
Public Hearing

before

SENATE ENVIRONMENT AND ENERGY COMMITTEE

Senate Concurrent Resolution 66

“Prohibits adoption of DEP’s proposed rules and regulations to revise its Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules”

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: March 7, 2016
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Linda R. Greenstein, Vice Chair
Senator Richard J. Codey
Senator Christopher “Kip” Bateman
Senator Samuel D. Thompson



ALSO PRESENT:

Judith L. Horowitz
Michael R. Molimock
*Office of Legislative Services
Committee Aides*

Alison Accettola
*Senate Majority
Committee Aide*

Brian Ahrens
*Senate Republican
Committee Aide*

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



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New Jersey State Legislature

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATE HOUSE ANNEX
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PUBLIC HEARING NOTICE

&

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE ENVIRONMENT AND ENERGY COMMITTEE

FROM: SENATOR BOB SMITH, CHAIRMAN

SUBJECT: COMMITTEE MEETING - MARCH 7, 2016

The public may address comments and questions to Judith L. Horowitz or Michael R. Molimock, Committee Aides, or make bill status and scheduling inquiries to Pamela Petrone, Secretary, at (609)847-3855, fax (609)292-0561, or e-mail: OLSAideSEN@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The Senate Environment and Energy Committee will meet on Monday, March 7, 2016 at 10:00 AM in Committee Room 10, 3rd Floor, State House Annex, Trenton, New Jersey.

The Senate Environment and Energy Committee will also hold a public hearing immediately following the committee meeting.

The following bills will be considered at the meeting:

S-771 Smith, B/Bateman	Requires large food waste generators to separate and recycle food waste and amends definition of "Class I renewable energy."
S-1625 Van Drew	Provides diamondback terrapins protection as nongame indigenous species.
S-1732 Cruz-Perez	Establishes "Adopt a Monarch Butterfly Waystation" program.

(OVER)

Senate Environment And Energy Committee
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March 7, 2016

SCR-66
Lesniak

Prohibits adoption of DEP's proposed rules and regulations to revise its Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules.

The public hearing will be held in accordance with Article V, Section IV, paragraph 6 of the New Jersey Constitution on the following Senate Concurrent Resolution:

SCR-66
Lesniak

Prohibits adoption of DEP's proposed rules and regulations to revise its Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules.

Persons wishing to testify at the public hearing should submit 15 copies of written testimony to the committee on the day of the hearing.

Issued 2/29/16

For reasonable accommodation of a disability call the telephone number or fax number above, or TTY for persons with hearing loss 609-777-2744 (toll free in NJ) 800-257-7490. The provision of assistive listening devices requires 24 hours' notice. Real time reporter or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, call 800-792-8630 (toll-free in NJ) or 609-292-4840.

**SENATE CONCURRENT
RESOLUTION No. 66**

**STATE OF NEW JERSEY
217th LEGISLATURE**

INTRODUCED FEBRUARY 16, 2016

Sponsored by:

Senator RAYMOND J. LESNIAK

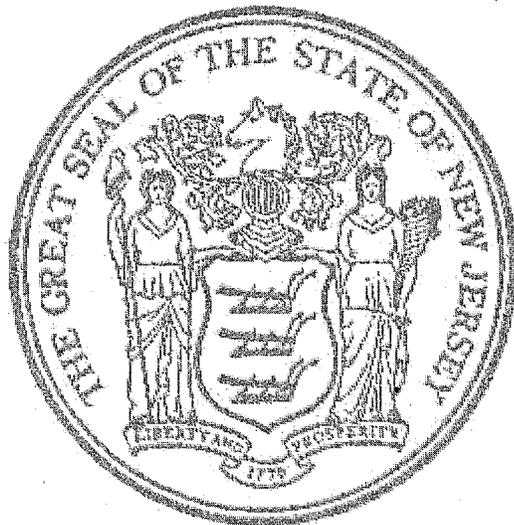
District 20 (Union)

SYNOPSIS

Prohibits adoption of DEP's proposed rules and regulations to revise its Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules.

CURRENT VERSION OF TEXT

As introduced.



SCR66 LESNIAK

2

1 **A CONCURRENT RESOLUTION** concerning legislative review of
2 rules and regulations pursuant to Article V, Section IV,
3 paragraph 6 of the Constitution of the State of New Jersey and
4 prohibiting the adoption of certain proposed Department of
5 Environmental Protection rules and regulations.

6
7 **WHEREAS**, Pursuant to Article V, Section IV, paragraph 6 of the
8 Constitution of the State of New Jersey, the Legislature may review
9 any rule or regulation adopted or proposed by an administrative
10 agency to determine if it is consistent with the intent of the
11 Legislature, and invalidate an adopted rule or regulation or prohibit
12 the adoption of a proposed rule or regulation if it finds that the rule
13 or regulation is not consistent with legislative intent; and

14 **WHEREAS**, Upon finding that a rule or regulation, either proposed or
15 adopted, is not consistent with legislative intent, Article V, Section
16 IV, paragraph 6 provides that the Legislature shall transmit its
17 findings in the form of a concurrent resolution to the Governor and
18 the head of the Executive Branch agency which promulgated, or
19 plans to promulgate, the rule or regulation, and the agency shall
20 have 30 days from the time the concurrent resolution is transmitted
21 to amend or withdraw the rule or regulation; and

22 **WHEREAS**, If the agency does not amend or withdraw the existing or
23 proposed rule or regulation, Article V, Section IV, paragraph 6
24 provides that the Legislature may invalidate or prohibit the adoption
25 of the proposed rule or regulation, following a public hearing held
26 by either House on the invalidation or prohibition, the placement of
27 a transcript of the public hearing on the desks of the members of
28 each House of the Legislature in open meeting followed by the
29 passage of at least 20 calendar days, and a vote of a majority of the
30 authorized membership of each House in favor of a concurrent
31 resolution invalidating or prohibiting the adoption of the rule or
32 regulation; and

33 **WHEREAS**, On June 1, 2015, the Department of Environmental
34 Protection proposed for public comment in the New Jersey Register
35 a rule proposal to revise its Flood Hazard Area Control Act
36 (FHACA) Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone
37 Management (CZM) Rules, N.J.A.C.7:7E-1.1 et seq. (recodified on
38 July 6, 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater
39 Management (SWM) Rules, N.J.A.C.7:8-1.1 et seq.; and

40 **WHEREAS**, The notice of proposal lists the following statutes as the
41 authority for the rule proposal: N.J.S.A.13:1D-1 et seq. (the statute
42 establishing the department); N.J.S.A.13:1D-29 et seq. (commonly
43 referred to as the "90-Day Law"); N.J.S.A.13:20-1 et seq. (the
44 "Highlands Water Protection and Planning Act"); N.J.S.A.58:10A-
45 1 et seq. (the "Water Pollution Control Act"); N.J.S.A.58:11A-1 et
46 seq. (the "Water Quality Planning Act"); and N.J.S.A.58:16A-50 et
47 seq. (the "Flood Hazard Area Control Act"); and

SCR66 LESNIAK

1 **WHEREAS**, Assembly Concurrent Resolution No. 249 and Senate
2 Concurrent Resolution No. 180 declared that the proposal by the
3 Department of Environmental Protection, published for public
4 comment in the New Jersey Register on June 1, 2015, to revise the
5 Flood Hazard Area Control Act Rules, N.J.A.C.7:13-1.1 et seq.,
6 Coastal Zone Management Rules, N.J.A.C.7:7E-1.1 et seq.
7 (recodified on July 6, 2015 as N.J.A.C.7:7-1.1 et seq.), and
8 Stormwater Management Rules, N.J.A.C.7:8-1.1 et seq. is not
9 consistent with legislative intent; and

10 **WHEREAS**, On January 11, 2016, Senate Concurrent Resolution No.
11 180 received final approval by the Legislature and was filed with
12 the Secretary of State and transmitted to the Commissioner of
13 Environmental Protection; and

14 **WHEREAS**, Senate Concurrent Resolution No. 180 expressed the
15 Legislature's finding that the Department of Environmental
16 Protection's June 1, 2015 proposal was not consistent with
17 legislative intent and informed the department, pursuant to Article
18 V, Section IV, paragraph 6 of the Constitution of the State of New
19 Jersey, that the department shall have 30 days following transmittal
20 of that concurrent resolution to amend or withdraw the proposed
21 rules and regulations or the Legislature may, by passage of another
22 concurrent resolution, exercise its authority under the Constitution
23 to prohibit the adoption of the proposed rules and regulations in
24 whole or in part; and

25 **WHEREAS**, The Department of Environmental Protection has failed to
26 amend or withdraw, or provide any notification to the Legislature of
27 its intention to amend or withdraw, the proposed regulations within
28 30 days after the transmission of Senate Concurrent Resolution No.
29 180; and

30 **WHEREAS**, Prior to voting on a concurrent resolution to invalidate an
31 adopted rule or regulation or prohibit the adoption of a proposed
32 rule or regulation, a public hearing shall be held on invalidating or
33 prohibiting the adoption of the proposed rule and the transcript of
34 that hearing shall be placed on the desk of each member of the
35 Senate and each member of the General Assembly; now, therefore,
36

37 **BE IT RESOLVED** by the Senate of the State of New Jersey (the
38 *General Assembly concurring*):

39
40 1. The Legislature prohibits adoption of the proposed rules and
41 regulations published by the Department of Environmental
42 Protection for public comment in the New Jersey Register on June
43 1, 2015, to revise the Flood Hazard Area Control Act Rules,
44 N.J.A.C.7:13-1.1 et seq., Coastal Zone Management Rules,
45 N.J.A.C.7:7E-1.1 et seq. (recodified on July 6, 2015 as N.J.A.C.7:7-
46 1.1 et seq.), and Stormwater Management Rules, N.J.A.C.7:8-1.1 et
47 seq.

SCR66 LESNIAK

4

1 2. Copies of this concurrent resolution, as filed with the
2 Secretary of State, shall be transmitted by the Clerk of the General
3 Assembly or the Secretary of the Senate to the Governor, the
4 Commissioner of Environmental Protection, and the Office of
5 Administrative Law.

6

7 3. This concurrent resolution shall take effect immediately.

8

9

10

STATEMENT

11

12 Pursuant to Article V, Section IV, paragraph 6 of the
13 Constitution of the State of New Jersey, this concurrent resolution
14 prohibits adoption of the rules and regulations proposed by the
15 Department of Environmental published for public comment in the
16 New Jersey Register on June 1, 2015, to revise the Flood Hazard
17 Area Control Act Rules, N.J.A.C.7:13-1.1 et seq., Coastal Zone
18 Management Rules, N.J.A.C.7:7E-1.1 et seq. (recodified on July 6,
19 2015 as N.J.A.C.7:7-1.1 et seq.), and Stormwater Management
20 Rules, N.J.A.C.7:8-1.1 et seq.

21 As required by the Constitution, the Legislature previously
22 informed the Department of Environmental Protection, through
23 Senate Concurrent Resolution No. 180 of 2015, of the Legislature's
24 finding that this rule proposal is not consistent with legislative
25 intent.

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SENATOR BOB SMITH (Chair): So, a newbie to our Committee -- a person who is here for the first time today -- they said, "Why is your room packed from wall to wall?" And I said to them, "Welcome to the most interesting Committee in the Legislature." (laughter)

So that being said, let's talk about today.

The plan is to do the constitutionally required public hearing, according to Article V, Section IV, paragraph 6 of the New Jersey Constitution, on the following Concurrent Resolution -- which is SCR-66. SCR-66, and that hearing is the first thing on our agenda. And then we're going to do monarch butterflies, and diamondback terrapins, and then the last thing we're going to do on the agenda is food waste -- food waste recycling, which is the frontier of recycling in this state.

We have -- how many amendments are there on food waste?

UNIDENTIFIED MEMBER OF COMMITTEE: Just say *a lot*.

SENATOR SMITH: A pile; we have a pile of amendments to the food waste bill over there, (laughter) which we would like those people who are interested in food waste to look at. We're not going to release the food waste bill today, and the reason for that is we have been getting cards and letters about ways to improve it. So rather than rush the cake that's in the oven, we're going to do it the right way. We're going to take our time, and probably the first meeting in May will be the time that we'll release the bill. But we want to do it right. We're still going to have our hearing on it today; we still want to hear what you have to say. And if you get a chance to react to some of the amendments, that would be great.

So that's the plan.

So let's first start the meeting with a roll call.

MS. HOROWITZ (Committee Aide): Senator Smith.

SENATOR SMITH: Present.

MS. HOROWITZ: Senator Greenstein.

SENATOR LINDA R. GREENSTEIN (Vice Chair): Here.

MS. HOROWITZ: Governor Codey.

GOVERNOR CODEY: Here.

MS. HOROWITZ: Senator Bateman.

SENATOR BATEMAN: Here.

MS. HOROWITZ: Senator Thompson.

SENATOR THOMPSON: Here.

SENATOR SMITH: All right. So let me start this hearing on the SCR, which is basically to overturn the Department of Environmental Protection's Flood Hazard Area Control Act Rules. And let me start it by entering into the record two letters. First is a letter that I wrote to the Commissioner about two-and-a-half weeks ago, and it says, "Dear Commissioner Martin: As you are aware, the Legislature has determined that the Department's Flood Hazard Area Control Act Rules, N.J.A.C. 7:13-1.1 et seq.; Coastal Zone Management Rules, N.J.A.C. 7:7E-1.1 et seq.; and Stormwater Management Rules, N.J.A.C. 7:8-1.1 et seq. are inconsistent with legislative intent. Article V, Section IV, paragraph 6 of the New Jersey State Constitution authorizes the Legislature to invalidate administrative rules that are not consistent with the intent of the underlying legislation.

"As required by the Constitution, the Legislature previously informed the Department, through Senate Concurrent Resolution 180 of 2015, of the legislature's finding that this rule proposal is not consistent with legislative intent.

“Specifically, the rule proposal deviates from the intent of the underlying legislation by lessening and removing protections for headwaters, allowing development in vulnerable areas and mitigation elsewhere, weakening stream buffer requirements, and making it easier to obtain permits to build in flood-prone areas.

“The Department’s 30-day period within which to amend or withdraw the proposed rules has elapsed and the Department has taken no corrective action. As a result of this inaction, Sen. Lesniak has introduced Senate Concurrent Resolution 66, which would invalidate the DEP rules in question. SCR-66 has been referred to the Senate Environment and Energy Committee.

“The Legislature would prefer to fix the DEP rules rather than simply throw them out. There may still be time to make the necessary corrections. Please let me know at your earliest convenience how you plan to proceed so that the Committee may act accordingly.

“Respectfully,” and then I signed it. And we will give that letter to our stenographer (*sic*) at today’s hearing.

On February 23, I received a letter from Commissioner Martin. And it says,

“Dear Senator Smith: Thank you for your letter of February 19, 2016, concerning the NJDEP’s Flood Hazard Area Control Act proposed regulations and the Legislature’s concern, expressed in SCR 180, that these regulations may be inconsistent with legislative intent.

“Subsequent to your Committee meeting on this resolution, and after meeting with the United States Environmental Protection Agency

and reading the comments submitted, the NJDEP reevaluated certain aspects of our regulatory proposal.

“As a result, we intend to make changes to our proposal to address a number of issues that were raised. I would like to meet with you at your earliest convenience to personally discuss what these changes will entail.

“Thank you for your continued involvement on this issue, and I look forward to our discussion,” signed, Bob Martin.

And I will enter that into the record.

So we have a number of witnesses, both pro and con, on the SCR. I’m going to have the DEP go first, and they will listen to everyone. And then at the end of the hearing, we’re going to decide on what we do.

So Mr. Cantor, if you would come up and introduce our DEP reps to talk about this. It’s Ginger Kopkash—

GINGER KOPKASH: (off mike) Correct.

SENATOR SMITH: And Ginger, you’re the head of the Land Use Section?

MS. KOPKASH: Correct.

SENATOR SMITH: Okay; take it away.

RAYMOND CANTOR: Thank you, Mr. Chairman and members of the Committee.

Again, my name is Ray Cantor; I am Chief Advisor to Commissioner Bob Martin of the Department of Environmental Protection. You did the introductions, but I will do a little bit more.

With me is Assistant Commissioner Ginger Kopkash, with our Land Use Management Section.

We're here today to discuss Flood Hazard Rules -- our Flood Hazard and Stormwater Rules. The Department proposed these rules in June 2015 in an effort to streamline our regulations; but also to maintain our very strict environmental and water quality standards that we have in those rules. And we believe very strongly that, even with our proposal, we have maintained, and will have and continue to have, the strictest water quality flood hazard protections of any state in the nation.

We came upon these rules after a very long period of looking at the issues, of being involved with how the program is implemented. It took years of work and extensive stakeholder meetings. We met with all interests from the other governmental agencies, the business community, environmental groups, academics, developer, and engineers before we came up with this proposal. Assistant Commissioner Ginger Kopkash and her staff worked personally on this rule for probably over three years now.

MS. KOPKASH: Yes.

MR. CANTOR: And she's personally run all of our stakeholder meetings. The dates of all those meetings, the attendees, the meeting summaries have all been posted on our DEP's webpages. It has always been our intent, whenever we do stakeholder meetings -- and we do this by invitation -- is to be as totally transparent as possible. Which is why everything is posted on our webpage; everyone knows who we're talking to and what is being said.

After we posted this proposal in the June 1 Register, again, under the Administrative Procedures Act, there was a 60-day comment period. We received over 844 individual comments; 649 of those were from

a form letter. But in total, looking at all the comments we received, there have been over 900 individual comments received.

In addition to those comments -- which we have been and continue to look at -- we met with EPA on February 1. Again, Ms. Kopkash and her staff went to EPA Region 2 on February 1 and had a very long and extensive meeting with EPA to discuss their concerns over this rule. And we believe that was a very productive meeting.

As a result of our looking at all the comments that were received, and talking to EPA, we have decided, at this point, not to adopt the regulation as we proposed it. On adoption, we plan to make material changes to address various issues, including what you can and cannot do in stream buffers; making sure the headwaters are protected; ensuring there will be more and more effective mitigation; and ensuring that there will be compliance with the Federal Clean Water Act's antidegradation, anti-backsliding policies. We are working very closely not only with EPA, as we have in the past; but with our Office of the Attorney General and our own staff to make sure that we are consistent with all Federal laws and mandates.

We also, in addition to making material changes on adoption and not adopting certain parts, plan to propose a concurrent proposal which would provide further clarification to the rule and provide for additional protections, especially on the mitigation area.

Over the next several weeks we plan to finalize our review of these changes and prepare the necessary amendments on the rule and the concurrent proposal.

We also plan to bring in some additional stakeholders, including the environmental community, to make sure that they understand what we're doing and why we're doing it, and to make sure that we understand fully all of their concerns.

This is the process that the Administrative Procedure Act envisions. We put forth a regulation after years of work, after years of study, after talking to everybody. But whenever you do that, you never get it all right the first time you put something out. We've received all the comments; we're studying all the comments. And as a result of the comment period, as the APA envisions, we are making changes based on that.

Because of that, Mr. Chairman and members of the Committee, we believe it is really premature for this Committee to be taking action today. I would suggest that you wait to see what the rules look like when we're done revising them and making changes. So we would hope that you would take no further action today.

We'll be happy to answer any further questions that you may have. And as you requested, Mr. Chairman, we will be staying around for the rest of the hearing today to hear what everyone has to say.

SENATOR SMITH: Thank you.

Ms. Kopkash--

MS. KOPKASH: Yes?

SENATOR SMITH: When you met with the U.S. EPA, what did they say?

MS. KOPKASH: Is it on? (referring to PA microphone)

MR. CANTOR: Red means on.

SENATOR SMITH: Red means go in Trenton. (laughter)

MS. KOPKASH: Oh, okay. (laughter) I apologize.

SENATOR SMITH: That's okay.

MS. KOPKASH: I want to clarify something. My staff met with EPA; I couldn't make that meeting. My daughter was sick, so David Fanz, who is my second-in-command, went up to EPA and met with them. And it was a very positive conversation. You may recall Vince Mazzei from our organization, who testified in the first hearing--

SENATOR SMITH: Yes.

MS. KOPKASH: --he was there, and he pretty much ran the conversation. He's very articulate on the subject matter. He's been implementing the rules for a number of years. And he explained to them what we were doing, and the recognition that maybe some of the rule language could have been perceived differently, which is the language that we're considering not adopting. It was a very positive conversation.

MR. CANTOR: And Mr. Chairman, we would have had Mr. Mazzei with us today, but he's home with the flu.

MS. KOPKASH: He has the flu; yes.

SENATOR SMITH: Okay.

SENATOR BATEMAN: Mr. Chairman, when you're done I'd like to ask--

SENATOR SMITH: Yes; Senator Bateman.

SENATOR BATEMAN: Mr. Chairman, through you; thank you.

Do you have a timeframe on when you think you'll be ready?

MR. CANTOR: Again, we've received over 900 individual comments. It's a very long and tedious process. A lot of the questions that were raised are of a legal significance, so we have a lot of work to do. We've been working very diligently since the comment period closed. So we're moving expeditiously, but we don't have a set timeframe at this point by which we're going to be done. But again, we've read the comments; we understand the issues being raised. We've already made certain decisions. We literally went back and compared exactly how the rules being implemented now-- If you're coming in for a driveway, if you're coming in for a house, you're coming in for a septic system -- how do we apply the rule now, what does the rule -- what does our proposal do. And we're looking for gaps. So we've identified all of those; and there are certain things we know we're not going to adopt, and certain things we know we need to change.

But to get through that whole legal process of being able to sufficiently respond to comments and draft a new proposal, I couldn't give you a date on that.

SENATOR BATEMAN: Okay. Do you think May, June? I mean, is that realistic?

MR. CANTOR: I think that's realistic. Again, Ginger has a staff of very dedicated professionals, including Mr. Mazzei, who is probably the State's expert in these rules and the subject. And they're working diligently. If Mr. Mazzei wasn't out ill for the last 10 days with the flu, maybe we could be a little bit further along. But we're working as we can.

SENATOR BATEMAN: All right.

MR. CANTOR: Now we have another team member out with the flu; these things just happen.

SENATOR BATEMAN: Thank you.

SENATOR SMITH: We want no more illness in the DEP.
(laughter)

MS. KOPKASH: I agree.

MR. CANTOR: I'm keeping them all in separate-- They don't even come in anymore; they just work from home.

GOVERNOR CODEY: Somebody better test the water over there. (laughter)

SENATOR GREENSTEIN: I was just thinking--

SENATOR SMITH: Good point, Governor.

Any other questions for DEP? (no response)

All right. Well, let me do a quick reaction -- which is, it is not unreasonable for the government to act reasonably. You're not proposing to adopt the regulations at this point. You see some changes that need to be made in the original. I think what our purpose should be today is to complete the hearing, which is constitutionally required, which puts the bullet in the gun. Because, quite frankly, both houses of the Legislature have already passed this resolution -- that what's currently proposed is violative of legislative intent.

But I do think we, as the Legislature, should try to work with the Executive branch, as long as at the end of the day the environment is not compromised. Let's see what you can do, all right? I know you're aware of the comments, and I think what we want to do also-- Ginger, if you wouldn't mind, could we have some additional letters sent in to you, by

maybe March 31, so that if there is anything that people here think should be considered, it's in Assistant Commissioner Kopkash's hands?

In addition to that, I'd like to be copied on those letters, all right? By me being copied -- I mean, Ms. Horowitz being copied, in OLS -- so the Committee is aware of what the thoughts of the stakeholders may be.

And then Mr. Cantor and Assistant Commissioner Kopkash, as a courtesy we'd like you to come back and tell us about the changes that you're going to make so that we don't have to pull that trigger; so that we are trying to act reasonably, and that we're protecting the environment, and maybe you're having a more efficient or better process. You know, I don't think we want to necessarily be at war with the Executive; we want to be working to protect the environment. And as long as those rules are going to do that, I think we'd be good with it. But we don't know that yet. We need to see what your changes are.

So that being said, why don't you guys pull up a chair?

MR. CANTOR: If I can, Mr. Chairman--

SENATOR SMITH: Yes, sir.

MR. CANTOR: --just one point; one, I appreciate your remarks. But just to make sure everyone understands the Administrative process -- it's perfectly okay for everyone to submit comments to Ms. Kopkash; we will obviously look at those because if we've missed anything, we want to be aware of that.

SENATOR SMITH: Sure.

MR. CANTOR: But just to set expectations -- we already have the 900-some-odd comments which we will respond to officially; we're not going to respond--

SENATOR SMITH: Officially, to these additional comments.

MR. CANTOR: Correct.

SENATOR SMITH: No; but the good news is they will be copied to the Committee so we can be more aware of what the issues are. And again, we're not trying to be adversarial; but our function -- one of our legislative functions is to make sure the environment is protected. I know that's your intent; but there are obviously some issues that need to be addressed.

So if you would pull up a chair.

I'll go pro-con, back and forth.

Let me start with Mike Egenton, who never gets any respect in front of this Committee--

M I C H A E L E G E N T O N: No respect.

SENATOR SMITH: --and Dennis Toft, who gets lots of respect. (laughter)

If you would introduce yourselves.

MR. EGENTON: Good morning, Chairman Smith and members of the Senate Environment and Energy Committee. I am Michael Egenton, Executive Vice President, Government Relations, for the New Jersey State Chamber of Commerce.

I'm joined by one of our Board of Directors, Dennis Toft, who is a member of the law firm Chiesa Shahinian & Giantomasi, heading their environmental practice. Dennis has great experience in several critical areas of environmental law, and I have had the benefit of working with him for several years now. His practice includes representation of developers, public utilities, parties performing remediation and redevelopment of

contaminated sites, and public entities. In the course of his practice, he frequently assists clients in obtaining flood hazard and other land use permits from NJDEP.

We are here today to urge the Committee to not approve SCR-66. The amendments to the Flood Hazard Rules proposed by DEP are not inconsistent with legislative intent under the Flood Hazard Area Control Act. These rules will prioritize and refocus permitting efforts on activities that are most likely to exacerbate flooding or pose a risk to the environment. These rules will make the permitting process more efficient, and add appropriate flexibility and provide greater consistency with Federal, local, and other State requirements.

As was said by DEP in the earlier remarks, many stakeholders, including the State Chamber, has spent countless hours and numerous meetings over the past several years assisting in the rulemaking process. And Chairman, let it be noted that it's not often that we can praise the regulatory process and the proposal's outcome.

Implementation of this rule proposal will support our efforts to redevelop distressed areas and bring much needed jobs and investment to New Jersey. And obviously our ask, Chairman, before I hand it over to Dennis, is to give the Department the ample time they need to respond and put forward their plan.

So I appreciate your remarks, and we concur.

With that, I'll hand it over to Dennis.

Thank you, Chairman.

SENATOR SMITH: Mr. Toft.

DENNIS M. TOFT, Esq.: Thank you, Mr. Chairman.

As Mr. Egenton said, my name is Dennis Toft; I head up the environmental practice at the firm of Chiesa Shahinian & Giantomasi, where my practice involves representation of developers, public utilities, parties performing remediation and redevelopment of contaminated sites, and public entities.

I frequently assist clients in the process of obtaining flood hazard and other permits from NJDEP.

As Mr. Egenton said, I'm here to urge the Committee not to adopt SCR-66. The whole purpose of the Flood Hazard Rules under consideration -- the large part was to address the unintended consequences of the prior rules that were adopted in 2007, while also streamlining the regulatory process.

Part of the problem with the existing rules is that they apply equally to previously disturbed areas and sites that have been developed for decades. This includes sites undergoing remediation. Application of the existing rules to these sites has delayed necessary remediation and has led, in some instances, to preventing other projects, which would have an environmental benefit, from proceeding. These sites include disturbances in riparian zones which existed before 2008 when the current rules were adopted. And most of these sites do not have measures now to address stormwater quality that are required under the current rules.

The rationalization of the riparian zone requirements in the proposed rule will make it easier to redevelop these sites, to finish remediation projects, and to incorporate up-to-date stormwater treatment systems. At the same time, the proposed rules will allow greater ability to mitigate for riparian zone impacts by increasing mitigation options to

match those under other programs. This will only increase the planting of trees and the protection of stream corridors.

To this end, it seems that the Legislature and proponents of SCR-66 misunderstand the proposed changes to the Special Water Resource Protection Area requirements. These 300-foot buffers are not being eliminated; rather, the requirements with respect to them are being moved to the Flood Hazard Rules where they belong. And this change will again allow for potential improvement to water quality on sites where a buffer covers an existing disturbed area where there is no modern stormwater treatment.

I understand that NJDEP is willing to address these concerns, as we just heard. And we look forward to participating in that process, and are (indiscernible) to hear that the Legislature intends to give DEP the time to do so.

The proposed rule also corrects the problem of having conflicting requirements between NJDEP and the Soil Conservation Service with respect to acid producing soils. This is also correcting unintended consequences of the 2007 rules, which only created confusion concerning these requirements.

The regulatory process changes in the rules are also needed to increase regulatory efficiency and allow both NJDEP and the regulated community to focus on projects with significant potential impacts. The process changes will assist the implementation of the necessary infrastructure and utility projects, while ensuring that environmental standards applicable to these projects are maintained.

Overall, therefore, the proposed Flood Hazard Rules provide an enhanced opportunity to increase environmental benefits by expediting remediation of contaminated sites; and making it possible for redevelopment, including implementation of improved stormwater management and riparian zone enhancement.

Thank you very much. I'm happy to take any questions.

SENATOR SMITH: Any questions? (no response)

All right; if not, Mr. Dillingham, American Littoral Society, is in favor of going forward with the SCR-66, and no need to testify.

Tim, do you still not want to testify, or do you want to testify?

T I M D I L L I N G H A M: Thank you, Mr. Chairman. Tim Dillingham; I'm the Executive Director of the American Littoral Society. We're a coastal conservation organization.

I was not anticipating being here, so I'm a little unprepared. I did send out comments to the Committee about the concerns we have about these rules.

SENATOR SMITH: Right. And would you now forward them on to Assistant Commissioner Kopkash as well?

MR. DILLINGHAM: I will.

SENATOR SMITH: Okay.

MR. DILLINGHAM: They are part of the 900-and-something comments that they received earlier--

SENATOR SMITH: Already?

MR. DILLINGHAM: --and we have participated with them in the conversation about these rules.

I do think one reason to keep moving forward is that clearly the Administration had set their policy direction in the initial design of these rules. And I think what I heard today from Mr. Cantor was an acknowledgement that parts of those rules were headed in the wrong direction -- in a way that was not supportive or protective of the environment; it was not consistent with the Federal Clean Water Act.

And so, in my mind, that's a recognition of mistakes and a need to redirect. And I appreciate the fact that they're doing that. A challenge in the stakeholder process always is to see what the actual language is and to have an opportunity to respond to that. If there are substantive or extensive changes to a rule, then clearly that's something that we would like to have an opportunity to look at again before those rules move forward.

You know, the idea of accommodating more development is really, sort of, the core of the problems that the environmental community has with this rule. There are some fundamentals about Flood Hazard areas, right? Stay out of the areas that flood; keep the barriers and the distances between development and the flood areas; and don't put more stormwater into already overcapacity streams in areas that are vulnerable to flooding. And these rules, as designed, go against all those fundamental ideas of how to protect the environment, and property, and people from flooding. They diminish the buffers; they allow more development in the Flood Hazard Areas; and they allow more stormwater to be piped indirectly into the streams.

So I understand that the building community always wants to build closer to the edge of the water. And they want to say, "Well, redevelopment -- we want to have redevelopment; we shouldn't have

buffers.” Those are old questions that were long ago, I think, addressed. I think if we haven’t learned the lessons from the flooding we have in this state now, about the need to sort of reshape some of the development on the landscape when we have the opportunity, I think, then, shame on us.

So I appreciate the Committee’s effort; I appreciate the Legislature’s effort in exercising their responsibilities and their authorities into the Constitution. And I would urge you to keep going forward to make sure this gets addressed appropriately.

SENATOR SMITH: Thank you.

For the record, Michael K. Drulis, New Jersey Seed, opposed to the SCR, no need to testify; Tony Pizzutillo, NAIOP, opposed, no need to testify; Ed Wengryn, New Jersey Farm Bureau, opposed. And Ed’s going to testify.

ED WENGRYN: Good morning, Mr. Chairman and members of the Committee. Ed Wengryn from New Jersey Farm Bureau.

One of our comments I think you’re addressing by letting the process play out, and we appreciate DEP having the opportunity to make amendments that they feel are necessary.

We supported the rule, in part, because they’ve addressed a long-standing conflict between conservation plans on farms and DEP’s wetlands and stream corridor rules. You have a farm that wants to improve water quality on the farm by enhancing its buffer strips -- these are done within a wetland area -- you get a plan from the Conservation Service or USDA, follow their three-ring-binder-thick photog of standards and practices, and then DEP says, “Oh, well, you need a permit to do all that.”

And then the cost of the permit makes the project unfunctionable for farms to actually do the practice that would improve the water quality.

They simplified that permitting process. So as they go forward in amending the rules, we're encouraging them to keep that section in that streamlines those things that match up with the USDA and Farm Service Agency -- or Soil Conservation District rules.

So thank you very much for hearing us.

SENATOR SMITH: Thank you for coming in.

And again, get your additional cards and letters in to Assistant Commissioner Kopkash, with a copy to us.

For the record, Sara Bluhm, NJBIA, opposed, no need to testify; Tony Russo, Commerce and Industry Association, opposed, no need to testify; Nancy Hedinger, League of Women Voters, in favor of going forward.

Nancy.

NANCY HEDINGER: Thank you, Mr. Chairman.

SENATOR SMITH: Hit the red; right, that's it.

MS. HEDINGER: Thank you. My name is Nancy Hedinger; I'm President of the League of Women Voters of New Jersey.

The League supports SCR-66, which prohibits adoption of DEP's harmful revisions of the Flood Hazard Control Act Rules, the Coastal Zone Management Rules, and the Stormwater Management Rules. We believe these revisions would threaten our drinking water and the safety of our residents.

We thank the Legislature for recognizing these rule proposals are not consistent with legislative intent. We're pleased to hear that they're

being reevaluated. And I hope we will have an opportunity to see them and comment on them after they've been proposed.

SENATOR SMITH: Absolutely.

MS. HEDINGER: Okay.

I just want to add that SWRPA buffers are critical. We're particularly concerned about any roll-back protections against flooding to allow more stream buffer vegetation to be cleared, placing more people and development in flood areas, and putting more residents in harm's way.

As I said, SWRPA buffers are critical. They not only provide protection from rising waters, but they also help remove contaminants from stormwater before they reach sensitive headwater streams that feed our reservoirs.

It's important to note that New Jersey last adopted a Water Supply Master Plan 20 years ago. We believe it's dangerous and imprudent to oppose consequential rule changes without an updated plan to evaluate our water supplies and future needs. Any revision should take into consideration the increased development in our watershed since adoption of the dated Water Supply Master Plan.

The League asks the Committee to pass the resolution and end DEP's-- Well, obviously, let's wait and see what they come up with. And if anyone has an opportunity to comment, we'd be very happy to weigh in at that point.

SENATOR SMITH: Thank you.

MS. HEDINGER: Thanks.

SENATOR SMITH: Megan Tinsley, from New Jersey Audubon, in favor of the SCR, no need to testify; Ciro Scalera, Laborers

Union, opposed, no need to testify, with the note, “Why not wait until DEP makes its changes based on comments to SCR-66?” Bruce Shapiro, New Jersey Realtors, opposed, no need to testify; Jeff Tittel, Sierra Club, in favor.

Jeff.

J E F F T I T T E L: Thank you.

And I want to thank this Legislature for its work that they’ve done on this issue so far. This has been the most important environmental issue that you really have worked on; and you have a long list of some really good issues.

SENATOR SMITH: I would disagree. I think Open Space is more important; but it’s okay. (laughter)

MR. TITTEL: Well, this protects 300,000--

SENATOR SMITH: And I like e-waste a lot, too.

MR. TITTEL: This protects over 300,000 acres in New Jersey--

SENATOR SMITH: Yes.

MR. TITTEL: --without costing the taxpayers money.

So I wanted to start off and say, given what’s happened in Flint, and the reasons that we’re looking at a continuation of trying to protect waters, we think this is why it’s so important. Because the water supply in New Jersey, as you know, is being threatened by overdevelopment, by pollution. According to the 303(d) list, which is the latest update, only 2.5 percent of New Jersey streams meet all conditions. And if you remember, the main reason for these Flood Hazard Rules, when they were put in place by Lisa Jackson, was to protect the headwaters to these key CI streams above our reservoirs, which protect our riparian

corridors for water quality purposes and prevent against flooding. New Jersey has seen more flooding than almost any other state. So these rules are critical when you look at trying to protect New Jersey's waters, especially its drinking water.

A couple of points that I want to make, because I happen to think that the reason that we're here is because of this Legislature being tough and standing up for clean water. Otherwise, we wouldn't be here. A few months ago, the same people here were saying we're looking to make changes; were saying, everything was fine. The EPA agreed with the rules, when it turned out it wasn't true. And now they're coming back and saying, "Trust us." Like Ronald Reagan said, "Trust, but verify."

SENATOR SMITH: Well, I hope you do understand that today's hearing is a check-off on the constitutional box--

MR. TITTEL: I understand; yes.

SENATOR SMITH: --puts the bullet in the gun.

MR. TITTEL: Yes.

SENATOR SMITH: It doesn't fire it.

MR. TITTEL: Right; I understand.

SENATOR SMITH: So we're going to see revised regulations, and then we're going to make the decision on what to do.

MR. TITTEL: And I happen to believe that you should go forward with voting this out of Committee. You don't have to bring it to a floor vote until you see what those changes are and you see that there's an open and transparent process.

Look, they said they had a stakeholder process on rewriting the rule. We weren't included, and most of the environmental groups I know

were not included. They say they're going to have another stakeholder process. Is it going to be open to the public? Is it going to be transparent?

SENATOR SMITH: Actually, they didn't say they were going to have another stakeholder process.

MR. TITTEL: I thought he said--

SENATOR SMITH: I think what Mr. Cantor said was that Assistant Commissioner Kopkash is happy to receive additional letters, and we're going to be copied. But it's not part of the APA process to which they have to make a response.

MR. TITTEL: Right.

SENATOR SMITH: Ultimately, I think the people who they have to make happy are the people on this Committee and the Legislature. We want to see what the revised regulations are; we want there to be a public process where everybody gets a chance to see what the proposed regulations are. If they remove the environmental -- the significant environmental issues, we may be okay with them. On the other hand, if they don't, then we may fire the bullet.

MR. TITTEL: And I'm--

SENATOR SMITH: And I think there's a certain value to this tension between the Legislature and the Executive Branch to try and get them right. We in the Legislature recognized, in the last session, that we did not believe the proposed regulations met legislative intent.

MR. TITTEL: Right.

SENATOR SMITH: And as a result, you had majority votes in both houses that said, "Overturn them." So all we're doing is keeping the pressure on to get them right.

MR. TITTEL: Let me continue.

The point I was trying to get at is that we know in the rules -- and again, it's kind of interesting, because you hear, like, the builders and others saying, "The rules are fine, but now we'll wait for the DEP." The rules weren't fine, and we know that. That's why you voted the way you did.

Here are my major concerns where I have -- I really have a concern with what DEP is going to do, going forward. Will they actually make real changes and keep intact a lot of the 2007 rules that protect headwaters, that protect the surface water quality standards, that protect against anti-backsliding on our TMDLs and the Clean Water Act?

The most important piece is the SWRPA -- the Special Water Resource Protection Areas -- a 150-foot no-touch line on each side of the stream. That, to me, has to be included in the change to keep that intact and not to allow -- to be able to drill under C1 streams for gas pipelines, which is in the rules. And 63 different kinds of new permits that were added, and Permits by Certification, and all kinds of other things.

So I think again, like Ronald Regan said, "Trust, but verify" -- I believe in verifying more than I trust, given how the rules were written and pushed through, given the Governor's own statements in Iowa where he attacked these rules and the Waters of the United States. There are other pieces in here that I'm concerned about -- the definition of connectivity -- because under these rules again it goes against what the Waters of the United States says -- that if a stream isn't-- Under these rules, there are streams that are not considered streams anymore that, under New Jersey rules in the past, were always streams.

And so, for us, I would like to see this move forward -- not go for a floor vote, but until we see exactly what's going to be repropoed-- Because I have concern that they're going to do the minimal and then say they did something. And then we'll still have a rule that will weaken water protections and increase flooding.

SENATOR SMITH: We appreciate your comments.

For the record, the International Council of Shopping Centers, opposed, and they indicate that there's a letter sent, that the Committee has, with their position; Dwight Pittenger and Tony DiLodovico, from the New Jersey Builders Association, opposed.

D W I G H T W. P I T T E N G E R, Esq.: Chairman Smith, Committee members, good morning.

SENATOR SMITH: Good morning.

MR. PITTENGER: My name is Dwight Pittenger; I'm an officer of the New Jersey Builders Association. I'm also a home builder in Monmouth County.

In the interest of time, we have submitted a written statement and a copy of our detailed comments on DEP's proposed amendments. But we would like to briefly highlight why we strongly oppose SCR-66.

It's no secret that New Jersey's economy continues to lag nationally and regionally because costly, inconsistent, and lengthy land use rules and regulations deter companies from moving to or expanding in New Jersey. The current regulatory framework unnecessarily impedes vital development projects from moving forward in our state.

We strongly support and applaud the DEP for proposing changes that would benefit the rebuilding of New Jersey's economic base in

the aftermath of the great recession and Superstorm Sandy. The DEP has held numerous meetings with stakeholders from both the environmental and regulating community to ensure that any proposed amendments would safeguard the environment and public health. As a result, the DEP has done a very good job of balancing environmental protection and economic growth.

With me here today is Tony DiLodovico, a regulatory consultant with Omland Consulting and a member of the State Soil Conservation Committee; and he will highlight why we--

SENATOR SMITH: Why you oppose SCR--

MR. PITTENGER: --why we oppose this resolution and would support the DEP.

SENATOR SMITH: Yes, I don't charge extra for filling in the blanks. (laughter)

Tony, a question for you before you go into this.

T O N Y D i L O D O V I C O: Sure.

SENATOR SMITH: My understanding is the Department of Ag has forwarded soil restoration standards to the front office?

MR. DiLODOVICO: Yes, yes.

SENATOR SMITH: How's it going?

MR. DiLODOVICO: Well, we have our meeting -- and I'll apologize -- I had the flu the last week, but -- I didn't have the flu, but I was sick. My son had the flu; so my voice is getting better, and I'm feeling all right. But my voice is bad.

We have our State Soil Conservation Committee meeting next Monday.

SENATOR SMITH: Right.

MR. DiLODOVICO: And it should be on the agenda to put them into the Register to formally oppose them. But we at the Committee have approved the changes--

SENATOR SMITH: Do they have the clearance in the front office?

MR. DiLODOVICO: That's -- I haven't gotten the letter yet.

SENATOR SMITH: Well, if you get the clearance--

MR. DiLODOVICO: We're supposed to get the clearance, so it can be on Monday.

SENATOR SMITH: If you get the clearance, do us a favor and send us a copy so we can take a look at them.

MR. DiLODOVICO: I will do that; sure.

SENATOR SMITH: Thank you.

MR. DiLODOVICO: No problem.

SENATOR SMITH: All right, back to the topic at hand.

SCR-66, in opposition -- what is your position on that?

MR. DiLODOVICO: Well, I had some prepared notes here. But I'm encouraged that the Department came and explained what they were doing, and you now want to see what they've done. The problem I had with trying to understand this process was they proposed the rules, they take comments, and then based upon comments they would either adopt the rule or make changes, pull the rule. And it appears that based upon discussions with EPA and comments they received, they're making changes to the rule. They'll adopt part of the rule, where they don't believe

there's an issue, it sounds like. Then they're going to propose changes. And I think that's how it should work.

There's a lot a lot of discussion on this SWRPA. The removal of the SWRPA from the Stormwater Rule is because the Flood Hazard Rule is the permitting program. And right now, in order to address issues of the SWRPA, you have to follow Administrative Order, whatever the number is, from 2008 by Lisa Jackson, which has you go through the Flood Hazard permitting process to address whether there should be any allowance in actively disturbed areas. What this does is just puts all of that into the Flood Hazard Rule; and it doesn't have it in one rule, that then directs you through an order to follow the other rule.

So to say that it's coming out -- it's not coming out. The protections are there; we could argue back and forth -- are the protections dissimilar, are they weakening protections, are they strengthening protections. That's subjective; I haven't seen any specific items as to what exactly is wrong with the protections that are being proposed. But the Department will evidently clarify that when they do that.

With the acid soils -- that's something that I've been harping on, as being part of the State's Soil Conservation Committee and Vice Chairman of the Ocean County Soil for 16 years -- is we don't want to run stormwater through acid soils. We want to make sure that those soils are stable and that development goes and covers them. That's really a construction issue; we've been regulating acid-producing soils through the Soil Erosion Standards for many years now. And there's really been no issue with the acid-producing soils in the state, particularly ever since we've had them in the Standards.

So what the rule does do-- I was on the Permitting Efficiency Task Force with Lisa Jackson and a number of people in the room. And we all had decided that we needed a more straightforward permitting process; we needed Permit by Rules; general permits. And this rule does all of that.

And so we're encouraged to see that it's moving forward and that any issues that are out there are being addressed.

SENATOR SMITH: Great; thank you for your comments.

Any questions? (no response)

All right then, Mike Pisauero, Stony Brook-Millstone Watershed Association, in favor.

MICHAEL L. PISAURO Jr., Esq.: (coughs) Excuse me; I'm getting over something myself.

SENATOR SMITH: (off mike) Wait a minute; you've been over to the Department? (laughter)

MR. PISAURO: No, not yet. It's been a while.

SENATOR SMITH: (of mike) How'd you get sick?

MR. PISAURO: Children.

SENATOR SMITH: Probably touching legislative hearing microphones. (laughter)

MR. PISAURO: Good morning. My name is Mike Pisauero; I'm the Policy Director for the Stony Brook-Millstone Watershed Association. And prior to that, I was in private practice where I represented land use objectors and environmental organizations on projects. And I say that to give a little background to some of my comments.

I am very thankful to the sponsors in this Committee for having this hearing. I think we're only here today because the Legislature acted at

the end of last year and in January; otherwise, we would not have rules -- their statements. And what I did hear from DEP was an implicit understanding that, yes, the proposed rules were inconsistent with the legislative intent and, therefore, they are making changes -- which I am hopeful -- I'm going to cross my fingers and follow Jeff's lead in hope and verify later.

A couple of comments: The one thing I did not hear was that they were going to restore the protections to the riparian zones. I did hear that they were going to increase mitigation, but not improving or restoring the protections to the riparian zones. What the prior rules of this rule proposal did was increase the amount of impacts to the riparian zones that were allowed. They increased the amount of impacts without mitigation, and maintaining riparian zones are vitally important to the protection of water quality. DEP, in its 2007-2008 rules, made that scientific basis very clear. Wider, intact buffers protect water quality. Protecting water quality is extremely important because under our Surface Water Law, N.J.A.C. 7:9B-1.5 (d)1 -- requires that "no irreversible changes may be made to existing water quality that would impair or preclude attainment of the designated uses."

So DEP's rules are supposed to protect and enhance water quality. According to the most recent Integrated Water Report, which is DEP's analysis every two years of whether our waters are meeting water quality, the vast majority of our waters are not meeting water quality. So maintaining the riparian zones is vital.

I will also point out the developers -- the prior speaker indicated that the SWRPAs really impeded redevelopment, in that these

rules would allow stormwater management, Under the Stormwater Rules, unless a redevelopment site disturbs a new one-quarter acre of ground or increases the impervious surface by a quarter-acre, the Stormwater Rules aren't triggered. So, you know, it's not really there. The SWRPA also protected water quality -- as the prior speaker said -- by allowing some development or redevelopment in the outer 150 if it was disturbed; but protecting that inner 150 -- and that's very important, because the SWRPAs protected water quality for the CIs, which are nondegradation waters. You cannot degrade those.

And lastly, to tie back up with the riparian zones, under Clean Water Act you're supposed to avoid the impacts; then mitigate if you can't avoid those impacts. And what DEP's rules throughout said, "Well, these impacts -- we see more and more applications for hardships, so we're going to increase it." No, we're supposed to design the rules to avoid those impacts first, and then only in the true case, when they are completely and totally unavoidable, do we then step to mitigation. And the rule proposal does not do that.

So I'm very thankful for this Committee to have this hearing. I urge you to release this bill; and then hopefully DEP's proposed changes will meet this Committee's and the Legislature's concerns.

Thank you.

SENATOR SMITH: Thank you for your comments.

David Pringle, Clean Water Action, in favor.

Mr. Pringle.

DAVID PRINGLE: I think this is a safer mike, so I'm staying to the left. (laughter)

We do support the resolution; no big surprise. I like your analogy about lock and loaded; the resolution should be released today. And that's because most importantly, I think the record is clear -- we can't trust this Administration; we can't trust DEP. They proposed this rule in the first place; they provided testimony, last time through, that they had satisfied the EPA. EPA said, after the fact, that was in fact not the case. They were silent since -- until today, for two months, since the Senate acted before. And if you look at the totality of the record of the weakening of the protections -- from Pinelands to Highlands, to other water rules, to climate change -- I think it's clear that left to their own devices this Administration can't be trusted when it comes to protecting the environment.

And they have been extremely exclusive -- meaning, not being inclusive in terms of moving this process forward to date. The Process even here isn't clear in terms of they're accepting additional comment, but we have nothing other than the verbal testimony to understand what we should be commenting on now. So that doesn't really make sense.

And in a post-Flint world, I think it's clear how important it is -- not that it wasn't already -- but it brings home the point about protecting our drinking water in a post-Sandy world; how important it is to provide adequate flood protections. And this rule, to date, has done just the opposite.

So we urge you to keep their feet to the fire and release it today.

SENATOR SMITH: Thank you for your comments.

Britta Wenzel, Save Barnegat Bay; last, but not least.

Britta.

B R I T T A W E N Z E L: Good afternoon, and thank you for your leadership on this subject.

We are obviously in support of SCR-66. And I don't want to repeat what my colleagues have said, but we very much agree.

I would like to add that the recently released 303(d) list for new information -- Barnegat Bay has nine segments, which the DEP assesses, and five of those segments do not support aquatic life. And that's new; that's degradation, heading -- eutrophication heading to the southern segments of the Bay. Four of the nine segments have insufficient data, two of which are in the northern part of the Bay -- the Metedeconk area and Bay Head area -- which historically have had degraded waters. So we expect if there was sufficient data, you would have seven out of the nine segments in Barnegat Bay having degraded waters.

The only two that are coming up clean are at the mouth of the Barnegat Inlet. Obviously, there's a lot of flush there.

What this means to this particular subject is that increased development on the land, which is heading to the southern parts of the watershed, impacts water quality. It's important to have the protections in place in the Flood Hazard Zone. We're bothered by the increased potential development, for example, in marinas that would be allowed. That's problematic. At the foot of the Mantoloking Bridge, one marina has become converted into a park, and the other one soon to be just docks with a restaurant.

There are definitely struggles on the industry side. I'm born and raised at a boatyard; I understand that. However, the impact on water quality is just not acceptable.

So we would agree with many of the comments already submitted. And the buffers need to be in place.

And that's it; we thank you for your support.

SENATOR SMITH: Thank you, Britta.

Okay, that concludes our hearing. Check that box on the constitutional checklist.

After listening to the witnesses, unless some of the Senators are going to really beat me up for this, I think we should give the DEP the opportunity to correct their rules and regulations. I don't think it's the world's greatest precedent to set where the Legislature is micromanaging rules. On the other hand, when the rules are egregiously not with -- in conforming with the legislative intent, then we have to take out the nuclear button and act accordingly.

But I think it's fair to allow the DEP to have an opportunity to revise its rules and regulations, come back to us, and let's see where they are and whether we've addressed some of these environmental concerns. And then we have the ability to go forward. And I think it's a situation of no harm, no foul. The rules have not been adopted; they are not the regulations for the State of New Jersey at this point. So if we can get the regulations, in our opinion, to be cleaned up, I think that's a good process to go through.

Anybody disagree with that? (no response)

Okay; then we're going to-- The hearing is completed; check the box. The SCR is held to, hopefully, the first meeting in May, which was kind of like a timeframe that the DEP said it might be able to make. If it can't make it by then, we'll adjourn it.

But we're in a position where if the rules are not revised appropriately, or if in the opinion of a majority of this Committee are not revised appropriately, we can go forward with this. And you do know -- DEP does know that both houses of the Legislature have now passed this the first time. The Constitution requires that we do it twice. Before we do that, let's have an opportunity to have a process where this gets -- hopefully the issues get resolved.

And that being said, we're going to hold SCR-66 to the May meeting and hope for the best. And we will verify; we will trust, but we will verify.

(HEARING CONCLUDED)