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# ***Committee Meeting***

of

## ASSEMBLY REGULATORY OVERSIGHT COMMITTEE

*“Continued discussion on the management and operations of  
the Department of Environmental Protection relating to the promulgation,  
implementation, and enforcement of department regulations”*

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**LOCATION:** Committee Room 8  
State House Annex  
Trenton, New Jersey

**DATE:** February 13, 2003  
2:00 p.m.

### **MEMBERS OF COMMITTEE PRESENT:**

Assemblyman William D. Payne, Chairman  
Assemblyman Joseph Cryan, Vice-Chairman  
Assemblywoman Nilsa Cruz-Perez  
Assemblywoman Connie Myers



### **ALSO PRESENT:**

James F. Vari  
*Office of Legislative Services  
Committee Aide*

Gabby Mosquera  
*Assembly Majority  
Committee Aide*

Thea M. Sheridan  
*Assembly Republican  
Committee Aide*

***Meeting Recorded and Transcribed by  
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Hearing Unit, State House Annex, PO 068, Trenton, New Jersey***

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**ASSEMBLYMAN WILLIAM D. PAYNE (Chairman):** Good afternoon. I'd like to welcome everyone here for the continuation of our discussions that were raised during our last hearing, of February 6, on the management and operations of the Department of Environmental Protection relating to the promulgation, implementation, and enforcement of the Department regulations.

The Committee will consider the concerns of the business community, environmental communities, and local government communities, and consider--

He can testify as soon as we introduce everybody. (referring to crying child) (laughter)

--and consider the specific recommendations for improvements that may be made to the regulatory process.

Our overall, overarching concern is to try to see to it that the government does, in fact, function as its -- its responsibilities are designated by legislation or regulations. And one of the things we're doing here -- and we're trying to, at least, listen to all the concerns of individuals and people and those who are impacted by the Department of Environmental Protection.

I'm not going to-- I'm going to give an opportunity for one of our members, Assemblywoman Myers, who has had long years of experience in this area, just to make an introductory remark.

I would like to announce that we had scheduled Assemblyman Doria to be here today to discuss EMAP, however, we've been informed that Professor Doria, Assemblyman Doria, Mayor Doria has been delayed and will

not be able to be here today. His tests -- I believe exams -- are taking a little longer than anticipated.

However, we do have people here that can give us an overview of where we are and where we want to go. And I'm going to call on John Hazen, from DEP, to make a few comments after hearing the comments from -- introductory comments, I think, from Assemblywoman Myers, who had indicated to me last week that she has quite a bit of knowledge in this whole area. She may want to make some introductory remarks.

ASSEMBLYWOMAN MYERS: Thank you, Mr. Chairman. If I could pass for now and take a rain check on that -- perhaps, later in the Committee meeting.

ASSEMBLYMAN PAYNE: Fine.

We'll continue. I'd like to call--

Is John Hazen here?

**JOHN HAZEN:** Yes, thank you, Mr. Chairman.

My name is John Hazen. I'm a Legislative Analyst with the DEP. With me is Sam Wolfe. He's Assistant Commissioner for Environmental Regulation. I'm glad to come before you again, to follow up on Commissioner Campbell's comments to you last week.

ASSEMBLYMAN PAYNE: Before you go on, let me ask you, were you-- We wanted to get an overview or background of EMAP, etc., you know, the legislation that passed in 1991, I think, by Joe Doria.

Were you here, were you there -- here at the time, when this was built? Are you prepared to give us some kind of a background of the intent,

etc., what motivated us back-- I, obviously, am a very young man, and I wasn't here in 1991. (laughter)

But as we described last week, we're going to have -- we're here to take inventory of your regulatory concerns and recommendations for everyone here. And it's my continued hope that by undertaking this review, as I said, our Committee will be able to work with the Department to institute changes that are necessary and to clarify existing practices, when appropriate, and provide an ongoing forum for addressing future regulatory concerns.

Last week, as those of you who were here know, we started to explore regulatory concerns related to DEP. Today we want to conclude our initial review of this Department before considering other departments. As you know, we intend to have these hearings for other State departments, as well, that impact on our people.

So this will conclude the DEP today, and then we, in the future, will have others. And as I said, to this thing, we had invited Assemblyman Doria to testify about his 1991 package, known as EMAP, which did put into statute new responsibilities for DEP. Unfortunately, he's not going to be here with us, but as I say -- that someone knows -- you may be able to, in fact, give us an overview of this entire EMAP -- this period.

So with that, I will ask you to continue.

MR. HAZEN: Yes, we would like to go through each of the components of EMAP and describe-- I mean, mostly it's been very positive for us and, kind of, forced us to do things. It's been a good accountability and management tool for us -- the various components of EMAP. I'll let Sam, kind of, go through the different parts of it and describe his experience.

**ASSISTANT COMMISSIONER SAMUEL WOLFE:**

Thank you, Mr. Chairman.

As it turns out, I was--

ASSEMBLYMAN PAYNE: For the record, would you identify yourself and your title, etc.

ASSISTANT COMMISSIONER WOLFE: Sure, sorry about that. I am Samuel Wolfe. I'm the Assistant Commissioner for Environmental Regulation at the DEP.

As it happens, I was working at the DEP back in '91 when EMAP was enacted. I don't know how much I can speak for the Legislature's motivations, but I think a lot of what was in EMAP is really so self-explanatory that the motivations tend to speak for themselves.

So what I'd like to do is go through some of the key points in EMAP, some of the key responsibilities that it put on the DEP, and talk a little bit about how that's worked out in practice over the past dozen years or so.

One major point was a direction to the DEP to set guidelines to establish review schedules for each individual class or category of permit. This is something that turned out to be very helpful in practice. It's something that hadn't been put on paper before. And in doing that, it's committed the DEP to a time frame for permit review and, therefore, improves our accountability. What it's also done is, it's acted as a warning system, because when we see individual permits that are taking longer than that guideline review period to get done, first of all, we can flag those as backlogged. We can track our backlogs and see if we're improving or getting worse over time, and we can take action to address the backlogs. So that has been helpful in practice.

One thing that's directly related to that is the requirement to publish a semi-annual report of permit activities and of permit backlogs. And that has, I think, probably been less helpful for the Department but, maybe, more helpful for the Legislature and the regulating community to see how we're doing. What it's forced us to do is to track our permit activity on a more detailed level. Rather than seeing how we're doing every six months, what a lot of permit programs tend to do is track the permit work monthly, and see monthly how we're doing with respect to bringing down backlogs and even tracking it based on the individual permit writers so that we can understand how productive each permit writer is.

So it's been very helpful as a management tool there. That's another way that we've been able to use just the fact that we have these permit review time-frame guidelines.

The semi-annual reports -- unfortunately, we've been somewhat behind on getting out. They're due shortly after the end of every six-month period -- I think by July 30 and January 30 of each year. And there were no reports done for either half of 2001, and they have not yet come out for 2002, either. We should be ready, in the very near future, to issue the back reports, both for the first and second half of '01, and also for the first half of '02. And then the report for the second half of '02 should follow fairly quickly after that.

ASSEMBLYMAN PAYNE: Let me just interrupt for a second.

ASSISTANT COMMISSIONER WOLFE: Sure.

ASSEMBLYMAN PAYNE: What was the reason for the fact that there were no reports done in 2001? Is that what you said?



ASSISTANT COMMISSIONER WOLFE: Yes, and that was under the past administration. I can't really account for what the decision making was to not issue those reports. We've been trying to play catch-up so that we're in a position to get ready to get the reports out. And also, in my office, we really have the lead in getting the report out. We've tried to streamline it so it's going to be easier and faster to get out. We will, from here on in, stick to our statutory deadlines.

ASSEMBLYMAN PAYNE: Pardon me for the interruption, but I think if we're having these hearings -- we're trying to find out how to streamline things. And in order to do that, we need to know what caused them -- and that kind of position. That's the point in just having these hearings, if, in fact, we don't understand the reasons. That's the reason for that. I just wanted to focus on that.

MR. HAZEN: I, frankly, just think it was a transition issue.

ASSEMBLYMAN CRYAN: Can I ask a quick question? Did anybody miss them? Did they? I mean, let me ask you directly. Did anybody come and say, "I need this report to function as a part of the process for me to deal with DEP," or are you generating them just for the practice?

MR. HAZEN: Well, we're generating them because they're mandated by the legislation.

ASSEMBLYMAN CRYAN: Yeah, that's great. Did anybody miss them? This is the Regulatory Oversight Committee.

MR. HAZEN: Well, I can honestly say no one's called my office with a request.

ASSISTANT COMMISSIONER WOLFE: The Chemistry Council, last year, did ask for a copy of, at least, the reports in draft that had never been issued.

ASSEMBLYMAN CRYAN: All right. So at least one person asked for it.

ASSISTANT COMMISSIONER WOLFE: That's right.

ASSEMBLYMAN CRYAN: Roughly, how much does it cost to go back into 2001 data -- which I can't imagine is worth a whole hell of a lot -- or 2002 data at this point? What's the cost of that?

ASSISTANT COMMISSIONER WOLFE: It's not especially costly, because the data management tools that were put in place over the past several years make it easier for us to just get the data out. If we're going to have a whole involved narrative explanation about where things are and why they are, that's going to take significant work. But what I've tried to do is strip that down.

ASSEMBLYMAN CRYAN: With all due respect, if you haven't done it in 18 months, but yet, the data management part of it makes it relatively easy to do, that sure doesn't make a whole lot of sense to me.

ASSISTANT COMMISSIONER WOLFE: And it's really a matter of the approach that we're going to take to it, that if it's not going to be just the data, which the legislation is calling for, but also-- What's been done in the past is a lengthy narrative description for each program, about explanations for the numbers that are being put out. That involves a lot of work, and I would like to be able to shortcut that. It's not called for by the statute, and I'd love to be able to put out the numbers and be done with it.

ASSEMBLYMAN CRYAN: I've got a feeling that's music to the Chairman's ears.

ASSEMBLYMAN PAYNE: Assemblywoman Myers.

ASSEMBLYWOMAN MYERS: Thank you.

Was that the bulletin you're referring to?

ASSISTANT COMMISSIONER WOLFE: The DEP bulletin is put out bi-weekly, and that's more a matter of informing the public of the status of individual permits. This is more a collection of data on various permit programs overall, just reporting gross numbers instead of saying, "This individual permit is at this stage, and here's when the public hearing was," and so on.

ASSEMBLYWOMAN MYERS: And the bulletin is useful?

ASSISTANT COMMISSIONER WOLFE: Well, it's, in some ways, convenient, because it provides us with one place where we can get out public notice of all the permit actions that are covered in it, and get out notice of the public hearings. It's one place that people can go, to refer to, to try and track the status of whatever permits it is that they're following.

ASSEMBLYWOMAN MYERS: Have you looked into just doing it online?

ASSISTANT COMMISSIONER WOLFE: We do publish it online, and we've tried to encourage people to look to the Web version rather than getting hard copy mailed to them, just as a money-saving measure.

ASSEMBLYWOMAN MYERS: Thank you.

ASSEMBLYMAN CRYAN: How many people does it take to put this thing together?

ASSISTANT COMMISSIONER WOLFE: To put the semi-annual reports together? (affirmative response) Well, there's about a dozen permit programs that are covered in the report. And so, generally, each of those programs puts one person on it. Again, once we can take out all the narrative -- that brings it down to, I'd say, no more than several hours of that one person's time in each of the programs.

ASSEMBLYMAN CRYAN: So in terms of man hours, it's--

ASSISTANT COMMISSIONER WOLFE: I'd say, as a rough guess, 100 would be a reasonable guess. I haven't tracked it exactly.

ASSEMBLYMAN PAYNE: Do you want to continue?

ASSEMBLYMAN CRYAN: I'm sorry.

ASSISTANT COMMISSIONER WOLFE: One other, and maybe somewhat less self-explanatory, direction in the legislation was for the DEP to publish technical manuals for each type of permit. And the purpose of the technical manual is to take everything that's not published in the regulations that might have to do with the procedural or substantive requirements for how you go about getting a permit or how you go about completing an application, and put that all in one place.

I think the concern that had driven that was that, at least in some permit programs, you had, sort of, these unwritten policies that were dictating how the permit process really worked. And so the drive here was to get the DEP to actually put that down on paper so that everybody could see what those hidden policies are.

The way that's worked out in practice is that in some places, I think, it's very valuable. One specific point that the legislation had directed

us on was in air pollution control permits. We have to come up with a decision on what is the state-of-the-art in air pollution control technology for a given type of equipment. And it's a really time-consuming and, probably, time-wasting process to try and do that case by case with each individual permit that comes into the hopper. So for -- I think it's now 17 categories of equipment, we have a technical manual that explains what the state-of-the-art is. And so that helps to shortcut the permit process somewhat. A permit applicant can come in and say, "I'm going to go by what you've said, in this technical manual, is the state-of-the-art. And that's how I'm going to plan to build my piece of equipment." And as an alternative, it's also, possibly, do it case by case. But that's harder, especially when you've already got the manual out there setting what the standards should be. And it's going to be much more time-consuming.

So the manual turns out to be very useful, I think, for everybody. It creates a lot more consistency in the decision making, and it puts everybody on the same page about where the decision's likely to come out.

And there are a couple of other, really, more involved processes that we go through in the permit process, like for modeling of the impacts that a facility might have on air quality. We have a technical manual on that, that guides people through what's a very difficult and complex process. And so that's turned out to be useful, too.

I think the original idea to try to capture everything that's unwritten about what happens in the permit process, wherever it may be residing in anybody's mind, is probably a little overly ambitious. When this was first done, probably about 10 years ago, it was a huge lift to get all that

work done. It required a whole lot of staff time from the people who would normally be writing permits. And then the Attorney General's office had to run through everything in detail to make sure that we were getting it all right. And so it was, I'd say, a pretty large investment of resources. And what's happened over time is that, say in the past five or six years, when programs have done big overhauls for their permit rules, the technical manuals have not, necessarily, kept up. At the same time, we're going to try to clarify the rules, so that you don't need the technical manual so much. And also, as we're doing more things electronically, the electronic application format is, itself, guiding you through things with enough specificity and detail that there's no need to refer to something else.

That same electronic approach has helped with another one of the mandates, which was to provide a checklist of permit application requirements for each type of permit. Again, the software walks you through what you have to submit. And so it more or less acts as its own checklist. It's a good idea to have a checklist. It gives everybody certainty about what it is they're supposed to be putting in an application. The need for a separate written checklist has probably diminished over time, just because of the way we're doing things electronically.

There are a couple of-- I said those were the most important mandates of the legislation. There are a couple of others that, I think, are more nibbling around the edges, that I can go through if that's what the Committee is interested in hearing, or we can leave it right here.

ASSEMBLYMAN PAYNE: You can leave it right there.

ASSISTANT COMMISSIONER WOLFE: Okay.

ASSEMBLYMAN PAYNE: Unless--

ASSEMBLYWOMAN MYERS: Are you intending to ask for legislation to change many of these requirements?

MR. HAZEN: I don't think that's really the intention. I think Commissioner Campbell outlined several proposals when he testified.

ASSEMBLYWOMAN MYERS: Yes, one of them we were asked to vote on that afternoon, suddenly. So that's why I'm asking. Are we going to be looking at more proposals coming up? Is that why we're hearing about this?

MR. HAZEN: I mean, one thing Sam mentioned was about the technical manuals and, in some cases, they needed updating. But a lot of that is just staff resource time. Some of the proposals that Commissioner Campbell put forward, in terms of changes to the APA, would free up a lot of time that we could spend on things like this. So I really don't anticipate -- unless you can think of any broad things that we would need, in terms of changing the provisions of EMAP.

ASSISTANT COMMISSIONER WOLFE: If the Legislature were to be revisiting EMAP, there are, maybe, some things we could suggest that could be tweaked or modified. But we hadn't planned on coming to the Legislature and asking for those changes.

ASSEMBLYMAN PAYNE: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Thanks for your comments. I have a couple of questions.

First of all, one of the things you talked about was -- one of the 11 gave a review schedule and guidelines, things like that, as one of the parts that

you missed. What happens when you miss them? I mean, I read it, but I'm looking at counties that talk about-- What happens in DEP when you miss the guideline dates?

ASSISTANT COMMISSIONER WOLFE: Well, a number of our permits, especially in the land use area, are covered by the 90-day law, which means that if there is no action on the permit within 90 days after the application's complete, then it's automatically granted. And that covers the kind of permits where it's really possible to do that. A lot of the more complex permits -- it's not really a question of a grant or a denial, because it's all about what are all the specific conditions in the permit that tell you, how do you comply. And so the idea of just an automatic grant or denial is something that really, probably, would work in those contexts.

So there's no immediate consequence other than that we know that we're behind schedule. We know that we're not doing something as fast as we're supposed to.

ASSEMBLYMAN CRYAN: I'm not Joe Doria, but I would imagine that the intent of the legislation was, in some way, shape, or form, the idea to, at least, speed up or get some sort of answers on these permits.

Freshwater wetlands -- or some interpretation -- take a 91-day review time, which I assume is work days, which is an average. We all know that averages could be 180 and zero, and that makes an average of 90. One of these, 181 days -- a half a year -- actually, probably, almost three-quarters of a year in work days -- for wetlands individual permit-- I assume your schedules don't say that that's acceptable. I'm going to just take the fundamental time



that it probably doesn't give you-- You probably don't allow yourselves a half a year to look at a permit. Would that be, probably, correct?

ASSISTANT COMMISSIONER WOLFE: If you're referring to the time frames that we put out as guidelines, that's our estimate of how long it should take to do the work to get the permit out.

ASSEMBLYMAN CRYAN: Oh, okay. You're right, you're exactly right. So you're telling people that it's going to take three-quarters of a year.

ASSISTANT COMMISSIONER WOLFE: That's right.

ASSEMBLYMAN CRYAN: Let me ask you this -- and I recognize it's a little unfair, because you're not Brad Campbell. Is there something that this Committee can look at that -- you never get a holy grail, but is there something that you're doing, as a group, that either we're legislating or you're regulating, that we should look at to reduce this time, anywhere intelligently? I've got to tell you something. You didn't make a too convincing argument to me for wasting any man hours for doing the report, when I would imagine you could probably just call the guy at the chemical council and be fine. Are there other things that this Committee should be aware of to help you, in terms of trying to be able to reduce some of these turn-around times? I mean, we have five or six things in front of us of people waiting 19 months and 20 months. We all have plenty of DEP horror stories. We don't need any-- Any ideas?

ASSISTANT COMMISSIONER WOLFE: The individual permits that take the time that's far longer than what the guidelines say they should-- That's going to really be something that turns on the facts of that individual case. There's something complex or contentious or just especially difficult

about that permit that's making it difficult to get it put to bed within the time that it's supposed to be. When it goes--

ASSEMBLYMAN CRYAN: With all due respect, I hear that a lot about stuff taking forever. Quite frankly, I may not know an anti-oxin from a dioxin, but it sure doesn't seem like it's that complicated for a pro, in a lot of cases, to be able to make some of the decisions that I see, at least from what I hear from municipalities and government. I think my colleagues would probably echo that. We hear it a lot. Are you sure it's not just an attention issue?

ASSISTANT COMMISSIONER WOLFE: It's for the horror stories that you hear about the permits that take far longer than they're supposed to. Like I said, it's a problem with that individual permit, more likely than not, that there's been an issue that's been the subject of some tough negotiations, let's say, between the DEP and the permit applicant, and that in trying to avoid having to litigate the permit, instead, we spend -- we're trying to spend time with the applicant to try and come to a solution that we can both live with, and that's going to be more time-consuming than the standard permit.

ASSEMBLYMAN CRYAN: Last question. Do you have-- Are there any permits or anything that should and could be done electronically, not just to do them electronically, but that would save time, that are being done, because I think that would fall into this EMAP?

ASSISTANT COMMISSIONER WOLFE: Well, especially in the air permit program, we're heading down that direction. We're heading down that road. We're already a good ways down the road and are continuing down

it -- where we have general permits that can be applied for and obtained over the Internet. So, really, there's never even an interaction with the human being and the DEP. You fill out the application online, you put in your credit card number, and bang, you've got your permit.

We've been able to bring up the number of our air preconstruction permits that are issued through that process, up over 50 percent. We're shooting for 60 percent by the end of this calendar year. So, yes, it's definitely something that we get -- that we can increase in the use of.

ASSEMBLYMAN CRYAN: Okay, thank you.

ASSEMBLYMAN PAYNE: Are there any other questions for the Commissioner? (no response)

As I said, the overarching reason for these hearings is to try to find out ways that we can eliminate backlogs, etc., and become more efficient. This legislation was passed in 1991, and many of the recommendations were -- became effective in March of '92 and May of '92, etc.

Overall, again, it was to try to eliminate or reduce the tremendous backlogs. I think one of the questions that is troubling to Assemblyman Cryan is, are there real legitimate reasons why these things-- I mean, what is it that causes the backlogs? Are there any ways that we can expedite or eliminate some of the reasons and red tape, etc., that exists here? I know conditions have changed. I mean, this is a decade later. Conditions have changed. Have we implemented-- Are we satisfied that EMAP has, in fact, effectuated the kinds of positive changes that we need, or what else do we need to do?

ASSISTANT COMMISSIONER WOLFE: Well, I think what EMAP was driving at was, maybe, not so much the direct elimination of

backlogs, but it was to make the DEP accountable for backlogs, to make us say, “At what point is a permit backlogged?” It makes us tell everybody -- okay, how many do we have backlogged? That would then bring the pressure to bear to have us figure out ways to bring down the backlogs.

Now, when we’re talking about--

ASSEMBLYMAN CRYAN: But you haven’t. I mean, you still have significant backlogs.

ASSEMBLYMAN PAYNE: But they’re accountable, though.

ASSEMBLYMAN CRYAN: I mean, you have this legislation that means nothing. It means absolutely nothing. All you do is tell us how far you are behind with-- There’s no corrective action plan. There’s been nothing, at least that I-- I’m only on the Regulatory Oversight Committee. But, I mean, you guys aren’t accountable to anybody.

ASSISTANT COMMISSIONER WOLFE: The Commissioner was here last week with some numbers, showing how we are getting our act together in bringing down the backlogs. That does take management, and it does take things other than throwing money at the problem, which also, by the way, does help, because nothing helps like having more people to review more permits, because we’ve had fewer staff members.

ASSEMBLYMAN CRYAN: Unless you have people that aren’t doing -- that aren’t creating reports that are 18 months old for nobody to read. I mean, it sounds like we need to be looking at-- And, again, anybody can sit up here in front of a Committee and point out one thing and sound like they’re-- But the reality is, it sounds like an awful lot of times we’re doing things that we don’t need, as opposed to things that we do, doesn’t it?

ASSEMBLYMAN PAYNE: I think one of the reasons-- Again, after we review the testimony here -- and I think the Commissioner, last week, did point out some of the areas where there were concerns that he had, and also some areas where he has -- make recommendations for further action.

I think that once we've had all the testimony, and we review it, we will be able to better assess where we are with this. And I appreciate--

ASSEMBLYMAN CRYAN: Can I ask one more thing? I'm sorry.

ASSEMBLYMAN PAYNE: Sure.

ASSEMBLYMAN CRYAN: Number 8 on the EMAP thing says that DEP is supposed to give the appropriate legislative standing reference committee when there's an increase in the number of permit applications. To your knowledge, is that -- I don't think we're the appropriate -- does that happen?

ASSISTANT COMMISSIONER WOLFE: I don't think it's been done except maybe through those semi-annual reports, when they are issued.

ASSEMBLYMAN CRYAN: I wish we can see how they're going.

That's a law from January of 1992. Could you check that? Could I ask, through the Chair, if we can get a response on that? It's Number 8 in the EMAP. I don't know. I just assume you did this as a standard. I'd like to know the oldest ones. I mean, when I was in business, my boss used to sit there and go over the three oldest things. Every time you sat down, it's just a matter of basic management and say, "All right, when are we going to fix it?"

I'll leave it at that.

ASSISTANT COMMISSIONER WOLFE: All I can say is that I can understand and agree with the point. I'm coming to the DEP from private

industry where I sat at the other side of the table and waited for a permit and had economic opportunities, sort of, passing the company by while we're waiting for the permit to be issued. It's important.

ASSEMBLYMAN CRYAN: I saw a senior citizen housing complex wait for almost two years for some idiotic permit over a brook, for five feet or something. I mean, everybody has a horror story. I didn't come down here-- I want to see if we can do something about them.

ASSEMBLYWOMAN MYERS: Mr. Chairman.

ASSEMBLYMAN PAYNE: Yes, Ms. Myers.

ASSEMBLYWOMAN MYERS: My impression, both from being at DEP and from listening to constituents, is that there is a wide range of attitudes among DEP staff -- permitting staff, and those staff members who feel some responsibility to help the applicant through the process do better, according to those on the other end, than others. And yet, they're civil servants. There's really nothing that you or we can do if they aren't helpful, whereas we know if they are helpful and willing to help applicants, things are processed more rapidly. So I'm just wondering if you've had some private industry background, if you've thought of any way to provide incentives for the staff. Certainly, that's not going to be the problem with every permit, but I believe it is some percentage of the problem, and one that would be very difficult for us to get out in any macro way. It's more of a bottom up, kind of, problem.

ASSISTANT COMMISSIONER WOLFE: One thing that we can do, and we are doing, is, first of all, to set expectations for the attitude that

somebody brings to the permit process. We are here to help the applicant get through the permit process and get to the end zone to get the permit.

At the same time, there are obstacles that the permit staff face that aren't entirely in their own control. What happens, often, is that you have, any number of times, a consultant who's preparing the application for the applicant, doing, let's face it, a rotten job on it. And when things aren't proceeding with the DEP, the consultant is reporting back to his or her client, "It's those bureaucrats who are just sitting on your application." And so there's a perception problem, aside from the real substantive issue that we have to deal with.

And one thing that we have to, also, deal with is getting the consultants to produce better work so that we have permit applications that we're able to act on more quickly.

ASSEMBLYWOMAN MYERS: Mr. Chairman, I agree 1,000 percent, because almost every constituent case that I've handled, that has been some element of the problem. And it puts us in a difficult position, as well, when we discover that that is the problem. And I don't know, perhaps there is some requirement that the applicant can be copied on, correspondence or whatever. I don't know if we could do that, or you could do that.

When something gets all fouled up and everybody gets lost as to who is to blame, that's usually where the problem may end up, in a legislator's lap. And I've found that it's not-- The blame game then goes on. Perhaps some -- I don't know -- like I said, some requirement that the applicants sign off, or something like that, might be helpful.

ASSISTANT COMMISSIONER WOLFE: And it's probably difficult for some applicants who are going to a consultant, because the consultant is supposed to be the expert -- and so the client is going to rely on the consultant's expertise. Even in getting a letter back from the DEP that says, "These are the problems with the application," it's up to the consultant to interpret that for the client.

ASSEMBLYMAN CRYAN: Do you rate consultants?

ASSISTANT COMMISSIONER WOLFE: In a couple of programs, we do. We've tried that in the Treatment Works Approval program. We have this concept in place where we have, sort of, an honor roll of consultants who have gotten in fully complete applications more than -- I think it's two-thirds of the time -- and given them more expedited service, and then published those lists.

ASSEMBLYMAN CRYAN: Is it a realistic thing to expand that?

ASSISTANT COMMISSIONER WOLFE: I'm sorry?

ASSEMBLYMAN CRYAN: Is it a realistic thing to expand that? And, secondly, do towns, for example, know about that type of thing? I mean, if you're making the choice as to who to hire, if you know somebody who's got an in or has a record, you're going to go there. How does that work? Do you have an idea of expansion on that?

ASSISTANT COMMISSIONER WOLFE: It's something I'd like to see expanded. It's something that, I'm sure, is going to get contentious, because the people who don't find themselves on the honor roll are going to have real complaints about it.



ASSEMBLYMAN CRYAN: Through the Chair, can I ask you for a list of what -- if you could provide -- I'll say to each member of this Committee -- what honor rolls are out there, how they're provided, and your thoughts on what, if any, expansions are possible? If that's what works, and you have some belief that somebody's going to do it right, let's take a look at that. I would venture to say that a lot of municipalities don't know that.

ASSEMBLYMAN PAYNE: Thank you very much, Commissioner. I would just say that much of the improvements of the things that we're trying to arrive at will be -- come from the top. I think the attitude, on the part of the Commissioner and the staff that is working with him, change the culture of the Department, and I think we're seeing a change there. And if it emanates from the top, I'm sure we will be able to see the improvements.

I want to thank you very much for appearing here today.

ASSISTANT COMMISSIONER WOLFE: Thank you, Mr. Chairman.

ASSEMBLYMAN PAYNE: Next, Dena Mottola.

And I'm going to ask that our people, who are testifying before us, please try to limit their testimony to maybe five minutes, and then allow for questions, if there are any.

Thank you.

**DENA MOTTOLA:** Good afternoon, Mr. Chairman and members of the Committee.

I'm Dena Mottola, from New Jersey PIRG.

I just want to -- I have a couple general thoughts and then some specific recommendations for the Committee.

I just want to start off by saying that Assistant Commissioner Wolfe and his colleague, Assistant Commissioner Jackson, have been doing an excellent job in enforcing our standards and our permits in the State. And that's, kind of, the minimum in what we need to be doing. So I want to recognize that.

Again, I think some of my colleagues in the environmental community have been saying this, and I want to say again, that, to me, the question is not whether we have a backlog in permits, although I can understand the frustrations of the business community with such a backlog, but whether or not our environmental standards and our permits are protective enough of public health and the environment.

From our opinion and from our point of view, they're really not protective enough, and we do need a sea change in the way that we protect ourselves and our own health in the state. It's not really funny, but I was recently in a conversation with my uncle who is trying to quit smoking. He keeps giving up, and he just-- His rationalization always is, "Well, why am I working so hard to do this when I live in New Jersey, for God's sake? I'm breathing air in--" He's a business manager in Carteret. And I can understand, because a lot of people in New Jersey do have, sort of, this fatalistic feeling that we're exposed to so much environmental pollution that our health really is threatened by the air, the water, and all these things.

So just, kind of, some thoughts about what a sea change would look like, just to give a little context to where we're coming from. Some of you may have heard of the *precautionary principle*, which is the thought that we really need to be looking at preventing ourselves from getting sick from pollution,

not holding environmentalists to this rigorous standard of, "Can you prove there's a direct link between pollution and people getting sick?" And this is something that's being forged by Lois Gibbs, the mom from Love Canal, who's become such a great environmental activist.

And really, when you look at the ways that we're -- well, I guess -- we're exposed to pollution in New Jersey, our permits and our standards are really inadequate, because we're not looking at the cumulative facts of all the pollution that we're faced with. So, for example, with our waterways -- we have, like, a thousand waterways in our state water segments, in our state, that are considered impaired, and many of them are impaired from phosphorous, because phosphorous is in the water. That's one of the pollutants that we look at that we think helps contribute to this problem called trihalomethanes, which is a probable human carcinogen.

We regulate phosphorous, we permit phosphorous in our state, but what we don't do is, we don't look at the -- every facility in a certain water segment that's impaired for phosphorous, how much phosphorous they put in the water. So we're not really getting rid of the problem, we're just -- we're regulating the facilities, facility by facility, not the cumulative effects and the total phosphorous in the waterway. And we need to start doing that.

On air toxics -- the other -- my two favorite health exposures -- trihalomethanes and air toxics. Almost everyone in our state breathes in air toxics that violate the EPA standard by 1,600 times, and that's an average. People in Hudson County -- it's like 3,000 times the EPA standard. Again, it's a cumulative effect from what's on the road, cars, mobile sources, and stationary sources.

So that's just, kind of, like, where we want to see the future of environmental enforcement and regulation going, because we care about-- More than anything else, we care about being able to live, and being healthy, and not -- stay in our state and not feel that 30 years of exposure puts us at risk.

So that means that-- I don't want to belabor the point -- but just to say, when we're thinking about dealing with permanent backlogs, that we really think about whether or not, if we do try to speed up the process, that we're not, in the process, going to be losing the protectiveness that we need to, actually, be increasing.

Our administration has laid out some very ambitious proposals to help protect waterways and limit sprawl. And we want to do everything we can to get those regulations-- Sam would know better -- but 10 or more regulatory packages need to be updated to accomplish all the goals. And that means that we're going to need the resources of the agency working on strengthening the regulations and getting the proposals out. Whether or not it makes sense to be spending a lot of time giving reports to the business community saying how much the permit backlogs are, I would argue I'd rather see people that are protecting waterways. But I'm sure that there are other points of view on that.

I don't know where this discussion is leading, and I don't know what proposals are going to end up on the table. But I will say for myself and the other environmentalists that are to come to the table, we're going to be asking you to be very diligent about making sure that any proposals we're seriously considering do not compromise health and the environment. Because, really, if you speed up a proposal and you let it out, it might help a

certain business capture economic opportunity, but some of the effects on the environment could be irreversible. So we're very engaged in wherever this is leading.

Just a quick couple of suggestions on how we'd like to see the regulatory process reformed. First, we're third parties, in terms of permits. As advocates, we want to be able to go to the administrative courts, when we don't like a permit, and challenge it. Currently, we can't do that. Only the permittee can. And what happens is, they go to the administrative court, and they say that they don't agree with the permit, and they can sometimes drag out final -- closing the final permit for some time. We don't have the ability to do that. We feel that we should have that same right as the permittee has.

Second, right now, when we, as advocates, make recommendations or comments on proposals, I know we say *A*, in terms of an option on some policy, and then the business community maybe says *B*, and then the DEP ends up choosing *C*, and nobody knows why *C* was chosen. We just feel that-- And then there's this perception with legislators, with all of you, and, then, at the agencies that sometimes, if all the communities are unhappy, maybe we struck the right balance and found the right policy. Obviously, in our opinion, that's not always true, that the right policy was chosen. And so, simply, what we would want is just to-- We want to know why *C* was chosen -- just the reason why *C* was the decision that the agency made.

And then, I guess, last is just something that Commissioner Campbell addressed, and I think some of the environmentalists may have raised, which is-- We said that there's lots that need to be done to upgrade our regulations. And Commissioner Campbell -- one of the things that he was

saying is that it would be good if he could propose -- if he could change or make some changes to regulatory proposals without having to repropose. And he had said that the Federal government had some guidance on that.

My organization is not dead set against that. Some of the other environmentalists in the community are. There's definitely a, kind of, split. Right now, it's great, because the administration is doing great things. So, yes, we'd love to see that be true under this administration. Under the Whitman administration, like David Pringle said, it saved us from getting really bad rollbacks on water regulations.

So I guess I'm saying that I would, at least, want to be part of a dialogue that addressed that, potentially. I think the environmental community would, maybe, support it. So I guess I'll stop right there.

Thank you.

ASSEMBLYMAN PAYNE: Thank you very much, Ms. Mottola.

Are there any questions.

ASSEMBLYMAN CRYAN: Two.

ASSEMBLYMAN PAYNE: Two brief questions from Assemblyman Cryan.

ASSEMBLYMAN CRYAN: Any examples of a permit that's been issued too quickly?

MS. MOTTOLA: Well, there's-- I wouldn't be the right person to ask.

ASSEMBLYMAN CRYAN: Okay. And secondly, because I was surprised, in particular, that you talked about--

MS. MOTTOLA: Well, I'm talking about in the future. Most of my comments were--

ASSEMBLYMAN CRYAN: The general, in the future. I understand that, because one of the things we heard from the good folks at the DEP was about air pollution permits, and I was surprised you were pretty much on the same theme when you spoke, yet they're looking for a goal at the end of 2003 of having 60 percent of the permits actually issued within their own guidelines, which still means four out of 10 aren't. Today it's five out of 10.

Are you saying that the standards, simply, aren't good enough, or are you saying that the function of DEP isn't right?

MS. MOTTOLA: Yes, when I was just doing my general overview, I was saying that -- just to give you context -- that we don't think a lot of permits and standards are strong enough to protect public health.

ASSEMBLYMAN CRYAN: And when you guys -- if you guys ever get a chance to be a third party to something -- not you guys, but as a general rule, your community-- If you say *A*, the business says *B*, DEP goes to *C* -- they don't have to give you any reason why?

MS. MOTTOLA: Well, that's not the third-party process, that's in the comment period.

ASSEMBLYMAN CRYAN: It's in the comment period. But you don't get a reason as to why?

MS. MOTTOLA: They're not required to say why each time.

ASSEMBLYMAN CRYAN: As a general practice, do you get it?

MS. MOTTOLA: I'm sure if I picked up the phone and called Sam Wolfe, he could tell me, but it's helpful to know.

ASSEMBLYMAN CRYAN: Okay, thanks.

ASSEMBLYMAN PAYNE: Thank you.

Assemblywoman Myers.

ASSEMBLYWOMAN MYERS: You spoke about the need for doing something about phosphorous. And it's my understanding that DEP has already promulgated a very strict standard for phosphorous that, indeed, is quite controversial, because it's costing our sewer authority a lot of money if, indeed-- I'm not sure I'm totally up-to-date on the status of it, but--

MS. MOTTOLA: Right. But that was one of the things that we think is very good. The phosphorous standard wasn't being enforced under Governor Whitman. And now the DEP is saying they're going to enforce the standard. We think that's helpful. We have a lot of phosphorous in our waterways in New Jersey. It's going to take a lot to reduce the levels. So we're supportive of that. I don't know that the current standard will even get us where we need to go, in terms of eliminating the problem of phosphorous in our waterways. It comes from multiple sources.

ASSEMBLYWOMAN MYERS: But you said it was the cause of trihalomethanes. I thought that came from the chlorination.

MS. MOTTOLA: Right, well, trihalomethanes are formed when chemicals are in the water, phosphorous and organic matter.

ASSEMBLYWOMAN MYERS: When it's chlorinated.

MS. MOTTOLA: What?

ASSEMBLYWOMAN MYERS: When it's chlorinated.



MS. MOTTOLA: And then it's chlorinated. So it's a byproduct.

ASSEMBLYWOMAN MYERS: But phosphorous and organic matter are two different things.

ASSEMBLYMAN PAYNE: You said when it's chlorinated. You're saying something else.

MS. MOTTOLA: The presence of phosphorous in waterways helps in the formation. And when there's phosphorous, there's more solid matter, organic matter. And when those things combine with chlorine, it forms trihalomethanes, and that's what we're concerned about.

ASSEMBLYWOMAN MYERS: Right, but it could be coincidental. It's not a cause and effect, right?

MS. MOTTOLA: It's been linked.

ASSEMBLYMAN PAYNE: Thank you very much.

Jim Sinclair.

For the record and taping, please, your name and organization, etc.  
Five minutes.

**JAMES SINCLAIR:** Good afternoon.

My name is Jim Sinclair. I am First Vice President of the New Jersey Business and Industry Association. I am a licensed professional engineer in the State of New Jersey. I'm here today representing the 19,000 members of the New Jersey Business and Industry Association, which are mostly small businesses.

I came, today, back from vacation to come and say how pleased I was with Joe Doria's EMAP and what it's intent was and the fact that we got it passed in the first place. Over the years, the EMAP program has, sort of,

petered out, as you've seen today, and because times have changed. In 1991, we didn't have the Internet, and so therefore, if you look at the reporting that is generated by the Department under EMAP, it is put together in such a way -- in a huge volume of statistics, and in such a way not to inform. And that is what has happened. It's a document whose -- is unusable.

And the answer, which you have hit on here is, why doesn't the Department just publish this information online as they go along. Why do we have to wait a year and a half, or six months, to know how we are doing in air permitting or what the backlog is? That information was designed not so much for the public, but for you. And it was for you, before you even were you, with the regulatory oversight process.

That information is designed, and should be, probably, from all of the departments, so that you can have a picture of what's going on and just to ask commonsense questions about, for instance: Why is the Department of Environmental Protection one of the largest regulatory agencies in the country? Why does it take so long to get a permit? Why do we have the highest costs in the -- for having those permits take so long to get? Those are the, sort of, pushing the envelope -- taking a look at how the Department is playing out the legislation that you have generated. And, of course, you're at fault here, you discover. And when you talk to the Department, we know, it's the laws that we pile on, one on top of another, and then we have separate Federal laws.

And we never quite make them the same as the Federal law, although we do have legislative intent to take a look at Federal standards and have them mesh up. But we're not really doing a good job of looking and comparing that, trying to make things so that they work a little bit better.

That's what we at the Business and Industry Association would like to see happen, and I think this is fertile ground for you and for this Committee, because, ultimately, what you-- You never really get to undo what the Department does, but you get to expose it. You get to ask the tough questions of everybody. Why can't we do things a little better? Why can't we be more efficient?

That isn't really what I wanted to talk about. What I wanted to talk about is that, while I was away on vacation, two major things happened in the State. One is, the Governor came out with a smart-growth policy, and we have this BIG MAP that's mostly red. And I don't want to talk about the red area. I want to talk about the green area, because that's where the economic development is supposed to occur. And we support economic development in those areas, and have for a long time.

I'd like to praise the Commissioner and the Governor. I know that they want to do the right things in this. The Commissioner has some very innovative proposals about third-party certification to, sort of, move the process along. I'd like to encourage him and have you encourage him, whether he needs legislative help or not.

But the second part that came out, and it's the thing that is the confounding part of this -- and it really is confounding-- The regulations came out -- the technical regulations for, basically, site remediation. That is the rules that people are going to have to use for cleaning up properties and redoing properties, selling, transferring properties in that 800,000 acres in the urban areas that we want to-- Using the word *develop* is the wrong word, because we're not talking about developing, we're talking about redeveloping things.

And if we want to make it economically feasible to go forward, and that's not a bad term, there is a balance between having the proper environmental standards and the ability to do things. And we want the ability to do things.

And I can tell you that the highest risk for health to a person in the state is not the quality of the groundwater or whether there are carcinogens in the air or the water. The highest risk to an individual person is not to have a job, by orders and orders of magnitude. And that's what we want to do. We want to have our people employed, and we want to reuse this property as best we can.

So that brings me to ISRA, which was S-1070 by Senator McNamara and Mr. Doria and Albohn, and a whole bunch of other people that were involved in it. It was a bi-partisan effort that, ultimately, Governor Florio was involved in. It was a good bill. It changed ECRA, which basically redlined these urban areas from redevelopment. And it had a lot of things in it. One of the things was that the Department should have more flexible standards. There should be a balance between what you're going to do on the property and what the standards should be to clean it up. What's the ultimate use of this property, and how do we go about doing that?

And that was a good Act. That was followed up by Assemblyman Bagger, who had the first brownfields bill, and then Senator McNamara and the entire universe that was on the second brownfields bill. That was more specific, in terms of legislative intent. And I won't use my five minutes, but you can see in the legislative intent that it mandates that the Department take a look at its standards and come up with some flexible standards that are either numerical, so that everybody knows what it is, or that they are narrative and

site specific, case specific. So if you can come in and make a good case on a site for what the cleanup standards should be, based on the reuse of that site, then you should be able to make that case to the Department and go forward with the cleanup, as long as it doesn't impact on public health and safety.

That's reasonable. That's what your intent is, your intent of the Legislature. These rules do not allow that. This only gives us a one-size-fits-all. They are applying the groundwater standards, which are fundamentally -- and I'm being simplistic here -- are fundamentally drinking water standards. And, basically, it says that all of these sites in the state, even in the Ironbound area of Newark, which is built historically on fill from the railroads and a variety of other things, is -- should be at drinking water standards, when they're never going to be used for drinking water purposes.

This is not just an idle thing that I'm talking about. This affects all of those sites that are not the easy sites that we've had in brownfields activity. This is the warehouse sites that are not moving, that we want to redevelop. These are the sites that have not gone forward with the cleanups. We have to figure out how to make that work properly.

I really don't know what it is that you can do. The Legislature is clear in its direction to the Department that we have to have this flexible standard. They have not delivered it in this. Ultimately, I think this turns into a court case, and it's messy, and it drags on. But it's the wrong thing at this time, when we're trying to channel development, some would say, restrict growth. But whatever growth we're going to have, it's going to be in the green areas, where many of you have your constituency. Let's figure out how to, at

least, make those sites attractive and make them move forward. So that's what I'm coming to you today--

In New Jersey -- I say this all the time, and people moan, but the cost of doing cleanup in New Jersey is twice as much as almost anyplace else, the dollar cost. And the size of dealing with the bureaucracy-- We have to figure out how to do this more effectively and cheaper.

One of the goals -- and I think Sara Bluhm mentioned to you -- our 15 points that we had-- One of our points was we ought to have, as a goal -- a legislative and administrative goal -- let's figure out how to reduce the cost of doing site remediation in New Jersey by 25 percent. Let's not fool with standards and stuff like that. But let's figure out how we can do this to provide the same level of safety, or an adequate level of safety, and reduce the cost by 25 percent, both inside the bureaucracy and for people applying to the system. And we would all benefit, because that would mean there would be 25 percent more cases that we could do, and we would open the range of things we can do.

So I leave you with those observations. I hope I stayed near my five minutes.

ASSEMBLYMAN PAYNE: Thank you very much.

Assemblywoman Myers.

ASSEMBLYWOMAN MYERS: These are the tech regs that you are referring to?

MR. SINCLAIR: Yes, the technical regs for site remediation that were just adopted in the February 3 register.

ASSEMBLYWOMAN MYERS: And they are effective--

MR. SINCLAIR: I think they're effective right now.

ASSEMBLYWOMAN MYERS: Okay, they're effective immediately.

MR. SINCLAIR: As of adoption.

ASSEMBLYWOMAN MYERS: I would suggest that this Committee consider having staff take a look at the regulations versus the legislation, and not go along with Mr. Sinclair's statement that they have to go to court because the regulations and the legislation doesn't match. At least we could take a look at it.

That's one of the things I was thinking about talking about today. But really, they are how many pages?

MR. SINCLAIR: Hundreds.

ASSEMBLYWOMAN MYERS: It's a significant document, and really, I don't have the time or the expertise to really raise the questions that, I think, he's talking about.

MR. SINCLAIR: The Department has done a good job with a lot of the comments that we had on their proposal. I don't want to smirch the Department. This administration, and the previous administration, have been working with us on it. But on this issue, on the groundwater quality standards -- is really something that could be a killer on so many projects.

ASSEMBLYWOMAN MYERS: It seems to me, with the Governor's smart growth proposal and the emphasis on redeveloping urban areas, this is critical. It seems to me.

ASSEMBLYMAN PAYNE: Thank you. We've made a note of your request and comment.

At some point, I suppose-- You mentioned the brownfields -- the factories that are waiting to be developed, etc., because there is either a need to review, or determine, or clean them up, etc. At some point, these clash. We're talking about site -- groundwater remediation -- the conflict between that which is safe and that which is not. I mean, we-- I don't know whether it's as simple as all that -- that these things are being held up simply because of the inability to either clean up or -- I'm not sure.

In the city of Newark, where I reside, there are a lot of places that are being utilized for residential areas. And, of course, the standards -- maybe the standards are too strict. They can't be used for recreation. They can be cleaned up and used for residential, etc. So somewhere along the line, we have to find where the line can be drawn.

MR. SINCLAIR: I was director of redevelopment for the city of Trenton. I understand that, even if there were not environmental problems, there are huge problems to figuring out how to make urban projects work, from economically, physically, infrastructure-wise-- This is just one additional thing. And I think it's a thing that can be addressed without hurting the environment or jeopardizing people's healths. I absolutely believe that. And if I'm wrong, then the Department should have the opportunity to show where the analysis is wrong. But people should have the right to do what the Legislature asked for.

ASSEMBLYMAN PAYNE: Thank you very much, Mr. Sinclair.

MR. SINCLAIR: Thank you, sir.

ASSEMBLYMAN PAYNE: Rich Hamilton and Dennis Krumholz, Riker Danzig.



**RICHARD HAMILTON, ESQ.:** Good afternoon, Mr. Chairman and to other members of the Committee.

I'm here, essentially, just to introduce Mr. Krumholz, who is head of the Riker Danzig Environmental Law Department and, for all intents and purposes, an expert in the area of environmental law. He's intimately familiar with the issue of the tech regs, which Mr. Sinclair just spoke about. And I'm sure Mr. Krumholz can add to the discussion and answer any questions you may have with respect to this very important issue. And as Mr. Sinclair indicated, it really ties into a lot of what the Governor's spoken about recently with respect to urban sprawl, urban redevelopment, and really recapturing some of the unused lands in our cities safely.

With that, I will turn it over to Mr. Krumholz.

**DENNIS J. KRUMHOLZ, ESQ.:** Thank you very much.

My name is Dennis J. Krumholz. I'm an attorney at law with the Riker, Danzig, Sherer, Hyland, and Perretti law firm in Trenton and Morristown.

Thank you for the opportunity to discuss our concerns with respect to a portion of the recently enacted tech regs. It is, indeed, the same portion that Mr. Sinclair just spoke about so eloquently.

On February 3, DEP promulgated these regulations. They're now effective. In fact, the agency is beginning to take enforcement action based upon these new regulatory standards. The problem we would like to address with you is that portion of the tech regs which adopts the groundwater quality standards as remediation standards for contaminated sites.

The groundwater quality standards, as Mr. Sinclair said, are drinking water standards, and they're now being used as remediation standards. In our view, this violates the clear legislative intent as expressed initially in 1993 and then again in 1997, and it violates clear legislative direction and specific language in those bills that told DEP exactly how to proceed. As well, and significantly for this Committee, these regulations run counter to Governor McGreevey's goals of smart growth, and the urban redevelopment, and the creation of jobs.

In 1993 -- 1983, ECRA was enacted. By 1993, it was clear -- 10 years later -- that we have some problems with it. Governor Florio called ECRA a symbol for regulations run amok. And Henry McNamara said that the program was overly burdensome, confusing, and lacking in timeliness. This is 1993. When ISRA was adopted to, in effect, try to turn the ship around, try to do some remediation differently-- And one of the very specific things that the Assembly policy and rules committee said was that the primary objective is to promote faster cleanups of contaminated property while, at the same time, further the State's economic well-being and development by improving the State's business climate. That was the goal of ISRA in 1993. But the goal has been largely unmet, at least in this one respect. And that has to do with the remediation standards applicable to groundwater.

The DEP, just two weeks ago, enacted the tech regs, which adopt the groundwater quality standards, which are ambient groundwater standards, drinking water standards, based upon 25-year-old science, as a site remediation standard. The Legislature didn't intend that. Groundwater quality standards existed in 1993. And the Legislature said to the DEP, "You must enact

regulations -- new regulations.” They didn’t say enact the old ones or the ones we have now. They said enact new ones, and ones that will encourage flexibility, with an emphasis on site-specific conditions.

The Legislature was very clear on this, and I’d like to just read a portion or two of the statute, because it’s that language that really evidences the intent. And it’s that language that the DEP has never followed.

The statute wants to consider enacting these regulations, the location, the surroundings, the intended use of the property, the potential exposure to the discharge, and the surrounding ambient conditions. This is language right from the statute. And significantly, as well, the Legislature took great pains to include some certain scientific principals the DEP was to follow. It enumerated them right in the statute.

The standards need to be based on generally accepted and peer-reviewed scientific evidence, not old scientific data. They need to be based on reasonable assumptions of exposure scenarios, and you need to avoid the use of redundant conservative assumptions. And I would suggest to you that the groundwater quality standards, as drinking water standards, enact very, very -- use very, very conservative assumptions to make sure that nobody gets sick from drinking water. And that’s certainly justifiable. We don’t have a problem with that. What we have a problem with is the use of those overly conservative standards, that are intended for drinking water, for the site remediation purpose.

In 1993, the Legislature was very specific about what it told DEP to do. You said it again in 1997. And DEP, only now, because it was forced as a result of litigation to do so, finally articulated its intention to use the

groundwater quality standards as remediation standards. They're not the right standards. They were never intended by the Legislature to be used as the standards. It requires an enormous amount of effort, time, and money to remediate contamination that really will never hurt anyone.

We're not talking about changing -- affecting drinking water. That's very, very different. But where you have -- in Newark, in Camden, in Trenton, in Paterson -- environmental issues that have groundwater where people will never be drinking it, because the water doesn't come from the ground, it comes from the reservoirs and other places, it's really not appropriate to require that groundwater to be remediated to the pristine standard that you need if you were going to drink it. The new regulations foster that. They require that.

Our suggestion, perhaps, is similar to Mr. Sinclair's. As the Regulatory Oversight Committee, perhaps through legislation or, perhaps otherwise, to-- Perhaps this body can tell the DEP -- remind the DEP really -- what the original intention was with respect to this particular issue.

Thank you very much.

ASSEMBLYMAN PAYNE: Thank you very much.

I suppose it doesn't make-- It wouldn't be harmful if, in fact, we were able -- we required standards to be as -- clean water standards wouldn't-- I mean, at least we would be above and beyond what is required. How do we know -- for instance, you say in Newark and other places like that, the drinking water comes from reservoirs -- will never, ever be used, gotten from any other source, so therefore, there would never be a problem? Is that accurate?

MR. KRUMHOLZ: We know that in Newark and many other urban areas, there are many, many hundreds of contaminated sites that have polluted the groundwater, generally. As well, Newark in particular, and some of the other cities, as well, have been built on historic fill. The fill itself contained contaminants. The likelihood that that kind of water is going to be cleaned up within the next 25 or 50 years, such that people can be able to drink it, I think, is extremely remote. And so I think the likelihood is very, very low that that water would ever be used for drinking purposes. And therefore, I think the standards really require that, and yet it's not applicable to those sites where that water will, really, never be used for that purpose.

ASSEMBLYMAN PAYNE: You know, you're almost suggesting that the correction of this problem that we have, where we have delays and where standards are much too high than are necessary-- You know, you're saying that it's illogical, and that it should be the way they are there now, and therefore, anybody with an open mind, anybody who can see this, anybody running in the Department -- or in the Department -- should be able to see what you're talking about as very, very clear. And therefore, your recommendations should not be too difficult to implement, I would imagine, if it's as simple as that. Is there anything there that we're not looking at, that we don't know, that causes us not to be able to have the standards that you're talking about?

MR. KRUMHOLZ: DEP, in its very lengthy -- I'll hold it up the way Jim Sinclair did, as well. It's a very, very lengthy, very, very well-done response to the 2000 comments that were made on this and other issues.

I would say the one theme that supports their view is that all the water, with a few exceptions like the Pinelands and other particular areas -- but otherwise, all the water in the State of New Jersey should be cleaned up to drinking water standards.

If you accept that principle, then by all means, we need to get all the water to drinking water standards. But I think it's an incorrect principle. It's a very nice idea, but given reality, given the need to create jobs, to redevelop the urban areas, to promote smart growth, it's not realistic. And so, if that assumption is questioned, I think you could acknowledge, easily, that you need to have different standards and appropriate site-specific approaches to site remediation, not the one-size-fits-all that we have today.

ASSEMBLYMAN CRYAN: How do you do site-specific and make it work in a great big regulatory--

ASSEMBLYMAN PAYNE: Mr. Cryan.

ASSEMBLYMAN CRYAN: I'm sorry.

How do you make site-specific things -- this is just a follow-up on Bill's point -- and make that work in a great big DEP agency? How do you -- from your experience -- how do you make that work? I mean, common sense and government don't, exactly--

MR. KRUMHOLZ: A couple of ways come to mind. First of all, there are at least a dozen states, and probably more, that do allow a site-specific review when you're talking about remediation of groundwater. Each of those states has its own program and does it in slightly different ways. But one of the ways that they sometimes do it is to categorize the water in different

ways, based upon its use, based upon people's exposure, and so forth. It's not that difficult. As I said, many other states do it.

ASSEMBLYMAN CRYAN: Do we have the categories of water here?

MR. KRUMHOLZ: We do.

ASSEMBLYMAN CRYAN: We just choose not to use them.

MR. KRUMHOLZ: Well, we do use them. We have Class 1, Class 2, and Class 3. But Class 1 and Class 3 are only applicable in very, very small areas like the Pinelands and other specific areas. The rest of the state -- the overwhelming majority of the groundwater of the state is classified as a Class 2, which is drinking water standards.

There's another way to do it, if I may, as well. And that is through the use of a site-specific risk assessment. It's a tool that's used in the EPA, and it's used extensively in other states, where you can, through use of scientific data applicable to that particular site, do an analysis and say, "At this site, given the use intended for groundwater, and the people who live in the area, and the other sites, and the other industries and so forth, we can calculate, numerically, that at this site the appropriate remediation standard should be X." It's very different from the groundwater quality standards, which is the drinking water standards. And that's based on site-specific factors that parties ought to be able to do when they formulate their cleanup plans -- to be able to do this scientific risk assessment and make that judgement. That's done, as I say, at the Federal level, it's allowed in other states. DEP had specifically prohibited that in these regulations.

ASSEMBLYMAN PAYNE: What was the rationale for that?

MR. KRUMHOLZ: You'd have to ask the Department, but I think the rationale is that they want to encourage the use of groundwater quality -- to mandate the use of the groundwater quality standards to further the goal that all the water in the state, with these limited exceptions, ultimately is usable for drinking water purposes.

I think the secondary goal is probably -- you probably hear them say, "We don't have the manpower to review site-specific risk assessments, because they can be complicated and time-consuming.

I would suggest that not everybody will do it, that people will be, in some cases, willing to go along with other standards. But, that, where you do have parties who say, "At our site, we want to put the time and effort in," they ought to be given the opportunity to do that, to demonstrate that the different standard is more appropriate.

ASSEMBLYMAN CRYAN: Do you have any sense as to how much--

ASSEMBLYMAN PAYNE: Thank you.

ASSEMBLYMAN CRYAN: --you represent Camden. I have Elizabeth, and Bill has Newark.

ASSEMBLYMAN PAYNE: Mr. Cryan, I would suggest that you put your mike on so that it can be recorded there whenever you're speaking. Also, ask for recognition from the Chair, if you don't mind. I'd appreciate that very much.

ASSEMBLYMAN CRYAN: Oh, excuse me, Mr. Chairman. I'm sorry.

ASSEMBLYMAN PAYNE: Thank you very much.



ASSEMBLYMAN CRYAN: Do you have any idea-- We represent three fairly large urban communities. Do you have any idea, based on this type of -- for lack of a better way to put it -- excessive standard -- that may not be fair -- how much opportunity do we lose, as a result of that? Do you have any sense of that?

MR. KRUMHOLZ: I can tell you only this: DEP said in its rule adoption that using these standards, which they have been using, effectively, illegally, for the last 10 years -- but they have been using them nonetheless -- that 1,000 sites or so were cleaned up. But, in fact, there are another 10,000 or more sites, not necessarily only in those three areas, but in general -- largely in urban areas -- where they are either called brownfields sites or contaminated sites, that have not yet been remediated.

Now, as Mr. Sinclair said, as well, we can't tell you that the sole reason is environmental. There's a whole series of reasons. But this can be, perhaps, the tipping point in some cases, where you have hard-to-develop sites that you could-- These costs would push you over into not doing something, whereas, under what we're suggesting, you might be able to do it. There are thousands of sites that really need to be remediated, that remain in the state, and a large portion of them are in the urban areas that are represented here.

ASSEMBLYWOMAN MYERS: Is this--

ASSEMBLYMAN PAYNE: Assemblywoman Myers.

ASSEMBLYWOMAN MYERS: Is this the only issue, in other words--

ASSEMBLYMAN PAYNE: Is your mike working?

ASSEMBLYWOMAN MYERS: --if we look at the legislation-- Is there anything left, or is this just the killer for the whole program? In other words, the legislation was passed to make sure that the standards were usable, and now they're essentially not, because of this particular focus -- and so the whole program is, pretty much, inoperative? Is that the right assessment?

MR. KRUMHOLZ: There are soil standards and surface water standards. We're not really talking about those. I think there's been less concern, perhaps, about those. It's really the groundwater standards. And in large part, that's because of the expense in remediating groundwater. Soil is a little bit easier to get to. Groundwater is harder to get to and can often take a long time. So that's where the costs can mount up.

ASSEMBLYWOMAN MYERS: So the soil and the surface water standards are not -- they're okay.

MR. KRUMHOLZ: I don't want to go quite that far. We don't have-- We're not here to raise any problem with them today. The tech regs that were adopted really don't address soils at all. They address surface water and groundwater. Soils are, kind of, a separate issue.

ASSEMBLYWOMAN MYERS: The surface water is doable.

MR. KRUMHOLZ: I know there are people who feel that the surface water standards are not appropriate either. We haven't look at that as carefully. I know people will feel that, as well. But it's certainly our feelings that the groundwater standards is the primary area where work is required.

ASSEMBLYWOMAN MYERS: Right. Does every site require cleanup to this groundwater standard?

MR. KRUMHOLZ: If you're in a different groundwater classification, 1 or 3, the standards may be even more stringent.

ASSEMBLYWOMAN MYERS: Right.

MR. KRUMHOLZ: Otherwise, if you're in an area classified as 2, 2A or 2B, the answer is yes. You must ultimately attain the groundwater quality standards, and those, as I say, are drinking water standards.

ASSEMBLYWOMAN MYERS: Even though they know that the groundwater under that site will probably not ever be used by anyone.

MR. KRUMHOLZ: That's correct.

ASSEMBLYWOMAN MYERS: Thank you, Mr. Chair.

ASSEMBLYMAN PAYNE: I'm always concerned about this *never* business, because we don't know what kind of development, what kind of movement, etc., will be in the future. To be so categorical about it, saying, "Well, this will never be used for this--" It's, kind of, hard for me to understand that the Department would have come up with standards knowing that we would never be using that groundwater for drinking water.

MR. KRUMHOLZ: Mr. Chairman, that's valid, and I hope I didn't use the word *never*. What I tried to say was, certainly within the next 25 years, which is the general planning horizon -- and I would suggest even within another 25 years -- the likelihood seems to be very, very low that areas which are so heavily contaminated like Newark and Camden are ever going to be able to be cleaned to drinking water standards--

ASSEMBLYMAN PAYNE: Thank you very much.

MR. KRUMHOLZ: Thank you very much.

MR. HAMILTON: Thank you.

ASSEMBLYMAN PAYNE: It's a lot of food for thought, there.

ASSEMBLYMAN CRYAN: Sure was.

ASSEMBLYMAN PAYNE: Let's see, Stuart Chaifetz, League of Animal Protection Voters.

**STUART CHAIFETZ:** Thank you for your patience.

ASSEMBLYMAN PAYNE: That's all right.

Identify yourself, please, for the record.

MR. CHAIFETZ: Sure. My name is Stuart Chaifetz, and I represent the League of Animal Protection Voters.

Before you, you should have two pieces of paper regarding the DEP. The first is a listing of some of the clear-cutting on State preserved land that's happened--

ASSEMBLYMAN PAYNE: Hold the bottle up. He's not getting any milk. (referring to child)

MR. CHAIFETZ: You think this is easy, doing this?

ASSEMBLYMAN PAYNE: You're worried about animal protection. Come on. I want to make-- We had DYFS hearings today, my friend, and I want to make sure that you're taking care of that youngster.

MR. CHAIFETZ: Are you available during the week, too?

Thank you.

I watch my son during the day, and I'm a freelance artist. My wife works, and I work at night, so it makes for an interesting situation.

But anyway, the reason why I'm here is regarding the significant amount of destruction of preserved forest in this state. Not many people realize it -- and I list, in detail, quoting from different DEP reports, under the

Division of Fish and Game. The first thing -- where they make the case for clear-cutting as a way to grow food for deer. And the reason why is, because deer don't do well in forest areas, because the trees block the sun from hitting the ground, and that keeps a lot of low-level vegetation away. And again, in their own words, they remove hundreds of acres of trees, basically, to plant food for deer to increase hunting opportunities.

Now, the biggest disaster here is, we're talking not only what happened in the past, but in the last segment, in an article in the *Courier Post*, March of last year, they have a plan where, currently, they're clear-cutting 400 acres in South Jersey of preserved land, and they want to do this across the state in "thousands of acres." And the real issues here are, one, why are we spending millions of dollars to preserve land, if we're allowing them -- if the DEP is going in and destroying it?

The second thing I show you there, so you can see, was a picture from that *Courier Post* article, where that was once a forest. And you see in the background the huge moving machine where they cleared it out. It looks like a strip mall could be going up there. That's the result of this continuing clear-cutting of State land.

And there's another aspect of it, too, which, again, as a citizen who's voted for Green Acres-- They're actually selling those trees to commercial loggers. Basically, it's a trade off. The commercial timber companies come in. They do the clear-cutting, and then they are able to sell those trees. So I'm not sure how-- I don't know if there's any regulation in the DEP about selling preserved wood from forests, but there ought to be. There

should be something about it-- Again, when we're asked to spend millions of dollars preserving land, and it's being stolen from us--

And here's the other interesting thing. In that paper, quoted again and again, they're doing it for deer. On one hand, we hear there's too many deer in this state. There is so much legislation to expand hunting and killing opportunities for them, and here you have DEP growing food for them to increase their populations. And then deer get blamed for destroying forests in this state when -- you know, how many trees existed on the 400 acres in South Jersey that got clear-cut last year? Thousands.

ASSEMBLYMAN PAYNE: Let me ask you this question.

MR. CHAIFETZ: Sure.

ASSEMBLYMAN PAYNE: You, several times, said that they're clear-cutting the land to grow food for deer in order to support the deer hunting community, I suppose.

MR. CHAIFETZ: Yes.

ASSEMBLYMAN PAYNE: Where do you get that? I mean, you said they are clear-cutting. Do you mean we, the State, is doing this?

MR. CHAIFETZ: Oh, the State, the Division of Fish and Game, under DEP, in conjunction with the Division of Parks and Forestry. Basically, the way it works is that the Division of Fish and Game plans this out, and then sometimes we wind up paying for it under the Parks and Forestry, because they'll plan it out and, sometimes, help with the cutting, as well.

That's why I was very specific in many of those quotes that I used from their own documents. And I have the originals here -- just to see how blatant they are about it. They don't-- At least they used to not hide it. Now

they've gotten-- You don't hear it so much. But in some of their older reports, over the past 10 years, we've lost, probably, close to a thousand acres. And the few instances that I quote there of 60 acres here, 100 acres here, 300 acres here, 400 acres there, that's not the whole picture. Every day I keep finding out more.

So anything that this Committee can do-- Again, we're hoping, through some kind of regulation, to stop the commercial sale of trees from preserved land-- And secondly, to stop the clear-cutting of State land. And we have so few forests in this state, why are we destroying them?

That's it. I thank you for hearing me.

ASSEMBLYMAN PAYNE: Thank you very much for your testimony.

Does anyone have any comments or thoughts? (no response)

Thank you very much. Your son, obviously, was intrigued by your voice, because he stopped yelling and screaming.

And I think Assemblywoman--

ASSEMBLYWOMAN CRUZ-PEREZ: I'm a good babysitter.

ASSEMBLYMAN PAYNE: Exactly.

Thank you very much. We've made note of your testimony.

MR. CHAIFETZ: Thank you.

ASSEMBLYMAN PAYNE: We have John Donnadio.

**JOHN G. DONNADIO, ESQ.:** Thank you, Senator.

ASSEMBLYMAN PAYNE: It all depends on where you put the accent. (indicating pronunciation)

MR. DONNADIO: Thank you, Mr. Chairman and members of the Committee.

My name is John Donnadio. I'm the Legislative Director for the New Jersey Association of Counties. Let me first just say, Assemblywoman, I have four children, so if you're free on a Saturday night, my wife and I haven't gotten out in a long time, so I'd love to have you come over.

ASSEMBLYWOMAN CRUZ-PEREZ: How come they're not here? (laughter)

MR. DONNADIO: I'm the Legislative Director for the New Jersey Association of Counties. I'd like to thank you, Mr. Chairman. A couple of weeks ago, you had sent an inquiry to our Association requesting information from the counties concerning the regulations and rules impacting county governments. We had, as a result of that letter, sent out a survey to our counties. We received it a couple of weeks ago, and we shared it with your staff. I had the opportunity to meet with John and Gabby, a while back, and discuss some of the results of those surveys.

I had hoped to have some county officials with me today, but, unfortunately, Thursdays are a difficult day for county government. So what I will do is just, basically, highlight some of the concerns that they've come up with. And there are basically two, and it deals, again, with the permitting issue that I know has been mentioned quite a bit today.

The first deals with the mosquito control and abatement in freshwater wetlands. In particular, the Atlantic County Board of Chosen Freeholders commented that they are concerned with the time and the cost that county incurs in applying for the permits. And basically, in a nutshell,



they suggested some type of blanket permit that the county could apply for to conduct just very simple mosquito control and abatement. So that was basically their solution, as opposed to having to continue to go through the whole process of applying for the necessary permits.

The second area of concern that came up with a number of our counties was, again -- and I know this was mentioned earlier, and I hate to say it again, but I will reiterate the fact that it was the water and septic permits, and the time that it takes the counties to apply, and the costs that the counties incur. I highlight a story, I think, in the testimony that I submitted that Morris County, in particular-- It's taken them 14 months to receive this septic permit. And the county has spent, approximately, \$19 million, which I think is \$9 million over their estimated budget for this particular project, to secure a septic permit. And what their recommendation to our Association was, was something that, again, I thought I heard today, to make that-- Why can't we have a 90-day rule? Either you approve or you deny, or you make your recommendations one way or the other. But 14 months is entirely too long of a period of time, and it's cost the county entirely too much money.

Those were the two main issues that we got back from our counties, the time -- the permitting process. I will be happy to answer any questions, if I can. And, again, thank you for your time and consideration.

And I'll leave my card with you, Assemblywoman. (laughter)

ASSEMBLYWOMAN CRUZ-PEREZ: Only if you are in Camden County.

ASSEMBLYMAN PAYNE: Just one point, one question.

MR. DONNADIO: Yes.

ASSEMBLYMAN PAYNE: The \$19 million-- You said this cost Morris County?

MR. DONNADIO: That's right.

ASSEMBLYMAN PAYNE: Nineteen million dollars for what, now?

MR. DONNADIO: They're in the process of rehabilitating -- and this is my understanding of the situation -- an old mine, and they're making it into a public golf course. And it's just taking an extremely long period of time to obtain the necessary-- They're rehabilitating this. It's an abandoned strip mine up in Morris County. And I also think it was the location where Ringling Brothers held their animals for a period of time. And they've rehabilitated it. They're in the process of making it a public golf course. And they've just run into a number of problems.

In fact, one of the officials I wanted to come was from Morris County, to be able to discuss it in more detail, but like I initially said, unfortunately, they couldn't be here.

ASSEMBLYMAN PAYNE: I don't understand the \$19 million. You said it cost them \$19 million, not for delays in getting the permits-- You said it's taken 14 months to get the permits. But this \$19 million is what? What is that cost? That certainly can't be attributed to this delay.

MR. DONNADIO: I think it is, and from my understanding of the situation, Mr. Chairman -- and I wish I could elaborate more -- is that I think it's \$9 million over budget. I think the county allocated \$10 million for the entire project. But because of the delay that they've encountered, as a

result of applying for the septic permit, they've incurred an additional \$9 million, perhaps, of indirect related expenses.

ASSEMBLYMAN PAYNE: I think it's important. I think what we're trying to do is streamline government, trying to eliminate real roadblocks, etc., for the approval of permits, etc., so that we can have development here. I think it's very, very important that we have accurate information. I hear a figure of \$19 million -- that it cost because of a 14-month delay. And I just don't think you can attribute it to that. And I think that it's -- we, rather than making that kind of statement, would, certainly, need to have backup for it, because it appears that, because of DEP, now, we're talking about a project that's costing them \$19 million -- \$9 million over -- and the persons, obviously, who are capable of providing that kind of information are not here. Therefore, I think we should defer any kind of discussion on that, because I would hate for the public record to indicate that here's a project that's costing \$19 million because of a delay of 14 months. So that's something that--

MR. DONNADIO: I will get some accurate figures for you, Mr. Chairman. I appreciate your comments.

ASSEMBLYMAN PAYNE: Thank you very much.

MR. DONNADIO: Thank you.

ASSEMBLYMAN PAYNE: Assemblyman Cryan.

ASSEMBLYMAN CRYAN: On blanket permits-- This is the idea that -- like for example in the town I live in, there's a creek. They have to go apply, I think, every time before they go in and clean it. Is that right?

John, do we have opportunities in DEP for blanket permits? Is that -- where towns and counties have to clean up specific sites or whether it's--

MR. HAZEN: Certain programs (indiscernible) came along a couple of years ago to that effect. It depends on the extent of the stream cleaning.

ASSEMBLYMAN CRYAN: Is that the intent-- With mosquito control, which was brought up today -- I mean, the West Nile thing and all that -- do we have opportunities there, is this-- I mean, this says, basically, that you have to go in each and every time under Permit 15. Did I get it right? Is that correct?

MR. DONNADIO: That's my understanding from the county mosquito control agencies, that they have to go in with freshwater -- for freshwater permits to do mosquito control and abatement. And their suggestion is that -- just apply for some type of general blanket permit, as they do -- as Mr. Hazen suggested -- some of the stream mosquito control and abatement.

ASSEMBLYMAN CRYAN: Is that correct, or is that on the books now?

ASSEMBLYMAN PAYNE: Put your mike on, please.

MR. HAZEN: Thank you.

I will have to check on that, because I'm not sure about freshwater wetlands. I know the stream cleaning law was changed a few years ago to allow municipalities and counties to do basic maintenance without the need for a permit.

ASSEMBLYMAN CRYAN: Can I ask, through the Chair, that you take a look at -- and take a copy of John's testimony -- not the -- the opening part with the mosquito control thing?

MR. HAZEN: Yes, I will check that. I know there was some talk about mosquito control. I'm not exactly sure where it went through and exactly what the--

ASSEMBLYMAN CRYAN: It's related. It's a cousin. What I do hear-- What you're telling me is that communities that want to go in and clean up a creek that floods, and things like that, can do that under a blanket permit if they were an area that floods once or twice a year, that kind of thing.

MR. HAZEN: It depends on the extent of the cleanup. I mean, one of the things we've found is that a lot of municipalities will come to us and say they're doing stream cleanup, but then they're, basically, doing deep dredging and it just--

ASSEMBLYMAN CRYAN: Towns would never do that, would they, John?

MR. HAZEN: No.

But I can get you some specifics on exactly what the parameters are for the stream cleaning.

ASSEMBLYMAN CRYAN: I'd be interested in that, because if we could just make that process easier, we can take another step.

MR. HAZEN: Sure.

ASSEMBLYMAN CRYAN: Thanks.

ASSEMBLYMAN PAYNE: Thank you very much.

MR. DONNADIO: Thank you, Mr. Chairman.

ASSEMBLYMAN PAYNE: Michael Cerra, League of Municipalities. I guess that's C-E-R-R-A, I believe.

**MICHAEL CERRA:** Yes, it is.

ASSEMBLYMAN PAYNE: Your name, and identify your organization, etc., for the record.

MR. CERRA: Yes, good afternoon. Michael Cerra, representing the New Jersey League of Municipalities.

First of all, I'd like to thank you, Mr. Chairman, and the Committee, for this opportunity.

Like John, we were contacted by you and your Committee to put some input in this process. And we are surveying our membership. And at some point in the near future-- Since our survey was a broad one, spanning across a number of departments, we haven't had an opportunity to really synthesize those comments. What I'm saying to you is more of a general overview specific to DEP. And a lot of it is, in all honesty, repetitive.

First of all, I do want to make the comment, on behalf of the League, that we are very pleased right now with our relationship with the Commissioner. He has been very proactive. I joked with Bill Dressel that sometimes I see Commissioner Campbell and Commissioner Levin more than I see him. So he has been very proactive in reaching out to the League, in particular, and local governments, as a whole. And we hope that's a model that continues in the future.

That said, there are some areas of constant concern the municipalities cited. I'm not going to get into permits, because it's very clear, from the questions that were asked last week and today by Assemblyman

Cryan and Assemblywoman Myers, that our members are also speaking to them and relaying these concerns about permits. So I don't think I need to go into that in great length, because I think it's already been said.

But another area that's been cited over and over again -- areas, because I think they're interrelated -- are cost and enforcement and compliance as a whole. It's a general opinion that there simply isn't -- when regulations are being developed, there just is not enough accurate, real-world cost analysis done for the entity being regulated -- in our case, municipalities. And we would like to see more of an open dialogue where we might be asked, how much is it going to cost you? And maybe more importantly, how can costs be reduced? And I think that also goes along with creating a relationship of -- a partnership in enforcement and compliance, instead of DEP being seen as an environmental cop to municipalities or the counties or authorities, as well as-- And it happened again today, last week, representatives from the business community cited just how voluminous some of these regulations are. And the small businesses are at a disadvantage in interpreting those. Why? I think that's a point that can be applied to government, especially small governments, as well. And frankly, the 90-, and even in some cases the 45-day window that we have to interpret these simply isn't enough. And if we were more involved in the process before hand, which does occur on occasion, but maybe not enough -- especially in regulations that have a significant cost impact -- we might be able to react in that time frame in a more appropriate manner and, really, more effective manner.

And, also, I do want to thank the staff for getting us involved in this process, as well as you. And any questions you have--

ASSEMBLYMAN PAYNE: Thank you very much.

Are there any questions? (no response)

MR. CERRA: Just one comment. We are going to submit results of the surveys when we're -- when they're ready.

ASSEMBLYMAN PAYNE: Thank you very much. We appreciate it. I'm sure that the administration at the DEP appreciates the comments that are made where there are positive kinds of relationships, and that also should be pointed out. We're not here simply to say that there's constant difficulties with relationships between the Department and the communities in which it serves. I'd just like to, for the record, indicate that there are -- want to clarify -- and those statements that were made that indicate, with insufficient information, that the DEP or any other department may not be doing anything right. It is our belief that these departments are doing the best they can, and sometimes they're working under conditions that they inherited, etc.

But I think what we've seen, so far, from the Commissioner of DEP, as you indicated, is that we are trying to work together so that we can make the services, that are provided by this Department and others, are more efficient and more effective and to the benefit of the people of the State of New Jersey. You heard one instance where I did ask about this figure that was attributed to delays within the Department, which-- We want to make sure that what we do say here is accurate, so that we can have a positive outcome from these hearings that we are conducting, for not only this Department, but others, as well.

I, too, would like to thank the staff for the exhaustive work that they did prior to these hearings -- in preparing us for that and meeting with



representatives of the various communities, to see to it that we had information that was helpful to us and enabled us to conduct these hearings -- so that we can come up with some kind of positive outcomes. I do want to thank the staff.

I want to thank the members of this Committee who also participated and attended. This hearing and topic is not the most glamorous or sexy, and therefore, sometimes there are those of us in the Legislature who recognize that some of our work may appear to be in the doldrums, but it's not so, because if, in the end, we can provide a more efficient, more effective and responsive of government, I think we are, in fact, doing our job that we were elected to do.

I would just like to say that at our next meeting, in March, we will continue our review of regulatory concerns relating to other departments. At that time, we may also entertain legislation based on the testimony that we are receiving from all of you, the business, environmental, and local government groups. I want to thank everyone for their participation.

This hearing is adjourned.

**(MEETING CONCLUDED)**