

1 NEW JERSEY STATE LEGISLATURE
2 ASSEMBLY JUDICIARY COMMITTEE

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6 COMMITTEE MEETING

7

8 TRANSCRIPT OF PROCEEDINGS

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11

AT: State House Annex

12

Committee Room 12, 4th Floor

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Trenton, New Jersey

14

DATE: Thursday, June 15, 2006

15

TIME: 10:00 a.m. to 11:45 a.m.

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2 L E G I S L A T I V E M E M B E R S :

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4 ASSEMBLYWOMAN LINDA R. GREENSTEIN, Chairwoman

5 ASSEMBLYMAN REED GUSCIORA, Vice Chair

6 ASSEMBLYMAN CHRISTOPHER J. CONNORS

7 ASSEMBLYWOMAN NELLIE POU

8 ASSEMBLYMAN DAVID WOLFE

9 ASSEMBLYMAN LOUIS M. MANZO

10

11

12 A L S O P R E S E N T :

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14 RAFAELA GARCIA, OLS Aide

15 KAY HENDERSON, Assembly Majority Aide

16 MARY BEAUMONT, Assembly Republican Aide

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VINCE BEKIER Director Government Affairs New Jersey Food Council	4
PEDRO RAMOS Director Loss Prevention Pathmark Supermarket	7
BILL WOLFE New Jersey Field Director Public Employees for Environmental Responsibility	16
JEFF TITTEL Executive Director Sierra Club New Jersey Chapter	19
TOM DiGANGI Government Affairs Director Building Contractors Association of New Jersey	33
JOHN HAZEN Director Legislative Affairs Division of Policy and Legislative Affairs New Jersey Department of Environmental Protection	34
TARA ST. ANGELO Legal Intern Edison Wetlands Association	39

1 ASSEMBLYWOMAN GREENSTEIN: Good
2 morning, everybody. I'll call this meeting of the
3 Assembly Judiciary Committee to order.

4 Would you please take a roll call?

5 MS. GARCIA: Assemblyman Wolfe?

6 ASSEMBLYMAN WOLFE: Present.

7 MS. GARCIA: Assemblyman Connors?

8 ASSEMBLYMAN CONNORS: Present.

9 MS. GARCIA: Assemblyman Gusciora?

10 ASSEMBLYMAN GUSCIORA: Here.

11 MS. GARCIA: And Assemblywoman
12 Greenstein?

13 ASSEMBLYWOMAN GREENSTEIN: Here.

14 MS. GARCIA: You have a quorum,
15 ma'am.

16 ASSEMBLYWOMAN GREENSTEIN: Thank
17 you.

18 The first bill that we will do today
19 is A-1675, Assemblyman Barnes, Cohen, Bramnick and
20 Rumpf; and Senate S-273, Senator Sarlo and
21 Girgenti.

22 Can you tell us about the bill?

23 MS. GARCIA: This bill would expand
24 the State's shoplifting law to make it a crime of
25 the second degree if shoplifting is committed in

1 conjunction with an organized retail theft
2 enterprise. It would also establish the second
3 degree crime of leader of organized retail theft
4 enterprise.

5 ASSEMBLYWOMAN GREENSTEIN: The first
6 witnesses -- actually, we have a no need to
7 testify, but in favor of from the New Jersey
8 Retail Merchants Association. And to testify we
9 have Vince Bekier and Pedro Ramos, New Jersey Food
10 Council and Pathmark. Thank you.

11 Make sure that it shows red on your
12 light. Red is go in the strange world of --

13 MR. BEKIER: Good morning. Thank
14 you, Chairwoman. Good morning, Chairwoman and the
15 members of the Committee. My name Vince Bekier,
16 and on behalf of the members of the New Jersey
17 Food Council, representing the grocery and
18 convenient stores in New Jersey, we would like to
19 express our strong support for this legislation.
20 Today, I have with me Pedro Ramos, Director of the
21 Loss Prevention for Pathmark Supermarket. In a
22 moment he will talk to you about how organized
23 retail theft affects his business.

24 Organized retail theft is a growing
25 problem throughout the United States, affecting a

1 wide range of retail establishments, including
2 supermarkets, drug stores, mass merchandizers and
3 convenient stores. It has become the most the
4 most pressing security problems confronting
5 retailers today and it accounts for over
6 \$33 million in losses annually nationwide,
7 according to the FBI Interstate Task Force.

8 ORT typically targets everyday
9 household commodities and consumer items that can
10 easily be sold through fencing operations, flea
11 markets, illegal store fronts, and on the
12 Internet. Items in high demand by these
13 professional theft rings, including
14 over-the-counter drug products, razor blades,
15 batteries, and videos, and as well as infant
16 formula.

17 ORT crime is separate and distinct
18 from petty shoplifting, in that it involves
19 professional theft rings that move quickly from
20 community to community and across state lines to
21 steal large amounts of merchandise that is
22 re-packaged and sold back into the marketplace.

23 Consumers are at risk when ORT gangs
24 steal consumable products, especially
25 over-the-counter drugs and infant formula. In

1 many cases, after the merchandise has been stolen,
2 the products are not kept under ideal storage
3 conditions, which can threaten the integrity of
4 the product. For example, extreme heat or cold
5 can adversely affect the nutrient content of
6 infant formulas. In addition, ORT middleman may
7 change the expiration dates, lot numbers, and
8 labels to falsely extend the shelf life of a
9 product and disguise the fact that the merchandise
10 has been stolen.

11 Retail theft results in consumers
12 paying higher prices for the products they
13 purchase. In addition, consumers are often
14 inconvenienced by this type of crime because major
15 retailers are taking certain products off the
16 shelves and placing them behind the counter or
17 under lock and key. I am sure many of you have
18 experienced this when you've attempted to purchase
19 either a razor blades, batteries, or baby formula.

20 The New Jersey Food Council is
21 calling for the Assembly and the Senate for
22 introducing the this consumer friendly legislation
23 and we urge you to please vote yes today.

24 Pedro will now give you a retailer's
25 perspective.

1 MR. RAMOS: Good morning, Madam
2 Chairwoman. I thank you for hosting the bill.

3 I just want to reiterate the
4 position of the New Jersey Food Council. Retail
5 crime accounts for about 12 to 14 million dollars
6 a year in losses. And one of the other major
7 concerns we have as an organization and as an
8 industry is the consumer safety concern that some
9 of the these consumables, whether it be baby
10 formula, health and beauty products such as
11 over-the-counter medications, leave the legitimate
12 supply chain and the integrity of these products
13 cannot be ensured to the consumer.

14 Outside of reiterating Vince's
15 testimony, I'll just leave myself open to any
16 questions you may have.

17 ASSEMBLYWOMAN GREENSTEIN: Thank you
18 very much.

19 Can you just expand a little bit
20 about how -- right now, obviously, we have state
21 shoplifting laws. Do you consider those strong,
22 and how does including these sort of organized, I
23 guess, these state RICO law, the organized
24 enterprises, how does making it an organized
25 enterprise -- does it increase penalties? Does it

1 make the crime more serious in some way?

2 MR. RAMOS: It makes the crime more
3 serious. Today, for example, in one of our
4 counties we've currently identified 15 small
5 establishments that are really funneling
6 operations for basically fences. When we move
7 with law enforcement on these establishments,
8 they're going to be faced with basic -- some of
9 the petty shoplifting charges. If we follow the
10 product and money up towards these organized rings
11 and just kind of -- I think we need to make a
12 distinction. These are professional boosters.
13 These folks make a living out of this. They can
14 make thousands of dollars a day boosting out of
15 all retailers. And these are organized rings that
16 have corporate structures, training grounds,
17 management, what-have-you. They are parallel
18 organizations to ours. When we face these type of
19 criminals, they're basically going into -- their
20 being covered in the regular shoplifting laws
21 which really have minimal impact.

22 ASSEMBLYWOMAN GREENSTEIN: These are
23 stricter penalties?

24 MR. RAMOS: Right

25 ASSEMBLYWOMAN GREENSTEIN: I sort of

1 have a legal question, for somebody up here
2 perhaps. I believe RICO, both federal and the
3 state -- I believe we have state RICO laws. Are
4 we fitting this into our state RICO laws? Or is
5 that not appropriate in this case? Anyone who can
6 answer that. Or do you folks know, perhaps?

7 MS. GARCIA: I can check to see.

8 ASSEMBLYMAN GUSCIORA: We have a
9 state RICO statute.

10 ASSEMBLYWOMAN GREENSTEIN: This is
11 going to theft statute. I was just wondering if
12 we had a RICO statute, would there be a waiver of
13 it. It's more a question with respect to the law.
14 Conceptionally, I think it's certainly an
15 important idea.

16 Does anybody have any comments or
17 questions? Anybody?

18 ASSEMBLYMAN MANZO: The only comment
19 I have is this could be a great deterrent if the
20 industry were to take use of the fact that this
21 law has changed and actually putting a warning out
22 there for those who would think about shoplifting
23 like they normally do in the store about
24 shoplifting that the law has been greatly changed
25 and people ought to think twice before doing this.

1 MR. BEKIER: The federal government
2 is in the process of passing a federal organized
3 retail crime bill, which is a little bit different
4 but incorporates the same concepts that they are
5 here. And as I said, the industry fully supports
6 this. And I can show you that the idea is to get
7 the word out to those who are doing it to make
8 sure at least when they come in New Jersey they
9 realize they're going to face stiffer penalties
10 than your standard shoplifting penalties.

11 ASSEMBLYWOMAN GREENSTEIN: Any other
12 questions or questions, comments on shoplifting?

13 ASSEMBLYMAN GUSCIORA: I just want
14 to find out the litany of items that you
15 mentioned, do they include over-the-counter drugs
16 such as Sudafed which make those bathtub drugs.

17 MR. RAMOS: That's correct. It's
18 one of the favorites of professional shoplifters.
19 The another item that is a favorite, it ranks one
20 of the top most shoplift items in our company is
21 frozen shrimp. It actually has a huge
22 over-the-counter instant retail out on the street.
23 Organized retail crime rings target that
24 particular product. It's easily removed, small
25 packages with high value. What leave somewhere

1 down the road a consumer goes into a local, small
2 establishment and buys something they believe to
3 have been constantly frozen, for example, in this
4 case shrimp, that product, that may have been
5 temperature abused throughout the process.

6 ASSEMBLYMAN GUSCIORA: Do you ever
7 compile information on the over-the-counter drugs
8 that are shoplifted? Are they ever conveyed in
9 some global report and passed on to the State
10 Police or anything just so that that would assist
11 us in our war on drugs.

12 MR. RAMOS: We deal with it on a
13 case-by-case basis with either local law
14 enforcement, state, or federal. We have worked
15 with all three branches of law enforcement.

16 ASSEMBLYMAN GUSCIORA: Do you
17 specifically have a report that X amount of
18 over-the-counter drugs have been stolen statewide?

19 MR. RAMOS: In our particular
20 company we can actually do that because of our
21 case management database. Other companies, larger
22 retailers also use case management data basis that
23 produce reports geographic actually show the
24 trends. But we can provide that to State Police
25 should they be interested, yes.

1 ASSEMBLYMAN GUSCIORA: Is it
2 possible just for our education we can get a copy
3 of that report or you can compile that statistics?

4 MR. RAMOS: I can speak for my
5 company. I could give you some breakdown of all
6 the products.

7 ASSEMBLYMAN GUSCIORA: I would be
8 interested in how many over-the-counter drugs such
9 as Sudafed are shoplifted each year in the state.

10 MR. RAMOS: From our company's
11 perspective, CK just do.

12 ASSEMBLYWOMAN GREENSTEIN: I did
13 want to mention, we just got some information
14 answering my question that all theft are already
15 in the racketeering statutes. So apparently it is
16 part of it already.

17 Any other questions or comments from
18 anybody?

19 I'll take a motion.

20 ASSEMBLYMAN MANZO: Moved.

21 ASSEMBLYMAN GUSCIORA: Second.

22 MS. GARCIA: On the Assembly bill,
23 Assemblyman Wolfe?

24 ASSEMBLYMAN WOLFE: Yes.

25 MS. GARCIA: Assemblyman Connors?

1 ASSEMBLYMAN CONNORS: Yes.

2 MS. GARCIA: Assemblyman Manzo?

3 ASSEMBLYMAN MANZO: Yes.

4 MS. GARCIA: Assemblywoman Pou?

5 ASSEMBLYWOMAN POU: Yes.

6 MS. GARCIA: Assemblyman Gusciora?

7 ASSEMBLYMAN GUSCIORA: Yes.

8 MS. GARCIA: Assemblywoman

9 Greenstein?

10 ASSEMBLYWOMAN GREENSTEIN: Yes.

11 MS. GARCIA: Now on the Senate bill,

12 please.

13 ASSEMBLYWOMAN GREENSTEIN: A motion

14 and second, please?

15 ASSEMBLYMAN CONNORS: So moved.

16 ASSEMBLYWOMAN POU: Second.

17 MS. GARCIA: Assemblyman Wolfe.

18 ASSEMBLYMAN WOLFE: Yes.

19 MS. GARCIA: Assemblyman Connors?

20 ASSEMBLYMAN CONNORS: Yes.

21 MS. GARCIA: Assemblyman Manzo?

22 ASSEMBLYMAN MANZO: Yes.

23 MS. GARCIA: Assemblywoman Pou?

24 ASSEMBLYWOMAN POU: Yes.

25 MS. GARCIA: Assemblyman Gusciora?

1 ASSEMBLYMAN GUSCIORA: Yes.

2 MS. GARCIA: Assemblywoman

3 Greenstein?

4 ASSEMBLYWOMAN GREENSTEIN: Yes.

5 MS. GARCIA: The bill is released.

6 ASSEMBLYWOMAN GREENSTEIN: Thank you
7 very much.

8 Next, we're going to do A-1839 and
9 A-1841, which are my bills and Assemblyman McKeon.
10 We've put together into a substitute bill, and the
11 bills provide for criminal penalties and civil
12 penalties for giving false statements pertaining
13 to violations of the environmental laws.

14 And, Rafie, could you describe the
15 changes that we've made?

16 MS. GARCIA: Yes. The bill combined
17 both bills to make it consistent with out the
18 environmental law, that civil penalties would be
19 provided regardless of the person's culpability.
20 It also provides consistency with regard to the
21 criminal penalties. It allows for a person who
22 knowingly gives or causes to be given any false or
23 misleading information or makes any false or
24 misleading information, to make that a crime of
25 the third degree. It would be the crime of the

1 fourth degree if that person does so recklessly.

2 ASSEMBLYWOMAN GREENSTEIN: Thank
3 you.

4 What we did here, because the two
5 bills really were quite inconsistent, just to
6 reiterate some of what Rafie said. The civil
7 penalties, the civil part of it stays very similar
8 to current law. We did up some of the penalties
9 from 25,000 to 50,000. Some of them stayed the
10 same. There already was a penalty under one of
11 the water protection laws that was a second
12 degree. Actually, that was on the criminal side,
13 and that stayed the same. The criminal was more
14 expanded. We made the standard more consistent to
15 knowingly and recklessly. I think we took out
16 negligently and just made it knowing and reckless,
17 was really what the criminal standard should be.
18 Knowingly, it was a fourth degree crime.
19 Recklessly, a third degree crime, except for that
20 one water act crime which was before a second
21 degree crime and remains second degree. So we put
22 them together and made the standards better, and
23 we made everything consistent. So that was the
24 purpose of putting the two bills together.

25 Does anyone have any questions about

1 them?

2 Our goal here, of course, we were
3 prompted by the WR Grace hearings, somewhat less
4 so by the recent PCB hearings, in the idea that we
5 wanted to make sure that we have strong criminal
6 laws to make sure that people didn't commit these
7 kinds of crimes. We wanted to emphasize that
8 environmental infractions can be a crime,
9 certainly, and that people would be prosecuted.
10 So that was the reason.

11 Any questions or comments?

12 We do have -- to comment on these,
13 we do have Bill Wolf today. Is Bill here?

14 We will be doing a hearing. If you
15 could restrict your comments just to these bills?

16 MR. WOLFE: Bill Wolfe, director of
17 PEER, Public Employees for Environmental
18 Responsibility. Obviously, we support anything
19 that strengthens criminal and administrative
20 penalties for violation of environment laws and
21 requirements. In order to provide effective
22 deterrent, you have to look at the underlying
23 program as to whether or not you have an effective
24 deterrent and is increase of penalties going to
25 solve the problem. And if you look at the

1 underlying can program, No. 1 it's a voluntary
2 program for the most part and the lion share of
3 the cases in the cleanup program are voluntarily
4 programs, meaning there can be no enforcement
5 section.

6 Number 2, the data -- I can give you
7 data from DEP with respect to the enforcement
8 practices of the department, meaning whether they
9 have a field presence out of site, whether they're
10 auditing papers, specific engineering
11 certifications or whether they actually have a
12 credible enforcement program to coincide with that
13 to increase section. I think you'd find some
14 shocking numbers when you look at that.

15 The last thing I would just ask
16 would be in combining the bills, did you retain a
17 negligence standard for administrative penalties?

18 MS. GARCIA: We eliminated the
19 culpability all throughout and just say any person
20 who makes false or misleading statements.

21 MR. WOLFE: That is a yes no
22 arbitrary binary type of logic there. Their
23 judgment, they're discretionary, they deal with
24 data, data interpretation, a professional
25 judgment. There can be a negligence standard

1 applied to professional judgment.

2 MS. GARCIA: I think some of them
3 were knowingly, if they made knowingly false
4 statements. They're very little negligent. The
5 bill itself put in the negligent standard.

6 MR. WOLFE: I'm not an attorney so I
7 just know how the program operates, and I don't
8 want anybody leaving the room with an expectation
9 that this is going to in any way effect an
10 effective deterrent. What we saw in WR Grace and
11 the underlying legal structure of the program and
12 how it is implemented DEP need to change. WR
13 Grace happened because WR Grace was cleaning up
14 the site under certain environmental laws that
15 gave them powers to make the cleanup decisions, to
16 shut the public out of the process, to have no
17 oversight effectively by the public or locally and
18 to make the ultimate choices and decisions, not
19 DEP. So, again, we're not going to get to --

20 ASSEMBLYWOMAN GREENSTEIN: I think
21 what had happened here was we worked with the
22 Attorney General's Office to make sure, because of
23 all the different sections of environmental, we
24 wanted to make sure it was no inconsistency which
25 is why we took that out. However, we can look at

1 it again. Why don't you look it over today and if
2 any changes need to be made, we can still do it
3 later or as it goes through the Senate. There is
4 still opportunity to make the changes.

5 MR. WOLFE: You just need a
6 compelling DEP into that audit program.

7 ASSEMBLYWOMAN GREENSTEIN: We'll
8 talk more about that in hearing. Thank you.

9 Does anybody want to testify on
10 those bills or that bill?

11 Jeff? Jeff Tittel from the Sierra
12 Club.

13 MR. TITTEL: I think that you need
14 to have some type of negligence standard for at
15 least the civil side. And I support the bills. I
16 think we've watched too many times where
17 consultants and responsible parties have played
18 games and lied. The reason I think we need to
19 keep some type of negligent standard, not on the
20 criminal side, at least on the civil side, the
21 reason is that when dealing with the regular
22 Superfund site -- I'll use this as an example.
23 There's a DEP report, going back years ago, that
24 the consultant for Ford was collecting water
25 samples for volatile organics in a bucket. Now,

1 the reason that's negligence and goes beyond
2 that -- because they can say it's negligence, it's
3 just a mistake. Anybody who knows anything, you
4 take samples from a bucket volatile organics are
5 going to evaporate out and you're going to get a
6 much lower reading. Those are some of the kinds
7 of games that get played by consultants, by
8 others, when it comes to dealing with the site.
9 So I don't know if that falls into being a
10 deliberate and reckless or is that -- or they can
11 hide behind negligence. That's why I think at
12 least the civil side --

13 ASSEMBLYWOMAN GREENSTEIN: We're
14 going to put the negligence back in, the word
15 negligence back in today, to the civil sections of
16 the bill.

17 MR. TITTEL: I think that would
18 help.

19 ASSEMBLYWOMAN GREENSTEIN: We will
20 do that.

21 MR. TITTEL: I appreciate it. Good
22 bill.

23 ASSEMBLYWOMAN GREENSTEIN: Yes?

24 ASSEMBLYMAN GUSCIORA: I'd jut like
25 to follow up on Jeff's point. If we bring up the

1 Martin Luther King Jefferson School in Trenton
2 where contaminants were actually trucked in as
3 fill, I can see on the one hand the contractor
4 saying, "Well, we're just bringing in fill and
5 there's no -- I didn't knowingly bring it in."
6 And then turns out they were very negligent in not
7 looking over the paperwork or discovering whether
8 there were contaminants.

9 ASSEMBLYWOMAN GREENSTEIN: I
10 actually think you'd probably catch more people
11 under the negligence standard. The issue is
12 whether reckless is the standard. It has a high
13 level. I think we want to make it very clear that
14 we don't see anybody even remotely negligent when
15 it comes to moving fill around. So I think
16 putting the negligence standard in is a good
17 thing.

18 ASSEMBLYMAN WOLFE: I'm only a
19 substitute day. I have to certainly support this
20 legislation. The township where I live most
21 recently had a problem where a developer brought
22 in tainted soil from a Ford plant and this fill
23 was placed at a new construction site that was
24 going to be home of a Home Depot and also in a
25 mobile home park on the roads to take care of

1 holes in roads. So I think something like this is
2 certainly warranted.

3 ASSEMBLYWOMAN GREENSTEIN: Thank
4 you.

5 Any other questions or comments.

6 ASSEMBLYMAN MANZO: I would just
7 comment that this legislation was around many
8 years ago. The problem in Hudson with chromium
9 wouldn't have arose where contractors were moving
10 more than 40 to 60 tons of chromium into building
11 sites for building foundations.

12 ASSEMBLYWOMAN GREENSTEIN: Anything
13 else from anybody?

14 I'll take a motion.

15 ASSEMBLYMAN CONNORS: Moved.

16 ASSEMBLYMAN WOLFE: Second.

17 MS. GARCIA: Assemblyman Wolfe.

18 ASSEMBLYMAN WOLFE: Yes.

19 MS. GARCIA: Assemblyman Connors?

20 ASSEMBLYMAN CONNORS: Yes.

21 MS. GARCIA: Assemblyman Manzo?

22 ASSEMBLYMAN MANZO: Yes.

23 MS. GARCIA: Assemblywoman Pou?

24 ASSEMBLYWOMAN POU: Yes.

25 MS. GARCIA: Assemblyman Gusciora?

1 ASSEMBLYMAN GUSCIORA: Yes.

2 MS. GARCIA: Assemblywoman

3 Greenstein?

4 ASSEMBLYWOMAN GREENSTEIN: Yes.

5 MS. GARCIA: The bill is released.

6 ASSEMBLYWOMAN GREENSTEIN: Thank

7 you.

8 Now we're going to do A-1893 and
9 1894. That's Assemblyman McKeon, myself and
10 Assemblyman Voss.

11 What we've done here is to created a
12 committee substitute for these two bills. These
13 bills deal with the topic of notice, two kinds of
14 notice: One to the town itself, to the town
15 clerk; the other, public notice.

16 Now, the changes that we've made
17 from the original bills, first of all, the bills
18 have several parts to them. There is a public
19 notice aspect in the bill, which we shortened a
20 little bit because the DEP is about to come out
21 with regulations, we believe, this summer and we
22 wanted to leave the actual details of exactly what
23 has to go into the public notice to the regulatory
24 process. We do have a few aspects of it in the
25 committee substitute. But we wanted to leave --

1 you know, we had a list in the original bill about
2 10 things, and we wanted to leave all of that to
3 the rulemaking process, which is going to happen
4 very shortly. In fact, in the bill we ask that it
5 happens in six months. And at that point, we can
6 revisit it. But for now, we're just requiring a
7 much more extensive public participation process
8 when there is site remediation. We even require
9 that both property owners and tenants within 200
10 feet of a contaminated site be informed, very
11 specific kinds of notice, all of that is in the
12 bill.

13 In addition, we wanted to clarify it
14 is the responsible party who files the remediation
15 plan who has to do this and not somebody who's
16 just hired by that party to move soil around or
17 whatever. The responsible party has to take care
18 of the notice and the entire public participation
19 requirement. This, I think, would also make a
20 change in the technical regulations that DEP works
21 under. So it makes that change. Respond party
22 must be one to do it. We have to clarify that.

23 And those are the major changes in
24 the bills, and we put them together. There is a
25 section there that talks about a website that

1 lists the sites that need remediation in all the
2 districts. That already exists right now. People
3 can go on and find that on the web. What we are
4 doing here is just codifying that.

5 And finally, we talked about two
6 kinds of notice in a way. Kind of a short notice
7 where the clerk is being told by the DEP or the
8 responsibility party about what site is being
9 remediated. That could be like a one-page type
10 notice. What's being remediated, what's the
11 nature of the remediation, something very simple.
12 And then we also ask that upon request of the
13 town, the work plan itself, which could be
14 voluminous, would be available either for the
15 clerk's office or the public library. That would
16 be upon request of the town. The town would know
17 it could request that and the town could request
18 that that be given and placed in the library at
19 the same time as it's made available to DEP.

20 So we're trying to really make the
21 notice requirements much more extensive and to
22 move forward this process so citizens who live in
23 areas where remediation is taking place will not
24 be in the dark about it. And, again, that was
25 prompted by what we learned in the WR Grace

1 hearings where citizens did not know what was
2 happening, and the Mayor and clerk, nobody knew
3 what was going on in the town. We hope that that
4 won't happen in the future. We want to make this
5 process much more transparent. So that's the
6 purpose.

7 I'll take any questions.

8 MS. GARCIA: Madam, could I bring up
9 a bookkeeping measure? The last bill that we
10 voted on, Assembly Bill 1839 and 1941, it was a
11 sub, including the negligent changes that we
12 discussed in the committee. We wanted to make
13 that clear.

14 ASSEMBLYWOMAN GREENSTEIN: Any
15 questions or comments on this bill?

16 ASSEMBLYWOMAN POU: Madam Chair, I
17 don't have a question, I just want to make a
18 statement. My statement would be, I really want
19 to commend the sponsors on this bill. I think
20 it's a really good bill. It's taking the
21 appropriate action. I think we all can share our
22 own individual stories of the various towns that
23 we represent within our districts. Certainly, I
24 can share a number of them from Patterson. I
25 won't do that today, but clearly this bill will

1 help to provide the necessary kind of notice that
2 indeed will aver any type of degree of major
3 problems or concerns that certainly arise from
4 these various contaminated sites. So I just want
5 to really express my sincere support for this
6 bill.

7 ASSEMBLYWOMAN GREENSTEIN: Thank you
8 so much.

9 Anybody else? Questions, comments?
10 I'll take a motion.

11 ASSEMBLYMAN WOLFE: Moved.

12 ASSEMBLYMAN CONNORS: Second.

13 ASSEMBLYWOMAN GREENSTEIN: This is
14 on the Assembly bill. We also have a Senate --
15 I'm sorry. Bill Wolfe also wanted to comment on
16 this. Sorry about that.

17 MR. WOLFE: It's a very good idea to
18 provide notice to people what's going on, but
19 notice without an effective remedy is unworkable.
20 And under the land use or any other public notice,
21 there's always a governmental process that the
22 citizen or the town is provided notice pursuant
23 to. And under this -- in this case the
24 governmental process is the DEP's decision on the
25 remedial action work plan approval. So a property

1 owner or a town gets notice, there is no way to
2 effectively discharge the notice, meaning once you
3 have the information and you reviewed the remedial
4 action work plan, under current law you cannot
5 influence the selection of the remedy, meaning you
6 can't say, "I want soil excavated. I want the
7 site cleaned up. I want it cleaned up to
8 residential standards so people can live there and
9 kids can play there." You have no ability as a
10 citizen, regardless of your ability to know and
11 get notice, you have no effective remedy because
12 under current law, selection of the remedy is
13 solely with the responsible party, and DEP rubber
14 stamps that. So if I were given notice, there,
15 number one, would be no public hearing that I
16 could go and raise the issue. And the governing
17 entity in this case, DEP, could not take my
18 comments under consideration and force change to
19 the remedial action at the site. So it's a very
20 empty gesture and it's unworkable. It may
21 actually backfire once towns and citizens start
22 getting notice but then start trying to do
23 something about it and they're going to find out
24 they can't change the decision because the
25 decision has been made by a private party. It's

1 not even a governmental decision here. I don't
2 think people recognize. In other words,
3 everywhere else, you submit an application to a
4 planning board, you submit a permit to the DEP.
5 The DEP makes the decision, the planning board
6 makes the decision. The citizen is provided an
7 opportunity to participate in the decision. It
8 doesn't work that way under this law. Those
9 decisions are made by private entities for their
10 own corporate either financial or developmental
11 needs. And that, to me, is the real enchilada you
12 have to manage. And I'm reminded of the scene in
13 one of my favorite movies, "Cool Hand Luke." What
14 we have here is not a failure to communicate
15 because with a hundred percent perfect
16 communication there still can't be an effective
17 remedy.

18 ASSEMBLYWOMAN GREENSTEIN: I hear
19 what you're saying, because you've been very good
20 at educating me on some of the things that go on
21 in the process. I personally think, though, that
22 adding this -- and it is one small piece of a pie
23 -- is still a step in the right direction. I
24 think we need to look further at the entire
25 process and our resources and what we can do, but

1 I agree with you that public participation needs
2 to be tied into something further. It needs to be
3 tied into an entire process with hearings and with
4 recourse. And you're saying that because this is
5 really in the hands of the private party that
6 there is no recourse.

7 THE WITNESS: In the Ford decision
8 that brought us here and Martin Luther King School
9 and WR Grace and American Standard and all the
10 Jersey City sites and that site still festering in
11 Brick, if there were a public hearing under on
12 this notice, I could raise my hand and say "where
13 is the contaminated soil going and I don't want it
14 to go there," and the DEP couldn't stop it. It
15 would happen. It's unregulated activity. So this
16 really is not going to solve the underlying
17 problem that brought us here.

18 ASSEMBLYWOMAN GREENSTEIN: It won't
19 completely solve it, and no one is saying that it
20 will, but I do think it's a step in the right
21 direction. But I do think that we need to go
22 further. In other words, I'd rather have this
23 than not. I'd rather have people in the community
24 have a sense of what's going on than not. And
25 then it will be up to -- for example, in the PCB

1 situation, Ford was required, because DEP ordered
2 for that specific situation, to hold public
3 hearings. Not many people showed up, I think, but
4 they did hold them and there was an opportunity
5 for people to take it a step further. And I think
6 we need to start this, and I think public
7 participation and notice is a start and then we
8 need to look further at the many other issues and
9 problems about fixing up our environment. I think
10 you're right.

11 Let me ask you this, Bill. Does it
12 make it worse or better? I don't think it makes
13 it worse.

14 MR. WOLFE: Unfortunately, when you
15 open up government, which is always a good thing
16 in my book, but when you open up government and
17 you do it in essentially a way that is really
18 frustrating, particularly to people like me WHO
19 care about who look closely at the details and
20 want to change the outcome and then we have no
21 effective ability to do that, that's just going
22 backfire. That's going to make people angry.

23 There were people that showed up at
24 the Hamilton hearings that had great ideas.
25 There's a lot of intelligence out there, and they

1 had very concrete suggestions. There were
2 professionals out there, there were professionals
3 in the audience, there were contractors in the
4 audience who knew the chain of custody of soils
5 and shipments and transportation, very pragmatic
6 real world people that could tribute to the people
7 at DEP who don't this those skills and knowledge.
8 And this is not going enable that to happen.

9 ASSEMBLYWOMAN GREENSTEIN: I think
10 making a process, any government process,
11 transparent, while it's not enough, it's a very
12 good start. That's why we're having a hearing
13 today and a last week to try to look further at
14 what might be done and what we can do. But I
15 think putting out -- you're right, it will get
16 some people upset. But I can tell that in
17 Hamilton people were more upset not knowing. I
18 think they would have just wanted to have a sense
19 of what was going on in their neighborhood, and
20 that's what we're trying to accomplish here. It's
21 one small step, but I think it's a positive step.

22 MR. WOLFE: Agreed.

23 ASSEMBLYWOMAN GREENSTEIN: Thank
24 you.

25 Any questions for Bill?

1 Jeff Tittel.

2 MR. TITTEL: I just wanted to
3 follow-up and what you just said. We do support
4 the legislation, knowing that there's further
5 reforms needed. But we also believe when the
6 public knows how bad the program is, like going to
7 these meetings and finding out that the cleanups
8 are voluntarily, that they don't really have a
9 say, I think that public outcry will help to force
10 the changes that are necessary. Thank you.

11 ASSEMBLYWOMAN GREENSTEIN: Thank
12 you.

13 Any other questions or comments?

14 Tom DiGangi, Building
15 Contractors Association.

16 MR. DiGANGI: Just quickly. Thank
17 you, Chairwoman, for working with all parties to
18 address -- helping a personal language a bills
19 which was a bit confusing. I think the solution
20 that you've presented brings clarity and precision
21 to the important public notification that's called
22 for in the substitute. And on behalf of the
23 Building Contractors Association, we appreciate
24 your hard work on the issue. Thank you very much.

25 ASSEMBLYWOMAN GREENSTEIN: Thank

1 you.

2 Is there anyone here from the Edison
3 Wetlands Association?

4 THE WITNESS: I think we would like
5 to reserve our testimony for the hearing.

6 ASSEMBLYWOMAN GREENSTEIN: Okay,
7 thank you.

8 And finally, John Hazen, did you
9 want to comment on this, any of the bills we just
10 did? Thanks.

11 John Hazen haste from the DEP.

12 MR. HAZEN: Thank you. First of
13 all, I wanted to thank you, Madam Chair, for your
14 leadership on this and on the hard work you've put
15 in on getting these bills to where they are.

16 I think, as everyone has testified,
17 the need for open government and the need for
18 information to the local governing bodies and to
19 the residents, I think it's clear that can only
20 help us. And I think the comments of Mr. Wolfe
21 and Mr. Tittel are well taken in terms of the
22 underlying process where I think it's Assistant
23 Commissioner Crock testified before you, we are
24 looking at the remedy selection.

25 One thing, I don't think this is as

1 useless as Mr. Wolfe said before because I think
2 in some cases additional information can come to
3 us from the locals. I think in terms of both WR
4 Grace and in terms of Ringwood, if there was a
5 process that gave the information upfront to the
6 locals, you had people in neighborhoods who just
7 said pointed at our backyard. While the statute
8 is set up really kind of in favor of the
9 responsible parties determining the direction, it
10 does say that we can disapprove of what they
11 select but it has to be protected both in health
12 and environment. If there's additional
13 information that is not provided to us that's
14 contained in the remedial action work plan, that
15 does give us the ability to say, "Let's step back
16 and we've got to look at this more
17 comprehensively."

18 I do think additional -- like the
19 Assistant Commissioner testified, we are
20 evaluating to try and bring the pendulum back
21 here, give the DEP more, but I think this is a
22 definite a step in the right direction. And the
23 department is very supportive of your efforts
24 here.

25 ASSEMBLYWOMAN GREENSTEIN: Thank

1 you.

2 Any questions, comments?

3 Thanks.

4 Anybody else who'd like to testify
5 on this bill?

6 I'll take a motion.

7 ASSEMBLYWOMAN POU: So moved.

8 ASSEMBLYMAN CONNORS: Second.

9 MS. GARCIA: On Assembly Bill 1893
10 and 1894, Assemblyman Wolfe?

11 ASSEMBLYMAN WOLFE: Yes.

12 MS. GARCIA: Assemblyman Connors?

13 ASSEMBLYMAN CONNORS: Yes.

14 MS. GARCIA: Assemblyman Manzo
15 indicated yes.

16 Assemblywoman Pou?

17 ASSEMBLYWOMAN POU: Yes.

18 MS. GARCIA: Assemblyman Gusciora?

19 ASSEMBLYMAN GUSCIORA: Yes.

20 MS. GARCIA: Assemblywoman

21 Greenstein?

22 ASSEMBLYWOMAN GREENSTEIN: Yes.

23 MS. GARCIA: Now, on the Senate
24 amendment to Senate Committee substitute --

25 ASSEMBLYWOMAN GREENSTEIN: It was

1 released by the Senate, making it look like 1893.
2 Now we're conforming it to make it look like our
3 sub. We need a motion.

4 ASSEMBLYWOMAN POU: Motion.

5 ASSEMBLYWOMAN GREENSTEIN: Second on
6 that, please?

7 ASSEMBLYMAN GUSCIORA: Second.

8 MS. GARCIA: Assemblyman Wolfe.

9 ASSEMBLYMAN WOLFE: Yes.

10 MS. GARCIA: Assemblyman Connors?

11 ASSEMBLYMAN CONNORS: Yes.

12 MS. GARCIA: Assemblyman Manzo
13 indicated yes.

14 Assemblywoman Pou?

15 ASSEMBLYWOMAN POU: Yes.

16 MS. GARCIA: Assemblyman Gusciora?

17 ASSEMBLYMAN GUSCIORA: Yes.

18 MS. GARCIA: Assemblywoman

19 Greenstein?

20 ASSEMBLYWOMAN GREENSTEIN: Yes.

21 MS. GARCIA: Now on the bill, as
22 amended.

23 Assemblyman Wolfe?

24 ASSEMBLYMAN WOLFE: Yes.

25 MS. GARCIA: Assemblyman Connors?

1 ASSEMBLYMAN CONNORS: Yes.

2 MS. GARCIA: Assemblyman Manzo
3 indicated yes.

4 Assemblywoman Pou?

5 ASSEMBLYWOMAN POU: Yes.

6 MS. GARCIA: Assemblyman Gusciora?

7 ASSEMBLYMAN GUSCIORA: Yes.

8 MS. GARCIA: Assemblywoman
9 Greenstein?

10 ASSEMBLYWOMAN GREENSTEIN: Yes.

11 MS. GARCIA: The bill is released.

12 ASSEMBLYWOMAN GREENSTEIN: Thank you
13 all very much on that. We appreciate it.

14 That's it for the voting. Now we'll
15 start our hearing.

16 It's just going to be a continuation
17 of the hearing that we had two weeks ago. And we
18 don't have too many people to speak, but we have
19 some interesting testimony, I'm sure. The main
20 people who I invited here today -- I did send a
21 letter to Mr. Morris from Edgewood Properties. Is
22 anybody here from Edgewood Properties today?

23 It's nobody here from Edgewood
24 Properties. We also asked Bill Wolfe and Jeff
25 Tittel because they were both rushed in the last

1 hearing and they have a lot suggestions. I will
2 let them testify, but I think I'll start with the
3 lady Tara St. Angelo from the Edison Wetlands
4 Association who wanted to come and speak.

5 Tara, do you want to come up?

6 You do not have to go through the
7 entire thing. You can summarize. You don't have
8 to read the entire thing because everybody here
9 will have copies, okay? Just do the best you can
10 to summarize. Talk to us, in other words.

11 MS. ST. ANGELO: Thank you for this
12 opportunity to present this testimony. My name is
13 Tara St. Angelo. I'm a legal intern at Edison
14 Wetlands Association. And I will reading this
15 testimony into the record but, unfortunately, I
16 can't answer any questions you may have. The rest
17 of the staff is in Washington, D.C.

18 ASSEMBLYWOMAN GREENSTEIN: I just
19 got word that you were sort of given this
20 assignment last night, so you're going to do your
21 best. If you have to read, just do your best with
22 it.

23 MS. ST. ANGELO: Edison Wetlands
24 Association, as you know, is a grass roots
25 non-profit organization. We have a

1 Brownfields-to-Greenfields Program as well as they
2 are very involved in cleaning up any Superfund
3 sites around the state. If you reference the
4 testimony or even the website, you can find out
5 more information about our organization.

6 As you also know EWA was the sole
7 catalyst who uncovered the illegal transportation
8 of the PCB contaminated fill from the former Ford
9 Motor Company plant to several Edgewood properties
10 across the state. And it was EWA's diligent
11 investigation advocacy that informed the general
12 public and local officials of the deposition of
13 PCB-contaminated fill.

14 If you would like a summary of what
15 went on in this investigation and how it was
16 revealed, you can also reference the testimony.

17 Unfortunately, it took this public
18 health debacle to demonstrate the importance of
19 the community involvement in the site remediation
20 process. However, with the right regulatory and
21 legislative changes, we can avoid another case
22 like this.

23 EWA strongly believes that there
24 should be community notification as referenced in
25 the bills today.

1 We also believe that strong public
2 participation regulations must be adopted.

3 The state should also provide
4 technical assistance grants to community
5 organizations so they can hire independent
6 technical advisors to help residents understand
7 whether the remediation is protective of their
8 health.

9 Another NJDEP site remediation issue
10 is their lack of response to public concerns.
11 Although the hotline number can work, we have
12 received several complaints from people in the
13 community that have not received feedback from the
14 DEP after leaving messages from the hotline. For
15 example, there was an issue last March, our
16 consultant who conducted sampling of the Mill
17 Brook tributary across the former Ford Edison
18 plant and we compiled a report with preliminary
19 results that indicated very high arsenic levels
20 and a concentration of metals in paint sludge.
21 And immediately we reported to the NJDEP hotline.
22 We were initially contacted by a representative,
23 but we were informed that no further action would
24 be taken.

25 And the Ford Edgewood case is not an

1 anomaly but rather indicative of current
2 systematic problems within the site remediation
3 program. EWA believes that this present situation
4 affect the dramatic change in the state's cleanup
5 program.

6 And one of the causes of the
7 situation we're in today is the big push to
8 redevelop approximately 10,000 brownfield sites
9 estimated to be in New Jersey. Although EWA
10 believes strongly in brownfield site remediation,
11 there is a concern there has been a systematic
12 weakening of cleanup requirements, and EWA
13 encourages us to strengthen the system.

14 Previously, the NJDEP had the
15 authority for strong oversight, but right now the
16 problem is that responsible parties are not
17 addressing site cleanup in a timely fashion and
18 NJDEP is not enforcing the regulations. So
19 instead of requiring protective cleanups, the
20 Whitman administration overhauled the regulations
21 by gutting agency oversight and enforcement
22 authority and putting the polluters in charge of
23 their own cleanups. The NJDEP was given a mere
24 advisory role.

25 As long as the responsible party

1 comply on paper with the technical requirements
2 and perform due diligence, they're allowed to
3 choose their your own remedy. Therefore, EWA
4 makes the following suggestions to return the
5 control to the NJDEP.

6 We recommend the elimination OF
7 Memorandum of Agreements and other types of
8 voluntary agreements which carry no legal weight.
9 Instead, we advise for Administrative Consent
10 Orders to be reinstituted at all major sites.

11 In addition, we need to put
12 enforcement back into the regulatory process so
13 that a responsible party does not delay cleanups
14 for eternity. Right now, the only thing a
15 noncompliant responsible party has to fear is a
16 letter from the DEP.

17 DEP should have its own independent
18 data analyzed at independent labs of their own
19 choosing rather than simply review the responsible
20 party's consultant reports for paperwork
21 compliance. Edison Wetlands is unique in that it
22 collects its own data and often conflicts with the
23 data collected by the responsible party. We need
24 to remind ourselves that when it comes to
25 sampling, you can't find a problem if you're

1 looking in the wrong place.

2 DEP Site Remediation Advisory Group
3 should be dissolved and replaced with a public
4 advisory committee made up of citizen activists,
5 environmental groups, and municipal leaders. DEP
6 initially created the advisory group to encourage
7 open dialogue between the agencies and the
8 community. While a few members of the
9 environmental community attended the meeting, the
10 vast majority of the attendees are industry
11 representatives and developers, including their
12 attorneys and consultants. What once was a
13 laudable goal for open dialogue has turned into a
14 lobbying tool for the regulated community directly
15 influence policies crafted and implemented by DEP
16 personnel.

17 An example of the unacceptable
18 influence of industry developers over DEP policy
19 occurred when DEP drafted its Vapor Intrusion
20 Guidance Document. And this is further outlined
21 in the printed testimony.

22 It is completely inappropriate for
23 the regulated community to have such influence
24 over DEP policy and regulations. DEP scientists
25 should be the ones who establish regulatory

1 standards and guidance documents, not the lawyers
2 and consultants of the regulated community. Put
3 simply, polluters' profits are being placed before
4 the public health. EWA believes one of the first
5 steps to putting an end to this is the dissolution
6 of the Advisory Group.

7 The pendulum has swung too far away
8 from responsible regulation and enforcement to the
9 current position of reckless disregard for public
10 safety and the environment in the rush to
11 redevelop. The Ford Edgewood PCB contaminated
12 fill problem is just one of the many that
13 indicates a reckless system without proper
14 oversight and enforcement mechanisms in place.
15 EWA believes that thorough site cleanups can be
16 completed without risk to human health and the
17 environment, while still promoting economic
18 growth.

19 In fact, EW's
20 Brownfields-to-Greenfields initiative encourages
21 balanced redevelopment with both economic
22 components and open space. The problem is that
23 industry and developers have been running amuck in
24 New Jersey and now you're experiencing the cost
25 that have privilege. In the interests of the

1 public and our future, we urge that you enact
2 reforms sooner rather than later on this very
3 important issue. Thank you.

4 ASSEMBLYWOMAN GREENSTEIN: Thank you
5 so much for your testimony. You know, the
6 interesting thing is that I think as we're
7 listening on this committee on the environment,
8 we're hearing the same things from everybody.
9 It's almost verbatim what Mr. Wolfe and Mr. Tittel
10 has been saying and will probably say shortly. So
11 clearly this is something that we need to look at.
12 We need to swing the pendulum, I think, in the
13 other direction, giving the DEP more involvement
14 in its own process and making sure that there is
15 good oversight in anything that the regulated
16 community does. And I think, hopefully, the bills
17 today -- do you feel good about the direction
18 we're taking on the bills today?

19 MS. ST. ANGELO: I can't speak for
20 the EWA. I'm sure the staff would join me saying
21 that these are a step in the right direction.

22 ASSEMBLYWOMAN GREENSTEIN: Good.

23 Any comments or questions?

24 ASSEMBLYMAN WOLFE: I have two
25 questions. Who initially discovered contaminants?

1 ASSEMBLYWOMAN GREENSTEIN: She may
2 not be able to answer.

3 MS. ST. ANGELO: This happened
4 before I actually started working at EWA. This is
5 my second week of work.

6 ASSEMBLYWOMAN GREENSTEIN: She was
7 put on the job last night.

8 MS. ST. ANGELO: I can give you the
9 card of our staff attorney and you can call her.
10 She'd be happy to answer any questions you have at
11 a later date.

12 ASSEMBLYWOMAN GREENSTEIN: Why don't
13 you put the question on the record, and then we
14 can --

15 ASSEMBLYMAN WOLFE: My second
16 question is, Edgewood purchased the property, was
17 hired to remediate the site, was it to truck this
18 material away?

19 MS. ST. ANGELO: To my
20 understanding, they are a developer and they
21 purchased fill from the Ford site and brought to
22 other sites, but I'm not entirely sure. You can
23 ask the rest of the staff at Edison Wetlands.

24 ASSEMBLYWOMAN GREENSTEIN: The
25 litigation that's going on right now is trying to

1 determine who did what when. I think that what is
2 not determined yet. There's finger-pointing going
3 on right now.

4 ASSEMBLYMAN WOLFE: You did a very
5 good job.

6 MS. ST. ANGELO: Thank you.

7 ASSEMBLYWOMAN GREENSTEIN: Did you
8 have any questions you want to put on the record?

9 ASSEMBLYMAN WOLFE: No.

10 ASSEMBLYWOMAN GREENSTEIN: Anybody
11 else?

12 Now I'll call -- is there an order
13 that's best for the two of you?

14 Jeff Tittel, Sierra Club.

15 MR. TITTEL: Unfortunately, I left
16 my packet in the office.

17 ASSEMBLYWOMAN GREENSTEIN: You two
18 can actually come up together.

19 Do you have anybody else testifying,
20 or just these two gentleman?

21 MR. TITTEL: Anyway, I'll follow-up.
22 I apologize I have a packet of all KINDS of
23 materials with lots of changes. Now I've got to
24 rely on my brain, which is not always --

25 Since I did talk at the last time, I

1 want to reiterate and go over what I said until I
2 get the three minute drill, which was pretty good
3 in basketball but I'm not so sure for a hearing.

4 ASSEMBLYWOMAN GREENSTEIN: You can
5 repeat. You were really quick time last time. We
6 rushed you.

7 MR. TITTEL: The main point is that
8 when we changed the statutes in the '90s, when we
9 moved to the statutes, we he removed the public
10 participation from it, from the cleanup system.
11 We basically became a voluntarily driven system by
12 the responsible parties who polluted the sites.
13 And because it's a voluntary system, there is
14 virtually no accountability by the DEP and there
15 is really no ability to force what I would say
16 permanent remedy because they can use an economic
17 balancing test and pick the remedy themselves,
18 which means they're always going to pick the
19 cheapest remedy and in most cases the least
20 effective remedy.

21 And the problem isn't when you're
22 capping a site and you're building a warehouse and
23 there's only a few people there, maybe a guard at
24 night or something, but the problem is many of
25 these sites are now becoming communities and homes

1 and families are there and yet they're not getting
2 cleanup to the standard they would get because of
3 the voluntarily cleanup that will cap the site and
4 walk away.

5 The problem with DEP programs right
6 now is that there really isn't a permanent remedy.
7 We can show you with -- I wish Assemblyman Manzo
8 was still here, because we were up in Weehawken
9 and we took soil samples where there's a new
10 development going in, a chromium site, and there's
11 chromium on sidewalks. It's not above the
12 standard, but it's not far from the standard. The
13 question is why on a new development should there
14 be chromium on sidewalks.

15 Part of the problem is that even
16 after we reported to DEP, it's the responsibility
17 party's consultants that went out there and
18 tested. Now, we asked for a very broad plan to
19 see if it's coming from this pile of chromium in
20 the corner or is it coming up from this side or
21 that side. They get to pick where they do the
22 sampling.

23 ASSEMBLYWOMAN GREENSTEIN: Jeff, did
24 you say that the chromium on the sidewalks there
25 met the existing standards?

1 MR. TITTEL: It was slightly below
2 the standard. The standard for cleanup is 20
3 parts per bill. It's at 15.

4 ASSEMBLYWOMAN GREENSTEIN: So in
5 that case, part of the issue is standard is bad.

6 MR. TITTEL: The standard is bad,
7 but the State can't enforce anything because --

8 ASSEMBLYWOMAN GREENSTEIN: Put your
9 mic on.

10 MR. TITTEL: So the point that I'm
11 trying to make, DEP standards are high because
12 their responsible parties' consultants went in
13 there and said, "Well, we sampled and we didn't
14 find any other spots. We don't think it's coming
15 from anywhere. It could be background." Well,
16 background for chromium should be zero, the
17 standard should be 4, but that's the California
18 standard, not 20 which is New Jersey standard.
19 The only positive in this is that for years we've
20 been putting poor people on top of these
21 contaminated sites. Now we have \$3 million
22 condos. So hopefully people there who live in
23 that development will be of upset and who have
24 more political clout and money to go fight for
25 cleanup.

1 But the point that I was getting at,
2 which is, I think, the change that we really think
3 needs to happen is that there needs to be an
4 independent system for doing testing on
5 contaminated sites. And I think the best way to
6 do it is to have the responsible party put up an
7 escrow account that's bonded and insured so that
8 the monitoring is being done by consultants that
9 are working for the escrow account monitored by
10 the State, not by the responsibility party. So
11 that they're out there taking the samples and
12 doing the right job, not the job that the
13 responsibility party tells them, you know, "Don't
14 go over there with a pile of dirt, go over there
15 by the other side of the parking lot." Because
16 they have this no test no tell methodology. And
17 then when there are caps in place or where you
18 don't have a permanent planned remedy. And even
19 when you do, there needs to be an ongoing monitor
20 system. And that's I think having an insurance
21 system set up that goes out -- AIG have written
22 out for contaminated sites without insurance for
23 50 years, a 50-year policy. And the idea is so
24 that you would be ongoing monitoring of these
25 sites. Because right now they're supposed to be

1 yearly monitoring. But again, it's the RP's
2 consultant, because DEP has no field staff to go
3 up there.

4 They talked about -- some of the
5 discussions we're having the DEP is having the
6 towns doing the monitoring. The problem is the
7 towns aren't even monitoring the retention basins
8 that are filling up with, you know, various caps
9 and making sure that they're not --

10 ASSEMBLYWOMAN GREENSTEIN: Who are
11 you suggesting would do the monitoring if you had
12 this insurance policy?

13 MR. TITTEL: Well, I think that you
14 can do it two ways. I think that two ways. One,
15 by having this insurance policy that the
16 consultants would be hired either by the DEP,
17 which may not be the greatest but it's still
18 better than the RP, and be reviewed by the
19 Department versus being put out there by the RP --
20 you know, I've been at sites where I've watched
21 these consultants come in -- and Ford, they were
22 more concerned about taking the EPA staffer to
23 lunch and the EPA staffer was more concerned about
24 where he was eating than what was actually
25 happening on site. I think that problem is part

1 of the problems that we see.

2 So I think the first thing that we
3 would like to see is better monitoring in the
4 first place, better main clean up plan, and the
5 ability of the public to participate in that
6 cleanup plan, but also where the testing is done
7 on site to make sure that the site is clean and
8 they're not playing games. You can play all kinds
9 of games with tests and I've watched consultants
10 do it. And then have a long-term monitor.

11 The other issue that I think that is
12 important is to be looking, especially in areas
13 where there is going to be redevelopment, and who
14 is going to pay for the difference between an
15 industrial standard and a more unrestricted
16 standard so that that site can be developed. Now
17 if the responsible party -- when they play this
18 game, and I'll try to explain it sort of briefly,
19 but there are companies -- one company I mention
20 in particular that does this Cherokee, they will
21 go to the responsible party and say, "We will take
22 over your site and your liability, give us \$10
23 million."

24 Now under the law, when you have a
25 contaminated site, you have to go to unrestricted

1 use, it could cost the responsible party 50 or
2 \$60 million. If all of a sudden it becomes a
3 brownfield and they're going to redevelop it, that
4 site for cleanup goes from, under the voluntary
5 cleanup program, goes from \$60 million restricted
6 to maybe a \$3 million cap. So the game they have
7 played is that companies come in to make money.
8 They'll say "Give us \$10 million, and we'll take
9 care of your problem. We'll taking over your
10 liability," and will come in there and put a golf
11 course or a parking lot or something else like
12 that so that they can come in under the voluntary
13 cleanup program, put that in, and then five or ten
14 years later, turn around and build housing on it
15 or something else. There is no DEP monitoring to
16 say, "Well, it's now residential so therefore
17 they've got to go back and do the cleanup." That
18 doesn't happen. So this is a game that's being
19 played throughout the State of New Jersey and
20 actually throughout the country. And there are
21 companies that actually profit on it.

22 The other thing that they do, the
23 cap itself -- and I'll use the site up in the
24 Meadowlands as an example. A cap itself is a cash
25 cow for the developer. Where they end up not

1 making the cap out of clean material like you
2 think. What happened with ford, that's the tip of
3 the iceberg, because they go out and make money
4 off of capping a contaminated site and building on
5 top of it.

6 If you look at the end cap site in
7 Lyndhurst, it's a garbage dump to begin with on
8 top of the wetlands. So the cap itself is being
9 made out of dredged sludge from has dioxin in
10 them. They've got a waiver for that.
11 Construction debris from the school construction
12 corporation, which means lead paint and asbestos,
13 what's called dirty dirt which is a term which
14 means soils from underground tanks which you could
15 have hydrocarbon in them. And, as I call it, the
16 icing of the property is sewer sludge with PCBs,
17 heavy metals and so on. And they're actually
18 going to make \$75 million for their cap. But
19 basically making it into a dump. It's the only
20 way I can really describe it. And that's one of
21 the problems. Then you'll be putting housing
22 there. So not only are you going to get
23 contamination from the landfill, you're going to
24 have contamination of the cap. That's why caps
25 are so bad because the caps themselves do not have

1 to be made out of clean material. And again,
2 without the proper monitoring, who knows if
3 they're actually going to use the standards for
4 what's conceived for clean dirty fill. It's
5 dirty, but it's supposed to be to a certain
6 standard. But there's no real monitoring. In
7 fact, one of the companies involved has got some
8 fuzzy past to New York State.

9 So those are the kinds of problems
10 that we see. And why especially put where you're
11 going to put 2,000 units of housing, 5,000 people
12 are going to live there. People playing golf,
13 that's one thing. But 5,000 people may be living
14 on that site. It's going to be unstable because
15 of the fill. And that's why I think we need to
16 have a better process. If we're going to be
17 building housing and communities, it should be a
18 permanent remedy, not a temporary remedy that
19 itself is a problem. So the point that I'm trying
20 to get at is that we need better monitoring. We
21 need better testing. We need to do better
22 science. And we need to have permanent remedies.
23 We cannot allow this game for capping the site for
24 now and then turn around and put housing on it.
25 We have to reopen the whole process. If they're

1 going to change what's going to be built on that
2 site, there has to be a trigger to say reopen the
3 NFA or the NFA goes away they have to come back
4 and clean it up to an unrestricted standard.
5 Because otherwise we're going to be putting people
6 in harm's way.

7 Another point that I wanted to make
8 is that we need look at our groundwater standards
9 and what goes into them. Another problem that
10 we're seeing in the state is that because we
11 believe we're allowing more and more natural
12 attenuation. Natural attenuation is a very fancy
13 term that basically means that you got crap in the
14 groundwater and instead of cleaning it up, we're
15 just going to let it keep diluting through the
16 aquifer and contaminating it until it gets to a
17 safe level. In some cases we allow for natural
18 attenuation to last for over 30 years. Based on
19 the model, not on reality, you can come DEP and
20 say, "Well, in 30 years this will dissipate into
21 the aquifer. Yeah, it's going to hit every well
22 field no four counties. And it could be picked up
23 with other contaminations from other sites. Once
24 they do this, it's the potato chip syndrome, so
25 they do it for this one and that one. The next

1 thing you know, you've got this toxic soup in your
2 groundwater because you've got 30 sites in the
3 community that are leeching we're not cleaning
4 them up, we're going to allow them to naturally
5 attenuate. What's the effect of the benzene from
6 this site and the from this site and, you know,
7 coming all together. That's the real problem.
8 There really needs a tight groundwater standard.
9 We can't allow for natural attenuation, and we
10 can't allow for the other thing that they do is
11 called a CEA, Categorical Exception Area where they
12 write this groundwater off because it's too
13 contaminated and they're not going to require to
14 clean up it. Do you know that there's a well in
15 the City of Camden that could not be -- actually,
16 not a well. There's a well field in Camden that's
17 in the middle of CEA, which is an exemption area,
18 off limits for water that you could put a new well
19 into the system that already exists. We're going
20 to allow you to be pumping contaminated water.
21 There's class action by the people in the City of
22 Camden because their water supply is impacted and,
23 you know, quite frankly, we want to see Camden
24 redevelopment redevelop, but where are they going
25 to get the water from if you allow CEAs on top of

1 well fields.

2 And the same problem that we have in
3 Dover Township. And so because there are 3500
4 state, in according EPA, that are leaking into
5 groundwater aren't getting cleaned up, it's
6 creating a water supply problem for the state
7 because we have no other place to get water,
8 especially in the southern part of New Jersey, but
9 from the ground. So we should not be allowing
10 that. You should be forcing cleanups as part of
11 this.

12 The other point I wanted to make
13 which is -- and I want to thank those on the
14 Environment Committee, particularly on the
15 corporate business tax and running on for parks.
16 One of the things that we know from that is under
17 the Site Remediation Program there's \$150 million
18 sitting there. That money was put there because
19 of the environmental community fought to have the
20 constitutional dedication to CBT and is going to
21 different programs. The site remediation was
22 there because the state has the power to go in, do
23 a cleanup on a site that's delinquent and then sue
24 the responsible party to get the money back. And
25 that money is supposed to be there to you pay for

1 the cleanup costs. The problem is that we're not
2 doing it anywhere. One of the changes that you
3 should look at for major contaminated sites,
4 especially those that are in protection areas or
5 close to well fields and reservoirs, there has to
6 be a mechanism because the public health and
7 safety to trigger those cleanups.

8 We've had sites, and e raise it as
9 an example, next to reservoirs. Yet the State of
10 New Jersey does not trigger any mechanism to force
11 the cleanup even though you've got a billion
12 gallons of contaminated water right next to a
13 reservoir. And I think there has to be a loss and
14 trigger mechanism that when a site sits so long
15 affecting groundwater and water supply that you
16 have to automatically go in there and force the
17 cleanup. You can't just sit there and let it go
18 on for years and years.

19 And I just wanted to end there
20 because there's a lot of information in the bill
21 has a lot to talk about. Those are just a couple
22 of thoughts that I wanted to put out. And I will
23 bring my packet of other issues as well.

24 ASSEMBLYWOMAN GREENSTEIN: That
25 point you made about 150 million, that was money

1 from the CBC?

2 MR. TITTEL: Yes. That money very
3 specifically is a fund for site remediation. The
4 purpose of that fund is so that the State can go
5 after sites that are not being cleaned up, do to
6 cleanup themselves and then sue them. They need
7 that upfront money so that can start the cleanups
8 themselves. Unfortunately, I think, there's maybe
9 three of them in the last 15 years that we've
10 actually done something.

11 ASSEMBLYWOMAN GREENSTEIN: So that
12 money is sitting there, it really hasn't been
13 used?

14 MR. TITTEL: It hasn't been used.
15 And we don't want to take it for something else
16 like parks or something. We want it to be used to
17 go after these sites, especially terrible sites
18 that are out there that are affecting drinking
19 water and people's properties.

20 ASSEMBLYWOMAN GREENSTEIN: Do you
21 have any sense of why it hasn't been used.

22 MR. TITTEL: Yeah. Basically,
23 because they had a Commissioner for eight years
24 who didn't want to take on any industry and he
25 decided not to do anything. And since then, it's

1 been sort of we haven't done it so therefore we're
2 not going to do it.

3 Commissioner Gambol did announce a
4 year ago they were going to use of that, but
5 they've done very little. And I think that there
6 needs to be some mechanism to enforce it so that
7 much sites get cleaned up especially those that
8 are impacting people's drinking water. So I would
9 focus on being directly at drinking water to force
10 the DEP to take action.

11 ASSEMBLYWOMAN GREENSTEIN: Any
12 questions or comments?

13 Thank you. You certainly give us a
14 lot to think about. As I say, today is just one
15 tiny step, but I know this is area I've developed
16 an interest in, and I'm hoping to try to pursue it
17 in some way. Thank you for all the great input.

18 ASSEMBLYMAN WOLFE: Bill Wolfe. I
19 don't appear very often here. I'm not a lobbyist.
20 I spent 13 years at DEP. I spent seven years at
21 the Sierra Club with Jeff for the most part.

22 Today, I just like to focus -- I'm
23 really pleased that we're allowed to talk about
24 the underlying issues as opposed to the last
25 hearing which was really a very -- I felt from DEP

1 focussing -- and Ford, for that matter, focussing
2 on recycling and the minutia for the recycling
3 program -- so I'm very pleased that we can orient
4 the focus on site remediation program. And I want
5 to focus on --

6 ASSEMBLYWOMAN GREENSTEIN: Is your
7 mic on?

8 MR. WOLFE: I want to focus on the
9 statutory framework and underlying statutory
10 provisions that have created the problem. So when
11 you look towards reform, you know where to look,
12 you know what to look at. And I'll make some
13 recommendations as to specific changes that need
14 to be made.

15 Last, I'd just supplement that with
16 some actual DEP data. The's a little stale now.
17 I haven't been there for a while, but I took some
18 thing with me when I left.

19 ASSEMBLYMAN WOLFE: How did you do
20 that?

21 MR. WOLFE: Public records. I was a
22 civil servant and I'm paid by the taxpayers of New
23 Jersey. I think it was public information and I
24 left with it, frankly. If that's an ethics issue,
25 I'll be glad to talk about it.

1 Is that satisfactory?

2 ASSEMBLYMAN WOLFE: We'll see.
3 Continue.

4 MR. WOLFE: First, I'd like to share
5 a couple of quotes from fairly independent and
6 credible sources just to put a face on this thing.
7 This is not environmental advocacy type of
8 situation. I'm sorry Assemblyman Manzo is not
9 here. A case that went through the Federal
10 District Court and upheld in the U.S. Circuit
11 Court of Appeals for third in circuit in Jersey
12 City dealing chromium. And in that case the
13 federal judge after exhaustive review of the
14 record and DEP's actual implementation and the
15 state law at play found -- and this is his words,
16 quote, "The court finds the evidence demonstrates
17 a substantial break down in the agency process
18 that has resulted in 20 years of permanent cleanup
19 in action," end quote.

20 That really is a scathing
21 indictment, frankly for both the state program and
22 the state law that New Jersey citizens had to
23 initiated a citizens suit under federal law and go
24 to federal court to get an effective remedy to
25 protect their health. That's a shame, frankly,

1 that the State of New Jersey on its failure both
2 administratively and legislatively to place the
3 framework to protect its people.

4 In recognition of that deficiency at
5 that level, which is now a national precedent,
6 that nobody seems to want to talk about. That's a
7 \$400 million cleanup up there. That has regional
8 significance.

9 Former Commissioner Campbell in a
10 letter to Jersey City Mayor Healy stated, quote --
11 and I provided that letter to the Committee in my
12 June 1 testimony. Quote, "Recognizing the public
13 concern (and my own) about excessive capping of
14 sites we are preparing a legislative proposal for
15 Assemblyman Manzo's consideration, that will
16 strengthen the Department's authority to order
17 permanent remedies, in lieu of capping or
18 engineering controls, where appropriate to ensure
19 public health or environmental protection. That's
20 December 2, 2005 letter from Commissioner Campbell
21 to Mayor Healy.

22 I haven't seen that legislative
23 initiative. DEP is here today. I think some Q
24 and A back in the department what the status of
25 that was. That's the material you will be dealing

1 with.

2 Third. In reiterating that policy
3 direction and legal concern Commissioner Jackson,
4 quote, "We need to go back to having the authority
5 to demand a more rigorous cleanup. We need to
6 assure ourselves and, more importantly, the public
7 that in our rush to redevelop we're not too quick
8 to leave material in place." That's a quote from
9 a Commissioner Jackson in the Bergen Record of
10 April 21, 2006.

11 And lastly and most importantly, I
12 think, at this point, Governor Corzine's
13 Transition Team recommendation is very specific
14 and very focussed on this issue and I quote from
15 that transition report, dated -- I think it's
16 January 10th. "The Policy Group recommends that
17 the Governor supports measures to restore DEP'S
18 pre-1993 authority to select remedial actions at
19 specific sites, similar to the power the
20 Department had before 1993. This restoration of
21 authority should also give DEP the authority to
22 compel a Responsible Party to implement a
23 permanent remedy, to mandate that the polluter
24 conduct a feasibility study similar to the
25 Superfund model, and to require additional cleanup

1 without having to expend taxpayers' money to prove
2 that the remedies have failed."

3 The statutory changes that were in
4 my June 1 testimony --

5 ASSEMBLYWOMAN GREENSTEIN: Bill, did
6 you give us -- do we have a copy of your June 1
7 testimony?

8 MR. WOLFE: I gave six copies. I
9 can part with some copies today.

10 ASSEMBLYWOMAN GREENSTEIN: If you
11 give us one to make sure we have copies.

12 MR. WOLFE: Sure. And in the June 1
13 testimony I have written recommendations as to
14 what should change legislatively, which I can
15 repeat a little bit today. And I also ended for
16 you 12 specific legislative provisions in
17 boldface, specific language, that creates an
18 underlying legal problem that we're dealing with
19 here.

20 ASSEMBLYWOMAN GREENSTEIN: Bill, can
21 you give us a copy of that now, the June 1
22 testimony? And they'll make copies of it.
23 Thanks.

24 MR. WOLFE: So with that backdrop in
25 mind, here's the general areas of some legislative

1 change. I thin we talked about some of this
2 earlier about notice the shift in public
3 participation. I was saying that providing public
4 participation, that's a supplement to the notice
5 that we talked about earlier.

6 The restoration of authority
7 stripped in 1993 and '97, there were legislative
8 policy directions to privatize cleanup decisions
9 to reduce cleanup costs to reduce oversight and
10 weaken DEP enforcement. These are not -- what
11 we're dealing with is we're reaping the fruit of
12 what we created in the '90s and we went too far.
13 And I think we need to have that recognition going
14 in and we need to from a consensus around that in
15 order to get some change. Once you get to
16 fundamental understanding, I think the rest isn't
17 as difficult. But, again, is it the legislature's
18 preference in, quote, expediting or promoting or
19 incentivizing redevelopment, given the real estate
20 market in urban New Jersey is now. It's a hot
21 market. It's not the depression of the late '80s.
22 We're now taking about major turnaround in
23 redevelopment in New Jersey. Do you want to stay
24 with policies of the past that were developed
25 under completely different economic conditions for

1 completely different economic purposes and
2 completely different environmental purposes that
3 are now hurting us? So I think you need to think
4 very seriously about go look at the legislative
5 intent of the '93 law and see if it's fresh. And,
6 frankly, it's to the right of Christy Whitman in
7 the policy accepts. In terms of balance between
8 environmental and public health protection and
9 promoting economic development.

10 I don't think the Governor who
11 strongly promote economic development would want
12 to put his name on those legislative findings.
13 And they were further enhanced in '97 when we did
14 the Brownfields Act. I was on it, Senator
15 McNamara, so I know the bodies were buried in that
16 bill. Some serious change came back with remedy
17 selection to the responsible party came in in '97.

18 So at any rate, the third piece is
19 restoring the DEP's authority to compel permanent
20 remedies which they are now prohibited from doing.
21 Restoring DEP's authority to compel the conduct of
22 the feasibility study, which identify the plan
23 alternative. Restoring the DEP will provide the
24 public with those alternatives and let the public
25 express their point of view as to what their

1 preference they have for which particular remedy
2 so the public can weigh in on the decision on how
3 to trade off and balance environmental protection
4 and economic defiant cost of, let's say, Dupont.
5 We're talking about trading off private
6 responsible parties compliance cost with the
7 protection of public health. I think if we have
8 that debate publicly, we win that debate hands
9 down every single time if it's framed that way.
10 Unfortunately, the way law is structured right
11 now, I can't in any forum anywhere in this state
12 have that debate, because it's been preempted by
13 the legislation intentionally. Let's not fool
14 ourselves.

15 The fifth point I have here is I
16 think the Department implemented in the beginning
17 of the mid '90s what is now known as the Voluntary
18 Cleanup Program. According to the DEP data -- and
19 this data is old, this is three years old. There
20 were 4,921 cases in the Voluntary Cleanup Program.
21 Last Earth Day, Governor Codey announced an
22 initiative called Times Up For Cleanup where the
23 Department went back and selectively revoked those
24 voluntary cleanup agreements.

25 You've got to understand what a

1 voluntary cleanup agreement is. A company comes
2 in and says, "I'll clean this up. I'll clean it
3 up at my own pace. I'll clean it up as much as I
4 feel like cleaning it up when I want to. And if I
5 find out I'm in over my head and economically it's
6 going to cost me too much, I walk away, hands
7 free, no enforcement, no liability, nothing."
8 That's the way the law is structured. And there's
9 only 5,000 of those deals. And what happens is
10 the program is expanded so much that companies
11 have come in and using voluntarily agreements as a
12 shield against enforcement and an excuse to
13 present an appearance that they're under some
14 agreement with the State of New Jersey to clean up
15 a site, and that gives them a license to sit there
16 and let that site fester for years without any
17 active cleanup. The irony is that whole mechanism
18 was created to accelerate cleanup and accelerate
19 redevelopment, and it's turned into a mechanism to
20 frustrate cleanup and frustrate redevelopment.
21 And those are the facts. And you can ask DEP to
22 respond. I have facts that come directly from
23 them and I would be glad to hand you factual
24 inquiry if you guys, again, want to do the
25 appropriate degree of legislative oversight here,

1 which another thing, because I got to tell you
2 last time around on June 1st to sit here and
3 listen to Assistant Commissioner Crop both divert
4 the Committee's attention from the real issues and
5 secondarily mislead the Committee on what she
6 chose to say and what she chose not to say -- and
7 I'll talk about a couple of those things in a
8 moment -- is not an effective way to conduct this
9 type of important oversight you're talking about.

10 You're going to have to hold the
11 Department to the fire and you're going to have
12 require submission of written documents with facts
13 and legal interpretations, because it's been --
14 the Department, frankly, in my view -- I think
15 they're losing credibility here. And that should
16 be unacceptable.

17 ASSEMBLYWOMAN GREENSTEIN: The one
18 thing I can say what we've learned from these
19 hearings both the last time and this time is it's
20 a difficult situation, because DEP is where it is
21 as a result of much legislation that has happened
22 over a long period of time. I don't think it's
23 any individual's fault or anything like that. I
24 think this where we've gotten and I think there's
25 some sentiment to try to make some change in that.

1 But as you know, it's a long process. I think
2 we've taken some baby steps today and over the
3 last few months, but we still -- you know, it's
4 interesting to hear where we might go.

5 MR. WOLFE: I want to shift gears to
6 flush that point out because it's an important
7 point.

8 Had the Department been engaging in
9 good faith at the time, they would have told you
10 that they had a proposal that was drafted by the
11 program that was reported in the Bergen Record.
12 We had to weaken DEP policy memos where they
13 proposed to weaken the groundwater standards for a
14 host of toxic chemical plants by a factor of at
15 least a 10 and allow groundwater models to dilute
16 groundwater for up to 98 years.

17 ASSEMBLYWOMAN GREENSTEIN: When did
18 that take place?

19 MR. WOLFE: That memo was circulated
20 in the wake of a Supreme Court decision this
21 spring which upheld the Department's authority
22 under the groundwater standard to apply the ground
23 standard. So just at the point after years of a
24 legal loophole, which technically the groundwater
25 standards existed but they weren't incorporated as

1 remedial standards, so in 2003 the Department
2 finally got its act together and legally closed
3 the loophole and applied the groundwater standards
4 as remedial standards in the program. The
5 regulated community sued the Department on that.
6 The New Jersey Supreme Court decided this spring
7 and upheld those standards. And literally weeks
8 later, because of the pressure of applying those
9 standards, to reduce the cost to industry, the
10 Department floated a proposal to weaken the
11 standard by a factor of 10. And not only was it
12 in bad faith, but it was, again, brought -- I'm
13 going to give you an insider's view. And an end
14 run around the Department's own regulations which
15 give them the authority to reclassify aquifers
16 where there is no drinking water or ecological
17 attack and where it would be cost prohibitive to
18 clean up.

19 The industry has petitioned DEP four
20 times in the last 10 years to classify aquifers to
21 Class 2B. All four petitions have been denied by
22 the DEP because it hasn't scientifically justified
23 it.

24 And here, instead of going through
25 THE existing regulatory process, which is science

1 based and open to the public, they floated an
2 internal proposal saying, "We won't even do this
3 through rulemaking, we will do this AS a matter of
4 administrative policy." And there's been a
5 20-year history with DEP being sued for adopting
6 administrative policies in the absence of the
7 rulemaking. But in this case, they were doing it
8 to weaken a standard. It's an egregious thing to
9 do. And they're not doing it in no context.
10 They're doing it when the Legislature is holding
11 oversight hearings, when the press is beating them
12 up on a regular basis about weaknesses in their
13 cleanup program.

14 ASSEMBLYWOMAN GREENSTEIN: Bill, let
15 me ask you this question. The thing you're --
16 because I want to rein us in here a bit. Are you
17 saying that this is a result of one of these
18 needed legislative changes?

19 MR. WOLFE: What I'm trying to
20 suggest to you, and this all occurred since the
21 last Legislative Oversight hearing --

22 ASSEMBLYWOMAN GREENSTEIN: Just in
23 the last few weeks?

24 MR. WOLFE: In the last few weeks.
25 The other three things that occurred -- you need

1 to know about because you're not getting briefed
2 by the Department. You have heard about the
3 public participation rules.

4 ASSEMBLYWOMAN GREENSTEIN: Yes.

5 MR. WOLFE: Those rules will suffer
6 because they do not enable any effective remedy,
7 meaning they will have the same thing I identified
8 earlier. So, again, they're putting a Band-Aid on
9 a gaping wound that's misleading in terms of its
10 effectiveness.

11 ASSEMBLYWOMAN GREENSTEIN: With all
12 due respect, I don't think it's misleading. I
13 think we all know that because of legislative
14 changes that have happened over the years, the
15 Department is probably a very different place than
16 it was at some point. It's under completely
17 different rules and regulations. And I think
18 there's some belated recognition that that's a
19 problem and there are many problems. And what we
20 need to do is what we can realistically change
21 what we need to change. It's certainly important
22 or we wouldn't be looking at it. We've have to
23 think of what we can do legislatively and also
24 what they can do under their regulations.

25 Can you summarize?

1 MR. WOLFE: Let me -- I need to give
2 you two more examples so you understand this. The
3 WR Grace thing --

4 ASSEMBLYWOMAN GREENSTEIN: Be brief.

5 MR. WOLFE: Very, very brief. The
6 WR Grace debacle revolved around private
7 certifications of compliance, private consultants
8 and contractors. Everybody agrees we need to get
9 more handle, more control. The DEP is expanding
10 and accelerating their program known as Cleanup
11 Start. The Cleanup Start Program is designed to
12 reduce the DEP's oversight and consultancy. So
13 they're over here testifying, "Oh, yeah, we need
14 stronger programs, we more authority," but
15 administratively they're over there on the other
16 end of State Street, they're doing things exactly
17 the opposite of what they're telling you here.
18 Inquire about that.

19 The other piece --

20 ASSEMBLYWOMAN GREENSTEIN: If you
21 would make this your last point. I think we've
22 definitely gotten lot of your testimony here.

23 MR. WOLFE: Again, you held June 1
24 oversight hearings. That was Thursday. On
25 Saturday the Star Ledger's front page story was

1 about an issue of scientific fraud whereby a
2 scientific journal withdrew a study about chromium
3 carcinogenicity as to whether chromium was a
4 carcinogen, human carcinogen, by injection. And
5 that fraudulent science that the journal itself
6 revoked because it was fraudulent influenced the
7 DEP's deliberations in setting the chromium
8 standard.

9 ASSEMBLYWOMAN GREENSTEIN:
10 Unfortunately, that was bad information out there.

11 MR. WOLFE: But what happened was,
12 there were DEP -- if you read the article, there
13 were DEP scientists who said just what I said, and
14 there are other DEP scientists that felt they
15 needed reflect the press office and the
16 commissioners and the company line. So in the
17 newspaper, DEP scientists were debating each
18 other. As a result of that kind of embarrassing
19 type of situation where you have your own staff
20 disagreeing in the newspaper and the prior leak
21 about the DEP policy on 10-fold increase in
22 groundwater standards, the Assistant Commissioner
23 issued a memo to 600 and some odd staff members
24 saying, "You shall not disclose or talk publicly
25 about information." Just as we're getting to the

1 point where for years we've been saying there's
2 something wrong with the Cleanup Program. We have
3 public discussion about the Cleanup Program. Now
4 that we're starting to have public discussion on
5 the Cleanup Program, the Assistant Commissioner
6 issues a very intimidating gag order to her staff.

7 That's the game. If you don't
8 recognize we're in that game, then you're not
9 going to have a very effective dialog.

10 ASSEMBLYWOMAN GREENSTEIN: I think
11 the fact that we are have the hearings is a
12 recognition that there is change needed. I
13 certainly appreciate all of the input you've
14 given, and we do have your testimony with
15 suggested legislative changes. I know I'll be
16 looking at those. And certainly your knowledge, I
17 appreciate fact you have some very good
18 information here. You've given us a couple of
19 very good ideas.

20 I don't know if Mr. Haven -- do you
21 want to make any comments on any of the testimony
22 today at all?

23 Certainly, DEP gave us very good
24 testimony the last time. I think it was pretty
25 thorough.

1 Is there anybody that wants to ask
2 any questions or has any comments? Anybody here
3 or in the audience?

4 Thank you all very much. I
5 appreciate it. Thank you.

6 (The meeting was adjourned at 11:45
7 a.m.)

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1 C E R T I F I C A T E

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3 I, Lisa C. Bradley, a Certified
4 Shorthand Reporter and Notary Public of the State
5 of New Jersey, do hereby certify that prior to the
6 commencement of the examination, the witness was
7 duly sworn by me to testify to the truth, the
8 whole truth and nothing but the truth.

9 I DO FURTHER CERTIFY that the
10 foregoing is a true and accurate transcript of the
11 testimony as taken stenographically by and before
12 me at the time, place and on the date hereinbefore
13 set forth, to the best of my ability.

14 I DO FURTHER CERTIFY that I am
15 neither a relative nor employee nor attorney nor
16 counsel of any of the parties to this action, and
17 that I am neither a relative nor employee of such
18 attorney or counsel, and that I am not financially
19 interested in the action.

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LISA C. BRADLEY, CSR, RPR

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CSR NO. 30XI00228700

25 DATED: July 12, 2006