

Public Hearing

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before

SENATE STATE GOVERNMENT COMMITTEE

SENATE BILL No. 636

(Prohibits State agencies from charging
excessive permit or application fees)

LOCATION: Totowa Municipal Building
Totowa, New Jersey

DATE: April 22, 1993
10:20 a.m.

MEMBER OF COMMITTEE PRESENT:

Senator Joseph L. Bubba, Chairman

ALSO PRESENT:

Joseph P. Capalbo
Office of Legislative Services
Aide, Senate State Government Committee



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



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New Jersey State Legislature

SENATE STATE GOVERNMENT COMMITTEE
LEGISLATIVE OFFICE BUILDING, CN-068
TRENTON, NEW JERSEY 08625-0068
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NOTICE OF PUBLIC HEARING

The Senate State Government Committee will hold a public hearing on the following legislation:

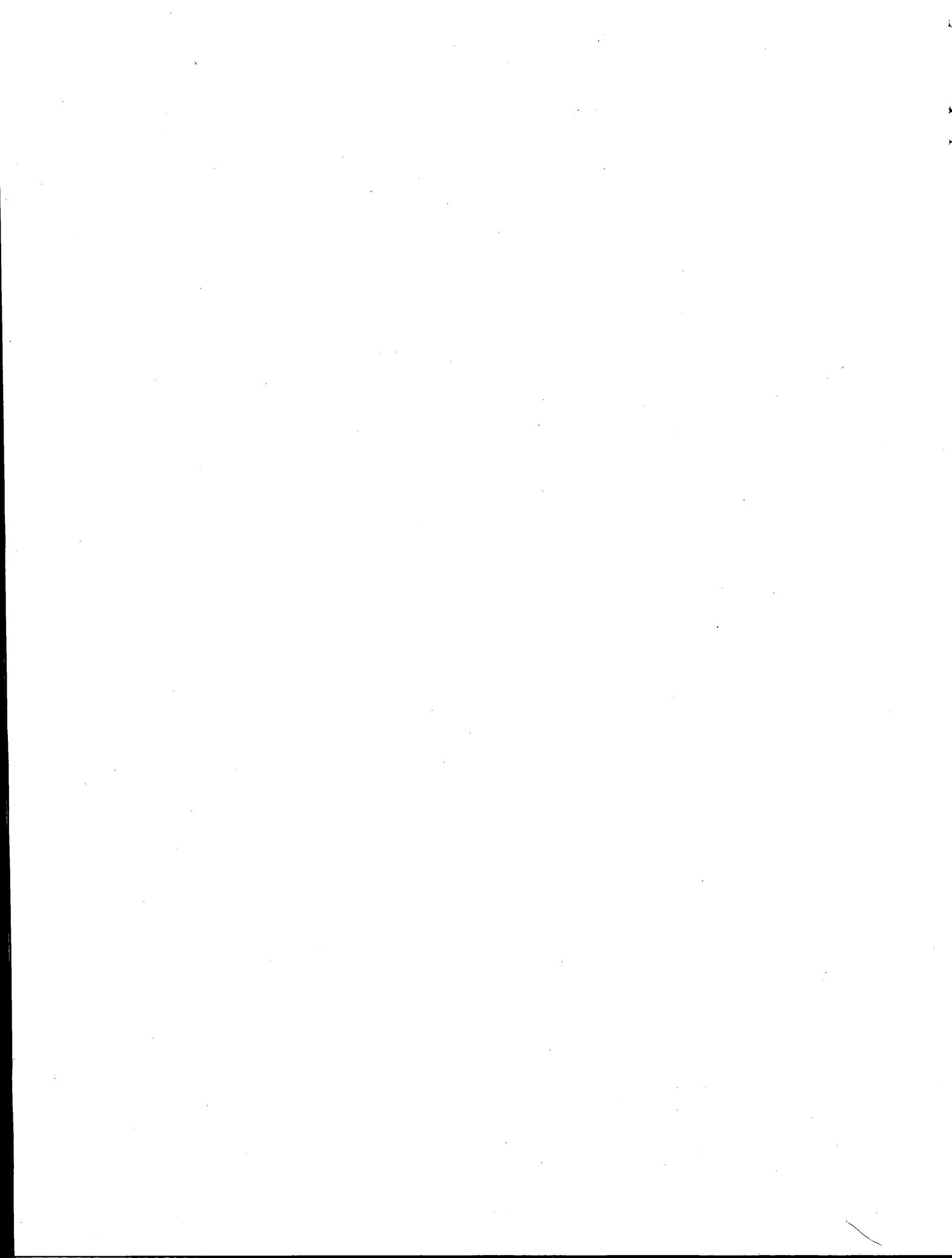
S-636
Bassano

Prohibits State agencies from charging excessive permit or application fees.

The hearing will be held on Thursday, April 22, 1993 at 10:00 A.M. at the Totowa Municipal Building, 537 Totowa Road, Totowa, New Jersey.

The public may address comments and questions to Joseph P. Capalbo, Committee Aide, or make bill status or scheduling inquiries to Deborah Del Vecchio, Secretary, at (609) 292-9106.

Issued 04/12/93



SENATE, No. 636

STATE OF NEW JERSEY

INTRODUCED MARCH 26, 1992

By Senator BASSANO

1 AN ACT concerning certain fees charged by State agencies and
2 supplementing Title 52 of the Revised Statutes.
3

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

6 1. As used in this act, "State agency" means any of the
7 principal departments in the Executive Branch of State
8 government, and any division, board, bureau, office, commission,
9 or other instrumentality within or created by a department, and
10 any independent State authority, commission, instrumentality or
11 agency which is authorized and empowered to charge a permit or
12 application fee.

13 2. Except if the Legislature establishes a fee by law, no State
14 agency shall charge a permit or application fee in excess of the
15 actual cost of issuing the permit or processing the application.

16 3. This act shall take effect 90 days after enactment.
17

18
19 STATEMENT
20

21 This bill provides that except if the Legislature establishes a
22 fee by law, no State agency shall charge a permit or application
23 fee in excess of the actual cost of issuing the permit or
24 processing the application.
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29 Prohibits State agencies from charging excessive permit or
30 application fees.

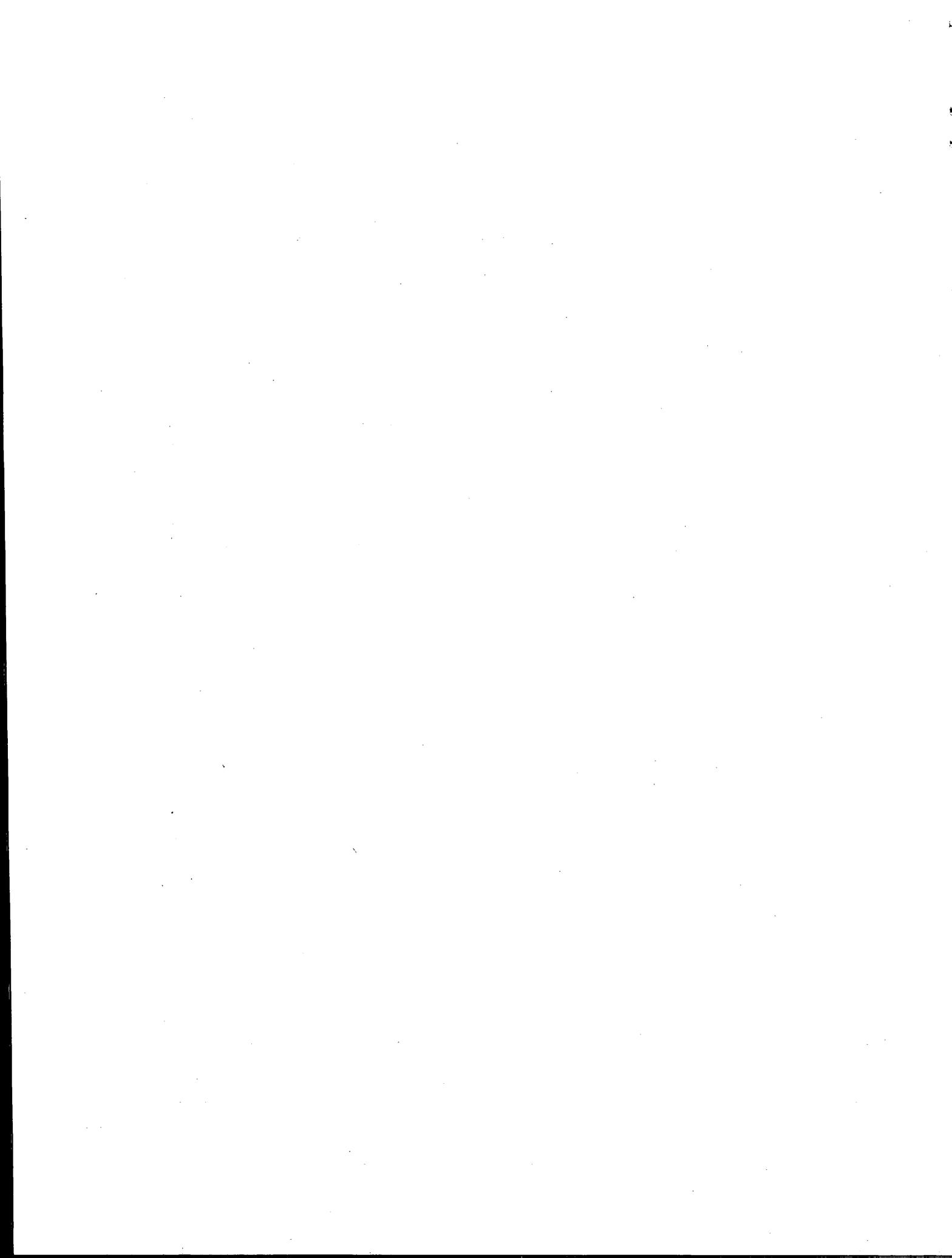


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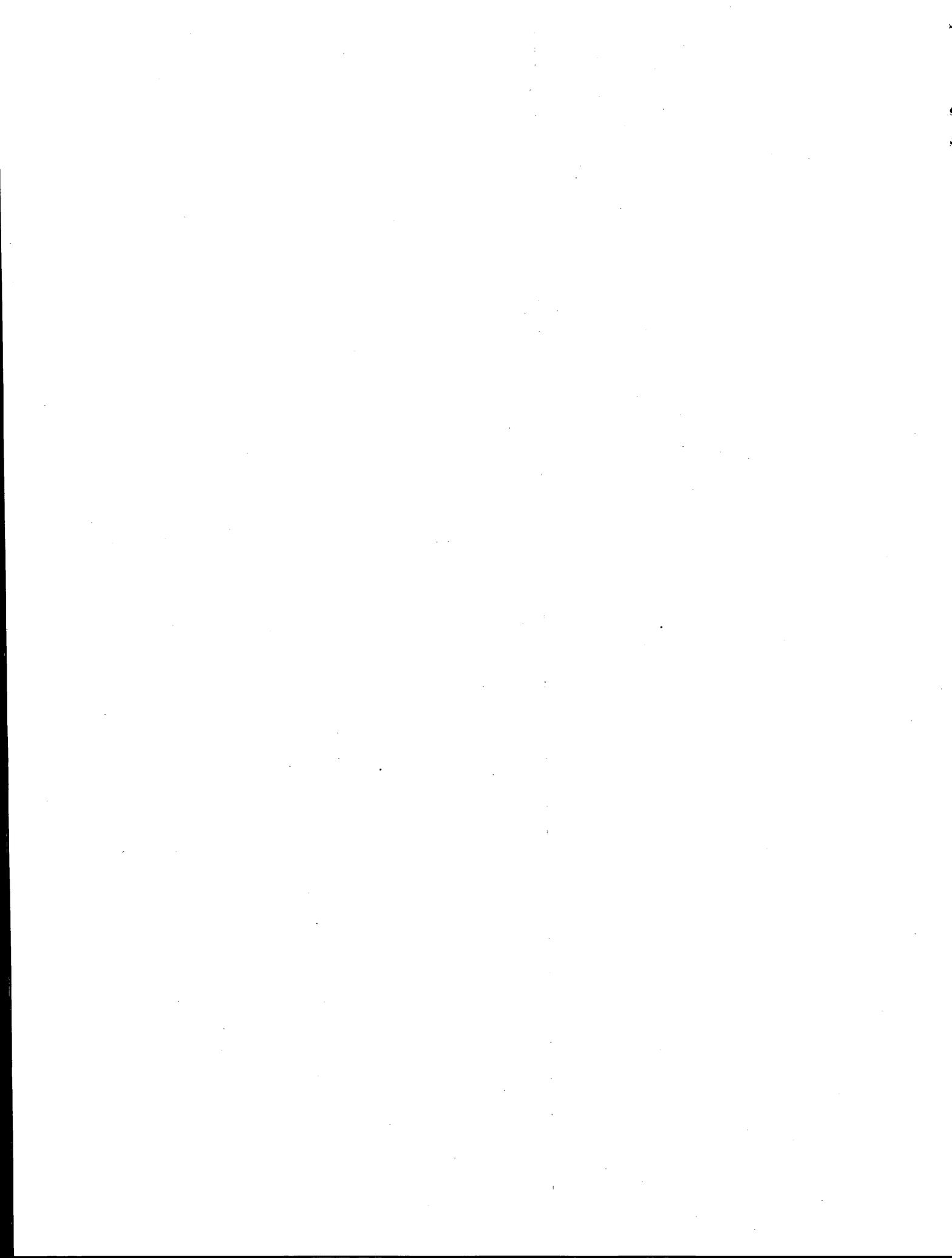
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SENATOR JOSEPH L. BUBBA (Chairman): Good morning.

The Senate State Government Committee has convened this public hearing in order to take testimony on S-636, sponsored by Senator Bassano and myself. This bill addresses an important issue. It provides that unless the Legislature establishes a fee by law, no State agency shall charge a permit or application fee in excess of the actual cost of issuing the permit or processing the application. The bill defines a State agency as any of the principal departments in the executive branch of State government, any division, board, bureau, office, commission, or other instrumentality within or created by a department, and any independent State authority, commission, instrumentality, or agency which is authorized and empowered to charge a permit or application fee. This Act will be effective 90 days after the date of enactment. This legislation would prevent State agencies from charging fees in excess of the actual costs of the administrative activity and supplies utilized in issuing a permit, processing an application, or providing a document.

S-636 is aimed at preventing price gouging by the State agencies that are responsible for issuing the many documents entailed in conducting business in the State of New Jersey.

I want to thank all those who have appeared here to testify on this issue. Now I will call on the first witness, Senator Lou Bassano.

SENATOR C. LOUIS BASSANO: I want to take this opportunity to thank Senator Bubba, the Chairman of the Senate State Government Committee, for convening a public hearing on this legislation. This is a piece of legislation which attempts to restore some common sense to the process of administering the laws of the State of New Jersey by the executive branch of State government. Quite simply, this bill,

when enacted into law, will prohibit State agencies from charging excessive permit or application fees.

Anyone who has had contact with the bureaucracy of State agencies has probably come away with a strong impression that they are living in another world from most of the citizens of New Jersey. In New Jersey, we have one of the weakest economies in the United States. Our unemployment rate is above the national average. We are struggling to save the economy and motivate business to stay here in our State.

One would think that the bureaucrats in the departments of State government would be taking steps to make it easy for New Jersey firms to conduct business. That would seem to be the commonsense approach, but just consider this: The Office of Legislative Services has informed me that 72 percent of the \$117 million of DEPE's budgets for direct State services is generated by fees, fines, special dedicated trust funds, and administrative costs moneys.

In addition, another \$86 million from dedicated fee revenues is allocated as off budget or below the line to pay for fringe benefits and indirect cost charges. Shouldn't there be some control over procedures to generate this amount of revenue? Excessive fees and rigid bureaucratic policies wreak hardships on the business community of this State.

Every year one of my constituents applies for approval with the State, as a garbage hauler. Does he have to be placed on the list for approval? It is a \$3500 cost. Each year he pays the \$3500 just to get on the list, and so far, after five years, he has yet to receive approval. At least the Department could carry the fee over to the next year and eliminate the need for an annual payment.

The fee charged by the Department of Health for a certificate of need to build or expand a nursing home in this State is \$100,000. This is a nonrefundable fee, and every

applicant must pay it whether they represent a small for-profit nursing home or a religious organization.

The language of my bill states that except if the Legislature shall establish a fee by law, no State agency shall charge a permit or application fee in excess of the actual cost of issuing the permit or processing that application. I will admit that that is pretty restrictive language. It is not my intent to put the department of the executive branch out of business, but rather to promote some kind of control on excessive fees. The benefit of this public hearing will be that we can hear both sides of the issue and reach some solutions on the problem.

Once again, I want to extend my thanks to Senator Bubba and the Committee for this opportunity.

SENATOR BUBBA: Thank you, Senator.

Hal Bozarth, from the Chemical Industry Council.

H A L B O Z A R T H: Thank you, Mr. Chairman.

SENATOR BUBBA: I'll call you next, Jack. Are you going to make your presentation together?

J O H N B. D A L T O N: Yes, one after the other.

MR. BOZARTH: If that's okay?

SENATOR BUBBA: Yes.

MR. BOZARTH: Great.

Mr. Chairman, Senator: Thank you very much for the opportunity to present to you what we think is an appalling picture of, at least in one department's case, their ability to process permits, and also their real ability to charge exorbitant fees. I just want to take a second to tell you what we believe is at stake economically.

The member companies that we represent in the Chemical Industry Council account for about 116,000 jobs throughout the State. One out of every five manufacturing jobs is represented in the chemical process industry. Our workers earn very good wages. We produce about \$2.3 billion in exports alone from the

State of New Jersey. Downstream jobs are another factor that needs to be considered.

I mention this in passing, really, at the beginning, because it is important to know what is at risk here. What is at risk here is the continuing loss of the manufacturing sector in the State of New Jersey. There is no way that we can afford to lose the \$145 million in property tax, the \$66-plus million in corporate business tax, the \$756 million in sales tax, the \$150 million in employee taxes, and \$125 million in downstream industry taxes because New Jersey is perceived by the industrial community as being, if not hostile, at least certainly not helpful.

In 1991 alone, the chemical process industry lost 1500 jobs. The loss of those jobs meant \$80 million in total yearly payroll, and about \$3 million in State income taxes. Over the last 10 years, while our part of the manufacturing community has done better than manufacturing as a whole, we still lost nearly 10,000 jobs. While many like to say there is no correlation between permit fees and the inability to get permits, I am here to assert to you that it is at least a significant contributing factor.

Let me talk about just one program in the Department of Environmental Protection. It is called the NJPDES program -- New Jersey Pollutant Discharge Elimination System. It is the water discharge permit. Everyone who has a discharge, including municipalities, must have a NJPDES permit; must pay a fee for that permit.

Let me just give you some examples of what has happened to that program: In the last few years, for certain people in that program, the fees have increased over 1000 percent. Out of the roughly-- I believe there are 177 people in the system, or 180 firms in the system. Seven companies pay 54 percent of the total budget because of the way the formula

is structured -- seven companies -- and I will give you one example:

One of my member companies in the southern part of the State in Salem County is DuPont, a large company; makes a lot of money; has a large facility. Directly across the Delaware River it has a sister plant in the State of Delaware, about the same kind of discharge size, a discharge product mix, another large facility. NJPDES fees goes for five years. Each year, DuPont, in its New Jersey plant, pays a quarter of a million dollars, for a rough total over a five-year period for a permit fee of \$3.2 million. That other facility, the sister plant across the river in Delaware, pays \$10,000 a year for the same permit, for a total of \$50,000 as opposed to \$3.2 million.

It would be bad enough if the problem here was only the cost of the fees. It is the permit backlog. Let me give you what I think are some startling figures: This program, the NJPDES water program, charges \$14 million per year; employs about 160 people. Yet it only processed 87 permits in 1992. There was a 660-permit backlog as of June '92, the latest data we have. At the rate they are processing permits, while they are charging exorbitant fees, it should take them 20 years to eliminate the backlog in the permits.

DEPE was budgeted to receive \$7 million in NJPDES fees in 1988. In 1992, it rose to \$15.3 million. There was a 119 percent increase in four years -- in four years. The 1992 NJPDES budget included close to 31 percent of the fees, as Senator Bassano mentioned earlier, going to indirect charges; 30 percent for fringe benefits. It was equal to \$5.5 million not directly related to the program.

There is supposed to be a "polluter pays" concept. The more you discharge in the NJPDES program, the higher your fee should be. It sort of makes sense, except that the way the Department is administering the permit rationale and fee program-- I will give you an example of what happens:

One of my member companies in Burlington County reduced their water discharge by half from one year to the next. They closed half of their facility. They were not discharging anymore, and yet their fee for the second year increased 55 percent. After a while, my member companies continue to say to me, "What are they doing with our fees? Why can't they process our permits? And why does the place seem to be totally out of control?"

Our fees have gone up -- fees and fines collected from industry-- Our figures are \$12 million in '82 to \$112 million in '92. Permit backlogs are the norm. Not to stay just with the NJPDES, right now there are 219 permits backlogged in the air section, and about 42 backlogged -- and they are large permits -- in the waste program.

The stories go on and on and on. Mr. Dalton will regale you with some of the stories directly related to his facilities.

I could take three hours, Mr. Chairman, and go down example after example of the kinds of problems we have, just in this program as an example. I have some suggestions:

I think Senator Bassano's bill is a start to address, in effect, a fee-based program which is out of control. We would be more draconian in our attempt. We would say cap all fees at the 1990 or 1992 level, and not let the departments raise fees unless they have statutory authority from one of the committees that oversees their budget, either Appropriations or the specific committee of reference. That is one way to do it.

We need an outside real audit, not just whether or not the money is being spent that is being taken in, but how it is being spent; how those people are doing it. It defies logic, to me, that the Department can't set up a system like a lawyer has. It is called "billable time." It is a very simple concept. If you spend 100 hours on a law case, you charge whatever your rate is. If you only spend 50, you charge for 50

hours. Why can't, in this case the Department of Environmental Protection and Energy, charge us exactly what it costs to administer the program? If it costs myself \$1000, I should pay that. If it costs Mr. Dalton \$15 worth of air time, that is what he should pay. No more and no less. I don't think that is an amazingly innovative idea. I think it just makes common sense, and I think Senator Bassano's bill goes in that direction.

I think the Legislature ought to have some ability to say, "No," to the agencies when situations like this arise. I will give Commissioner Weiner some credit. After he was beaten about the head in last year's Appropriations Committees, he put together a Task Force to deal with the NJPDES issue. They worked and they have struggled over the last year. Now they have a plan. The only problem is, the plan for the new fee structure won't become effective for two more years. Meanwhile, each of those examples I gave you continues, and all of the other examples of egregious and outrageous amounts for permit fees will continue, and the backlog will continue. It makes absolutely no sense, and, as they used to say, "It is certainly no way to run a railroad."

There are a lot of bills in the Legislature dealing with this issue. That is why we appreciate the opportunity to be here, because Senator Bassano's bill is one.

Let me just mention another interesting idea that is embodied in another bill. It would seem to me because of the backlog that obviously the Department doesn't get the idea that it needs to process its permits. Why hasn't the Legislature established a system whereby you pay a third of the cost of your permit when you go in for your application? When the Department says your paperwork is complete, you pay another third, and you don't pay the rest until you get the permit. Now, that is how it works in the real world. If I hire a contractor to put a deck on my house, I give him some money

down to get started; I give him some money in the middle of the process as he proceeds to pay his people; and when it is completed-- I don't pay until it is. It would seem to me that it might force some behavioral changes within the Department.

Let me stop there and turn to Mr. Dalton, from Hoffmann-La Roche. I think he has some great stories to tell, and a perspective from an individual company that is, frankly, startling.

SENATOR BUBBA: All right, but before you start, Jack, I would be interesting in Hal directing a comment to those who would say that the reason for the excessive charges is that, in effect, the big guys are paying for the operation of the DEPE to serve the little guy.

MR. BOZARTH: Well, those who say that are missing the point. It should not be redistribution of wealth that is at issue here in a permit program. It should be charging a fee for a service and paying for that service and having the service delivered. Again, in my example of Mr. Dalton and I, if it costs \$1000 to do my permit, I ought to pay that. If it costs \$20 for Mr. Dalton's permit, he ought to pay that. There are two problems here: how the structure is set for the permits, number one; and how they spend their money. No one is really looking at those 177 employees, or saying, "Where is this additional 30 percent for fringe benefits going? Where is the 31 percent for overhead going?" I mean, isn't there a way to conserve in government?

My member companies in this recession have been cutting back significantly. Everybody watches every dollar. We don't understand why there have been no economies of scale within the agency that we are talking about here this morning. It just seems to grow larger and bigger and on and on and on, and never is even able to deliver permits.

So, yes, I mean, it would be nice to redistribute wealth, if that is what we are about as a society, but I think

everybody ought to pay for the cost of whatever it is they've got going.

SENATOR BUBBA: I think you have struck on what I wanted to hear you say without prompting you; that is, when they discover-- It is my understanding, better, it is my perception, that when they find a good thing, such as a NJPDES permit, they expand that department so that the funds that are collected are not paying the expenses of the department. Rather, the funds that are collected are used to build a bigger structure in another area of the Department. That being the case, we are never going to reduce the size of government, but we are going to increase it.

In addition to that, when you talk about a budget of \$117 million, as Senator Bassano mentioned before, of the \$117 million, \$86 million is below the line. I think that is significant.

I'm sorry to have interrupted you, Jack. Please go ahead.

MR. DALTON: Senator, my remarks are designed to complement Hal's.

SENATOR BUBBA: Why don't you identify yourself for the record?

MR. DALTON: I am Jack Dalton, Assistant Director of State Government Affairs at Hoffmann-LaRoche, a company that is headquartered in Nutley, nearby, but which has facilities here in the Borough of Totowa. We employ about 180 people here, about 140 of them in a manufacturing facility in Totowa, and the others in a printing operation, but we have about 8000 people in the State. We are one of the State's largest employers.

We have been impacted tremendously over the last few years by DEPE permit fees, primarily in the area of NJPDES fees, and primarily at our site in Belvidere, where we take water from the Delaware River, a major reason for having an

industry located on a river. We use that water in our process and we return the water after treating it to the Delaware River.

The standards that we are required to meet by the Department are acceptable to us, although there are some aspects of that that are not acceptable, or at least are not understandable. The water we take in, of course, has naturally occurring substances in it. When it rains, the water is full of mud, as you see when you drive over a river or a creek at the time of a rainstorm. Anything that we extract from that water that we must purify in order to use in our process, we are prohibited from putting back into the water -- into the river. We are permitted to put back certain substances that inadvertently or naturally get into the water during the process. Those permit limits are established and we have learned to live with them, and we have learned to control them.

However, what has happened with this one major permit over the last few years, I think, is really something that the Department cannot explain. In 1989, the permit to operate that facility and discharge the water back into the Delaware River cost us \$28,000. For 1993, that same permit, where we are putting less pollutant back into the water than we were in 1989, is costing us \$660,000.

I have a chart here which I would like to give you. This was developed based upon our fee experiences with the Department over the last several years, including 1992. The chart may be a little confusing, but let me explain: On the left side are dollars that are paid -- total dollars that are paid -- for permits. On the right side, total pounds of effluent, or releases into air, water, whatever we have permits for. You will notice that on the upper left, those are the pollutant levels that we had in 1987. You will notice that those lines are tending down to the right, so that in 1991, the latest year in which we measured those, we were far below where

we started; in fact, less than one-quarter of the total pollutants in 1991.

We had made a commitment to reduce our pollutant levels by 90 percent over that period of time, and we have accomplished that. In fact, we are going to be having a celebration to reward our employees for having accomplished that, in the very near future.

But if you look at the other more solid line on the chart, which starts out very low in 1987, we were paying under \$100,000 at that time for all of our permits from the Department of Environmental Protection and Energy. You will see that, in 1992, we were paying almost \$1 million for all of our permits from the Department of Environmental Protection and Energy.

The major impact factor is this NJPDES fee, the amount of which I gave you a few moments ago -- \$660,000 now. Last year it was about \$620,000. We have been working with the Department and with the Commissioner to try to resolve this problem we have. We are one of the seven companies that support that group of employees at the Department with over half of its budget. We think that is unjustified. Also, we cannot understand what we are getting for our money, but we are working with the Department to try to bring some rationale to their system of determining what is an appropriate fee for a company.

We certainly cannot believe that this is a justifiable fee, except for some of the machinations that they have used to determine what is appropriate for Hoffmann-LaRoche. They use a lot of variables. If we were operating that same plant on the Passaic River, the formula that we would be using -- or that they would use to assess our fee, would be far less than the Delaware River, or have a far lower impact, because they believe the Passaic River is already polluted, so people putting the same pollutants into that river would not

necessarily pay the high fee that we pay to the Delaware, which they believe is a less polluted river, and which provides more water to towns downstream. That is one of the rationales they use for ratcheting up the formula that affects us so dramatically, and affects other companies that operate on the Delaware River. I think two of the other seven companies, at least, are on the Delaware River, that pay these exorbitant fees.

I really have no strong feelings about Senator Bassano's bill. I think it is an important issue, but I also think that the major factor that has impacted on us at our Belvidere facility, is the passage in 1989 of the Clean Water Enforcement Act. The Clean Water Enforcement Act had been considered in the prior Legislature, the last two years of Governor Kean's term. At that time, industry objected to what that Clean Water Enforcement Act would do. The Department of Environmental Protection, in its science group, indicated that the bill was not necessary, so in that particular legislative session the bill was not passed.

When our Governor was running for office, he indicated his support for the Clean Water Enforcement Act. When his party took control of the Legislature, the Clean Water Enforcement Act was one of the very first bills that was passed. To us, the bill was not a necessity; to most any scientific observer of what the Department was doing to enforce its already significant powers to ensure clean water in our State, it was not necessary. But that Clean Water Enforcement Act now has been responsible for stimulating the growth, as I see it, of staff in the Department. The Clean Water Enforcement Act came with no appropriations for the Department, so they had no choice but to find the money and build the staff, which that law gave them the authority to do, with no controls from the Legislature, with no expectations, and now we are paying the price, along with many other companies, for the increase in that staff level.

It was a political bill; it solved some political needs for certain individuals; and now industry is paying the price. It is really doing nothing to clean up the waters of our State. More than 50 percent of the problems we have with water are caused by nonpoint sources, not by industrial sources. The same water that would run off our property, we have to capture-- I'm talking now about the Belvidere facility. We have to capture all the water that is on our property and treat it before we put it into the Delaware River. The farmers, who have property exactly like ours, right next to our 500 acres-- The rainwater just goes from their property carrying whatever is there right into the river. They have no permits; they have no costs involved. That is understandable, it's agricultural land. But we have to treat that water before putting it back into the river.

We would have a point source because we are a permitted facility. But don't you see how bizarre it is that we are required to do this, when that water would not be polluting the river any more than the farmer's water right next door? There are just so many absurdities in this whole law, that I think they have to employ people to try to explain some of those absurdities. It is really difficult for companies to continue to exist in this kind of an environment.

We, as you probably know, are moving some of our manufacturing facilities out-of-state, because it is the manufacturing facilities in a chemical industry that cause you to need permits. When you are subject to the whims of laws that have been passed to give this Department all of the authority it uses so well, you look for ways to avoid having to deal with that kind of a Department. I don't think we can ever move out of this State completely, but I think many people at the top of our company would just as soon do so in view of what we have to deal with in this Department, and others in State government.

SENATOR BUBBA: Thank you very much, Jack.

Is Ellen Gulbinsky here? (no response) It might be well to note that DEPE is not here.

I know you fellows have to run, but I want you to know that if they do not show up here, we are going to direct them to appear before our Committee in Trenton to explain some of these things.

Jim Sinclair.

JAMES A. SINCLAIR: Good morning, Mr. Chairman. My name is Jim Sinclair. I am with the New Jersey Business & Industry Association. I handle environmental matters for the Association.

I want to start by saying that we enthusiastically support the bill being considered here today. It is a wonderful bill. I think, though, as Hal said, it really just sort of scratches the surface of where we should be going. This is really an appropriate day to be having this discussion.

I was in Washington yesterday and had the opportunity to hear Senator Bacchus speak, who is the head of the Senate Environment and Public Works Committee in the U.S. Senate. He had just, before he spoke to the group I was with, been with the President and had heard the President's speech at the arboretum -- his Earth Day speech. Actually what the President is asking for is sort of a new look at how we do things in the area of the environment.

I think, really, what a number of these bills such as the Senator's bill is doing, is asking us to stop and take a look at how we have been doing business in this State, and how we have gotten into the trouble that we have gotten into. We have done it not intentionally. This is unintended consequences of public policy. The public policy goals, I think, that we all agree on, are how do we get a health environment that everybody can enjoy? In recent years, we have

added to that, how do we have a healthy economy to go along with that?

We always hear, "Well, you know, good environmental laws and good economics work together." I think that's great, but I think the operative word is "good," and I think it is now time to assess what "good" means. Does "good" mean you have a NJPDES program that has seven companies pay for the bulk of the program, or does "good" mean that you have a water permitting program that makes sense for the State, that is cost-effective for everybody that uses it, and that has some demonstratable benefits to the citizen, so that we can know how well we are doing with the program?

My testimony is not going to be beating up on DEPE, because I don't see them as the problem. I see they are just pawns in this process, the same as industry. We have a public policy that needs to be sorted out, and we need to be clear on where we want to go. The whole concept, you know, of reinventing government-- I think this is it. I mean, we should be thinking about reinventing government, and if there is one agency in State government, one set of laws, that needs to be reinvented and rethought and redirected, it is the Environmental Protection Department in New Jersey.

DEPE is a prime candidate. Last year, I went around giving out my little chart and graph that showed that DEPE had the most employees in the country, and after a year's worth of analysis, the Department has been able to come back to me and tell me that I have been wrong, really; that I had underestimated how many people were in California. So, we have the second biggest Environmental Protection Department in the country. That is a lot of people, and we have to pay those people. As you have seen in this, the fees on these permit programs, the penalties that the Legislature has directed to the Department, are paying for these people.

Where is the oversight in that process? We can talk about the NJPDES program, a wonderful program that has these very high fees. The highest fees in the nation are for the NJPDES programs. It isn't just Delaware, across the river. Across the country we have the highest fees. So the question is: When you total it altogether for the total NJPDES program, why is it so much money for our program versus all the other programs, or even the second highest program?

Now, Senator Weiss and I -- and I have brought a copy of his report, which I will give to you to put in the record-- His Committee took a look at this and came up with some good recommendations, but his recommendations only scratched the surface of the problem. The problem is that the program needs to be reevaluated in looking at how it is fundamentally structured, not who is in the program and how you divide up the fees. Our goal should be to say, "New Jersey's enforcement structure should be as efficient and effective as other states." We should not be duplicating things that, for instance, the Federal government does. We should not be inventing duplicate permit and fee systems in New Jersey as the State does. My example here on fees is that we have a law called the County Environment Health Act, that was amended by, I believe, Assemblyman Villapiano several years ago to allow all these county agencies to do the same things as the Department of Environmental Protection. And do you know what? In many counties they are doing the same things. They're issuing permits and collecting fees. But that is all they're doing -- issuing permits and collecting fees.

I have heard from Union County and from Essex County, where there have been the most serious complaints about the process. Basically, it is just another taxing mechanism, and that is really what it is. The NJPDES program, I think, is a taxing mechanism, in that there is a public good that really isn't very well articulated. Mr. Dalton tried to explain.

Really what the Department is trying to do, is to put a tax on some facilities because of where they are located, near what water body. That is a taxing system. They are making them pay a lot of money for the Belvidere plant because it is going to be an incentive for them, supposedly, to reduce pollution there.

Well, that is a policy that they have made. It is a taxing policy that the Department has made in the context of its fee structure. I don't think-- I may be wrong, but I certainly -- and I have been looking at this for 10 years -- don't remember the Legislature addressing that issue, and saying, "Okay, Department of Environmental Protection, in your fee system you can do this tax."

We have members in the Association that are in the waste hauling business. I am not quite sure if this is a DEPE request at all, but the fees are just absolutely astronomical for people who are in the business. The fees come-- The requests, the bills, come late, and they are given, like, five days to come up with \$63,000. You know, you have to pay your thing within five days. There just seems to be a lack of reality in that process. I mean, you know, I pay my bills once a month. I sort of face it and that gives me a little time, but five days seems ridiculous -- \$63,000 -- for not a small company, but a fairly small company.

I know I said that I wasn't going to beat up on DEPE, but I will beat up on the Federal Environmental Protection Agency.

SENATOR BUBBA: That's okay, you can beat up on it.

SENATOR BASSANO: They're not here. You can say what you want.

MR. SINCLAIR: I couldn't get my call returned from the Federal EPA in five days, and I tried to call them 24 times. So, I mean, there should be some reality grounding in what we do.

On the air permit side-- I mean, we have been talking a lot about water permits here today, and I think probably rightly so. But on the air permit side, about three years ago, the Department went out for an increase in fees for the air permitting processing; a program that was beset with backlogs, the same as the water program is now.

Maybe as an aside, I would like to say that I think the Department has improved dramatically on the air side in processing permits; not the big ones, not the important ones, you know, that mean lots of jobs, but they have been able to move the smaller programs through quicker than they did in the past because we have had a good working relationship and they have been able to change their system and process things more quickly, at least be able to figure out-- Instead of having one big pile, they now have several different piles and they can move the easy ones.

In the basis and background document for the air fees, they took a look at a plan reviewer. They had a plan reviewer who was an engineer who made, at that time, around \$35,000 a year -- is what they figured. After you totaled up all the overhead and all of the other fees that went on top of keeping that one plan reviewer reviewing a plan, it turned out to be \$137,000. That was the cost. It was a wonderful piece of information, and I wish I had access to that to give that to you -- the details -- because the Department spelled it out. But it showed how the overhead of the Department, you know, the bureaucracy of the Department, is figured into this process. I think that is symptomatic. I think that is what Hal was saying; that the permittees are asked to carry the overhead of an agency that has responsibilities that are a lot larger, broader, than just processing a piece of paper.

I think that is a trap that I would not want to get into in your bill. I would like your bill-- My understanding of your bill is that the Department should charge what it costs

to process that fee. It should not be processing, you know, keeping the Governor's house at Island Beach, and stuff like that. I mean, that should not be part of that. It should be focused right on that programmatic thing. That is my understanding, but you might want to have tighter language in here than that.

SENATOR BUBBA: Unless I can use the house at Island Beach. (laughter)

MR. SINCLAIR: We have lost, you know, just in the 10-year period from 1982 to 1992, about 180,000 manufacturing jobs. That is a startling figure, because that is a net loss. That isn't like, you know, we lost 180,000 and gained back, you know, 150,000. That is a net loss of manufacturing jobs. Our membership, in our annual report to the members, for the last three years, has said, in terms of what the problems are in the State-- We have 13,600 companies in New Jersey that are members of the Association. Those members reported back to us-- Over 3000 of those companies returned the questionnaire that we sent out. That is a good return rate. Each year for the last three years, they have said that regulations -- government regulation is one of the key problems in New Jersey.

I said, "Well, I wonder if that is really true. You know, how does that play out in the manufacturing sector?" So I ran the numbers to take a look at them again. For the manufacturing sector, it jumps way up, so that it becomes one of the primary problems that manufacturers face in New Jersey -- dealing with the regulatory climate in the State, in dealing with the regulations.

The Governor knows this; the Economic Summit told him that. In the Economic Summit Report, which also should be a part of this record -- and if you don't have it, I will get you a copy of it -- talks about the fee program and the problems in the fee program. Scott Weiner, himself, has said on the NJPDES program, that it is an absolute disaster. I would love to be

able to quote him -- (Mr. Sinclair pauses to look through his papers) -- and I will. Yes, Commissioner Weiner told the Appropriations Committee that the fees charged by DEPE to business, indeed, sometimes do border on the irrational, particularly those dealing with the water patrol.

SENATOR BUBBA: Who said that?

MR. SINCLAIR: Scott Weiner, the Commissioner of the Department of Environmental Protection and Energy.

SENATOR BUBBA: What is he going to do? Did he say what he is going to do about it?

MR. SINCLAIR: He's working on it.

SENATOR BUBBA: Oh.

MR. SINCLAIR: Part of the problem of why it is irrational, though, Senator, is not the blame of the Department, but you take something like-- Here, this is the report, the second annual report of the Clean Water Enforcement Act. This is the telephone book that they send out semiannually now to talk about the Clean Water Enforcement Act and all of the nifty penalties that they have been required to impose on industry. I see this the same as the fees. This is an irrational system.

SENATOR BUBBA: Well, wait. You said that they are required-- By whom?

MR. SINCLAIR: By the Legislature, sir. Under the Clean Water Enforcement Act it is mandated that these penalties-- They are given no discretion, or very little discretion.

SENATOR BUBBA: Well, the penalties, in my recollection, were not itemized. The bill might have said that penalties should be assessed. Is that correct?

MR. SINCLAIR: The penalties have to be assessed.

SENATOR BUBBA: Fine.

MR. SINCLAIR: Have to be assessed for violation of the permit limits.

SENATOR BUBBA: Did the bill specify the amounts?

MR. SINCLAIR: Yes, sir.

SENATOR BUBBA: Well, in those cases, in the wisdom of the Legislature, we decided what they were going to pay.

MR. SINCLAIR: Right, which turns out to be an additional fee for many companies, because many companies have -- are in that backlog of permits there, that have been trying to get their permits revised.

I'll tell you about a company in Flemington, which in the period from 1984 through 1989 violated their NJPDES permit. They violated it a number of times. And why did they violate it? They violated it because-- Actually, they ran a nice operation, created a holding pond, and on the holding pond a flock of geese nested and it became a waterfowl habitat. The geese polluted the water; raised the carbon level that they were measuring; and, in addition to that, the sun heated up the water in the pond greater than the permit limit said they thought it was going to do.

The Department, in every one of those cases in the '80s, looked at the report that the company submitted, and said: "Oh, yes, we see. You've got geese on the pond, or ducks on the pond, and the sun heated it up." Well, that company, now, under the Clean Water Enforcement Act-- The company is being sued by PIRG for \$5 million, and has lost all the way through because they, in fact, violated the limits, even the DEP's. The company has been trying to get their permit changed since 1989, and has been part of that backlog that Mr. Bozarth mentioned. That is a problem of the system paralysis. That is where an individual--

Do you know what that company does now instead of discharging their clean effluent into the pond? They truck it to Trenton, and they dump it into the municipal sewer in Trenton. It's insane, but if they didn't, the Department would have to fine them under the Clean Water Enforcement Act for

violating the permit, even though it is the bureaucracy of the Department and the system that we have put together that keeps them from going back and getting the permit changed. You know, we do not have the ability to have real people make real world decisions. Part of that-- The PIRG suit, while they could do this under the State statute, is under a Federal statute, so it would be-- Insanity is not just here in town.

An interesting thing, though, is that the employees who have been hired-- See, these people right here (witness referring to papers he is using) have been hired additionally to enforce the Clean Water Enforcement Act in New Jersey. These were people that the Department said were unnecessary when they originally testified at the public hearings on this. This is a bill that has not, and will not, noticeably improve the quality of water in this State. I mean, it is a huge, huge penalty on business, and a burden on the rationality of people who have to -- people like Mr. Dalton and his company.

I have a company right here. I would like to read you-- I know I have taken more than the five minutes, but you said, "What is a real case of somebody--" This is from the Industrial Devices, Inc. They are a company that is right up here in Hackensack. The President of the company wrote me a letter after attending one of our legislative briefing breakfasts that we had up here, I believe, in Saddle Brook. I won't read the whole letter, although I will give you the whole letter so you can put it in the record, because he did say I could use this.

This is a company that makes automotive electronic applications. They employ about 300 people in Hackensack, and about 100 more in Costa Rica. Operations include plastics injection molding and light assembly. "We've been in Bergen County since our founding in 1945, until five years ago in Edgewater."

Less than 5 percent of their sales are in New Jersey. "We are here because our roots are in New Jersey, not because of proximity to markets."

He sent me a copy of their corporate vision statement and what he wants to say: "If we do not perform, if our pricing is too high, if our specifications lag, our customers will go elsewhere very quickly. We are put to the test every day.

"If the State of New Jersey thinks we are not competing in a free marketplace, think again. I get at least one solicitation a week from other states or other areas, places eager to have our 300 jobs and the economic benefit our company provides to its community. Changing plant locations may not be as casual as shopping among competing department stores in a local shopping center, but it can, and will, be done if there is sufficient incentive -- and as far as I am concerned, we're getting there fast.

"One short-term advantage of being in New Jersey is our ability to hire skilled people other companies have left behind as they moved out or downsized New Jersey operations in favor of other locations. We are keenly aware of how much that has happened in molding and in electronics. The local manufacturing support base -- machine shops, stampers, platers, etc. -- is also shrinking. You cited the numbers -- over 100,000 manufacturing jobs lost, more companies moving out than moving in."

He's asking why the NJBIA-- "Why isn't NJBIA's agenda benchmarking New Jersey against other states and lobbying for improvement in areas where we lag? Why aren't we concentrating on things New Jersey can do to delight both the individual and the corporate citizens? Why don't we focus on goals and insist on meeting them, instead of trying to whip a bloated and incompetent bureaucracy into moving paper a little bit faster?" etc., etc. It goes on.

It is a good letter because I think it is heartfelt, and it reflects, on a smaller company basis, the kind of decision making that is going on.

Are fees the most critical issue? No. But is it part of a regulatory climate that we have? Yes. What we need to do, what I think the Governor's Economic Summit talked about, and what we think there is some commitment from this administration and from the Legislature to -- clearly from the Legislature -- is to build a better, more business-friendly climate in the State. I think Senator Bassano's bill goes towards doing that, because it asks the fundamental question: What should we be paying for in the permit process?

The Department, by the way -- and if you do get the Department to come in and testify-- They believe that there is too much money of the Department's budget on this side. Clearly, we have gone too far, and we have gone too far because we have let it shift over there. We need to shift it back. Clearly, these programs have some general public good and some specific company responsibility, and I think that is where we need to figure out how to do the balance. And we need to figure out how to design the thing and make it work better.

Thank you.

SENATOR BUBBA: Thank you. Jim, you will give us a copy of that, won't you?

MR. SINCLAIR: Yes, sir, I'll give you this.

SENATOR BUBBA: Paul Chrystie? Paul is with the Department of Transportation.

P A U L D. C H R Y S T I E: Thank you, Senators. You have my testimony. I will not read it; I will just touch on some points. Some of them actually echo points that both Mr. Bozarth and Mr. Sinclair have made.

You should know that we do not make a profit on our fees, and on most of our programs, I don't think we break even

on what it costs to do things like outdoor advertising, access, and things like that.

As you consider the bill, I think there are some issues that you need to look at. For example, how narrowly do you want to define a cost? Should costs of a program include enforcement? I outlined, at our last hearing, that we are required by Federal law -- two Federal laws -- to enforce our outdoor advertising program. Is that something that should be a cost borne by a fee that the outdoor advertising industry pays for their permits? There are other permits that require enforcement, such as highway occupancy access to determine that the motoring public is safe; that we do not compromise sight distance when we give someone a landscaping permit, so that they comply with the permit. Is that enforcement something that their permit costs should cover?

I think you should take into account as you think of how you define these things the issue of averaging costs. Mr. Bozarth talked about doing it like a lawyer; you know, "Here is my hourly-- Here is what it costs." By averaging costs we do two things: We ensure that an applicant that comes in knows what the fee is going to be. He is not going to get a bill later on that is completely out of line with what he thought he was going to have to pay. The fees are predictable. When you are making a business decision -- "Do I do 'X' or 'Y'" -- and you are figuring out your costs, there is the fee. You know what it is. But it does mean that some people are going to pay more than their fee actually cost, and it means that some people are going to pay less.

We think the point that you raised earlier, or asked about earlier -- "Is the big guy subsidizing the little guy?"-- The answer is probably yes. I would almost guarantee that K. Hovnanian has a stack of our forms in each of their offices; that they know how to fill them out; and that because they come into us, for the most part, correct the first time,

there is less staff review, comparatively for the size of the project, than a mom and pop store on a State highway somewhere that wants to change their access; has no idea how to go about it; has no idea what the regulations are; and it requires some hand-holding on our part, some walking through, so that takes comparatively more time.

The issue of policy goals was raised. The Department is taking some policy into account. Concept reviews-- We keep the cost of those that an applicant pays artificially low, because we think it is good for the private sector and it is good for us.

SENATOR BUBBA: What were they called?

MR. CHRYSTIE: Concept reviews. Before you come in with a full-blown access application, you would come in with a concept of what you want to do, and we would give you, sort of our gut reaction: "Here is what you ought to look at. Here is where you ought to change."

The subsequent access permit subsidizes, to a certain extent, that program. What we hope happens is, that because the concept review is a lower price, somebody comes in to us, we can spot some big problems early, we don't spend our time after the access application fixing things that could have been fixed easier earlier, and the developer does not spend a whole lot of money coming up with something that is not going to fly.

But, if you read the bill so that access review fees can only cover access review costs, and concept review fees can only cover concept review costs, the result of that is probably that the access fee comes down some, but that the concept review fee goes up significantly.

We think that from a policy standpoint there are a couple of issues that we ought to be looking at -- actually not we, but you should be looking at. Should we be doing it at all? The answer would appear to be yes, because all of our programs that charge fees are mandated through statute, whether

Federal or State. And if we have to do them, how should we pay for them? The two schools of thought are that the regulated industry should pay for it, and not the general public. The alternative is that if it benefits the general public, whether it be for safety or whatever reason, the general public, as a whole, ought to support it.

From the Department's standpoint, we don't care. If you decide that our programs ought to be -- that the enforcement of our programs ought to be supported through fees, that's fine. If you think it ought to be a General Fund appropriation, that's fine, too. The only thing that we do not believe is acceptable, is to give us a responsibility, but then no means to meet it.

I would be happy to answer any questions you have. To reiterate the comment I made to the Senator earlier -- at the earlier hearing -- we would be happy to work with the sponsors on language.

SENATOR BUBBA: All right. First of all, in the 12 years that I have been in the Senate, while I can recall some cases where I had some problems with DOT, that has not been an overriding problem. Your Department has not been a problem that I am aware of. I asked Senator Bassano, and Senator Bassano seems to feel the same way.

I can recall -- I don't want you to get a big head -- instances where a permit would take forever for Transportation to issue. However, generally speaking, I think you try to move things as quickly as possible.

However, when you ask the question, "Should the fee pay for the inspector who goes out there?" that is how the inspector got there. Fees are supposed to pay for the inspector. I mean, that is how it is done on a local level, you know, municipal, county, etc. So the answer is, "Yes."

MR. CHRYSSTIE: If I may, Senator, the reason I raised the point is, you could read the bill very literally that it is

not included in the cost of processing the application or issuing the permit. That is why I raised the issue of language. Should we be more specific that, yes, implementing a program is also part of what the fee can cover?

SENATOR BUBBA: I think the costs associated with the permit are self-explanatory. "The costs associated--" That is what your bill says, isn't it? (no response) So that would mean, you know, that you have to issue it, and then you have to look at it to approve it. So I guess those costs-- I would imagine that those costs are all together.

Do you have a method to isolate direct charges from nondirect charges? Let's go over that.

MR. CHRYSTIE: Such as overhead and fringe?

SENATOR BUBBA: Well, direct charges would be the guy actually going out to the property. Nondirect would be the building you sit in. That is how I would establish that.

MR. CHRYSTIE: I would assume so.

SENATOR BUBBA: See, I think what we are headed toward-- The best way I can explain it, and you probably remember-- Do you remember your cost accounting in college?

MR. CHRYSTIE: Those of us in Liberal Arts didn't quite get to accounting.

SENATOR BUBBA: Oh, you liberal guys. (laughter)

I think we are going to have to operate on a cost accounting basis more and more. You are attempting it with your concept review permitting. I mean, I see the benefit of something like that. You ought to go back to your Department and tell them to-- You know, you are headed down the right path to expand that approach to permitting and to setting fees for permitting. You know, we may use you as a guide for DEPE, because God knows DEPE needs some help and some direction.

MR. CHRYSTIE: Well, I think there are a couple of ways where we do things right. I outlined for you, at the last hearing, how we sat down with the outdoor advertising industry

and came up with what the costs would be. While perhaps we would like them minimally higher because it doesn't cover the entire costs of the program, you know, we compromised with the industry. We provided the Legislature for a bill that is coming up, hopefully, in the Senate on the 13th, our auto/bus fees inspection, with an accounting. We provided the sponsors and the Committees with an accounting of what it costs to get to the cost that is in that bill. So we hope we--

SENATOR BUBBA: Who is the Commissioner of DOT?

MR. CHRYSTIE: Tom Downs.

SENATOR BUBBA: Well, tell Tom that, you know, based on your testimony we are happy with a lot of the things he is doing.

MR. CHRYSTIE: He will appreciate that.

SENATOR BUBBA: Tell him not to get a big head. We are not happy with everything.

MR. CHRYSTIE: No. We hear often enough where we screw up, so our heads remain relatively small.

SENATOR BUBBA: Thank you.

MR. CHRYSTIE: Thank you, Senators.

SENATOR BUBBA: Our last speaker will be Ron Johnson.

We ought to send Commissioner Downs a copy of this transcript. It is probably the first time in the history of his employment that someone said something nice.

R O N A L D B. J O H N S O N: Thank you, Mr. Chairman, and good morning. Thank you for having this hearing today on an issue that is near and dear to the hearts of the New Jersey State Chamber of Commerce. My name is Ron Johnson. I am Manager of Governmental Relations for the State Chamber. Together with our 110 local and county chambers of commerce, we represent over 45,000 businesses in the State.

We all know that New Jersey is a tough State to do business in. There are many reasons for that. Today's hearing is focusing in on one of those, and that is the area of

regulatory burdens placed on industry, and, more specifically, the area of permit fees.

I think this morning's hearing is timely, in that next week the Department of Environmental Protection and Energy will be holding a hearing on raising fees for three programs. Those programs are:

- * New Jersey Pollutant Discharge Elimination System -- NJPDES,
- * Underground Storage Tanks -- UST,
- * Environmental Cleanup Responsibility Act -- ECRA or maybe someday ISRA.

I think a lot of what you heard today we will probably hear again next week before the Department on the issue of fees and what is in them.

I think it is also timely in that this past Tuesday, Commissioner Weiner testified before the Joint Budget Committee on Fiscal Year 1994's budget. The Commissioner did point out in his testimony that fees were having a large impact on the business community, and they are aware of that. He also pointed out that, unfortunately, his budget relies heavily on fees. He pointed out some numbers. I think we have heard them already this morning. Approximately 83 percent of the Department's budget is funded through fees, fines, and grants, and close to 17 percent comes from general State appropriations. Within that general appropriations component, most of that goes to the natural resources sector, and only a slight -- we'll call it a slight fraction of only 1.6 percent goes towards environmental regulation. That is the area, I think, that fees probably contribute most to in that Department.

We think the Department has been basically forced into a corner when it comes to budgeting with the scarcity of general revenues that have been appropriated to that Department. I think last year's rate of permit fees to keep

the parks open is just another example of that. We are hopeful that in this year's budget that that same error will not be made.

We support this legislation introduced by the Senator, and we thank him very much for doing that. I think we have to take a look at the actual costs that are in the permit fees, and let me just go into that for a moment. I don't think the task is easy, trying to allocate those costs to all of the permit holders, but I think it is important to take a look at some of the things that are in there:

The hourly salary rate, which I think we can all agree is important, if we can agree on how many employees we are paying for; the salary additive rate, and this is where I think we run into some problems. What is included in that is a portion of the employee's benefit time, which includes vacation, sick time, administrative leave, and holidays. In the recent rule proposal, close to 22 percent of every employee's salary is that benefit rate -- is that salary additive rate. That translates, to me, into one of five days. I question how that compares to the private sector, and whether or not a State agency can do it more efficiently and with less employees.

The fringe benefit rate-- I don't think we could argue with that with the exception of the number of employees, and that includes all the State's contributions for health benefits, pension, that sort of thing.

Then the indirect cost rate, and this was explored a little bit in the permit fee rate last year when there were two pieces of legislation that passed. One of them sort of allocated some costs to a central management team within the fee area, which had formerly been funded by general revenues. Part of that is covered in the indirect cost rate. That also includes items such as: soft supplies, equipment. There was something that we found interesting, which was a portion of

rent that programs pay to DEPE for the use of that State building, which is passed through to permit holders.

Obviously, some of those charges are wholly appropriate. We support them, but we have to question where you draw the line between what the regulated community is paying and what the taxpayer is paying. I think the NJPDES program is probably a great example of that, whereas businesses pay for the entire cost of the program, yet they are not 100 percent of the problem. There are nonpoint sources that contribute to pollution every day, including you and I who, when we drove here today, were doing that -- our cars on the street; the fertilizer on our lawns. We all contribute, yet business is paying for the entire cost of that.

Another area -- and we talked about it earlier -- was accountability. The rule proposal that will be debated Friday of next week will talk about this some more. The Department does not allow permittees to challenge the fee based on DEPE's management decisions. Nor will the Department consider objections based on some of the items I pointed out before, including the salary additive, fringe benefit, or indirect rates. We think those areas need some attention.

Back to the legislation for one moment. The State Chamber supports it. We basically just have a question for Senator Bassano on something that if you interpret this one way, you might say that the Legislature is prohibiting State agencies from charging fees that are excessive; higher than the actual cost of permit processing. However, it does not prohibit the Legislature from imposing a fee that could be, say, in excess of what it costs to deliver the permit. That's splitting hairs, I know, but we just wonder if you might take a look at that.

SENATOR BUBBA: We don't want to restrict the Legislature. We want the Legislature to be able to do whatever it wants to do.

MR. JOHNSON: Whatever it wants, okay.

SENATOR BUBBA: See, we like that.

MR. JOHNSON: That was our only concern with the legislation.

Thank you very much for holding the hearing today. I would be happy to answer any questions you may have.

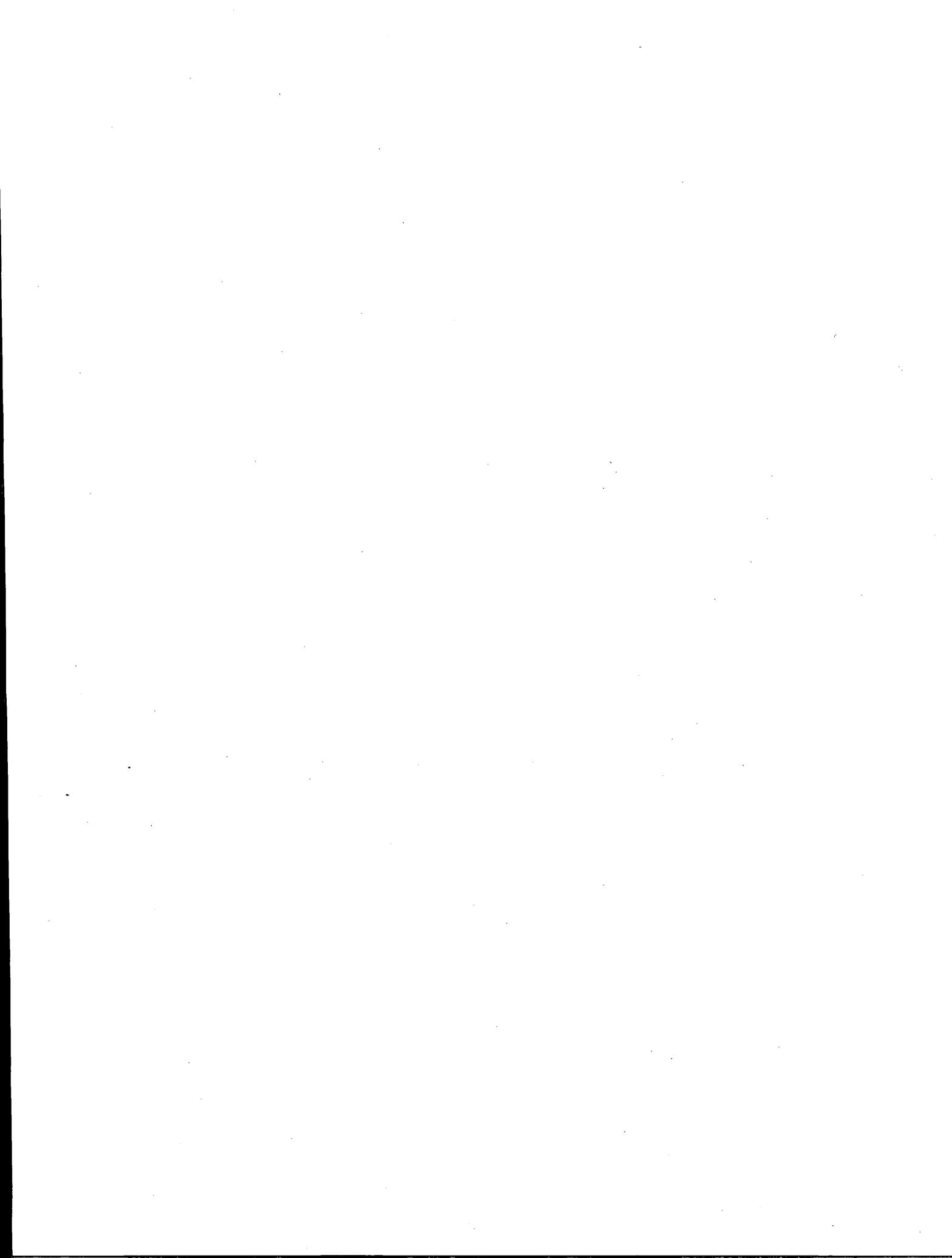
SENATOR BUBBA: Thank you.

That appears to be the end of the hearing. I thank you all for attending. We are probably going to have another hearing of the Senate State Government Committee in Trenton, where we will ask DEPE to come in and explain.

(HEARING CONCLUDED)



APPENDIX

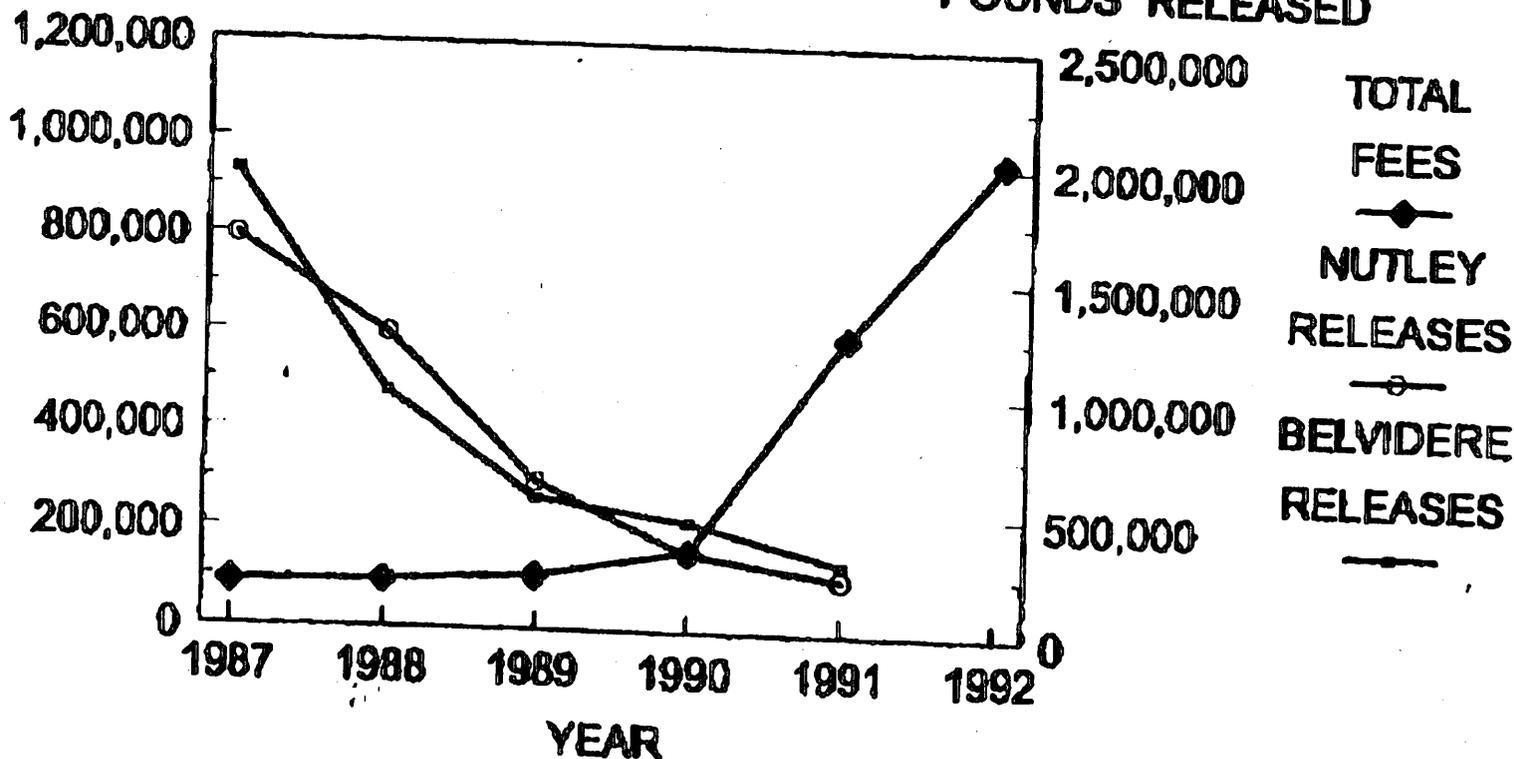


COMPARISON OF NJDEPE PERMIT FEES

AND TOTAL REPORTABLE SARA RELEASES

DOLLARS

POUNDS RELEASED





INDUSTRIAL DEVICES, INC.

FAX: 609-695-9597

March 22, 1993

Mr. Jim Sinclair, First Vice President
New Jersey Business & Industry Association
102 West State Street
Trenton NJ 08608-1102

Dear Jim:

I sat at the March 19 Legislative Briefing Breakfast thinking that the problem was not NJBIA's positions, but the agenda itself.

Industrial Devices manufactures indicator lights for automotive and electronics applications; we employ about 300 people in Hackensack and about 100 more in Costa Rica. Operations include plastics injection molding and light assembly. We've been in Bergen County since our founding in 1945; until 5 years ago in Edgewater.

Less than 5% of IDI's sales are in New Jersey -- we're here because our roots are in New Jersey, not because of proximity to markets. I grew up in Fort Lee, got my undergraduate degree at Rutgers and my MBA at Fairleigh Dickinson.

A copy of IDI's corporate vision statement is attached. If we are ever tempted to forget the need to meet or exceed customer expectations, the presence of aggressive capable competitors in every one of our markets serves as a constant reminder. If we do not perform, if our pricing is too high or our specifications lag, our customers will go elsewhere very quickly. We are put to the test every day.

If the State of New Jersey thinks they are not competing in a free marketplace, think again. I get at least one solicitation a week from other states or other areas, places eager to have our 300 jobs and the economic benefit our company provides to its community. Changing plant locations may not be as casual as shopping among competing department stores in a local shopping center, but it can and will be done if there is sufficient incentive -- and as far as I am concerned, we're getting there fast.

One short-term advantage of being in New Jersey is our ability to hire skilled people other companies have left behind as they moved out or downsized New Jersey operations in favor of other locations. We're keenly aware of how much that has happened in molding and in electronics. The local manufacturing support base -- machine shops, stampers, platers, etc. -- is also shrinking. You cited the numbers -- over 100,000 manufacturing jobs lost, more companies moving out than in.

IX

Why isn't NJBIA's agenda benchmarking New Jersey against other states, and lobbying for improvement in areas where we lag? Why aren't we concentrating on things New Jersey can do to delight both individual and corporate citizens? Why don't we focus on goals and insist on meeting them instead of trying to whip a bloated and incompetent bureaucracy into moving paper a little faster?

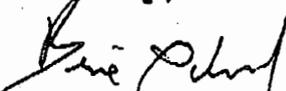
I sat at breakfast Friday morning thinking that we should talk not about laws that benefit special interests at the expense of the rest of us, but about fixing the system. Capitalism works, as they've learned in Moscow, but seemingly not in Trenton or we would have less Government protection of special interests and fewer Government impediments to the functioning of the free market.

New Jersey is never going to be the lowest cost manufacturing location, and doesn't need to be, but why can't we provide better education? Why is state government so monumentally inept, and why doesn't anyone get fired for incompetence? Why write laws that guarantee non-compliance, and why can't we allow good judgement and "de minimus" to function? Why do our Governor and Legislature think one or two pro-business acts constitute a pro-business climate? 100,000 lost jobs tell them how employers feel!

Why do you feed legislators \$20 breakfasts, and tell them how grateful we are for trivial compromises in fundamentally awful legislation, when instead you should be telling them that we're fed up? Most of the attendees at the breakfast were not "customers", but suppliers to companies like mine, like NJBIA, and my message is that if New Jersey doesn't fix the situation, we won't be around to buy power from Public Service (with 16 molding machines running 3 shifts we use a lot of it) or banking from UJB (we use of lot of their product too), or to pay taxes or provide jobs. Maybe 300 direct jobs, and 600 more indirect jobs, aren't enough to get attention, but I think TNT is typical of many New Jersey manufacturers.

What will it take to get our concerns on the breakfast agenda?

Cordially,


Bernard Schnoll
President

BPS:m1s

enc: Vision Statement



State of New Jersey
DEPARTMENT OF TRANSPORTATION

THOMAS M. DOWNS
COMMISSIONER

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TESTIMONY ON S-636

PAUL D. CHRYSTIE

ACTING DIRECTOR, EXTERNAL AFFAIRS AND INTERGOVERNMENTAL RELATIONS

APRIL 22, 1993

Mr. Chairman, members of the Committee, thank you for the opportunity to provide you with information regarding the Department's application and permit fees as you consider S-636.

First, you should be aware that the Department does not make a profit on any of its permit programs. In fact, for the most part, fees do not cover the Department's costs.

However, there are several issues that we believe you should consider as you deliberate on S-636, issues that become relevant depending on the wording and the interpretation of the legislation.

For example, how narrowly do you wish to define the costs which a fee can cover? At your last hearing on this bill, I outlined that our outdoor advertising fees cover the federally-mandated enforcement activities of that program. Outdoor advertising is not, however, the only program where fees cover enforcement costs.

A number of permits require enforcement to ensure that the terms of the permit are being complied with. Access permit conditions promote highway safety and an level competitive playing field for businesses on the same highway. Landscaping permit restrictions ensure that sight distance is not compromised for the motoring public. We inspect the work of these permittees to ensure that the conditions of the permits are met, and the cost of the permit covers that inspection function.

You should also consider the issue of the averaging of permit costs. The Department does not bill applicants as costs accrue; rather the fee is paid up front by the applicant. The only way the Department can set a fee before any work is done is to average costs for processing that type of permit. One outgrowth of this is that an applicant knows going in what the fee will be, our fees are predictable, and the applicant is not socked with extra costs later on. However, it also means that some applicants will be paying more than it cost to process their permit and some will be paying less. It has been the Department's experience that the larger applicants,

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such as developers, are more familiar with the process and therefore may require comparatively less of our staff time to assist them than the one-time applicant who has never applied for a permit before. In this way a larger applicant is likely to be "subsidizing" a smaller applicant.

Permit costs can also be used to advance policy goals. For example, the cost of concept reviews is kept artificially low and the lost funding is recouped through subsequent access application and permit fees. The reason for this is that the Department wants private developers to come in for concept review. It saves us more time in the long run and saves the developer money by catching large problems before too much work has been done.

If S-636 is read so that access review fees can only cover access review costs, concept review fees will increase substantially, and developers will be less likely to come in for concept reviews, and will ultimately spend more money on plans and revisions. However, if S-636 is read (or is amended) that all program fees can only cover the cost of the program and averaging is allowed, we can save the Department time and private developers money.

I know this bill seems a reasonable response to a simple issue. Nobody, including the Department of Transportation, believes that state government should make a "profit" on the fees that we charge. However, in considering this issue, you need to consider a number of questions.

First, should we be doing the activity the fee supports at all? The Legislature has answered that question yes, as each of the Department's activities is mandated by statute passed by the Legislature. And while my tenure at the Department is relatively limited, during that time I am unaware of any legislation that has been introduced to reduce those functions.

Second, how should we pay for those activities? For the programs I have outlined, the answer to date has been fees. The theory of course is that these are user fees, and that those entities benefitting from specific state activity should pay for that activity. Are there alternatives to a fee-based system? Of course. If the Legislature decides that all taxpayers should support efforts such as outdoor advertising enforcement or access permit review, it can appropriate the general funds necessary to carry out those functions, and the fees can be eliminated.

From the Department's standpoint, we do not care how the funds which enable us to carry out our mission are raised. Our obligations are equally well-served through a fee-based system or a general fund-based system. And there are probably arguments either way. However, the one option which we believe is not acceptable, and we do not believe the citizens of the state will find acceptable, is to require us to perform a function and then to deny us any resources to professionally carry out that job.

I would be happy to answer any questions that the Committee has.



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NEW JERSEY STATE CHAMBER OF COMMERCE
STATEMENT ON S-636 (BASSANO)
CONCERNING PERMIT FEES

SENATE STATE GOVERNMENT COMMITTEE

APRIL 22, 1993

TOTOWA MUNICIPAL BUILDING

PRESENTED BY:

RONALD B. JOHNSON

MANAGER

GOVERNMENTAL RELATIONS

6X

Good morning Mr. Chairman and members of the Senate State Government Committee. I am Ronald B. Johnson, Manager of Government Relations for the New Jersey State Chamber of Commerce. Along with our 110 affiliated regional and local chambers, the state's chambers of commerce represent over 45,000 businesses -- both small and large.

Today, businesses in New Jersey face many impediments to a healthy business environment. High taxes and health care costs as well as an overburdensome regulatory system make New Jersey a tough place to do business. This morning's hearing focuses on an area of particular concern to State Chamber members -- especially our dwindling number of manufacturers.

This hearing is timely in that next week the Department of Environmental Protection and Energy will hold public hearings on permit fee increases for three permit programs:

- New Jersey Pollutant Discharge Elimination System (NJPDDES);
- Underground Storage Tanks (UST); and

- Environmental Cleanup Responsibility Act (ECRA) and
someday maybe ISRA.

It is also timely in that DEPE Commissioner Weiner testified Tuesday before the Joint Budget Committee about the impact fees are having on the business community. The Commissioner also pointed out that the department's budget relies heavily on fees as a component of the overall departmental budget.

For FY94, the DEPE expects to raise 83.2 percent of its budget through fees, fines, grants and trust funds. Therefore, only 16.8 percent of their budget will come from general state appropriations. Of that 16.8 percent (roughly \$41.8 million), 73.6 percent goes to the natural resources component of the budget. Only 1.6 percent (or \$639,000) of general revenue will go toward environmental regulation (the rest coming from fees).

It is obvious to the State Chamber that the DEPE has been forced into a corner when it comes to budgeting.

Last year's raid of permit fees of \$1.5 million to keep the parks open is further evidence of a scarcity of general revenue appropriations available to the department. The State Chamber opposed last year's diversion and we sincerely hope the Budget Committee does not make the same error this year.

The State Chamber must compliment Senator Bassano for introducing S-636 and we appreciate his concern over the costs associated with environmental permitting programs. S-636 prohibits any State agency from charging a permit or applications fee in excess of the actual cost of issuing the permit or processing the application. I think we can all agree with that goal -- including the state agencies.

But the real issue is defining "actual cost." Contained in the rule proposals for raising the various fees I alluded to before are various multipliers, direct charges and indirect charges that need some exploring. Allocating costs within the various permit programs is no easy task. But let me share with you, some of the items that State Chamber members pay for as part of the permit or application fee:

- hourly salary rate (appropriate)

- salary additive rate (portion of employee's benefit time, such as vacation, sick leave, administrative leave, and holidays). The rate for benefits translates to 22 percent of every employee's salary. How does that compare to private employers?

- fringe benefit rate (includes state's contribution for pension, health benefits, worker's compensation, temporary disability insurance and F.I.C.A.).

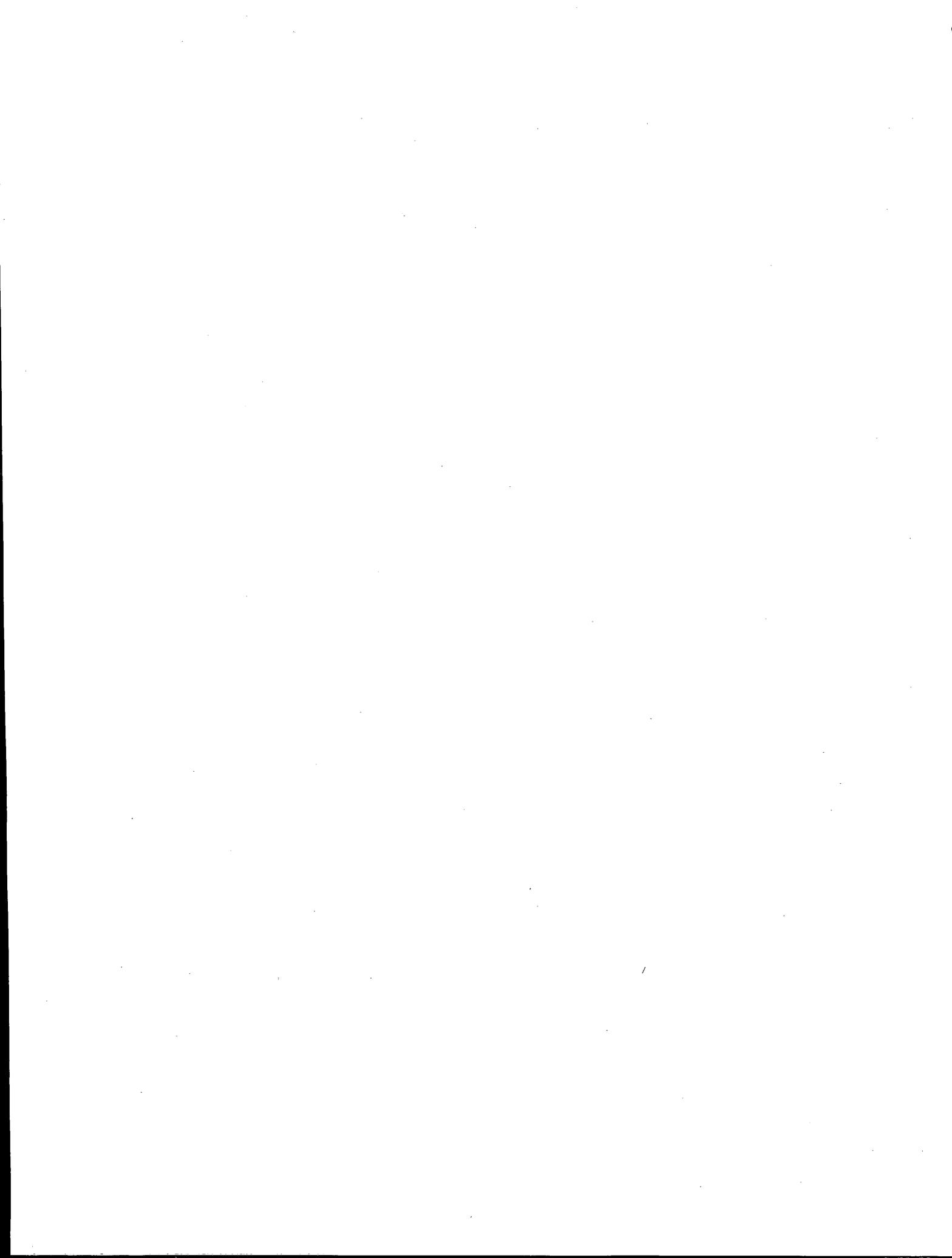
- indirect cost rate (includes salaries for management, personnel and financial management staff and non-salary costs such as office supplies and equipment and the programs proportional share of rent).

Some of these charges to business are wholly appropriate. However, where does it end? Where do you draw the line between the regulated community paying some of these costs and the taxpayer paying some of these costs. And the issue of accountability must be addressed.

The Department will not allow permittees to challenge a fee based on DEPE management decisions. Nor will the department consider objections based on salary additive, fringe benefit or indirect rate. These are the area's that need your attention.

Getting back to the legislation, the State Chamber does support it with one question. We believe that Section 2 provides the Legislature an exemption from the very law they seek to impose on regulatory agencies. Section 2 allows the Legislature to set a fee by law that may be in excess of the actual cost of issuing the permit. We strongly urge the committee to reword that section to eliminate this exception.

Thank you for the chance to offer testimony on this legislation. I would be happy to answer any questions you may have.



NJPDES Fees Task Force

Report of Findings

**Presented to Commissioner Scott A. Weiner
New Jersey Department of Environmental Protection and Energy**

March 29, 1993

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EXECUTIVE SUMMARY

The NJPDES Fees Task Force was appointed by the New Jersey Department of Environmental Protection and Energy (NJDEPE) Commissioner Scott A. Weiner to analyze and recommend reforms in the administrative and fiscal structure of the New Jersey Pollutant Discharge Elimination System (NJPDES) program. This report is the product of the Task Force's intensive independent review of all factors that impact on NJPDES financial matters.

Based upon our analysis, it is clear that the program must be reformed to improve environmental protection and to ensure that the attendant costs are reasonable and borne equitably. We view our report as an integral step in NJDEPE's ongoing efforts to improve both its internal operations and the NJPDES program.

Listed below is a summary of our recommendations:

1. As an interim measure until the NJPDES program reforms are implemented and a new fee formula is developed, the total fees collected from permittees shall be capped at the FY 1992 level of \$15.3 million.
2. General Fund revenues should provide partial support of the NJPDES program, as all New Jerseyans impact the State's water quality and clean water benefits all citizens.
3. Until General Fund revenues are provided, NJPDES fees should be offset by excess Clean Water Enforcement Act penalty monies and by the elimination of the transfer of the \$3 million of water pollution fines and penalties to the General Fund. It is our impression that this revenue transfer can be implemented without the need for legislation, and we recommend that this be completed in time to reduce the fee invoices for the FY 94 budget.
4. NJPDES fees should be based upon the cost of permit issuance and administration, as provided by law, together with environmental impact indicators common to all permittees.

At present, there are severe fee equity imbalances, with some permittees paying excessive fees while others pay significantly less than the cost of administering their permits.

5. All dischargers should be assessed fees, and the exemption of school districts should be eliminated at least until a General Fund appropriation is made to the NJPDES program.
6. NJDEPE should develop a NJPDES mission statement and management principles to guide the administration of the program. NJDEPE should publish a NJPDES policy manual.
7. At present, some NJPDES policies are more stringent than those required by federal law. In some cases, these stringencies may not be producing tangible environmental benefits. Policies, guidelines, interpretations, and regulations which exceed federal requirements should be reviewed to determine if New Jersey's more restrictive approaches have any incremental environmental benefit, and if there is no particular benefit, NJDEPE should follow federal provisions.
8. Delays in permit issuance have negative implications for environmental protection. Concerted action should be taken, through both management improvements and fee reforms, to ensure that permits are issued in a timely fashion.
9. The Clean Water Enforcement Act should be modified to remove barriers to the enhancement of water quality. At present, NJDEPE lacks administrative flexibility under the Act, often forcing extensive permittee litigation on issues with marginal environmental impact. The Clean Water Enforcement Act is turning the NJPDES program into another ECRA-like disaster. It is doing to NJPDES permits what ECRA has done to property transfers by bringing issuance and resolution of permits to a virtual halt.

Taken together, our recommendations, all of which are discussed at length below, would improve water quality, cost control, and funding equity in the NJPDES program.

HISTORICAL PERSPECTIVE

Fee Assessment

Congressional passage of the 1972 Federal Water Pollution Control Act (Clean Water Act) established a national program to control the discharge of pollutants into surface waters, replacing an ineffective and fragmented program that existed under federal statutes dating back to 1899. The legislation required a National Pollutant Discharge Elimination System (NPDES) permit for discharging pollutants from point sources to US waters - generally industrial process wastewater and effluent from municipal treatment plants. States could assume authority over the program once their permit systems were approved by the United States Environmental Protection Agency (EPA).

EPA delegated the NJPDES program to New Jersey in 1982. The NJDEPE is responsible for administering a program that regulates the discharge of pollutants to the surface and ground waters of the State. The Department's authority is derived from the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. The NJPDES rules are set forth at N.J.A.C. 7:14A. All persons or entities who wish to discharge pollutants directly or indirectly into the Waters of the State are required to obtain a NJPDES discharge permit from the Department.

Pursuant to Section 9 of the State Act, the Department is authorized to "establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring, and administering the NJPDES permits." Fees are assessed to cover the Department's costs to issue and manage NJPDES permits. The NJPDES budget and fee schedule covers activities including the review of NJPDES permit applications, the development of specific permit terms and conditions including wasteload allocations and water quality-based effluent limitations, stream monitoring and computer modeling, conducting compliance and 24-hour sampling inspections, ground water compliance sampling, bioassay testing, supervising the installation of groundwater monitoring

wells, evaluating and approving groundwater remediation alternatives, evaluating compliance with the terms and conditions of each NJPDES permit, and providing for the general administrative costs of the NJPDES program, including regulatory support, data processing, filing, budgeting and fee assessment. N.J.S.A. 58:10A-10 provides the Department with the authority to seek civil administrative penalties for failure to pay assessed NJPDES permit fees.

The Department first established a fee assessment program in 1981. Individual permit fees were based on the facility's potential environmental impact, the billing rate for the category of discharge, and the minimum fee for the category of discharge. The billing rate is determined annually by subtracting the total minimum fees paid by the permittee in the category of discharge from the total budget for the category of discharge and dividing the difference by the sum of the calculated environmental impacts for all the dischargers within the category. This has not significantly changed since 1981. However, the environmental impact calculation has been revised several times through rule amendments. Now, the Department utilizes several complex environmental impact formulas which estimate the impact of the regulated discharge on the environment based on only regulated parameters. This formula does not take into consideration the cost of administering a permit. The fee assessment methodology can be found at N.J.A.C. 7:14A-1.8.

Program Cost Effectiveness

What went wrong with NJPDES

The average person who is unfamiliar with the NJPDES program might ask "Why is this program in crisis at this time? How is the New Jersey program different from that of other states? Why should I care about this program?"

If State managers are to correct the problems which plague the program now and prepare for the future success of the program, it is important to review its history. NJPDES program performance directly impacts the total program budget which is allocated via fees.

The growth in responsibilities and reduction in funding

In 1982, when New Jersey became a delegated state, the federal government subsidized the budgets of the delegated states. In the nineties, the trend has changed, and, while federal laws and rules have added additional responsibilities to the states, the corresponding funding has not been forthcoming. As the Department sought to find funding to support programs, the reliance on permit fees and penalty monies developed. The legislature began to reduce the Department's general budget appropriation and pass new legislation requiring programs to be self-sufficient. The last two budgets have essentially eliminated all State General Fund support for NJPDES.

Disjointed programs and policies

The New Jersey Legislature has compounded the trend described above by passing additional environmental laws unique to New Jersey. The result is six volumes of New Jersey administrative codes which are growing every day. The programs formed to administer the various State and federal mandates have taken on a life of their own. Too often, as staff administering a specific program fall victim to tunnel-vision the result is a lack of communication with other members of the Department, and a loss of sight as to how to implement the mission of the Department. This insulated decision making results in inconsistent and indefensible actions on the part of the Department. As permittees learn of these inconsistencies, they contest their permits. Recently, the legislature passed a law to require that the Department write policy manuals to improve the understanding and integration of the programs.

Going beyond federal requirements

As EPA promulgated new rules, NJDEPE often rushed to pass their own version of the rules before the final federal promulgation. Many states will not deviate from federal rules unless they have conclusive evidence that there is a need to do so and then will phase in additional requirements over a period of time.

New Jersey's approach has resulted in excessive requirements which can be extremely costly and do not necessarily afford additional environmental benefit. In addition to these extra requirements, New Jersey has interpreted some EPA policies and guidance as being more restrictive than intended. For example, NJDEPE has misinterpreted federal anti-backsliding policy to mean that it could not relax permit limits once they were imposed, even if they were incorrectly imposed. In fact, EPA provides mechanisms to adjust or eliminate limits that were not properly established.

Loss of discretion in decision making

No matter how well rules are written, there will always be individual situations where judicious deviation from the rules would provide the best protection of the environment. The Department's discretion to deviate from the rules was essentially revoked with the passage of the Clean Water Enforcement Act (CWEA) in 1990. The NJDEPE's ability to review permit conditions and decide when to pursue enforcement action was also lost. In its place, an automatic numerical trigger was established. If any permit condition or limit is exceeded by this amount, the Department is required to take action. This automatic "photo radar" enforcement approach has resulted in permittees contesting any requirements in their permit that could be even potentially difficult to achieve. This has resulted in huge delays in the permit issuance process. Making matters worse, the CWEA also states that permittees may not argue the fairness of a limit after receiving a fine for exceeding that limit. All discussions of permit conditions must take place when the permit is issued. Again, this

factor has added to the expansion of time and legal activity the Department experiences in issuing a NJPDES permit.

Organizational changes

Adding to the need to adapt to new rules and expanded responsibilities, Department staff have had to cope with several departmental reorganizations. Bureaus and program staffs were changed and moved away from each other which made communication more of an effort. The State hiring freeze left positions vacant. The State lay-offs moved inexperienced people into unfamiliar jobs as the so called "bumping practice" of the civil service system was executed. Numerous changes at the helm occurred between 1989 and 1991. The commissioner's job was vacant for awhile, thus leaving no one to make important decisions on the NJPDES program.

Long range planning to handle these changes was neglected due to the need to focus on immediate crises. This overall planning must be reinstated in order to coordinate the reforms needed to correct the problems outlined in this report.

Recent proposals for reform

Commissioner Scott Weiner and Assistant Commissioner John Weingart recently issued a press release and a document for interested party review announcing that the NJPDES program would be overhauled and renamed the Clean Water Discharge Permit Program. Commissioner Weiner explained that the proposed watershed approach would represent a dramatic shift in discharge permitting practices at the NJDEPE. Previously, the Department issued permits based on standardized data regarding safe levels for specific substances within a discharge. "The watershed permitting approach will enable us to focus our regulation and enforcement efforts on those substances that represent a particular problem to water quality in a particular area and will eliminate our present practice of regulating every substance by textbook standards," Weiner added. "While many factors have contributed to the problems

with the NJPDES program, most can be traced to outdated, confusing and inefficient regulations, combined with a permitting process that has been unable to effectively address major water quality issues. The proposal today is intended to lead to a program that functions more efficiently and does a better job of protecting water quality," said John Weingart, NJDEPE Assistant Commissioner for Environmental Regulation.

In summary

The NJPDES program affects the regulated community and every citizen who pays for sewer service. The technical decisions made by Department personnel determine how and when facilities will need upgrading and how much it costs to operate a facility. This cost is borne by citizens. The NJPDES permit fee and any fines levied against the publicly owned treatment works (POTW) are going to be passed along as increased user charges. Industrial permitting impacts are likewise passed along in the price of products. Thus, NJDEPE staff make decisions which result in the expenditure of public money both inside and outside the Department. In addition, it is an important factor considered by industry in deciding whether to locate new facilities in New Jersey. It places industry in New Jersey at a substantial disadvantage to competitors in other states.

As taxpayers, all New Jerseyans contribute to the State general treasury. The expenses of any State program should result in a benefit to its citizens. If the same service can be delivered more cost effectively, it should be done so. This report will identify several areas where such improvements in efficiency can be made.

TASK FORCE MISSION

During the Legislative Appropriations Committees' hearings on the FY 1993 budget last year, a clear message was delivered that NJPDES fees are too high. NJDEPE representatives pledged to evaluate program modifications and implement changes where appropriate. As a result, Commissioner Weiner formed a NJPDES Fees Task Force to follow through on this pledge. Former State Senator and Joint Appropriations Committee Chair Laurence Weiss was appointed as the chair of the Task Force, and members representing various public policy, industry, municipal associations, large dischargers, and environmental groups were invited to participate (see list below).

Commissioner Weiner defined the purpose of the NJPDES Fee Task Force in a letter to its members on July 23, 1992:

The purpose of the task force is to help the Department reassess the NJPDES budget and fee structure.

He went on to ask the Task Force to focus its work on three major related issues:

- 1) How much money is needed to administer the NJPDES program effectively?
- 2) Should all of this money be paid by NJPDES permit holders, or should other sources of funding for part of the program be explored?
- 3) What is the most equitable philosophy and formula to use to divide the amount of the budget to be financed through fees among the regulated facilities?

The Task Force identified the following as its primary tasks in carrying out Commissioner Weiner's request:

1) Evaluate the NJPDES fee structure and make recommendations to make it as fair, equitable, and predictable as possible. Funding sources and fee apportionment would be considered under this task.

2) Evaluate the NJPDES budget and make recommendations to maximize program cost effectiveness while maintaining the primary objective of protecting the environment. This would keep the budget as low as possible. Program scope and administration would be considered under this task.

TASK FORCE MEMBERS

The following people were invited to participate on the Task Force. The group consists of representatives of the regulated community, the NJDEPE, and environmental and public interest groups.

Task Force Chair:

Honorable Laurence S. Weiss

NJDEPE:

Debra Hammond, Chief
Bureau of Permit Management

Dennis Hart, Administrator
Wastewater Facilities Regulation

Ronald Tuminski, Acting Assistant Commissioner
Management and Budget

John Weingart, Assistant Commissioner
Environmental Regulation

Regulated Community:

John Alexander, Esq., Assistant General Counsel
Hoffmann - La Roche Inc.

Renée Bobal, Associate Manager
Environmental Affairs
Hoffmann - La Roche Inc.
Representing the New Jersey Business and Industry Association

Hal Bozarth, Director
Chemical Industry Council of New Jersey

Thomas J. Detweiler, Associate Director
Regulatory Affairs
Chemical Industry Council of New Jersey

Honorable Robert H. Grasmere
Mayor of Maplewood
Representing the New Jersey State League of Municipalities

Ellen Gulbinsky, Executive Director
Association of Environmental Authorities

Thomas Hoatson, Manager
Compliance and Permitting
Cogen Technologies

Alfred H. Pagano, Ph.D.
Senior Consulting Associate
Environmental Affairs
E.I. DuPont
Representing the Chemical Industry Council of New Jersey

Mark F. Strickland, P.E.
Principal Engineer, Environmental Affairs
PSE&G
Representing the New Jersey State Chamber of Commerce Environment Committee

Hank Van Handle, P.E.
Environmental Coordinator
Exxon Company, USA
Representing the New Jersey Petroleum Council

Other Interested Parties:

David Kehler, President
Public Affairs Research Institute of New Jersey

Michael Lihvarcik
Office of Management and Budget

Edward Lloyd, Esq.
Rutgers Environmental Law Clinic

Linda Spalinsky, Executive Director
New Jersey Association of Counties

GUIDING PRINCIPLES OF THE TASK FORCE

The Task Force agreed on several principles that served as the standard against which we evaluated the Department's NJPDES program. They included the following:

- The purpose of the NJPDES program is to maximize protection and improvement of the Waters of the State;
- Those costs that are borne by the regulated community should be assessed fairly, equitably and predictably on the basis of the cost of processing a permit and some common measure of environmental impact;
- Because all citizens both impact water quality and benefit from its protection, the program should be supported, in part, from General Fund appropriations (i.e., tax dollars);
- The general public should be encouraged to be more involved in the public policy decisions that are part of a clean water program; and
- The effectiveness and productivity of the NJPDES program should be optimized to make it less costly and more productive in issuing more permits and permit modifications in a timely manner, while maximizing environmental protection of the Waters of the State.

In applying these principles to the Task Force mission, we identified a number of problems with the program, and formulated some recommendations for their resolution as follows:

OBSERVATIONS

We found that the State's NJPDES program is in critical need of reform. A number of factors have combined to logjam the program to the extent that protection of the State's water quality is jeopardized by the program's inability to produce and implement new permits in a timely fashion. Currently, 60% of regulated facilities are operating on expired permits, i.e., they are more than five years old, the standard term of a permit. Program costs have escalated while program output falls farther and farther behind program demands. Regulations as well as program costs have not been applied equitably, fairly, or predictably.

The following are some specific examples of our concerns:

1. The current formula for assessing fees is too complex and is not related to the cost of administering a permit, resulting in fees that are either too high or too low. For example, 54% of the industrial NJPDES budget is paid by 1% of permittees.
2. The total budget is too high and has rapidly increased to cover a variety of costs not directly related to the program.
3. Despite recent increases in permit decisions (e.g., issuing final permits or permit modifications), the program cannot keep up with permitting demands. This backlog of NJPDES permits is impeding the further improvement of the State's water quality as newer, more protective permits are delayed from implementation.
4. The 1990 Clean Water Enforcement Act has created a process which compels permit holders to enter into lengthy and costly adjudication, thereby diverting Departmental resources from issuing permits.
5. General program policies are too often defined on a case-by-case basis rather than by consistent criteria.

6. The Department needs to develop a definitive plan to implement effectively watershed permitting to protect the quality of the Waters of the State. The implementation of this program must be reconciled with the Department's current approach to water quality-based permits so that permittees who have already entered into the process are not encumbered with permit limits that may be inappropriate for protection of the receiving waters.
7. There are too few general permits and permits-by-rule available to regulate relatively simple generic discharges. Increased usage of these types of permits would allow the Department to focus its resources on the more complex individual permits.
8. The NJDEPE, on many occasions, has implemented EPA guidance without a clear understanding of the intent, resulting in inconsistent policies.
9. Application of pessimistic assumptions has resulted in permit limits that are more restrictive than those necessary to protect the environment and, in some cases, beyond what is technologically achievable or measurable.
10. There has been insufficient overall coordination of goals and policies within the water program. For instance, as identified in the Department's Interested Party Review document on watershed permitting, there has been poor coordination between the permitting and standards-setting programs resulting in a mutually poor understanding of the basis and intent of these related programs.
11. No method currently exists to settle the issue of "reasonableness" in reaching the objective of protecting the environment.
12. Regulations and policies currently in force have in the past been instituted without benefit of an effective dialogue between NJDEPE leadership, permittees, and the public.

RECOMMENDATIONS

Fee Structure

1. **As an interim measure until NJPDES program reforms are implemented and a new fee formula is developed, the total fees collected from permittees shall be capped at the FY 1992 level of \$15.3 million.**

We recognize that implementation of the recommendations which follow in this report will require public discussion and, therefore, take time to initiate. However, to stabilize the budget temporarily, we recommend that the fee revenues be frozen at FY 1992 levels as the minimum action that must be taken immediately.

2. **Since clean water benefits all citizens of the State of New Jersey, and likewise all citizens of New Jersey impact the quality of the water in this State, the general revenues of the State of New Jersey should pay at least part of the costs of implementing the NJPDES program.**

Since 1982, the Department has come to rely on fees and fines generated from the regulated community to fund its various programs, in part because the Legislature added some 40 new programs to the Department's responsibilities. Initially, fees were imposed at modest levels, partially to offset the funding from general revenues. However, as economic conditions have increasingly impacted the State's budgetary process, both the Legislative and the Executive branches of government have come to rely more heavily on the imposition of fees and fines to fund various regulatory programs. Indeed, in the case of NJDEPE, the total amount of non-State appropriated revenue, including fees, fines, bond proceeds, and federal revenues now constitutes 83% (\$201,000,000) of its FY 1993 operating budget of \$242,000,000.

FY 1993

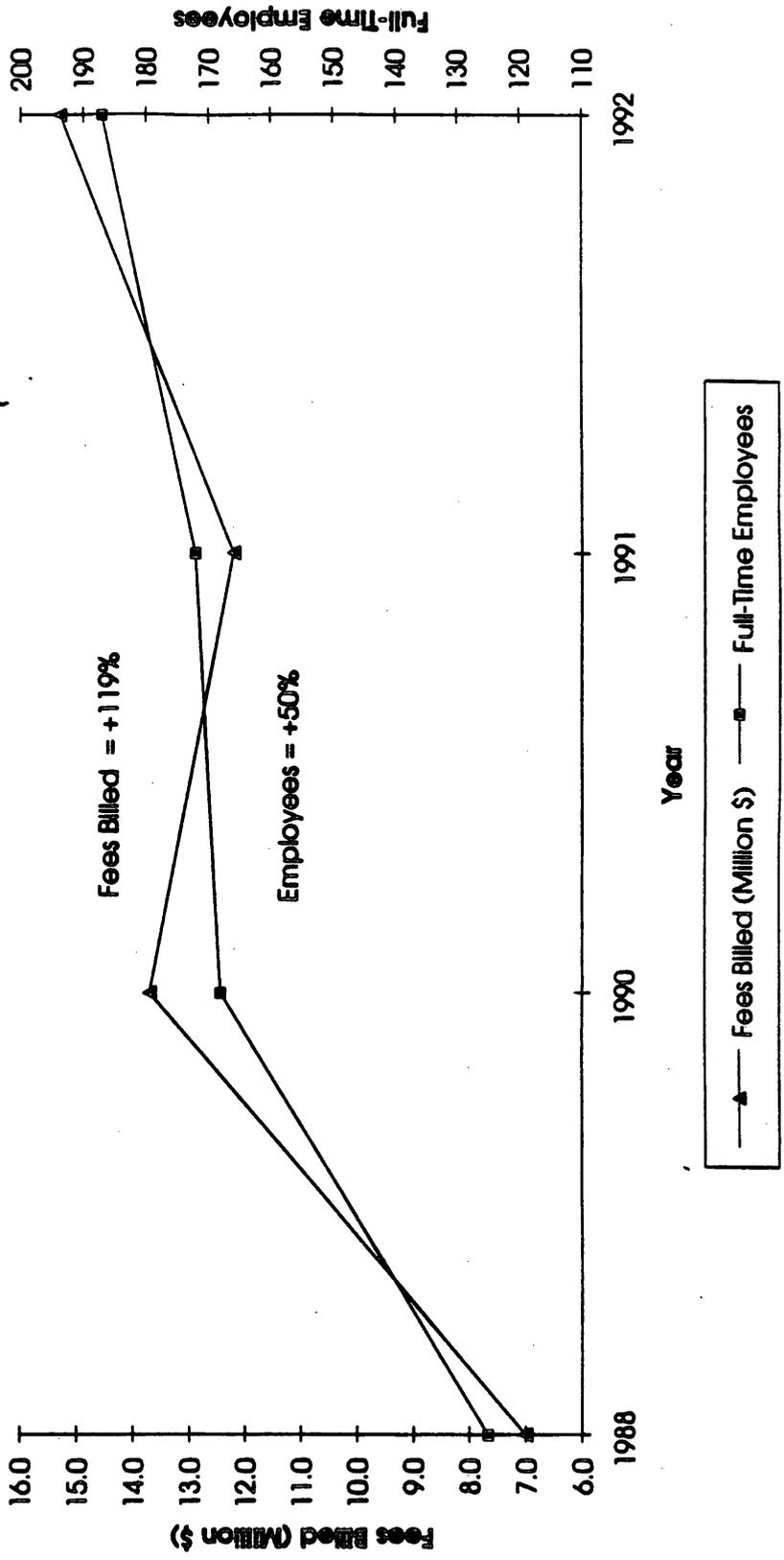
	Dollars (thousands)	Percent
General State	\$41,496	17.15 %
Fees On-Budget	101,120	41.77
Fees Off-Budget	36,828	15.22
Federal Funds	35,331	14.60
Bond Funds	13,125	5.41
Taxes	<u>14,186</u>	<u>5.85</u>
TOTAL	<u>\$242.086</u>	<u>100.00%</u>

Source: NJDEPE

Total NJPDES fees have increased dramatically. For instance, the portion of the NJPDES surface water budget funded by fees went from \$7 million in FY 1988 to \$15.3 million in FY 1992, an increase of 119% in only four years. Figure 1 illustrates the increase in NJPDES fees billed and the workforce trends. Driven in large part by the fiscal climate in Trenton, the Department has adopted a consistent policy of including every cost arguably associated with the NJPDES program in the NJPDES budget, which is then passed on to the regulated community through NJPDES fees. However, it is our opinion that the NJDEPE, in greatly expanding the types of charges allocated to the NJPDES program, has inflated the program to the point of being an unfair burden on the regulated community. While the shift from general State funding to fee-based funding obviously assists the State in arriving at a balanced budget, it does not take account of the fact that the population in general greatly benefits from the NJPDES program and those services associated with it and that the general public is at least partly responsible for pollution problems in the surface water and groundwater in the State of New Jersey and should therefore share in funding the protection of the State's waters.

It is estimated that the public is responsible for at least 25%, and possibly as high as 50%, of the pollution entering our waterways. By and large, these "non-point" sources (which

Figure 1
NJPDES Fees Billed and Workforce Trends



include septic tank effluent, runoff of fertilizers and pesticides from agricultural property, suburban lawns and parks, as well as contaminated storm water runoff from city streets) are not NJPDES fee-paying entities. From a practical perspective, it is impossible to extend the Department's "polluter pays" principle to these non-point sources, since this class encompasses every citizen. The more readily available solution and obvious source of funds is utilization of revenue already paid to the State by the public, namely taxes paid to the State's General Fund.

Examples of costs included in the NJPDES fee program which primarily benefit the general public and are not required solely because of the existence of regulated discharges include:

- General departmental overhead and data management;
- Legislative reporting;
- Ambient monitoring of surface and ground waters;
- Technical and legal expense of rule development (such as the recent surface water and groundwater standards);
- Review of Federal and State laws, rules and policies; and
- Various science and technical research programs.

Clearly, these programs benefit the public at large and would likely exist even in the absence of a State-run NJPDES program. The Task Force can find no justification for costs such as these being included in a 100% fee-funded budget.

We do not recommend that the Department eliminate the regulated community as a source of funding for the NJPDES program. However, there must be a reversal in the trend to allocate as many costs as possible to fee-funded programs, including NJPDES. We recognize that the regulated community is not an unlimited source of revenue for the Department's fee-funded programs, and that the various fees imposed on the regulated community are little more than thinly veiled taxes not subject to legislative review.

Accordingly, we recommend that the Department begin to include in its annual budgetary requests a specific appropriation from the General Fund to support the NJPDES program. In addition to providing funding equity, this approach would enhance New Jersey's business competitiveness, in that NJPDES fees would become more in line with those of competing states. This is a fundamental recommendation of this report. The Task Force recognizes that implementation of this approach will be challenging and will require the commitment of both the Executive and Legislative branches of the Government.

- 3. General revenues should fund at least 25% of the NJPDES program costs in the short term, and ultimately 50% of program costs should be borne by funding sources other than fees. As an interim measure, the Task Force recommends the fees paid by the regulated community be offset by excess penalty monies available by means of the Clean Water Enforcement Act (CWEA) as well as the elimination of the \$3.0 million general revenue anticipation for fines and penalties.**

As noted previously, the Department has opted to allocate an ever-increasing amount of its operating expenses and activities to fee-funded programs. Thus, the NJPDES program has had to bear numerous charges which are only indirectly related to the operation of this program. The NJPDES program exists to issue wastewater discharge permits to various classes of permit holders in the regulated community. The Task Force, therefore, recommends that the costs being paid directly by the regulated community should be limited to this core function. Conversely, costs not essential to the core program's operation should be paid out of the General Fund.

The Task Force has reviewed each element of the NJPDES program and the cost thereof and has concluded that as much as 50% of program expenses primarily benefit the general public. We reach this conclusion based on the following:

- The specific budgeted expenses for permit issuance, administration, and enforcement (up to the issuance of any notices of violation) amount to no more than 50% of the program budget in FY 1992. This fact has been confirmed by NJPDES program

management. The balance of the budget covers those items not considered by the Task Force as essential to the core function.

- The NJPDES budget includes a 30.85% indirect (overhead) charge in addition to a 29.35% fringe benefit charge, representing \$5.5 million. The indirect charge covers general government operating/overhead types of expenses such as space rental charges, employee training, and a share of the Department's Divisions of Financial Management and Personnel. It is inappropriate for only one segment of society (in this case the fee-paying regulated community) to carry the burden of governmental general operating expenses.
- The Office of Administrative Law and the Division of Law, no doubt seeking to allocate its costs to fee paying programs, "billed" the NJPDES program for \$366,000 in FY 1992 and has increased the amount to \$550,000 for FY 1993. The Task Force does not believe that the cost incurred by these agencies should be funded by fees but rather should be funded by the General Fund as had been the case prior to the FY 1992 budget.
- The Treasury Department has retained as general revenue up to \$3 million annually from the fines collected from NJPDES permittees pursuant to the Clean Water Enforcement Act. If this amount had been allocated back to the NJPDES program in FY 1992, permit fee assessments could have been reduced by 20%. We are hesitant to recommend that a regulatory program be funded by fines, since the temptation clearly exists to increase arbitrarily fines to perpetuate the program. Nevertheless, when the only other option is to increase already high permit fees, we feel there is little justification for continued Treasury retention of any NJPDES fine money.
- If the "polluter pays" principle has any continued validity and is fairly applied, those non-point sources referenced previously, namely the public at large, should pay at least 25% of program costs and, more properly, 50%.

We feel strongly that the reasons noted above, as well as sound public policy and basic fairness, dictate that a significant portion of NJPDES program costs should be funded by general revenues. We did not feel our role was to examine every dollar in the program budget, but clearly a compelling case can be made for general revenue funding in the 25%-50% range. While the Task Force strongly recommends that a greater share of the NJPDES budget be directly borne by the State's General Fund, we also recognize that, given the State's fiscal climate, it may be advisable that such an approach be phased in gradually. This approach is deemed feasible by the Task Force based upon the following:

- Items currently included within the NJPDES budget as direct expenses (United States Geological Survey contracts for various stream studies, water monitoring, standards and system analysis, New Jersey Geological Survey, science and research, etc.) should be reallocated as part of the Department's overhead rate, thus spreading these costs in a more equitable manner among all fee programs. These expenses totaled \$1.2 million for FY 1993. This step is considered justifiable by the Task Force. Such programs benefit the entire spectrum of regulatory programs of the NJDEPE and not just NJPDES.
- The Clean Water Enforcement Act (CWEA) has served to increase the overall cost of the NJPDES program. At the same time, penalty revenues collected under the provisions of the Act have been utilized by the NJDEPE to offset, and thus avoid, a direct dollar for dollar impact on the NJPDES fee-paying community. The Task Force finds, however, that a surplus exists within the Clean Water Enforcement fund which could serve to further reduce that portion of the NJPDES budget which is borne by the regulated community through fees. Accordingly, we recommend that at least half of the surplus within the Fund, as well as future excess receipts, be allocated to the NJPDES budget.
- The Task Force also notes that \$3.0 million in Clean Water Enforcement Act penalty monies are now remitted to the State's General Fund on an annual basis, thus

representing lost revenue to the Water Pollution Control Program. We recommend that the State, in structuring its FY 1994 budget, eliminate the general revenue anticipation. Such a measure would serve to reduce directly that portion of the NJPDES budget now borne by the regulated community through fees.

The above funding measures are seen by the Task Force as allowing the State to begin phasing in General Fund support given the availability of these CWEA monies in the short term. Recognizing that there will be a decline in the CWEA fine and penalty monies over the course of the next two to five years, it is critical that the State begins to phase-in direct General Fund support to offset that decline, thus offsetting a potential spike in the portion of the NJPDES budget that would need to be funded by fees. This approach is seen by the Task Force as a means to make the NJPDES budget, and more importantly the portion covered by fees, more predictable and/or constant.

- 4. Those costs borne by the regulated community should be assessed fairly and equitably based upon the cost of issuing and administering an individual permit and some indicator of environmental impact common to all permit holders.**

In 1977, the Legislature passed the Water Pollution Control Act which established the State's NJPDES program. Section 9 of that Act stated that, "The Commissioner shall, in conformance with a fee schedule adopted by regulation, establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits" (emphasis added). While the Task Force is quite aware that the creation and implementation of a fee schedule to meet the above criteria is no simple task, it is becoming increasingly apparent that the formula currently in effect has reached a point of inequity and that, notwithstanding any overall decrease in program costs, as advocated above, fees must be allocated more fairly.

One major problem in fee allocation is that a disproportionately large amount of the fees are concentrated among only a few permit holders, and the dollar amounts have increased

precipitously. This has become more aggravated in recent years as shown in the table below and in Figure 2.

Number of Permittees Comprising 50% of the NJPDES Budget

	Municipal	Billed	Industrial	Billed	Rule Applied
FY 92	8	244	6	918	No root factor; max fee limit
FY 91	8	285	9	924	No root factor; max fee limit.
FY 90	50	438	47	935	Square root factor; no max fee.
FY 89	50	323	69	965	Cube root factor; no max fee.
FY 88	45	348	52	755	Cube root factor; no max fee.

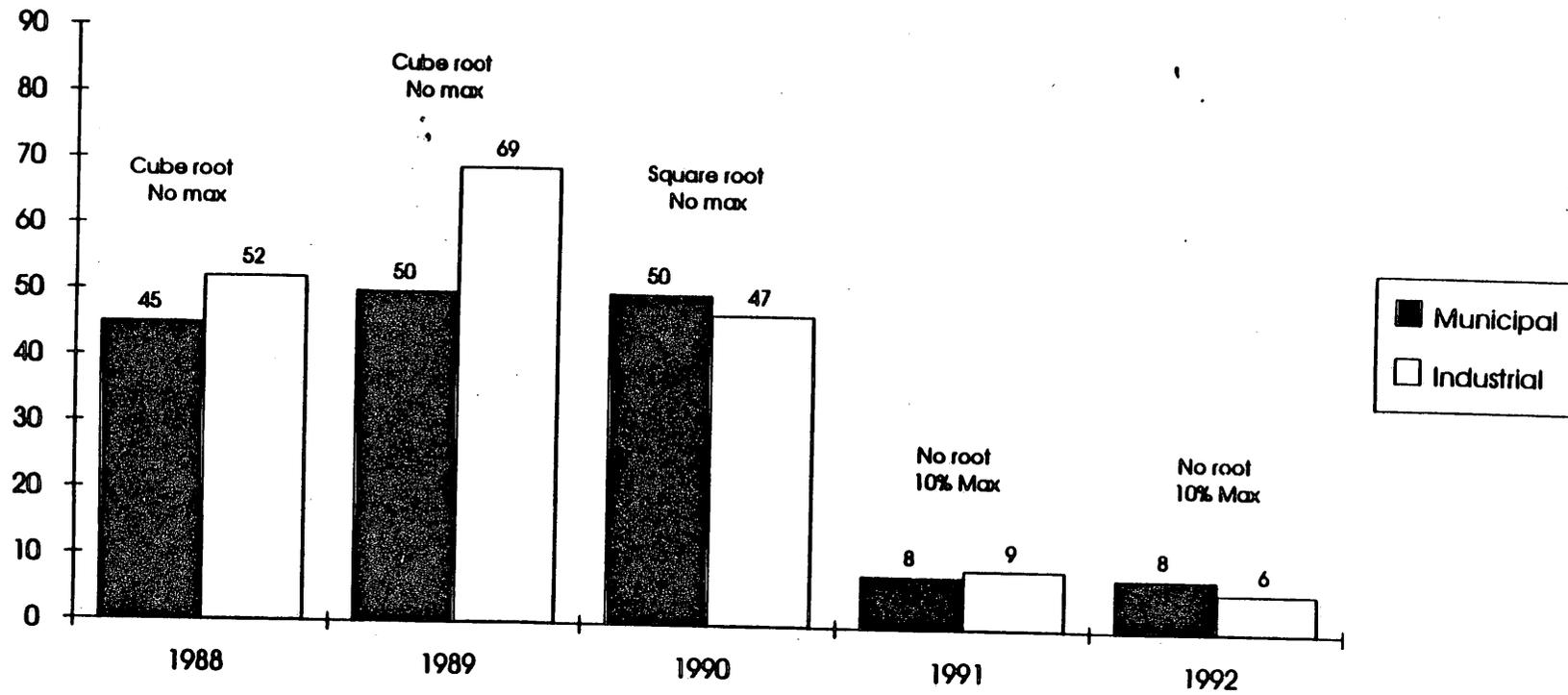
Thus, in FY 88, 52 of 755 total permittees paid 50% of the total industrial surface water budget, whereas the numbers shifted to 6 of 918 by FY 92. In contrast, for FY 92 626 of the 918 industrial surface water permit holders paid less than \$1,000 each, which is less than 0.4% of the overall budget. This incredible concentration of fee allocation is based on two main factors:

- a. Despite the mandatory increase in regulatory obligations involving all permit holders, which thereby increase the amount of time necessary to administer even the simplest of permits, the Department has not raised the \$500 minimum in several years;
- b. Changes in the fee formula in recent years have eliminated the cube root factor¹ which previously had the effect of statistically normalizing the fee

¹ The Department originally used the cube root factor to compress pollutant loading values which varied widely, as many facilities continued to operate at the primary treatment levels. In 1988, the Department required all facilities to upgrade their treatment to the secondary level. The Department also realized that, if fees are to be truly based on the environmental impact of the discharge, this factor was inappropriate. Applying the cube root factor to a facility with a pollutant loading of 1,000 resulted in a fee assessment only 10 times more than that of a facility with a loading of 1 for the same pollutant (1,000 times the loading for 10 times the cost). The Department realized that the elimination of what was essentially a "volume discount" would have tremendous financial impact on the larger dischargers. Therefore, a square root factor was applied to temper the effect. The same

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Figure 2
Number of Permits Paying 50% of NJPDES Budget



impact of certain pollutant loadings. In an attempt to tie fees more closely to pollutant loadings, the cube root factor was phased out starting in 1988. NJDEPE was in the process of issuing more technically complete permits to all permit holders thereby equalizing the number of pollutant parameters contained in the typical NJPDES permit. This latter activity has been stalled, and so those permit holders with water quality-based permits containing many pollutant parameters must incorporate these additional pollutant loadings into their fee calculation while others do not. The fact that not all permit holders are regulated in the same manner and must engage in this more extensive calculation results in the inequitable concentration of fees without a true basis in actual pollutant loading. The effect of the elimination of the cube root factor is illustrated below.

Number of Permittees Comprising 50 Percent of the NJPDES Budget

	Total Billed	50 Percent	Rule Applied
FY 92	1162	14	No root factor; max fee limit.
FY 91	1209	17	No root factor; max fee limit.
FY 90	1373	97	Square root factor; no max fee.
FY 89	1288	119	Cube root factor; no max fee.
FY 88	1103	97	Cube root factor; no max fee.

The Task Force is unanimous in recommending that the Department at least partly utilize a cost-based mechanism to calculate the fees. This method recognizes that the fact the NJDEPE must perform certain fundamental functions for the issuance of any NJPDES permit regardless of environmental impact since many functions are now required by law (e.g., bi-annual inspections, monthly DMRs, and five year permit revision). Toward this end, the

facility with a pollutant loading of 1,000 was assessed a permit fee 31 times more than the facility with a loading of 1 (1,000 times the loading for 31 times the cost). Under the current fee assessment methodology, all permittees are assessed fees based upon their pollutant loadings unless their loadings are so large that their fees would exceed ten percent of the total NJPDES budget. In this case, the fee is capped at 10% of the budget.

minimum fees applicable to certain classes of permits must be substantially increased to cover better the cost of issuing and administering these permits.

We note that if non-core task costs are paid by general revenues, it would be a relatively simple task to allocate the actual cost of permit issuance and administration. If the fees are adjusted to levels that truly reflect the effort required to administer these permits, then any excess revenue required to fund the balance of the NJPDES budget paid by fees could be calculated using an environmental indicator which would be applied to all permit holders on an equitable basis.

The Task Force has not extensively evaluated this particular point. We suggest that the permits and the respective fees be divided into separate classes. These classes would reflect the various types of permits, such as Significant Indirect Users, minor, municipal, industrial, Discharge to Ground Water, stormwater, cooling water, and general permits, etc. Each category would then be subject to certain base fees which would be calculated utilizing the actual direct costs of issuing and administering a permit in that class. If the minimum fee for each class covers the average cost of issuing and administering these permits, then total base fee revenues should roughly equal 50% of the NJPDES budget.

Each permit would then have an increasingly higher fee according to its pollutant loading. Certain common pollutant parameters which are contained in all NJPDES permits or classes of permits should be the basis for such a calculation. This formula would provide an incentive for permittees to reduce their pollutant loadings to receive lower fees. In turn, if the Department needed to increase fees, the pollutant loading criteria for the classes could be decreased, which would have the effect of moving more permittees into the higher fee classes. The maximum permit fee for any permit class would be set at some upper limit.

As an example, if Class 2 minor industrial permit fees were based on pollutant loadings of 1,000 to 10,000 pounds of TOC per year, and the typical base cost to the Department of issuing and administering such a permit over a five year life cycle were \$10,000 per year,

the base fee would be \$10,000 for an applicant with a 1,000 to 10,000 pound TOC loading. If the Department were required to raise more money, it could decrease Class 2 loadings to 900 to 9,000 pounds of TOC per year. This would produce two results: (1) it would increase the total amount of fees paid by pushing several permittees into higher classes, and (2) would increase pollution prevention efforts. The numbers used in this example are for illustrative purposes only and are not Task Force recommendations. Another such illustration is shown in Appendix 1 to this report.

The Task Force contends that a fee based at least 50% on actual costs expended in issuance/administration with the remainder based upon one common environmental factor is not only a fairer way to allocate the costs of this program but is also more predictable so that the regulated community is better able to budget for this expense. There would still be ample incentive for each permittee to reduce its pollutant loading in order to reduce the cost of its fee. We also suspect that a more stable and more easily understandable fee structure would reduce the costs of generating the elaborate and convoluted calculations currently necessary to set the fees and thus reduce staff time needed to respond to questions and challenges of particular fees.

We are well aware that there is no "perfect" way to allocate a \$17 million budget among 1700 permittees. Our goal is to identify a more reasonable and equitable fee structure which acknowledges actual cost considerations as well as common equitable environmental factors.

We also recognize that development of a fee formula is at once a delicate and tedious effort which requires careful evaluation of the effects of any changes on all permittees. For this reason, the Task Force needs to remain in place to continue to work with the NJDEPE to develop an equitable fee formula based on the above principles.

5. **No permitted discharger should be exempt from the fee program, at least until general revenues fund part of the program.**

During its investigation, the Task Force became aware of a general fee exemption granted to school districts which have NJPDES permits. Although this exemption is well-intentioned, we recommend that it be abolished. The NJPDES program has grown to such a size that it imposes a significant financial burden on many large and small businesses alike. Indeed, virtually every citizen pays for some portion of this program through sewer use charges from POTWs. Thus, the Task Force cannot condone the many school district dischargers contributing nothing to program revenues, which in effect forces other dischargers to cover the costs of administering those permits issued to school districts. The Task Force believes the true cost of environmental regulation should be borne by all who benefit from it, and in this case the school districts can incorporate the modest fees in their general budgets.

We would consider reinstating this exemption if and when the State's General Fund is used to support this NJPDES program to a significant extent. At that point, we would agree that the public at large is paying its share and that school districts should again be exempt.

Program Cost Effectiveness

6. **A clear statement of mission and core values is needed for the NJDEPE and the NJPDES program in particular. All activities and decisions should be done in concert with the mission and core values to ensure consistency and predictability. Management and staff should be responsible and accountable for carrying out their mission in accordance with the core values.**

The Clean Water Enforcement Act (CWEA) has caused necessary discipline to be placed upon the Department and the regulated community to ensure that proper limits are established in each permit. The mandatory enforcement penalty provisions of the Act have caused permittees to evaluate more thoroughly each and every permit condition and to request a hearing on those conditions that put them at risk, no matter how unlikely. This reality must be accompanied by an open and continued dialogue between the Department and the regulated community and the environmental groups. This dialogue needs to be formalized.

It should revolve around specific and general issues that relate to the overall core values and mission of the program.

Currently, the Department meets with various groups and members of the regulated community in an uncoordinated and unfocused manner. The community recommends that groups such as the Water Environment Federation, the Association of Environmental Authorities, the Water Industrial Advisory Group, the Clean Water Council, and other various environmental groups and other interest and regulated groups should meet with the Department in a formalized and structured way. A good approach would be to follow the dialogue program that has been operating in the Department's Environmental Cleanup Responsibility Act (ECRA) Program. Similar to ECRA, there needs to be a technical advisory committee and a program advisory committee that meets on a regularly scheduled basis to discuss, advise, debate, and define better the directions of the program, in both a generic and issue related fashion.

Accompanying this, the Department should develop and issue a program newsletter to discuss regulatory initiatives and directions and describe some decisions that the Department has made that will allow the regulated community to understand better where the program is and where the program is going. Along with this, the *DEPE Bulletin* should include production outputs from the program so that the regulated community can clearly view and evaluate the productivity of this program.

The size of the backlog and the potential for CWEA penalties necessitates that the Department meet with permittees prior to the issuance of any draft permits to ensure that the Department understands the permittee's application and the permittee understands concerns and issues the Department will have in preparing the draft permit. These meetings should be for information exchange purposes and not for negotiating permits. They should be used to eliminate the multiple changes that often happen through the draft and final permitting stages due to a lack of mutual understanding. A permittee should never receive a draft permit in

the mail with a 30-day review time mandated without having any prior knowledge that the Department has drafted the permit.

The Department has released an Interested Party Review document which proposes a plenary examination of the NJPDES Surface Water Program. This has effectively opened a public dialogue on the proposed changes. Once completed, the codification of the revised water regulations could be finalized.

Development and implementation of the technical manuals pursuant to the "Doria Bills" and numerous other regulatory initiatives need to take place in a participatory process which establishes an open dialogue amongst the Department's management, staff, the regulated community, and other interested parties. The magnitude and acceleration of the regulatory implementation by the Department needs to be thoroughly understood and evaluated. The input of the people who actually run the treatment facilities needs constantly to be sought so that workable, achievable, and environmentally protective permits are issued that meet public policy objectives and the mission and core values of the program.

- 7. Policies, guidelines, interpretations, and regulations which are more stringent than federal requirements should be carefully examined to determine if it is worth the additional benefit to New Jersey. Unjustifiable requirements should be dropped. Approaches that, on the aggregate, result in unduly restrictive requirements should be re-examined. All policies should be written in Departmental manuals and published.**

It is of paramount importance that the entire regulatory process, from the determination of surface and ground water classifications and the establishment of surface and ground water quality criteria to the ultimate establishment of water quality based permit limits, be reviewed in an integrated and plenary fashion to ensure that appropriate levels of environmental protection are achieved at reasonable cost. To this end, the Department has already initiated several activities described in the section of this report entitled "Recent Initiatives".

The philosophy of "lower or stricter limits are better" with no analysis of the environmental benefit versus the cost of achievement is self defeating. Strict limitations in and of themselves do not necessarily benefit the environment and may not be technically or economically achievable. Rather, they are a prime cause of forcing permit adjudications and stagnating the issuance of environmentally protective permits.

The use of additive conservative assumptions in writing permit limits and water quality standards, among other things, should be revisited to see if it results in requirements for conditions that are statistically non-occurring and which unproductively increase costs of compliance. Recent efforts to include practical considerations in the proposed Ground Water Quality Criteria is a step in the right direction. NJDEPE must recognize that it is not reasonable or possible to regulate all surface waters to standards which are not practically achievable and modify its surface water classification system accordingly. In all cases, balanced solutions must be reached which both protect the environment and yet allow for a reasonable chance of business and industrial survival in New Jersey.

The approach to water quality-based NJPDES permitting, as embodied in draft permits currently issued, should be re-examined. The NJDEPE's recent commitment to a "watershed-based permitting approach" is wholeheartedly supported in concept by the Task Force. By first conducting in-depth analyses which will determine actual, rather than hypothetical, water quality problems, the Department will establish a solid foundation from which it can develop water quality-based permits. A process which requires additional controls only for those pollutants which cause known and demonstrated water quality impacts from identified sources should be pursued. In this manner, true and measurable progress can be achieved in improving the State's water quality in a manner that provides environmental benefit at reasonable and commensurate cost.

When available, the NJDEPE should share the results of the current EPA analysis comparing NJPDES rules to federal rules and should discuss its implications with all affected parties. The Department should adopt a policy of accepting federal regulations and reviewing their

impacts on the State regulatory climate before proposing even more restrictive New Jersey changes. An example of this approach is the direct adoption of federal Section 503 sludge regulations by the State without additional requirements.

Also, NJDEPE should identify why other states issue less complicated permits in a shorter period of time and reform administrative procedures to emulate the best practices.

Several presenters at our public hearings indicated that states such as Wisconsin do not deviate from federal environmental law unless scientific studies indicate a need to do so. Conversely, New Jersey deviates from federal law and regulation as the norm and often without sound scientific reason.

The result is protracted permit contests and adjudications causing the delay of the issuance of final permits. For example, in 1992, NJDEPE improved its total permit output by issuing twice as many permits as in 1991. However, only 14 municipal permits were issued and 11 are under appeal. Adjudications proliferate because of inconsistent and scientifically-indefensible policies which are not publicly articulated or equitably administered.

The Task Force received two reports regarding the Department's approach to various technical issues. They are attached as Appendices 2 and 3. Appendix 2 was submitted by the Association of Environmental Authorities. Appendix 3 was submitted by several members of Technical Issues Subcommittee to this Task Force. This paper discusses the "accumulation of conservative assumptions" that go into the development of NJPDES permit limits. The report asserts that these assumptions, when applied sequentially, result in limits that are protective of conditions that would virtually never occur and therefore may be substantially more stringent than is needed to effectively protect the Waters of the State.

8. Staff efforts should be redirected towards increased productivity in achieving core activity results such as permit issuance.

The Department should make every effort to ensure that redundant and overlapping programs that are not providing environmental benefit are examined and reduced or eliminated if possible. Resources that are freed up as a result of these evaluations should be directed to the NJPDES Surface Water Permitting Program. As an example, on February 1, 1993, the Department adopted regulations which in effect greatly scaled back the Significant Indirect User (SIU) permitting program. The effect of this was an elimination of redundant permitting for industries that discharge into sewerage facilities that already have the capability to issue those permits themselves. As this program goes forward, the Department's role will be reduced to overseeing of the pretreatment permitting program administered by the delegated sewerage authorities and will no longer be responsible for issuing individual permits. The Department evaluated the resources and determined that two staff members will be necessary to administer the remaining SIU permitting responsibilities within the non-delegated areas, and the five staff members were transferred to the NJPDES Surface Water Permitting Program.

The Task Force acknowledges this and recommends that similar activities take place in other programs. As example of another program, "The Treatment Works and Sewer Ban Working Paper" that the Department issued last spring must be followed up with rule adoptions. This program, as discussed in the paper and in the working sessions, has the potential for major modifications that would greatly reduce redundant, overlapping, and unnecessary regulatory activities.

The Task Force is encouraging the Department to move in the direction of examining the treatment works approval (TWA) program and eliminating those activities that are duplicative of the permits issued on the local level, as well as those activities that are not environmentally productive but add to the cost and time of projects for both the permittee and the Department.

The industrial treatment works approval program should be eliminated almost in its entirety and the activities necessary to ensure that facilities are built correctly can be incorporated into the actual NJPDES permit, as well as can be delegated, in the most part, to the local authorities and to the professional engineers who actually certify the projects.

The series of legislative bills known as the Environmental Management Accountability Act ("Doria Bills") provides the Department with greater oversight capacity of professional engineers, and the Department should use this in attempting to reduce its overall permitting burden. As the TWA programs, both industrial and municipal, are evaluated and scaled back, those resources should also be directed to the NJPDES Surface Water Permitting Program. It is imperative that the Department continues to evaluate the programs in an attempt to reduce those that are unnecessary and direct more resources to the Surface Water Permitting Program.

The resource allocation in the NJPDES program needs to match the core values and the mission of the program. We are quite concerned that only 25% of the staff resources are directed towards the actual permit production outputs. This cannot continue, since more resources are necessary to reduce existing backlog and eventually reach the point where inputs equals outputs.

It is unconscionable that a fee paying program is not directing its resources towards the mission and core values of the program. The actual production process of the permitting program needs to be thoroughly evaluated and examined along the lines of simple productivity. The Department should evaluate innovative approaches to permitting to identify effective and efficient ways of issuing environmentally protective permits in a cost effective and efficient manner.

Recent actions in this direction should be greatly expanded. For example, The Department has encouraged some permittees to draft their own permits so that the application that the Department receives is in the form of a draft permit. The Department can then review that

application to see if it meets the requirements of the Department, and if acceptable, it could then issue the application as a formal draft. The Department should evaluate this and expand on it if possible because it appears to be a logical way of accelerating the permit process, thereby maintaining or improving the state's water quality.

- Other initiatives such as the use of more general permits should be pursued. The additional stormwater permits, cooling water permits, fuel cleanup permits, and other permits the Department has discussed need to be issued as soon as possible to get on with doing more routine things in a general fashion that will allow the Department to focus its resources on the actual water quality problems and away from the administrative problems.
- Permits for discharges that have relatively little or no impact on the surface water quality should have a mechanism to renew them without a great deal of review. An extremely large amount of time and resources are spent on permits that have little or no effect on the environment, thereby diverting staff resources from those permits that have significant environmental impact. The Department should focus on those dischargers that cause significant environmental impacts. Minimal resources should be expended on minor discharges where adverse impacts are not apparent.

The computer networking capabilities of the Department are currently extremely limited. The NJPDES program needs to establish a network capability that would allow the production process to use batch processing, form documents, and other shell documents that would allow a much more rapid production process. Accordingly, in addition, the Department should encourage permittees to file draft permits in an electronic format so as to eliminate duplication of effort in the issuance of draft and final permits.

It is relatively common place that large organizations are moving away from the centralized computer systems to providing the staff with the necessary resources and computer capabilities to do a lot of projects in a short period of time.

The Task Force also strongly encourages current efforts on the part of the department to introduce the use of Electronic Data Interchange (EDI) in the filing of Discharge Monitoring Reports (DMRs).

The Department's traditional approach to organizational hierarchy and job assignments needs to be thoroughly evaluated and reviewed. We believe that the Surface Water Program can be structured to deal with the batch processing nature of the program. A team should be assigned to deal with the issue. For example, if there is a large backlog of permit closure actions, a team should be assigned to perform these actions. Large numbers of similar modifications should be handled as mass modifications. There is a great deal of advantage to processing permits by batch fashion" and/or by a team approach. The current and traditional approach of individual staff assignments does not allow for this.

9. The mandatory actions and penalties in the Act should be reviewed and modified to improve both their cost and resource effectiveness and to remove barriers for the enhancement of water quality.

The original intent of the Clean Water Enforcement Act was positive in that it focused attention on issues which needed to be brought to the forefront. The Act and subsequent regulations provided a platform for giving discipline to the water program and brought resources to a data management system which needed major overhaul.

However, in the three years that have passed since the Act's implementation, it has become evident that numerous items in the Act are counterproductive and create barriers to improving the State's water quality.

In particular, provisions of the Act:

- Delay actions that can achieve improvements in actual water quality;

- Divert both industrial and Departmental resources toward administrative and legal issues and away from activities designed to solve problems to enhance water quality;
- Require duplicative reporting;
- Remove needed Departmental discretion which forces adjudication because of fear of mandatory penalties even with non-achievable permit limits or no environmental impact or benefit. Permittees are forced to litigate permit conditions and limits up front, with accompanying high consultant and adjudicatory costs. Public and private monies are required for these adjudicatory costs instead of being expended on upgrading facilities to improve water quality;
- Mandate the Department to pursue penalties for violations of permit limits that it considers incorrect but has not yet corrected;
- Preclude the use of a common sense approach to solve problems; and,
- Affect all sewer use rate-payers through higher fees due to statutorily-required actions.

RECENT INITIATIVES

The Task Force is encouraged by the following actions the Department has taken during the last two years to improve the effectiveness of the NJPDES program.

- In 1991, the program was reorganized to reduce the number of layers of middle management. Under the new structure, the Program Administrator reports directly to an Assistant Commissioner. The Task Force believes that this close tie with NJDEPE's top management has had a positive effect on the program.
- In 1992, the Department embarked on a Cooperative Program Improvement Initiative with the USEPA. This activity included several meetings between the two agencies to discuss problems and opportunities in the NJPDES program. They also initiated an evaluation and comparison of State and federal regulations to identify differences and clarify some of the federal policies which form the basis for the State's authority. Unfortunately, the report from this effort is long overdue.
- Also in 1992, the Department began a process to review and revise the entire NJPDES regulations in an attempt to make the program more efficient and effective while being no less protective of the State's waters. After producing a draft on their own, the Department plans to solicit input from interested parties before making a formal rule proposal. They have set September, 1993, as the target date to adopt final rule revisions.
- In February 1993, the NJDEPE adopted a rule revision that would revoke all Department-issued significant indirect user permits in areas served by delegated local agencies, and would authorize these agencies to issue permits directly.
- In January 1993, the Department issued a document for interested party review in which sweeping changes to the NJPDES program are proposed. For instance, the

Department is proposing a new approach to permit writing that would allow the applicant to submit applications in the form of a draft permit. This would allow the Department to evaluate more quickly the draft permit and proceed to a public review and permit issuance. The Task Force applauds the Department's effort to obtain input from the regulated community, environmental groups, and other interested parties at the front end of a program restructuring.

- Lastly, the Department has demonstrated a genuine desire to improve the NJPDES program by its formation of this Task Force.

CONCLUSION

The Task Force recommends fundamental fiscal and administrative changes in the NJPDES program to enhance environmental protection in an equitable, cost-effective manner. Our review of the program has been comprehensive, and we have concluded that program cost control, funding equity, and improved water quality can be achieved simultaneously through the adoption of our recommendations. These recommendations, together with the NJDEPE's proposed overhaul of the program, provide a broad, detailed agenda for much needed reform.

Our recommendations are based on five principles which we believe should guide efforts to reform the NJPDES program. The specifics of our reform proposals are grounded on these principles and on basic, practical concepts of public administration and public finance. Throughout this report, it has been our goal to increase NJDEPE's administrative effectiveness in protecting and improving water quality.

NJPDES program costs should be more fairly apportioned among permittees and between permittees and the general public, who both impact on and benefit from efforts to improve water quality. Our recommendations to this end promote equity, a principle which the Task Force views as part of the original legislative mandate as well as a basic objective of any reasonable fiscal policy. To this end, more work needs to be done to finalize and codify preliminary fee formula recommendations made in this report. For this reason, as well as to aid in other Department initiatives, such as watershed permitting and the ongoing rule rewrite, we recommend that the Task Force be continued to aid the Department in these efforts.

In recent years, the NJPDES program has borne costs of activities of NJDEPE and other agencies not wholly germane to the program, expenses formerly funded through general State government appropriations. This undue reliance on fee income is a hidden tax. The

recommended reform will restore a basic element of fiscal fairness: that expenditures benefitting the general public should be funded through the regular appropriations process.

A comprehensive review of the New Jersey Water Pollution Control Act, and in particular the Clean Water Enforcement Act amendments, should be initiated to implement the reforms recommended by this Task Force.

Responsible reform of the NJPDES program is imperative and possible and can be accomplished while enhancing environmental protection. The Task Force's recommendations provide a cohesive system of ideas to strengthen the program and improve the equity of its funding.