidly enforced, companies and municipalities would more seriously consider the risks before engaging in or allowing plans for development that put our waterways- and even our potable water supplies- at risk of pollution. In addition, townships might be more conscientious in defining areas which should be environmentally protected.

Among other things our county has one town, Holmdel, which for the sake of ratables, has requested a change in our county's Wastewater Management Plan to enable them to allow for a number of package sewerage treatment plants in close proximity to the Swimming River Reservoir. This is the county's major reservoir and the source of drinking water for half the residents of the county. These plants would lie more than twice as close to the reservoir than the pumping station of Western Monmouth Utilities Authority on Route #79 which recently malfunctioned and polluted.

Intelligent planning should obviously be the first step. Unfortunately, without a clearly delineated set of enforceable laws which hold violators strictly and seriously accountable, companies and even municipalities will test the limits. They will continue dangerous land-use or operating practices that place the public welfare at risk.

We hope the state will speedily act to provide us with such laws!

My name is Lisa Suhay and I am here today to speak for Alliance for a Living Ocean, for ALO President Karen Kiss and for our over 2,500 members.

ALO is a non-profit citizens group committed to ending the contamination of New Jersey's coastal waters through efforts in research, public education and citizen action.

The section of the bill that I would like to address is that of citizens rights. Under the current law, citizens are inhibited from taking effective legal action against companies whose discharges are in violation of water quality permit standards. The reason that effective legal action is not always taken is the prohibitive cost of quality legal aid. Whereas many corporations can afford to employ a full staff of high quality legal counsel, there are areas in this state where citizens simply cannot afford competitive representation. I am sure that you are aware of the current cap on attorneys' fees which limits the amount that can be recovered as a result of a citizens suit. Removal of this cap, as specified in the Enforcement Act, will give incentive to lawyers to represent citizens in these cases.

Also, the Enforcement Act's establishment of an "Intervention Fund" of 1 million dollars to provide loans and grants, to support citizen suits and to aid in the provision of expert testimony at adjudicatory hearings will be invaluable. This provision would mean that instead of spending thousands of dollars on expert testimony, citizens groups like ALO, could receive a grant from the "Intervention Fund" and conserve scarce financial resources for other use.

We have an overburdened DEP which is not coping with its enormous enforcement responsibilities under current methods. The Clean Water Enforcement Act will give more responsibility to the citizens. Instead of an adversarial relationship between the DEP and the public this bill will be a way to utilize the power of the citizenry to augment the system. There must be a mechanism in place for the citizenry to have truly equal representation in the form of the highest quality legal aid. The Clean Water Enforcement Act will preserve the rights of people of all economic strata to clean water.

Citizens' suits are an effective means of getting companies into compliance. Allowing citizens to bring suit for past and/or continuing violations adds teeth to the Clean Water Act. The reality is that many companies place priority on a balance sheet rather than the environment. Citizen suits will take away the profit motive that companies have for dumping illegally. The fines currently issued to these companies are often insignificant. The possibility of citizens bringing suit for past violations means that if a company has saved 20,000 dollars a year for the past five years by not treating its waste properly, then citizens can demand restitution for that amount in addition to damages. That's incentive.

Granted, citizens' suits are time-consuming and an inconvenience to the companies. However, when you think about the citizens of the Pine Lake Park area, in Manchester Township, who for months had to travel to get water to drink and bathe in, you can't help but reach the conclusion that citizen suits, no matter how inconvenient, are necessary. Those people still don't know weather or not they and their children are walking time bombs, due to the chemicals that they have already absorbed from the contaminated water.

Industry is necessary to our society. It provides us with many benefits. We do not propose to cripple companies in this state but to hold them responsible for their actions. Industry and citizenry can peacefully coexist in a very densely populated state that has many demands on its resources.

NL

CERTIFIED MAIL - RRR

October 25, 1988

Mr. Norm Miller - Chief
Environmental Section
New Jersey Office of Legislative Services
CN-068
Trenton, NJ 08625

Subject: Criminal Penalty Bill S-2787

Dear Mr. Miller:

This is in reference to Criminal Penalty Bill S-2787. NL Industries, Inc., a manufacturer of organic chemicals in the State of New Jersey, has several comments concerning the Bill. These are as follows:

1. The definition of "chronic violator" is far too stringent, in that four serious violations within a six-month period would designate a person or other entity a "chronic violator". This definition instead should be reserved for long-term, historical violators.
2. The Bill as presently written does not take into account ongoing operations at facilities which may affect their ability to meet NJPDES or NPDES permit limits. An investigation and cleanup under the requirements of the Environmental Cleanup Responsibility Act (ECRA) may take several years to complete. Violations could potentially occur in the interim. However, once completed, ECRA requirements will completely eliminate the potential for violations. It is impractical and not cost-effective to implement potentially major actions, such as installation of a wastewater treatment plant, before the completion of the ECRA investigation and cleanup. At a minimum, the Bill is duplicative for those facilities. Therefore, the Bill should provide an exemption for facilities undergoing investigation and/or cleanup under ECRA.

NL Industries, Inc.
Environmental Control Department
P.O. Box 1090, Hightstown, N.J. 08520 Tel. (609) 443-2326

Mr. Norm Miller
October 25, 1988
Page -2-

3. The Bill as presently written does not take into account other investigations which may be undertaken to determine the cause of NJPDES or NPDES violations. Again, such investigations may take significantly longer than six months, and violations could potentially occur in the interim. The Bill should provide an exemption for facilities conducting such investigations.
4. The definition of "serious violation" should be amended to reflect a more realistic excursion level than the mentioned 40 percent. NJPDES and NPDES permit limits are typically set far below those limits which could potentially harm the environment, and it is very likely that a 40 percent excursion above the allowable limit still will pose no environmental harm. Therefore, the definition of "serious violation" should be amended to reflect those effluents which may actually cause environmental damage.
5. As mentioned earlier, an ECRA (or other) investigation and/or cleanup may impede a facility's ability to comply with NJPDES and NPDES limits. Such ECRA investigations may be quite lengthy, and are highly dependent upon the complexity of the hydrogeology and processes of the facility. Therefore, a schedule of compliance should be allowed beyond the mentioned 18 months.
6. The degree of crime and fines specified for persons who willfully or negligently violate the Clean Water Enforcement Act are far too stringent, and will deter facilities from operating in the State of New Jersey, resulting in plant shutdowns and adverse economic impact to the State. Neither will such penalties assist in meeting the goals of the Clean Water Act.

It is NL's position that the Bill in its present form is overly restrictive and technically flawed. We sincerely hope you will share this opinion, and assist in amending the Bill as appropriate.

Very truly yours,



James E. Tracewski
Regulatory Affairs Specialist

JET/lmp



RESEARCH &
DEVELOPMENT
DIVISION

P.O. BOX 3301, PRINCETON, NJ 08543-3301 TELEPHONE (609) 896-1200

October 24, 1988

Mr. Norm Miller
Chief, Environmental Section
New Jersey Office of Legislative Services
CN 068
Trenton, NJ 08625

Dear Mr. Miller:

The following comments are being offered on Bill S-2787, "The Clean Water Enforcement Act."

First, I would like to comment on the general premise of the bill that the condition of ground and surface waters in the State of New Jersey is the result of flagrant violations of water quality permits by corporations. Environmental professionals in both government and industry know that by far the most serious intrusions into the quality of our water resources are from underground storage tanks, residential septic tanks, and agricultural runoff. Permit violations are a distant fourth. Under permit violations, municipal sewerage authorities and solid waste disposal facilities, which are direct agencies of the public, are clearly the most significant contributors to water pollution. My concern is that bills like this mislead the public into believing that industrial facilities are major detractors of water quality and, thus, focus public opinion away from the real issues. Specifically, public officials should direct their activities toward those conditions that are truly creating the heaviest environmental burden.

Second, responsible industrial and commercial activity is essential to the well-being of the State and every one of its inhabitants. Legislation that is misdirected at this sector will contribute to undermining the economic vitality of the State.

Finally, I have the following comments on the specifics of the bill.

Section 2: Definitions

w. Serious Violations:

- The trigger level of 40% is not consistent with "Serious." Permit limitations are established on the technical assumption that a consistent discharge at or near that level will not degrade the quality of the receiving water body. Therefore, a 40% average for short periods, such as a few days, is insignificant. Serious violations should define discharge conditions that have the potential to seriously degrade the receiving water quality in a lasting fashion. Calculation of a 40% average of a parameter for 24 hours is equivalent to a 0.1% exceedance of the annual allowable limit. This is not significant. We have learned from the space program that zero defect systems are not possible, so we should not attempt to impose such standards here.
- For many water quality parameters, the permit levels are set at concentrations in the parts per million or even billion range. The analytical accuracy for many of these quality parameters at these concentrations is of the order of 25-50% of the measured value. therefore, it would not be statistically defensible or possible to demonstrate that a value derived from a single determination showed to be 40% above a specified level is not in compliance.
- Failure to submit a "completed" discharge monitoring report should not be considered a serious violation. It has been the experience that trivial disagreements over paperwork are common in dealing with governmental agencies. In addition, lost paperwork in the agencies is a reasonably common occurrence. For a serious violation, there should be a reasonable time allowance and

a required warning for the case of an omitted report. The omission of information should be defined as an intentional omission of data which would demonstrate a significant and damaging excursion above the permit limit.

Section 6.f.(5) Reporting

- Monthly reporting may be an unnecessary administrative burden. Many discharges, such as non-contact cooling water, have little or no impact on overall water quality. The report frequency should be determined on a case-by-case basis based on potential impact, and allow for decreased frequency based on historical experience.
- Routine reports should be signed by the senior manager of the facility. In large corporations, facility management have responsibility for facility operations, and these individuals could be several levels removed from the CEO of the corporation. Report signature should reflect acknowledgment of the responsible and knowledgeable on-site executive.

Very truly yours,



Edwin P. Crowell
Assistant Laboratory Director

EPC/bem

c: Assembly John O. Bennett
6 West Main Street
Freehold, NJ 07728



October 25, 1988

The Honorable Daniel Dalton
P.O. Box 100
RD 2, Greentree Road
Turnersville, NJ 08012

Dear Senator Dalton:

On behalf of the 90 member companies of the New Jersey Chemical Industry Council (CIC/NJ) I would like to inform you that we are opposed to S-2787 which would mandate fines for violators of water permit parameters. The CIC/NJ, along with the New Jersey Department of Environmental Protection, strongly believes that existing regulations adequately address this issue and that there is no need for additional and redundant legislation.

The CIC/NJ is quite concerned with the scope of the proposed legislation and believes that it is onerous, unreasonable, and somewhat vague. We believe S-2787 will have a significant impact on all manufacturing sectors throughout the State, requiring mandatory economic penalties for seemingly minor violations, and takes away the NJDEP's discretionary powers. We are pleased to submit the following comments which we believe you should consider before moving the bill.

Definitions

r. "Toxic pollutant" - The definition is very loose and could be interpreted very broadly. To be consistent we suggest using the N.J.A.C. 7:14-8.2 definition and using specific lists of substances (i.e. New Jersey Hazardous Substance List, TCPA List, Priority Pollutants).

v. "Recurring serious violations" - Again, in an attempt to remain consistent we suggest using the Department of Environmental Protection's definition of a significant non-complier, i.e. a facility cannot exceed its permit limit parameters in four out of the last six reporting periods. Exceeding on different parameters which individually total less than four occurrences in the last six reporting periods but in aggregate total more than four should not be considered a recurring serious violation. If a single parameter is out of compliance in four out of the last six reporting periods then the CIC/NJ recognizes that the problem must be addressed. However, if different parameters go out of tolerance sporadically, it is not indicative of a systematic problem in the treatment plant.

Chemical Industry Council of New Jersey

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w. "Serious violation" - Inherent sources of variability in effluent results -- including analytical uncertainty, sampling and process variability -- are acknowledged by EPA in its effluent guidelines and discharge permitting activities. However, variability is not adequately taken into account by the DEP when permit limits are established. As a result, there is a potential for dischargers to frequently exceed permit limits due strictly to analytical uncertainty or predicted variability of exemplary treatment processes. The CIC/NJ believes that forty percent is not significant at PPb levels. We suggest language instead that reads 40% or outside of two standard deviations at 95% confidence limits for test method precision and accuracy above the permit limit.

Signatory Requirements

6.f.(5) The CIC/NJ believes that the signatory requirements should not have any minimum time for absence. Lab results take approximately six to seven weeks to get back and there is no time to wait two weeks to get a CEO signature and still have timely report submittals (25th day of the following month). Instead, we propose language to read as follows:

"A chief executive officer may authorize another responsible official to sign a monthly monitoring report but the chief executive officer shall be liable in all instances for the accuracy of all the information provided in the monitoring report."

If, however, the signature requirement is retained we propose that the submittal period be increased to 60 days.

Facility Inspections

6.1.(1-5) Each of these items is already performed on a routine, at least annual, basis by the NJDEP water element enforcement group; including sampling and analysis by a certified lab of their choice. All other items are also currently inspected. This represents a burden on the State for those facilities with a good compliance record. By making these items mandatory, this bill is requiring available enforcement time and effort to be shifted away from out-of-compliance facilities to facilities with good compliance records.

Outside Laboratories for Chronic Violators

6.n. If a laboratory is certified, it supposedly meets specific Quality Assurance/Quality Control standards and is capable of conducting tests. This requirement could be extremely burdensome and would most probably outstrip already limited capacities of commercial laboratories who are already taxed beyond capacity and would therefore decrease, rather than increase, the quality of data.

If the State has a problem with a laboratory we suggest they rescind the certification for due course as per the lab certification regulations. However, when a lab is properly certified and is then denied the ability to perform the tests it brings into question the whole purpose and meaning of the State's certification program.

Civil and Administrative Penalties

10.d.(1) The CIC/NJ submits that N.J.A.C 7:14-8 (Civil Administrative Penalties and Requests for Adjudicatory Hearings), adopted August 1, 1988 contains such language and provisions. Furthermore, we submit that the language "except that the amount compromised shall not be more than 50% of the assessed penalty, or, as hereinafter provided, the statutory minimum amount that shall be assessed, whichever is greater" takes away the ability of the NJDEP to encourage rapid compliance.

10.d.(2)(c) We suggest the following language:
"Any chronic violator for two or more consecutive reporting periods who willfully or negligently violated this act, then the commissioner, in addition to pursuing any other available remedies, shall petition the Attorney General and the county prosecutor of the county in which the facility is located to bring a criminal action in accordance with subsection f. of this subsection.

10.h.(1)(a) We suggest the following language:
"Include provisions for stipulated penalties of not less than \$1,000 per day for each violation of a standard or limitation required by the permit for which compliance is sought unless the schedule of compliance is modified, revised or extended by the NJDEP. In addition, provisions which cannot be met through nontimely action by the NJDEP shall not be subject to the minimum stipulated penalty.

10.h.(2)(a-c); 10.h.(3) The CIC/NJ maintains that there are valid engineering design and construction considerations which make these provisions extremely burdensome, impractical and unworkable.

New Section

7. Again, the CIC/NJ maintains that N.J.A.C. 7:14-8.9, adopted August 1, 1988 already contains such language and provisions.

9. The CIC/NJ recommends that this section be amended to strike the words "past or", so that the line makes reference only to continuing violations.

The existing language in the bill conflicts with a holding of the United States Supreme Court in Gwaltney of Smithfield Ltd. v. Chesapeake Bay Foundation, Inc., (26 ERC 1857) which found that the language of the Water Pollution Control Act allowing citizens' suits did not allow such suits to be brought solely for past violations of the statute. In other words, in order for citizens to have standing to sue under the Act, the violations must be of a continuing nature. There are strong public policy reasons for this position, not the least of which is the theory that violations, once corrected or ended, should not be the subject of citizen action, absent any other manifestation of damage. Existing law, notably the Environmental Rights Act, the Water Pollution Control Act and the New Jersey Spill Compensation and Control Act, in their present forms, allow citizens to bring actions against persons causing environmental damage. This is sufficient authority for those wishing to protect the environment from damages caused by violations of State law.

In conclusion, the Chemical Industry Council of New Jersey believes that S-2787 takes all discretionary powers away from the NJDEP and legislates mandatory penalties for seemingly minor violations. The NJDEP already has the authority to enforce water pollution control regulations in the State. This proposal will not encourage better controls, but encourage more manufacturers to look outside New Jersey for new facilities.

As you are aware, we have requested a meeting to discuss this issue and we are prepared to fully explain our position.

Sincerely,



Hal Bozarth
Executive Director CIC/NJ

HB/ed

cc: Norman Milller

CLEAN WATER ENFORCEMENT CAMPAIGN - PARTICIPATING ORGANIZATIONS
The following organizations are supporting the statewide campaign
to pass the Clean Water Enforcement Act.

Alliance for a Living Ocean
Alliance for New Jersey Environmental Education
Allied Citizens Opposing Pollution
Amalgamated Clothing and Textile Workers Union Local 1278
AFSCME Local 2216
American Littoral Society
Association of New Jersey Environmental Commissions
Borg's Woods Preservation Coalition
Cape May Court House Neighborhood Association
Cause for Concern
Central Jersey Environmental Task Force
Citizens Organized for Pollution Prevention
Citizens United to Protect the Maurice River and its Tributaries
Clean Ocean Action
Coalition Against Toxics
Coalition of Religious and Civic Organizations
Coastal Zone Coalition
Communications Workers of America Local 1033
Communications Workers of America Local 1034
Communications Workers of America Local 1037
Communications Workers of America Local 1088
Concerned Citizens of Manchester
Cornucopia Network
Delaware Riverkeeper Project
East Dover Committee for Clean Water
Environmental Response Network
Garden Club of New Jersey
Grass Roots Environmental Organization
Industrial Union Council
International Brotherhood of Electrical Workers Local 827
International Chemical Workers Union Local 527
International Union of Electrical Workers Local 417
Jersey City Environmental Commission
Jersey Shore Audubon Society
Kateri Environmental Education Center
Metedeconk / Beaver Dam Creek Water Watch
Middlesex County Environmental Coalition
Monmouth County Friends of Clearwater
New Jersey Audubon Society
New Jersey Environmental Federation
New Jersey Environmental Lobby
New Jersey Public Interest Research Group
New Jersey Toxics Project
Ocean County Citizens for Clean Water
Office and Professional Employees International Union Local 32
People United for a Klean Environment (P.U.K.E.)
Pine Lake Park Association for a Better Community
Policeman's Benevolent Association Local 120
Princeton Environmental Commission
Save Our Ocean Committee
Save Our Shores
Shore Region Tourism Council
Stony Brook Millstone Watershed Association
Trout Unlimited - New Jersey Council
United Auto Workers Region 9
United Labor Agency of Bergen AFL-CIO
Watch Against Toxic Effluent Residues (W.A.T.E.R.)
Watershed Association of the Delaware River
Winslow Township Environmental Commission

National Audubon Society 10/1/88

The Clean Water Enforcement Campaign is coordinated by N.J. PIRG
201-247-4606 and the N.J. Environmental Federation 201-680-8446.

