
Committee Meeting

of

SENATE ENVIRONMENT AND ENERGY COMMITTEE

“The Committee has invited representatives from the Department of Environmental Protection to discuss the proposed revisions to the Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules”

The following bills will be considered:

S-580, S-885, S-1251

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

DATE: May 16, 2016
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Linda R. Greenstein, Vice Chair
Senator Richard D. Codey
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 Alpert
*Senate Republican
Committee Aide*

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



BOB SMITH
Chairman

LINDA R. GREENSTEIN
Vice-Chairwoman

RICHARD J. CODEY
CHRISTOPHER "KIP" BATEMAN
SAMUEL D. THOMPSON

JUDITH L. HOROWITZ
Office of Legislative Services
Committee Aide
(609) 847-3855
(609) 292-0561 fax

MICHAEL MOLIMOCK
Office of Legislative Services
Committee Aide
(609) 847-3855
(609) 292-0561 fax

New Jersey State Legislature

SENATE ENVIRONMENT
AND ENERGY COMMITTEE
STATE HOUSE ANNEX
PO BOX 068
TRENTON NJ 08625-0068

COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE ENVIRONMENT AND ENERGY COMMITTEE

FROM: SENATOR BOB SMITH, CHAIRMAN

SUBJECT: COMMITTEE MEETING - MAY 16, 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, May 16, 2016 at 10:00 AM in Committee Room 10, 3rd Floor, State House Annex, Trenton, New Jersey.

The committee has invited representatives from the Department of Environmental Protection to discuss the proposed revisions to the Flood Hazard Area Control Act Rules, Coastal Zone Management Rules, and Stormwater Management Rules.

The following bills will be considered:

S-580 Doherty	Establishes NJ Water Supply and Pharmaceutical Product Study Commission.
S-885 Greenstein	Requires maximum contaminant level to be established for 1,2,3-trichloropropane in drinking water.
S-1251 Vitale	Allows tax credits for development of qualified wind energy facilities in certain portfield sites.

Issued 5/10/16

For reasonable accommodation of a disability call the telephone number or fax number above, or for persons with hearing loss dial 711 for NJ Relay. The provision of assistive listening devices requires 24 hours' notice. CART or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, see website <http://www.njleg.state.nj.us> or call 800-792-8630 (toll-free in NJ) or 609-847-3905.

[First Reprint]

SENATE, No. 580

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator MICHAEL J. DOHERTY

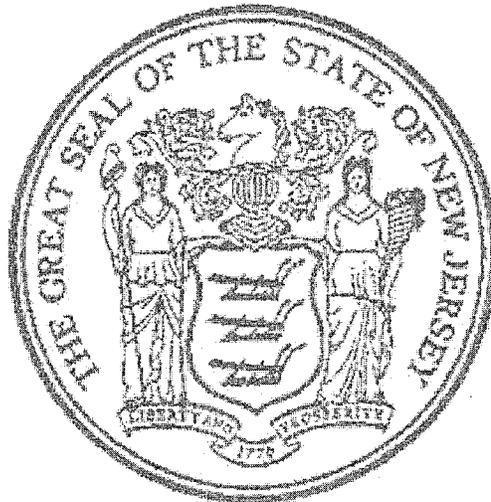
District 23 (Hunterdon, Somerset and Warren)

SYNOPSIS

Establishes NJ Water Supply and Pharmaceutical Product Study Commission.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee on May 16, 2016, with amendments.



S580 [1R] DOHERTY

2

1 AN ACT establishing the New Jersey Water Supply and
2 Pharmaceutical Product Study Commission.

3

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

6

7 1. The Legislature finds and declares that recent studies have
8 shown measurable quantities of pharmaceutical products, such as
9 antibiotics, hormones, and anti-depressants, in water supplies
10 throughout the country, and that the effects of these substances,
11 individually and in combination, on human health and the
12 environment are unknown.

13 The Legislature further finds and declares that the increasing use
14 of pharmaceuticals, in combination with the lack of information
15 **and systems for proper disposal of these substances**¹, will likely
16 result in increasing quantities of pharmaceuticals in the water
17 supply of the State.

18 The Legislature further finds and declares that there **is** are¹
19 currently no adequate government guidelines or requirements for
20 the proper **disposal**¹ detection and management of
21 pharmaceutical products in water supplies, and, therefore, various
22 proposals and systems should be examined to determine if such
23 oversight is necessary, and if so, to determine the best method of
24 pharmaceutical **disposal** product detection and¹ management.

25 The Legislature further finds and declares that the public health
26 and well-being, as well as public confidence in the water supply,
27 are critical and, therefore, further study and investigation into the
28 potential risks of pharmaceutical products in the water supply is
29 necessary.

30

31 2. As used in this act:

32 "Commission" means the New Jersey Water Supply and
33 Pharmaceutical Product Study Commission established pursuant to
34 section 3 of this act.

35 "Department" means the Department of Environmental
36 Protection.

37 "Pharmaceutical product" means any prescription or over-the-
38 counter therapeutic drug including those used for veterinary
39 purposes.

40

41 3. There is established the New Jersey Water Supply and
42 Pharmaceutical Product Study Commission. The purpose of the
43 commission shall be to investigate, quantify, and evaluate the
44 potential risks associated with pharmaceutical products in the water

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted May 16, 2016.

1 supply of the State and to develop recommendations for ¹[proper
2 disposal methods and] ¹ potential filtering techniques to remove
3 pharmaceutical products from the waste stream.

4 a. The commission shall consist of nine voting members ¹, who
5 shall be appointed no later than the 60th day after the effective date
6 of this act. ¹ as follows:

7 (1) the Commissioner of Environmental Protection, or a
8 designee, who shall serve ex officio;

9 (2) four members of the Senate, of whom two shall be members
10 of the majority party appointed by the President of the Senate and
11 two shall be members of the minority party appointed by the
12 Minority Leader of the Senate; and

13 (3) four members of the General Assembly, of whom two shall
14 be members of the majority party appointed by the Speaker of the
15 General Assembly and two shall be members of the minority party
16 appointed by the Minority Leader of the General Assembly.

17 b. The commission shall organize as soon as practicable, but no
18 later than the 30th day after the appointment of its members, and
19 shall select a chairperson and vice-chairperson from among the
20 members.

21 c. The commission shall meet at the call of its chairperson or a
22 majority of its members, and ¹it ¹ may hold hearings at the times and
23 in the places it may deem appropriate and necessary to fulfill its
24 charge.

25 d. A majority of the commission shall constitute a quorum for
26 the transaction of commission business. Action may be taken and
27 motions and resolutions adopted by the commission at any meeting
28 thereof by the affirmative vote of a majority of the membership of
29 the commission.

30 e. Members of the commission shall serve without
31 compensation, but the commission may, within the limits of funds
32 appropriated or otherwise made available to it, reimburse its
33 members for actual and necessary expenses incurred in the
34 discharge of their official duties.

35 f. The commission shall be entitled to call to its assistance and
36 avail itself of the services of the employees of any State, county ¹,
37 or municipal department, board, bureau, commission, authority ¹,
38 or agency as it may require and as may be available to it for its
39 purposes, ¹[and] ¹ to employ stenographic and clerical assistance ¹,
40 and to incur traveling and other miscellaneous expenses as may be
41 necessary in order to perform its duties, within the limits of funds
42 appropriated or otherwise made available to it for its purposes. The
43 department shall provide staff support to the commission.

44 g. The commission shall report its findings and conclusions,
45 together with any recommendations for legislative, administrative,
46 or private sector action, to the Governor and, pursuant to section 2
47 of P.L.1991, c.164 (C:52:14-19.1), to the Legislature within two

S580 [1R] DOHERTY

4

1 years after the date of its initial meeting. Copies of the report shall
2 also be made available to the public upon request at no charge or
3 for a fee not to exceed the cost of reproduction, and the report shall
4 be posted on the website of the department.

5 h. The commission shall expire on the 120th day after the
6 transmittal of its report to the Governor and the Legislature.

7

8 4. This act shall take effect immediately.

SENATE, No. 885

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

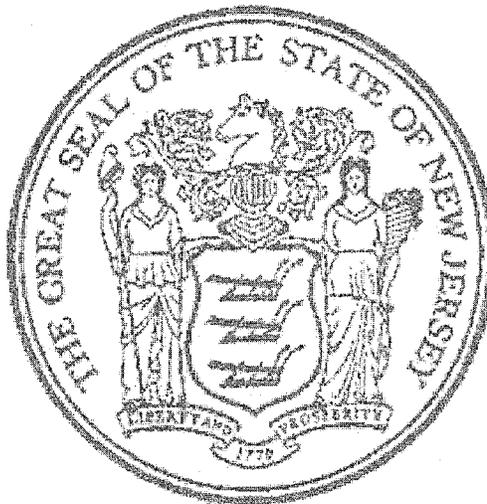
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

SYNOPSIS

Requires maximum contaminant level to be established for 1,2,3-trichloropropane in drinking water.

CURRENT VERSION OF TEXT

As reported by the Senate Environment and Energy Committee with technical review.



S885 GREENSTEIN

2

1 AN ACT concerning a maximum contaminant level for 1,2,3-
2 trichloropropane and supplementing P.L.1977, c.224 (C.58:12A-
3 1 et seq.).

4

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

7

8 1. a. The Drinking Water Quality Institute established pursuant
9 to section 10 of P.L.1983, c.443 (C.58:12A-20) shall study the issue
10 of 1,2,3-trichloropropane levels in drinking water and, within 90
11 days after the date of enactment of this act, recommend to the
12 Department of Environmental Protection a maximum contaminant
13 level for 1,2,3-trichloropropane in drinking water.

14 b. The Department of Environmental Protection shall adopt,
15 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
16 (C.52:14B-1 et seq.), a maximum contaminant level for 1,2,3-
17 trichloropropane based upon the recommendation made by the
18 Drinking Water Quality Institute pursuant to subsection a. of this
19 section. The department shall adopt the maximum contaminant
20 level for 1,2,3-trichloropropane within 180 days after receiving the
21 recommendation thereon from the institute.

22

23 2. This act shall take effect immediately.

SENATE, No. 1251

STATE OF NEW JERSEY

217th LEGISLATURE

INTRODUCED FEBRUARY 8, 2016

Sponsored by:

Senator JOSEPH F. VITALE

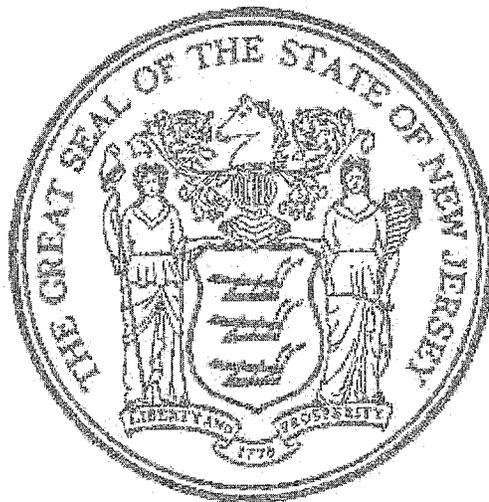
District 19 (Middlesex)

SYNOPSIS

Allows tax credits for development of qualified wind energy facilities in certain portfield sites.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning wind energy zones and amending P.L.2010,
2 c.57.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 6 of P.L.2010, c.57 (C.34:1B-209.4) is amended to
8 read as follows:

9 6. a. (1) A business, upon application to and approval from
10 the authority, shall be allowed a credit of 100 percent of its capital
11 investment, made after the effective date of P.L.2010, c.57 (C.48:3-
12 87.1 et al.) but prior to its submission of documentation pursuant to
13 subsection c. of this section, in a qualified wind energy facility
14 located within an eligible wind energy zone, pursuant to the
15 restrictions and requirements of this section. To be eligible for any
16 tax credits authorized under this section, a business shall
17 demonstrate to the authority, at the time of application, that the
18 State's financial support of the proposed capital investment in a
19 qualified wind energy facility will yield a net positive benefit to the
20 State. The value of all credits approved by the authority pursuant to
21 this section may be up to \$100,000,000, except as may be increased
22 by the authority if the chief executive officer judges certain
23 qualified offshore wind projects to be meritorious. Credits provided
24 pursuant to this section shall not be applicable to the cap on the
25 credits provided in section 3 of P.L.2007, c.346 (C.34:1B-209).

26 (2) (a) A business, other than a tenant eligible pursuant to
27 subparagraph (b) of this paragraph, shall make or acquire capital
28 investments totaling not less than \$50,000,000 in a qualified wind
29 energy facility, at which the business, including tenants at the
30 qualified wind energy facility, shall employ at least 300 new, full-
31 time employees, to be eligible for a credit under this section. A
32 business that acquires a qualified wind energy facility after the
33 effective date of P.L.2010, c.57 (C.48:3-87.1 et al.) shall also be
34 deemed to have acquired the capital investment made or acquired
35 by the seller.

36 (b) A business that is a tenant in the qualified wind energy
37 facility, the owner of which has made or acquired capital
38 investments in the facility totaling more than \$50,000,000, shall
39 occupy a leased area of the qualified wind energy facility that
40 represents at least \$17,500,000 of the capital investment in the
41 qualified wind energy facility at which at least 300 new, full-time
42 employees in the aggregate are employed, to be eligible for a credit
43 under this section. The amount of capital investment in a facility
44 that a leased area represents shall be equal to that percentage of the
45 owner's total capital investment in the facility that the percentage of
46 net leasable area leased by the tenant is of the total net leasable area

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

Matter underlined thus is new matter.

1 of the qualified business facility. Capital investments made by a
2 tenant shall be deemed to be included in the calculation of the
3 capital investment made or acquired by the owner, but only to the
4 extent necessary to meet the owner's minimum capital investment of
5 \$50,000,000. Capital investments made by a tenant and not
6 allocated to meet the owner's minimum capital investment threshold
7 of \$50,000,000 shall be added to the amount of capital investment
8 represented by the tenant's leased area in the qualified wind energy
9 facility.

10 (c) The calculation of the number of new, full-time employees
11 required pursuant to subparagraphs (a) and (b) of this paragraph
12 may include the number of new, full-time positions resulting from
13 an equipment supply coordination agreement with equipment
14 manufacturers, suppliers, installers and operators associated with
15 the supply chain required to support the qualified wind energy
16 facility.

17 For the purposes of this paragraph, "full time employee" shall
18 not include an employee who is a resident of another state and
19 whose income is not subject to the "New Jersey Gross Income Tax
20 Act," N.J.S.54A:1-1 et seq., unless that state has entered into a
21 reciprocity agreement with the State of New Jersey, provided that
22 any employee whose work is provided pursuant to a collective
23 bargaining agreement with the port district in the wind energy zone
24 may be included.

25 (3) A business shall not be allowed a tax credit pursuant to this
26 section if the business participates in a business employment
27 incentive grant relating to the same capital and employees that
28 qualify the business for this credit, or if the business receives
29 assistance pursuant to the "Business Retention and Relocation
30 Assistance Act," P.L.1996, c.25 (C.34:1B-112 et seq.). A business
31 that is allowed a tax credit under this section shall not be eligible
32 for incentives authorized pursuant to the "Municipal Rehabilitation
33 and Economic Recovery Act," P.L.2002, c.43 (C.52:27BBB-1 et
34 al.).

35 (4) Full-time employment for an accounting or privilege period
36 shall be determined as the average of the monthly full-time
37 employment for the period.

38 b. A business shall apply for the credit by August 1, 2016, and
39 a business shall submit its documentation for approval of its credit
40 amount by August 1, 2019.

41 c. The credit allowed pursuant to this section shall be
42 administered in accordance with the provisions of subsection c. of
43 section 3 of P.L.2007, c.346 (C.34:1B-209) and section 33 of
44 P.L.2009, c.90 (C.34:1B-209.1), except that all references therein to
45 "qualified business facility" shall be deemed to refer to "qualified
46 wind energy facility," as that term is defined in subsection f. of this
47 section.

S1251 VITALE

4

1 d. The amount of the credit allowed pursuant to this section
2 shall, except as otherwise provided, be equal to the capital
3 investment made by the business, or the capital investment
4 represented by the business' leased area, and shall be taken over a
5 10-year period, at the rate of one-tenth of the total amount of the
6 business' credit for each tax accounting or privilege period of the
7 business, beginning with the tax period in which the business is first
8 approved by the authority as having met the investment capital and
9 employment qualifications, subject to any disqualification as
10 determined by annual review by the authority. In conducting its
11 annual review, the authority may require a business to submit any
12 information determined by the authority to be necessary and
13 relevant to its review. The credit amount for any tax period ending
14 after the date eight years after the effective date of P.L.2007,
15 c.346 (C.34:1B-207 et seq.) during which the documentation of a
16 business' credit amount remains unapproved shall be forfeited,
17 although credit amounts for the remainder of the years of the 10-
18 year credit period shall remain available. The amount of the credit
19 allowed for a tax period to a business that is a tenant in a qualified
20 wind energy facility shall not exceed the business' total lease
21 payments for occupancy of the qualified wind energy facility for the
22 tax period.

23 e. The authority shall adopt rules in accordance with the
24 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
25 seq.) as are necessary to implement this section, including but not
26 limited to: examples of and the determination of capital investment;
27 nature of businesses and employment positions constituting and
28 participating in an equipment supply coordination agreement;
29 determination of the types of businesses that may be eligible and
30 expenses that may constitute capital improvements; promulgation of
31 procedures and forms necessary to apply for a credit; and provisions
32 for applicants to be charged an initial application fee, and ongoing
33 service fees, to cover the administrative costs related to the credit.

34 The rules established by the authority pursuant to this subsection
35 shall be effective immediately upon filing with the Office of
36 Administrative Law and shall be effective for a period not to exceed
37 12 months and may, thereafter, be amended, adopted or readopted
38 in accordance with the provisions of the "Administrative Procedure
39 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

40 f. As used in this section: the terms "authority," "business,"
41 and "capital investment" shall have the same meanings as defined in
42 section 2 of the "Urban Transit Hub Tax Credit Act," P.L.2007,
43 c.346 (C.34:1B-208), except that all references therein to "qualified
44 business facility" shall be deemed to refer to "qualified wind energy
45 facility" as defined in this subsection.

46 In addition, as used in this section:

47 "Equipment supply coordination agreement" means an agreement
48 between a business and equipment manufacturer, supplier, installer,

1 and operator that supports a qualified offshore wind project, or
2 other wind energy project as determined by the authority, and that
3 indicates the number of new, full-time jobs to be created by the
4 agreement participants towards the employment requirement as set
5 forth in paragraph (2) of subsection a. of this section.

6 "Qualified offshore wind project" means the same as the term is
7 defined in section 3 of P.L.1999, c.23 (C.48:3-51).

8 "Qualified wind energy facility" means any building, complex of
9 buildings, or structural components of buildings, including water
10 access infrastructure, and all machinery and equipment used in the
11 manufacturing, assembly, development or administration of
12 component parts that support the development and operation of a
13 qualified offshore wind project, or other wind energy project as
14 determined by the authority, and that are located in a wind energy
15 zone.

16 "Wind energy zone" means property located (1) in the South
17 Jersey Port District established pursuant to "The South Jersey Port
18 Corporation Act," P.L.1968, c.60 (C.12:11A-1 et seq.) , or (2) in the
19 project area of the "Portfields Initiative," designated as a portfield
20 site by the Port Authority of New York and New Jersey and the
21 New Jersey Economic Development Authority, and within a county
22 of the second class with at least 600,000 residents .

23 (cf: P.L.2013, c.161, s.25)

24

25 2. This act shall take effect immediately.

26

27

28

STATEMENT

29

30 This bill would amend P.L.2010, c.57, known as the "Offshore
31 Wind Economic Development Act," to expand the definition of
32 "wind energy zone" to include property located in the project area
33 of the "Portfields Initiative," designated as a portfield site by the
34 Port Authority of New York and New Jersey and the New Jersey
35 Economic Development Authority (EDA), and within a county of
36 the second class with at least 600,000 residents. This change would
37 allow EDA to provide tax credits for qualified wind energy
38 facilities located in this area.

TABLE OF CONTENTS

	<u>Page</u>
Raymond Cantor, Esq. Chief Advisor Office of the Commissioner New Jersey Department of Environmental Protection	1
Ginger Kopkash Assistant Commissioner Division of Land Use Management New Jersey Department of Environmental Protection	1
Vincent J. Mazzei Jr. Supervising Environmental Engineer Division of Land Use Management New Jersey Department of Environmental Protection	1
Jennifer Coffey Executive Director Association of New Jersey Environmental Commissions	43
Jeff Kolakowski Vice President Government Affairs New Jersey Builders Association	47
David Pringle Campaign Director Clean Water Action of New Jersey	51
Mary Kay Roberts, Esq. Representing Pharmaceutical Research and Manufacturers of America (PhRMA)	51
Jeff Tittel Director New Jersey Chapter Sierra Club	53

TABLE OF CONTENTS (continued)

	<u>Page</u>
Ed Waters Director Government Affairs Chemistry Council of New Jersey	55
APPENDIX:	
PowerPoint presentation submitted by Vincent J. Mazzei Jr.	1x
Testimony submitted by Mary Kay Roberts, Esq.	6x
pnf: 1-62	

SENATOR BOB SMITH (Chair): Welcome to what is uncontested and incontrovertible -- the most interesting Committee in the State Legislature. (laughter)

So here's the plan for today. We have three very good bills; but we're going to hold the bills. The first thing we're going to do is hear from our Department of Environmental Protection about where we stand with Flood Hazard Rules. And we're mainly going to listen. One of the unfortunate things is that the public has not had a chance to see exactly what the DEP is going to do, so this is going to be a little bit of an educational process for the public as well. And chances are we won't be taking testimony on the proposed Flood Hazard Rules today, but we'll see how that goes.

So we have Assistant Commissioner Cantor-- Did I get your title right?

RAYMOND CANTOR, Esq.: (off mike) Chief Advisor.

SENATOR SMITH: Chief Advisor Cantor; and Ginger--

MR. CANTOR: Assistant Commissioner Kopkash.

GINGER KOPKASH: (off mike) Kopkash.

SENATOR SMITH: --Kopkash. And--

VINCENT J. MAZZEI Jr.: (off mike) Supervising Environmental Engineer Vince Mazzei.

SENATOR SMITH: --Vince Mazzei here.

Why don't the three of you come up and bring up another chair. And while you're doing that, Ms. Horowitz will take the roll.

MS. HOROWITZ (Committee Aide): Senator Smith.

SENATOR SMITH: Present.

MS. HOROWITZ: Governor Codey.

SENATOR CODEY: Here.

MS. HOROWITZ: Senator Thompson.

SENATOR THOMPSON: Here.

SENATOR SMITH: And--

MS. HOROWITZ: And Senator Greenstein.

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

(laughter)

SENATOR SMITH: Okay. So who would like to introduce the topic? I assume it will be Ray?

MR. CANTOR: I will start off, Mr. Chairman--

SENATOR SMITH: Sure.

MR. CANTOR: --and then I will turn it over to my very well-qualified staff.

Thank you, today, for the opportunity to be here to discuss this very important Rule and the changes we are making on adoption to our Flood Hazard and Stormwater proposal.

Again, I also want to thank you, Mr. Chairman, for your leadership in this issue. We've had very constructive conversations with you and with staff; and again, we appreciate the opportunity to be here in this public forum to talk about this issue.

With me today, as you just mentioned before, is Assistant Commissioner Ginger Kopkash. Ms. Kopkash is the Assistant Commissioner for the Land Use Management Program. Also with me today is Mr. Vincent Mazzei. Vincent is a Supervisor -- I can't remember your title -- Supervisor Environmental--

MR. MAZZEI: Supervising Environmental Engineer.

MR. CANTOR: Environmental Engineer. More importantly, Mr. Mazzei has been integrally involved with this Rule since the beginning. He drafted the 2007 Rules, and he has been pretty much spending his entire professional career working on these Rules (laughter), and probably knows them better than anybody in the state at this point in time.

Our original intent in doing these Rules -- which we proposed about a year ago, in this point in time -- was to try to make the permitting process better; to try to eliminate provisions in the Rules that we thought had unintended consequences of actually harming the environment, as opposed to making it better; and also to eliminate what we thought were duplicative and contradictory provisions, especially as they relate to buffer requirements around streams. It was never our intent in doing these Rules to weaken water quality provisions and to weaken environmental standards. Again, that was not the intent when we put out these Rules.

Our Rules, as they exist right now, are the most stringent in the nation -- the most protective buffer requirements of any state in the nation. Under the proposal, as we proposed it, they would have remained the most stringent in the nation. And once we adopt these amendments they will, again, be the most stringent in the nation -- actually, they may be even more stringent than they are right now.

When we undertook this process -- as we do with any of our Rules, we have a very robust stakeholder process. I'm sure Commissioner Kopkash will talk a little bit more about that. But we also have a very robust comment period; that's how the process works. We've been working for years on these Rules, and when you do that -- as I'm sure you

understand -- there are words that we think we know what they mean when we put them out there; we have certain intent when we put words out there. But once they get into the public domain, everyone is looking at that language with fresh eyes.

So what I will tell you, Mr. Chairman and members of the Committee, is that there are certain provisions that we put out there with one intent, and people came back and said, "No, it could be read a different way," and that caused us some concern when we heard those comments. We went back and, in some instances, we agreed that the language we put out there can be read in ways we did not intend.

There were also provisions we put out there which we thought would have a better environmental result. But other people pointed out that some of these things could be loopholes to what we're trying to do -- again, things which we're going to be correcting.

We also had very good conversations with EPA Region 2. We listened to their concerns; we explained the Rule to them. And again, we think at the end of the day -- as a result of that process, as a result of this process -- we think we're coming out with an even better Rule than we have right now.

I know there's been some concern -- and Mr. Chairman, you raised this in your questioning of the Commissioner at the Budget hearing last week -- about our process of adopting this Rule and also coming out with a Concurrent Proposal. And it was suggested that maybe what we need to do is combine it into one rule. We do not believe that needs to be the case at all. It was essential to us, both from a practical and from a legal perspective, that when we adopt this Rule that we address all the concerns

that we need to from an EPA delegation perspective; that we address all the concerns to make sure that this Rule is as stringent or even more stringent than it was when we first proposed it so there would be no weakening of any standards. The adoption stands on its own; it meets all the requirements that we think were raised by the commenters -- again, that we planned to address. It addresses all the comments that EPA -- the concerns that EPA had raised to us.

The Concurrent Proposal largely -- again, we'll get into more details about this with Ms. Kopkash's and Mr. Mazzei's testimony -- the Concurrent Proposal largely deals with issues that were not raised, or even brought up, or that deal with the riparian zones, or the SWRPA, etc. They deal with other issues. To the extent that they deal with issues dealing with the SWRPA -- we have now gone beyond where we were, even in 2004 and 2007, making additional changes to mitigation and making the Rule an even better Rule, and more environmentally protected than it was before.

So again, these are two separate concepts or proposals that we're doing: one is the adoption that we think stands firmly on its own, and we believe can and should move forward. And then we have the Concurrent Proposal that makes things even better than it was before, but was really not needed to address the issues raised by this Committee, by EPA, by the commenters coming forward.

So having said that, I will turn it over to Ms. Kopkash, who will talk in more detail.

MS. KOPKASH: Thank you, Ray; and thank you Senators for giving us the opportunity to come and testify before you.

Vinnie is going to go into the detail regarding the proposed changes to the June 2015 proposal, as well as a proposed Concurrent Proposal.

Please excuse my throat; I am suffering from allergies today.

The Department, when we enter into a rulemaking process, we go through a very robust stakeholder process. For this Rule, we had 11 stakeholder meetings where we gathered comments from individuals. We also meet with staff and go through their projects and issues that they've had over time; struggles that they had with rule language. And then we also develop case studies of ideas that we would like to write a rule for, and then we evaluate whether we hit the mark. A great example of that is, we looked at a case study for daylighting a stream -- which is in the current 2015 proposal -- and if we made effective changes to allow it to go through an easier rulemaking process, but at the same time making sure that all the flooding issues are properly addressed.

So as I mentioned, we go through the stakeholder process. We also work as a team, which is unlike previous rules that have been worked on. Vinnie can probably attest to this the best. In 2007, he was a lone man in a dark room for years at a time before 2007, writing a rule.

SENATOR SMITH: That's why he looks so pale. (laughter)

MS. KOPKASH: I know, I know.

SENATOR CODEY: He looks pretty red right now. (laughter)

MS. KOPKASH: For this rule, as with all the Land Use rules, we actually have a great team of individuals who come at it from different perspectives -- environmental backgrounds to engineering backgrounds; as well, we have our attorneys in the space. And we sit down and we write,

and we rewrite, and we write again. And sometimes you -- when you get in that mode, when you read what you have written, you probably inject some of the previous conversations into that sentence. Which is why we firmly believe in the public process and other individuals taking a read at that language and seeing whether or not it effectively accomplishes what we want to accomplish. And that's what we did again; and as we've done in other rule writing procedures that we've gone through.

So we took the comments that we received. We had staff members summarize them, and we sat down with our legal team as well our rule team and we evaluated them. We pulled in our other counterparts in our Water Resource Program and got their thoughts on the language, and thought long and hard about what we did -- and did we hit our goal or not when it came to making sure we were not backsliding, as was inferred; if we made the clarifications that we thought we were making; and do we need to make additional changes? And through those sessions -- and we had numerous sessions, we did not take this lightly -- we came up with changes that we believe we need to make for this proposal to be whole. And then we came up with additional changes -- some of them we knew about and we wanted to make in 2015, but couldn't get them scripted well enough to put them in the proposal document -- and some of them have come up in 2015; like, for example, in the Concurrent Proposal, we have changes to our fee structure that we were running into some issues on.

So with that, I'm going to turn it over to Vinnie, and he's going to go into detail about the changes we're going to make to the Rule, and why we're going to make them; as well as the Concurrent Proposal and what it's going to include.

Wait a minute; before I go -- we did talk about our strategy with our lawyers, as Ray mentioned. And we did evaluate whether or not the Rule stood on its own legs with the changes that we are making. And we came to the conclusion it does. We couldn't adopt a rule that didn't stand on its own feet. But we also have a lot of changes in that Rule that many people want to see happen sooner than later. So that's why we thought a Concurrent Proposal would be an effective strategy in making sure that the adoption moves forward, as well as making additional changes that we feel will even strengthen the Flood Hazard Rules.

MR. MAZZEI: Thank you, Senators, for this opportunity. I appreciate this.

I brought a handout that's kind of a very short PowerPoint presentation. If everybody doesn't have a copy of it, this would be a good time-- I'm just going to briefly go through this and outline the changes that we will be proposing to incorporate, on adoption, to the proposal that we filed last June; and then go over some of the highlights of the Concurrent Proposal within the context of what we've been discussing in these hearings.

So the proposal was published on June 1; and we had a 60-day comment period. During the comment period, we had 875 unique comments. And what I mean by that is that 845 commenters submitted comments, and each commenter could submit 1 or 30 comments, let's say, and some of them overlapped. So when we collated them together and read through everything, we came up with 875 unique comments. So the document that would be published will include, of course, a response to every one of those comments. So when someone questions something that we did, we have a complete and robust response to demonstrate that what

we're doing is in light of the Flood Hazard Act, and the Pollution Control Act; and that it's legal, and it stands on its own.

But of course, as part of the rulemaking process, like Ginger had mentioned, there are opportunities that we find where somebody brings up something that we hadn't thought of before, or people -- we used terminology or we added some language that we thought got us to one place, and we realized that the vast majority of people interpreted it differently. And so this is an opportunity for us to fix that. Because having 2 or 3 of us, or 10 of us, at the Department deciding what would be a good way to describe something -- having thousands of people read it and vet it with them actually is a wonderful process.

So basically the amendments that we would be making on adoption fall into three basic categories. One is just general clarification of our intent with the rulemaking, to clear up those things where terminology that we used led to an incorrect interpretation or even made something happen that we didn't want to have happen. So that's the first category.

The second is that there were a lot of comments that we received on the protection of headwaters. And we want to protect headwaters, so we made changes on adoption that would continue to protect headwaters and not leave anything out.

And then the third is, we took a very close look at the type of activities that we would be permitting within the riparian zone. The riparian zone is that 50-, 150-, or 300-foot buffer that surrounds the state's surface waters. So we took a good hard look at what types of activities should be allowed in those areas, and we said, really, there are only three types of activities that should ever be allowed in the riparian zone: ones

that are unavoidable, in the sense that, for example, if you have someone who can't access their property without going through a riparian zone with a roadway; or a separate mediation project that's situated within a riparian zone -- that there's an environmental benefit if it's being improved or cleaned up. So there's this unavoidable impact.

Then there are ones that are beneficial. We could have situations where someone has a stream bank that has been severely eroded over time. And there's an interest in restabilizing the bank, or maybe even putting sinuosity in the stream, adding some -- connecting the stream to the overbank areas. So that's going to take some temporary disturbance to the riparian zone in order to do. And so the rules became an obstacle for things like that.

SENATOR SMITH: What is *sinuosity*?

MR. MAZZEI: Sinuosity describes the kind of natural process that a stream has; kind of like the *sine wave*, as it were -- that's where the word comes from. So in urban environments, you kind of see streams that have been straightened out.

SENATOR SMITH: Right.

MR. MAZZEI: And so what you have, then, is that there is no-
- The sinuosity permits sort of a loss of energy in the system. So when you straighten out the stream and kind of transport the water more quickly, it's retaining that velocity, so you have a lot of erosion. And that's why a lot of times through urban areas you have cement sides to the stream, because the stream wants to get wider--

SENATOR SMITH: I got it.

MR. MAZZEI: --to accommodate the extra velocity.

SENATOR SMITH: All right.

MR. MAZZEI: So then the third category of activities would be things that we would consider *de minimus*. So you have a property -- an existing home that is completely within the riparian zone, and somebody wants to put a shed, or an addition, or a fence on their property, or a pool in their backyard. These are the types of things that, within certain prescribed limits, if they're done according to the way that we've set forth, we believe they're not going to have any environmental impact if they're done. So if you have a 400-square-foot addition to your house in a lawn; or if you put a fence up and you're not cutting any trees down -- that sort of thing.

So for the first category -- headwater protection. *Headwaters* I would define as naturally occurring sources of surface water, such as a spring or where surface waters coalesce into a discernable linear feature. And we recognize the immense environmental benefits of protecting headwaters. We had proposed some clarifications and amendments to the Rule in two sections: one was Section 2.2 of the Rule, and that deals with the waters or the surface waters that we regulate under this Rule. And the second set was in section 4.1, which is where we described how to measure the riparian zone along those regulated waters.

SENATOR SMITH: What were the clarifications?

MR. MAZZEI: Well, the clarifications and changes were as follows: Under Section 2.2, we had added a provision that said if a feature was not considered a State Open Water under the Wetlands Rules, and it drained less than 50 acres of land, then it would not be considered a regulated water. So for example, things like ditches, swales -- things like

that. And the Rule had already listed out some of these things, and there had been some confusion among our staff. Our staff regulates both riparian zones and wetlands. And so when someone goes out to a site and evaluates where the wetlands are or whether a stream is a State Open Water, then it makes sense to have the rules talk to each other and use similar terminology. However, we got comments back saying, "That's actually going to change what you're regulating." And we weren't intending on changing what we're regulating there. So we're dropping any of the changes that we made to the features that drain less than 50 acres in that section.

SENATOR SMITH: So the EPA is happy with this change -- going back to what you originally had, or not?

MS. KOPKASH: They had no comments.

MR. CANTOR: Yes, well, again -- in this particular provision, we're not adopting the change--

SENATOR SMITH: Right.

MR. CANTOR: --as far as EPA is concerned. We explained everything to EPA; EPA will not comment -- if they do at all -- until they read the Rule at some point in time in the future. So--

SENATOR SMITH: Yes, but I'm sure you've had some back-and-forth between them.

MR. CANTOR: Yes.

MR. MAZZEI: Right; we--

SENATOR SMITH: It sounds like what you're doing here would make EPA happier than they would have with the changes -- or am I reading that wrongly?

MR. MAZZEI: I wouldn't want to put words in EPA's mouth, obviously. But if-- We have not had comments from them on the existing Rule, in the sense that they didn't say that the existing Rule was a problem. So by not adopting the changes that we had proposed to that section--

SENATOR SMITH: Theoretically, you'd be safe.

MR. CANTOR: Again, we think we've addressed the concerns of the EPA. But again, as we mentioned--

SENATOR SMITH: We'll find out.

MR. CANTOR: --we don't want to speak for EPA.

SENATOR SMITH: Right. And how about 4.1? What were the clarifications on 4.1?

MR. MAZZEI: So 4.1 sets up the riparian zone along surface waters. It says these waters get 300 feet, these waters get 150, these waters get 50 from the top of the bank. And so we had a problem with the word *tributary* and the way it was worded in the Rule. And so we tried to move things around and change -- change for clarity. But obviously the perception is that we were changing what waters are regulated and what waters do get a riparian zone in that section.

SENATOR SMITH: Right.

MR. MAZZEI: So we said, "You know what? We're just going to leave it the way it was--"

SENATOR SMITH: Okay.

MR. MAZZEI: --"and just kind of explain in our summary document what our intentions were."

SENATOR SMITH: Got it; go ahead.

MR. MAZZEI: So that's pretty much it for the headwaters section.

Oh, I'm sorry -- so for piped waters that drain less than 50 acres, we kind of had this interesting situation. Under the rules that have been in existence for -- long before even I rewrote them in 2007, any feature, any surface water that drains over 50 acres of land would be considered to have a Flood Hazard Area because, in other words, it's collecting enough runoff; it has the potential to flood. So we had said that -- in the 2007 adoption, people said, "Do waters that are piped have a Flood Hazard Area, and do waters that are piped have a riparian zone?" And so we answered, in the 2007 adoption, that piped waters do not have a riparian zone. And since features that drain less than 50 acres don't have a Flood Hazard Area, we thought we would put something in the Rules saying that if it's piped -- lawfully piped, obviously -- and it doesn't have a flood plain; and since it doesn't have a riparian zone, then why would we regulate it?

But some commenters pointed out that people could take stormwater discharges directly into that pipe and sort of short circuit or bypass our regulations that way. Because if we say this segment of stream that's in a pipe is not regulated, then we wouldn't have authority over what happens to that pipe -- so if somebody wanted to replace it, or tie into it. So we've decided to drop that amendment as well. So we're going to retain the existing language regarding that.

SENATOR SMITH: Okay.

MR. MAZZEI: And so the main benefit of that is that if someone is going to discharge stormwater into that pipe, then we will ensure that they have water quality standards that are equivalent to today.

With riparian zone disturbance, there were three, sort of, major places where we've adopted or where we plan to adopt changes. This is in the individual permit section, so individual permits are permits that are before our desk, and we do a 90-day review on them; we do an intensive review. And there was a provision that we had proposed at 11.2 (f)1, which basically said that in addition to the amount of disturbance that's allowed for a given activity, that an applicant could have up to a quarter-acre of disturbance to what we're terming *actively disturbed areas*, which are grass, lawns -- you know, meadow areas that are constantly mowed or plowed -- agricultural fields, things like that. And it was intended as an incentive for people to relocate their activities in those areas, than to cut down trees and put their activity in areas that are providing greater environmental benefit.

So the way that 11.2 is structured, it lists out the only things that you're allowed to do in a riparian zone; and it says -- it lists the amount of square footage that you can disturb for a given activity. So a house gets X square feet, or a road crossing gets X square feet, and so on. This would have added an extra quarter of an acre of grass or agricultural field to that.

So we realized -- reading through the comments and kind of going through the Rule on our own -- we realized that instead of being an incentive, it would just sort of give extra riparian zone disturbance to people who are proposing other activities. And we felt that the table would stand on its own and that it wasn't appropriate for us to give that additional

quarter-acre, especially in the case of the 300-foot riparian zone. So we said, "You know what? That's an easy one. We're just going to drop that," so we're not adopting that exemption.

SENATOR SMITH: Okay.

MR. MAZZEI: There's also sort of an "Other" category for things that are not listed in the table. So the table lists our remediation projects, and flood control projects, and bank stabilizations, and roadways, and things like that. But sometimes things come along where it doesn't fit into a category. So you have an existing commercial building and they want to put a small addition on that building. And the only option would be to relocate the building, and that's not -- let's say, that's not possible; it's impracticable. So in a case like that, a lot of those activities would fall under the "Other" category. And you have to do full mitigation for all impacts under that. We were going to--

SENATOR SMITH: Did you say *faux* mitigation?

MR. MAZZEI: *Full* mitigation.

MS. KOPKASH: Full.

SENATOR SMITH: Full.

MR. MAZZEI: Yes, complete; complete mitigation.

SENATOR SMITH: Okay. (laughter)

MR. MAZZEI: Full; it's--

SENATOR SMITH: Okay. (laughter)

SENATOR CODEY: That's the way we speak in North Jersey.

(laughter)

MR. MAZZEI: Yes, thank you, thank you. As someone born in Newark, you know, I--

SENATOR CODEY: Oh, okay.

MR. MAZZEI: Full mitigation.

So under the existing Rule, a person is allowed a very small amount of disturbance under that category. And we were going to bump it up to a quarter-acre of disturbance. And so we said, "Well, if you get a quarter-acre under (f)1, and a quarter-acre under (y), that's a half-acre disturbance, and that could be within a 300-foot riparian zone -- which, obviously, couldn't be done today under the SWRPA. So we said, "Let's drop that provision as well." So we're just going to retain the existing numbers that are in the table.

SENATOR SMITH: Okay.

MR. MAZZEI: We also had a Permit by Rule that was proposed for artificial turf -- athletic fields. So you have an existing athletic field -- and a lot of these can be in riparian zones. And so this was a Permit by Rule that would allow people to replace the existing grass turf with artificial turf. However, turf fields can be relatively large and, of course, there's no vegetation there anymore. And so we did some research on it and we felt that we weren't prepared at this time to adopt a Permit by Rule for that activity. So by dropping that Permit by Rule it means that someone who is proposing that activity would have to come in for an individual permit and we would do a more robust analysis of that activity.

SENATOR SMITH: Got it.

SENATOR CODEY: So they have to go to you to get permission?

MR. MAZZEI: Yes, sir.

SENATOR SMITH: Which is the current rule, right?

MR. MAZZEI: Correct.

SENATOR CODEY: Oh, yes; but what I'm saying -- isn't that--

MR. MAZZEI: That's what we're doing today; exactly.

SENATOR CODEY: Okay.

MR. MAZZEI: So it would be retaining the existing--

SENATOR CODEY: Because I get the phone calls, you know?

MR. MAZZEI: Right. (laughter)

So we can accommodate it, but it would be through the individual permit process.

SENATOR SMITH: Got it.

MR. MAZZEI: We're also adding a link between the Stormwater Rule and the Flood Hazard Rule. The Stormwater Rule, with the Special Water Resource Protection Area -- because of the link between that and our NJPEDS Program and our MS4 program, we wanted to make sure that municipalities and other people that were designing stormwater systems realized that there was this riparian zone that they had to deal with. So by deleting the SWRPA -- just the 300-foot buffer -- out of the Stormwater Rule, and making amendments to the 300-foot riparian zone, we wanted to make sure that there was a link between the two rules. So that's just, kind of, a FYI when people are developing -- that they recognize that the standard exists.

SENATOR SMITH: So where doesn't it exist?

MR. MAZZEI: Well, currently the Stormwater Rule has a 300-foot SWRPA -- Special Water Resource Protection Area.

SENATOR SMITH: Right.

MR. MAZZEI: And that is -- part of the questions that we had from EPA was, "Well, you had this in this rule, and now it's gone. Where is it?"

SENATOR SMITH: Right.

MR. MAZZEI: And so what this link is, is to say that it exists; it just exists in this other administrative code.

SENATOR SMITH: Does it cover all properties that were previously covered?

MS. KOPKASH: Yes.

MR. MAZZEI: Yes, because the 300-foot riparian zone applies along more streams than the SWRPA did. Because the SWRPA-- The Special Water Resource Protection Area -- SWRPA -- applies to features that are mapped on a USGS map or a soil survey; where the riparian zone applies to streams that exist in the field, whether they're mapped or not. And the second thing is that the Stormwater Rules only apply to what's called *major developments*. A major development is an activity that disturbs more than an acre of land or adds a quarter-acre of impervious surface. The riparian zone exists independent of the size of an activity. So because of that, the 300-foot riparian zone exists in more places than the SWRPA did.

SENATOR SMITH: Okay.

MR. CANTOR: And Senator, let me just clarify. I know Vinnie just said it was an FYI, but there are some legal consequences, which is why we thought it was necessary to that.

The Stormwater Rules -- the SWRPA was adopted under the Stormwater Rules, which link back to the Federal Clean Water Act. And there are certain requirements that come with that in protecting water

quality, which is why EPA has their concern. There was concern when we moved all the requirements of the SWRPA into riparian zone that we're no longer making a link to the Clean Water Act, and the protections against backsliding antidegradation will then be lost. By clearly stating in the rules that those provisions which protect clean water and which can be governed by the Clean Water Act are being implemented in the riparian zone, we've now made that legal linkage between the two so we've lost no legal protections that were there before.

SENATOR SMITH: Okay. This-- My recollection of the discussion -- this was a huge issue with the environmental community.

MR. CANTOR: Again, back to Vinnie's point -- all the requirements of the SWRPA are all being carried forth. The riparian zone, and with the changes we're making today -- they will be as stringent as they were before. Nothing that was being regulated today will not be regulated when those rules are adopted. So we've covered that from a practical perspective. From a legal perspective, having the Stormwater Rules now pointed at the riparian zone as the way by which we make those legal commitments under the Clean Water Act, we've now taken care of that legal linkage as well.

SENATOR SMITH: Does the -- is there still a hardship requirement here?

MR. MAZZEI: Yes. The Flood Hazard Rule has a hardship requirement.

You mean does it have the provision for hardships?

SENATOR SMITH: Yes.

MR. MAZZEI: Yes, if anybody can't meet the standards of the Rule, then there's a hardship provision. Is that what you're asking?

SENATOR SMITH: No, I'm not a 100 percent sure that's what I'm asking. Does the applicant have to prove a hardship in order to get the disturbance, under these rules?

MR. MAZZEI: No. If an applicant comes to us with a project that meets the list-- Remember I mentioned before that there's a table that says, "This is what you're allowed to do."

SENATOR SMITH: Yes.

MR. MAZZEI: So the way it's structured is, if you meet what's on the table they'll allow the disturbances; and if you meet all the standards for it-- For example, if you're building a roadway to a lot, you would have to demonstrate that the lot was not subdivided after the creation of riparian zones in 2007 -- because we don't want people taking lots and dividing them up into many parcels.

SENATOR SMITH: And how is that different than the current process?

MR. MAZZEI: The difference in the current process is that in cases where existing-- If you can't meet the limits in the table, in a number of cases you would need to apply for a hardship exception in the Rule and you would have to demonstrate there's a hardship. Under the adopted rule, you won't need a hardship exception if you exceed the table, as long as you demonstrate certain additional standards. So for example, we took-- Let's say you were building a driveway into a lot and you couldn't meet what the limits of the table were because the township requirements for the size of your road or whatever is the size of the culvert that you have to put in. You

would exceed the table. Under the existing rules, you have to ask for a hardship exception and you have to demonstrate that you had no alternative; that what you were doing wasn't going to adversely impact off-site properties. There were different demonstrations that you have to make. So rather than people going through the process of asking for a hardship, we took the standards that we would be asking someone to demonstrate and put them in in the Rule itself. So it would be structured to say if you build a driveway you have to meet the limits of the table, unless you can demonstrate X, Y, and Z. In which case, then you can exceed the table and you have to provide mitigation for the amount that you go over.

SENATOR SMITH: Yes, but is that a good thing? And the reason is, say that -- you know, the fact that there was this "hardship hurdle" without a table -- didn't that, to some extent, discourage people from doing these disturbances? And, ultimately, don't you want to have as few disturbances as possible?

SENATOR THOMPSON: It sounds like you're still requiring them to meet the hardship requirements, but they just don't have to go through a separate process to do it. Is that correct?

MS. KOPKASH: Can I interject here for a minute?

So I want to make sure something is clear. So in the Flood Hazard Rules, if you're applying for an individual permit -- to go into and disturb a riparian zone you have to go to subchapter 11 -- proposed subchapter 11 -- and demonstrate that one of your -- that the activity you want to undertake falls on that table. So there are limited categories on the table: You can build a roadway, a driveway, repair a malfunctioning septic system, trail, site remediation activity, solid waste landfill closure, flood

control projects-- There is not a category for commercial development. It's limited to the types of activities-- It is actually -- if you read the Flood Hazard Rule, it's harder, in many ways, to disturb a riparian zone than it is to disturb a wetland buffer -- the way it's structured. So I just want to make that clear. It's very limited in -- the activities you can do in a riparian zone are listed on that table, 11.2.

SENATOR SMITH: In the comments -- the 800-whatever unique comments -- was there any criticism that the table was "too loosey-goosey"?

MR. MAZZEI: Yes, some people commented that the allowable area was too great, because we increased the allowable area, in some cases. And some people--

SENATOR SMITH: Which you cut back on, right? You decided not to adopt that portion?

MR. MAZZEI: We have not changed-- In the adoption, we have not changed the numbers in the table, except for 11-point--

SENATOR SMITH: Okay. And how much disturbance is permitted in the table?

MR. MAZZEI: Well, different activities have different amounts. So, for example, a single-family home--

SENATOR SMITH: Right.

MR. MAZZEI: --under the existing Rule, was allowed 5,000 square feet of disturbance -- which is a relatively small area. And it's changed to 7,000 -- that was the proposal -- to accommodate things like a lawn around a house, and sidewalks, and things like that.

Roadways are increased a bit. We had some -- we had engineers come to us and say that, for example, the residential site improvement standards -- that in order to meet the standards for, say, a subdivision -- for a roadway going into it -- they couldn't meet it under the existing numbers. So they were getting hardships a lot. Whenever you have a rule that pushes people into hardships -- hardship exception requests, over and over again, you have to reexamine the rule and see, are the standards correct? Are they too small? So that was our intention -- to go through those areas and look at the ones that were problematic in that regard.

SENATOR SMITH: What were the other criticisms from the commenters on the table?

MR. MAZZEI: There were comments that we should not have increased the numbers; there were comments that we should not have added some of the categories that we did; and there were comments that said we shouldn't remove the hardship exception requirement if you exceed the table.

SENATOR SMITH: So now the table -- if adopted, the table will provide some automatics. But if it exceeds what's in the table, then they still have to go through the hardship process?

MR. MAZZEI: No. If someone-- Would you like me to read something from the rule, to give you an example?

SENATOR SMITH: Yes, I would appreciate a little clarification.

MR. MAZZEI: So for example, let's say that a person was proposing to build a driveway into a single-family lot. "The Department

shall issue an individual permit for the construction of a new private roadway or the expansion, reconstruction, or improvement of a lawfully existing private roadway, which results in clearing, cutting, or removal of riparian zone vegetation, only if *a)* you have to meet the standard of the Rule. The total area of the riparian zone vegetation to be disturbed does not exceed the limits, unless the applicant demonstrates that safe adequate access into the site, which meets all Federal, State, and local requirements governing roadways, cannot be provided without exceeding these limits.” So that’s a pretty hard standard. It can’t just be that, “I want a wider road.” It has to be that the town or somebody is requiring me to have a road that’s wider, and I can’t meet those standards because the limits in the table are too small.

The second one is that, if there’s construction within a 50- or 150-foot riparian zone, and you exceed the limits that are set forth in the table -- if you meet that -- if you do the demonstration under number 1 and say, “Yes, I am going to justifiably exceed the table,” then if you’re in a 50- or 150-foot riparian zone, you have to provide mitigation for all the disturbance over the table. So if you’re allowed -- for example, for a new driveway that’s crossing, say, a 150-foot riparian zone, you’re allowed 6,000 square feet of disturbance for that roadway -- so 6,000 square feet of vegetation that would be lost. If you say, “I have a cogent reason why it has to be 7,000 square feet,” and you demonstrate that to the Department, and we say we agree with you -- so now you owe us 1,000 square feet of mitigation because you’re over the table by 1,000 square feet.

But if you’re in a 300-foot riparian zone, then you have to provide mitigation for all impacts, period, whether you go over the table or

not. So if my driveway is 5,000 square feet, and I've met the table, I still have to provide mitigation for the 5,000 square feet. So that's more stringent than the SWRPA, because that project probably wouldn't have triggered the Special Water Resource Protection Area because of the size of it.

SENATOR SMITH: Okay; thank you.

MR. MAZZEI: And then there are additional standards that I could regale you with if-- For example, one of the things that's important to note is that we wouldn't even let somebody put a driveway to access a property unless the property was created before November 2007, because that's when we adopted the riparian zones. So a person couldn't buy a piece of property, divide it up into five pieces, and put five driveways. There would be no provision to do that.

SENATOR SMITH: Okay.

MR. MAZZEI: Did that answer the questions that you had?

SENATOR SMITH: It did.

MR. MAZZEI: Okay, okay.

Now I was going to talk about the Concurrent Proposals -- some of the things that we had proposed there. Do you have questions about the adoption document, before we go on to the Concurrent Proposal?

SENATOR SMITH: Not yet.

MR. MAZZEI: Okay.

SENATOR SMITH: I'm going to have questions about the interaction.

MR. MAZZEI: Understood.

SENATOR SMITH: But let's hear about the Concurrent Proposal.

MR. MAZZEI: Okay.

So the Administrative Procedures Act governs what we can and can't do on adoption. So when we propose a rule, we can make clarifications, we can fix typos, and edits, and things like that. We can drop, selectively, some new exemptions in things that we proposed. But we can't wholesale restructure things because people deserve another comment period to look at the proposed changes and make sure that they are correct.

So we did what we could in the adoption document, but we recognized that there were additional places where we can improve things and go beyond what we had adopted that we couldn't do in the adoption document. So the intent of the Concurrent Proposal is to tackle those things, and they go beyond the riparian zone issue. They go and take other things into account, like some of the comments that FEMA had raised during the proposal that we couldn't do on adoption because it was a change. So I'll go through some of the things that we are proposing in the Concurrent Proposal.

And the idea is that it would be published in the same New Jersey Register as the adoption document so that we would be coming out with an adopted rule and say, "And here's a proposal to change this rule, to consider at the same time."

So first of all, we looked at every Permit by Rule, which are the automatic permits where people don't have to come to the Department; the General Permits by Certification, which are the permits that people can apply for online; and the General Permits, which are ones that come to the

Department, but they're more prescribed than an Individual Permit. And we looked at all of them and decided to -- we looked and found opportunities where we could tighten up the amount of disturbance that would be allowed, especially within the 300-foot riparian zone or especially within the inner 150. So we looked at each one of them and said, "Is this an opportunity where we can improve it?" So where we found that we could improve it, we added language to it. And as an example, sometimes the rule might say, "You need to be as far away from the stream as possible," but that's somewhat subjective. So we added some hard lines in there, saying "You can't be within 150 feet of the stream if you're in a 300-foot riparian zone," or "You can't be within 75 feet of the stream if you're within 150." So by adding some clarity to that, we feel that it explains better what our intentions were, and also provides people who are applying for the permits more certainty as to, "Okay, if I stay out of this area, then I have a likelihood of getting this permit," as opposed to something that's more subjective.

So we went through all of those types of permits and added language that would improve that communication.

We've also clarified that projects that are Permits by Rule, General Permits by Certification, or General Permits cannot be a major development. So as I mentioned before, a major development is an activity that disturbs an acre of land or adds a quarter-acre of impervious surface to a project. And so we felt that the Department should be looking at activities that are major developments under an Individual Permit.

SENATOR SMITH: Yes.

MR. MAZZEI: The vast majority of those permits would not have gotten to the level of major development anyway just because of other limitations that are set forth. But we wanted to make sure that it was very clear to everybody that if you're a major development, you can't possibly qualify for these. So we've added that language in, as a blanket, across the board.

MR. CANTOR: But presumably--

SENATOR SMITH: Yes, but what happens under the Rule if you don't have the Concurrent Proposal, with regard to a major development?

MR. MAZZEI: So there are a couple of General Permits and General Permits by Certification that we know have the potential to be major developments. And so in those cases the existing -- the adopted Rule has language that says the applicant has to provide a certification that the project -- if it's a major development, that the project meets the Stormwater Rule. So some engineer has to provide a certification that it meets the Rule. And so these projects, also on the local level, would have a review of Stormwater by their municipal engineer. So the protection is in place, but we felt that it would be more simple and clear to communicate our intentions to just say, across the board, "You know what? If it's a major development, rather than having that certification, we're just going to review it ourselves."

SENATOR SMITH: Okay.

MR. CANTOR: But Senator, it's important to understand that under the 2004 SWRPA requirements and the 2007 Flood Hazard Area requirements -- that major developments, theoretically, could be done under

General Permits, Permits by Rules, etc. We are going now beyond where we are under the existing rules and making a further change. So this is not a change that needs to be clarified based on the last proposal; this is now going beyond where we are under existing regulations.

MR. MAZZEI: Yes, this change would be more strict than what we have under the existing rule.

SENATOR SMITH: And you believe it to be a very good change, correct?

MR. MAZZEI: I think it's a very good change, yes.

SENATOR SMITH: Okay.

MR. MAZZEI: As I mentioned, we have added levels of protection for work within 150 feet of a Category I water or tributary. Not only did we go through the Permits by Rule, the General Permits of Certification, and the General Permits, but there's robust language that we're adding to the Individual Permit standards that is very similar to a Wetlands Individual Permit. And so the language would basically say that in addition to all the other protections in the riparian zone, if you propose to develop the inner 150 of the 300-foot riparian zone, then you have to meet this much higher bar, and it lists out the types of things that we would ask for. And again, this is implied in the proposed rule that would be adopted because the proposed rule has some language-- May I read something from the soon-to-be adopted rule?

SENATOR SMITH: Please.

MR. MAZZEI: The soon-to-be adopted rule says that whether -- no matter what disturbance you have in a riparian zone, it says that the "basic purpose of the regulated activity or project cannot be accomplished

onsite without clearing, cutting, or removal of vegetation in a riparian zone.” So if you have a lot that’s -- let’s say you’re building a house and you have a lot that is half riparian zone and half not. We would not give you permits to build in the riparian zone because you clearly could build it outside the riparian zone. So if your basic purpose -- building a house -- could be satisfied without riparian zone disturbance, you wouldn’t get a permit.

The second thing is, “Clearing, cutting, or removal of vegetation is minimized through methods including situating the regulated activity or project as far away from any regulated waters as feasible; limiting construction to areas devoid of vegetation, actively disturbed areas, or others areas where the benefits and functions of riparian zone are considerably deteriorated and impaired as a result of previous development -- such as abandoned pavement that is partially revegetated, areas of dirt and gravel that are primarily void of vegetation, eroded embankments, areas covered with structures or other impervious areas, landscaped islands, and paved parking areas.”

So the idea is that if you have a lot and you’re putting some development on it that meets the table, and you have an opportunity to do it in an area that has already been disturbed, we’re going to make you put it there instead of going in an area that hasn’t been disturbed.

So these would apply to every project that comes to us for an Individual Permit. But it didn’t state -- when it says “as far away as possible from the stream,” what does that mean? In our minds, that means stay out of the inner 150, so that’s the way we would implement it. And so in the

proposal -- the Concurrent Proposal, we're just stating it directly: You have to stay out of that inner 150 unless you can demonstrate X, Y, and Z.

Just because someone -- just because the table allows you 5,000 square feet or 10,000 square feet, that's not an automatic; it's not like you automatically get that amount. You have to demonstrate that you've minimized -- that you've avoided disturbance, that you've minimized your disturbance, that it's situated in an area that has been previously disturbed. So this is the analysis that the staff will undertake. And I'm about to do a very robust training for all the Department staff in Land Use regulations to make sure that they understand that this is what the intention of this is. And we'll take projects and we'll look at them together and say, "This is what is meant by this, and this is what this term means," so that we're all on the same page in the Department.

SENATOR SMITH: How many hardship applications do you get every year?

MR. MAZZEI: Our tracking system does not -- did not previously track it. I did a poll of the staff members, and I would say it's-- I can't remember the number. We answered that question in the proposal. It was in the hundreds; I don't recall the actual number off the top of my head, Senator; I apologize. But that question was raised to us as a comment, and we did do the research we could to find out what we believe is the approximate value. And we do track them now, so in the future we would be able to give a more complete answer to that.

SENATOR SMITH: Okay.

MR. MAZZEI: So some other things that we're doing in the Concurrent Proposal would, as I mentioned before, address comments that

FEMA had raised to us. FEMA has different standards for development in V Zones and different floor elevations standards than-- Well, the Flood Hazard Rule really was silent on the issue. The previous rules -- there really were no V Zones that were affected by the Rule. Prior to 2007, the Rule did not even apply in tidal areas; 2007 expanded the Rule so that it would apply in tidal areas of the state. And then with FEMA's remapping of the coastline, a lot of areas that previously weren't V Zones, become V Zones.

Also the Uniform Construction Code was amended on September 21, 2015, by the Department of Community Affairs to include V Zone construction standards. And a V Zone is an area where you have wave action of at least 3 feet high expected. So in a V Zone you can't have enclosed areas below the lowest floor. And the lowest horizontal structural member of the floor has to be raised above the flood elevation. So you can't have a masonry foundation.

So on September 21, the Uniform Construction Code was amended to apply those same standards in Coastal A Zones. A Coastal A Zone is a part of Zone A, which is the 100-year flood plain, where you would have 1.5 to 3 feet of wave height during a flood. So you have the ocean, you have V Zone, you have Coastal A, and then you have A. So in order to make sure that people who came to us for permits would not be given guidance that was different than what FEMA allowed or what the Uniform Construction Code allowed, we decided to incorporate those standards and make sure that they're all the same across the board. So when somebody comes to us for a permit, we would only give them a permit for an activity if it met the National Flood Insurance Program or the Uniform Construction Code.

It would have been caught by the local government later because somebody has to get a building permit eventually for a building. But this kind of cuts down some of the confusion that local governments had.

SENATOR SMITH: Okay.

MR. MAZZEI: So that's a very positive change.

Also, there was some-- Wet floodproofing is a method of mitigation for buildings where you make sure that -- you allow water to come into the building to balance the pressure of the water on the outside of the building. And the Flood Hazard Rule allows that in a wider suite of cases than the Uniform Construction Code does. And so it was lending some confusion to local construction officials and floodplain managers. So we said, "Okay; well, we can fix that by saying that dry floodproofing and wet floodproofing can only be done if it's in accordance with the Uniform Construction Code." And so our staff would be looking at that as part of our review process.

And finally, we had some comments from the USDA, Natural Resource Conservation Service, and the U.S. Fish and Wildlife Service about some of the provisions that we had that they felt were unnecessarily limiting. When they were doing restoration work, they wanted a little bit more flexibility in some of the work under some Permits by Rule and other permits. So we met with them; we looked at some projects, and we felt that we could improve what they do by tweaking some of the language in our rules. So the Concurrent Proposal would have some language with regard to that, as well, to basically facilitate environmentally beneficial projects.

SENATOR SMITH: Okay. So tell me the-- What would be the impact of adopting the rule, but not adopting the Concurrent Proposal?

MR. MAZZEI: It would be-- Adopting the Rule without the Concurrent Proposal? It would be a missed opportunity for us to clarify our intent, and to improve flood protections with coordination with FEMA and the Uniform Construction Code. And it would be a missed opportunity to facilitate these environmentally beneficial projects.

MR. CANTOR: And so just on that point, as well -- we are continually looking at all our rules to do changes to make the rules better. We've done that the last several years; and the Concurrent Proposal really is in that vein. As Ginger had mentioned, these are things we have been thinking about for a long time that we could not get done; now we have the opportunity to get those done. So really, you know, it's almost a coincidence that they're happening at the same time; but we have the opportunity to make the Flood Hazard Rules better at the same time we're adopting the original rule, which also makes the Flood Hazard Rules better.

And again, I just want to emphasize, as well, the adoption that we're doing on the Flood Hazard Rules is as protective as the existing regulations -- actually, it's probably even more protective than we have right now. We believe on adoption-- By not adopting the provisions that Vinnie had talked about -- the two quarter-acre revisions, not adopting the headwater changes, etc.-- We are addressing all the concerns that we think that this Committee has raised; the significant ones that the commentators have raised; and addressing EPA concerns. So we think these are really two distinct actions that we're taking: adopting the Flood Hazard Rules, which have great things. We have projects waiting, and they're waiting for that

adoption to happen so they can move forward, especially in the areas where acid soils -- Mercer County, Middlesex County, etc. -- we have a lot of people who are waiting for those rules to be adopted so they could begin their projects; as well as doing the Concurrent Proposal, which makes the rule even better.

SENATOR CODEY: Mr. Chairman.

SENATOR SMITH: Yes, Governor.

SENATOR CODEY: Why would you raise that issue?

SENATOR SMITH: Well, there are a couple of reasons. First of all, the only person who has seen this is me; I got a courtesy copy. The public hasn't seen any of this stuff yet, okay? And the argument is made, Governor, that the Concurrent Proposal makes the rules better.

SENATOR CODEY: (Indiscernible).

SENATOR SMITH: Right. And by the way, there's no question you've made some progress; no question about that.

The problem is, you're creating a gap. If you go ahead and adopt the Rule, and then file the Concurrent Proposal, there will be some period of time where there's going to be either two sets of standards, or one set of standards, and there's a chance for more confusion. And I tried to find out a little more information about how the--

SENATOR CODEY: How long a period of time is that?

SENATOR SMITH: Well, let me ask that question.

How long is it going to take you to adopt the Concurrent Proposal?

MR. CANTOR: Well, first of all, again, let me just clarify. We don't think there's going to be any gap encouraged.

SENATOR SMITH: I understand your position.

MR. CANTOR: We're always adopting rules to make our rules better.

SENATOR SMITH: I understand your position.

MR. CANTOR: So until the next one comes along, there's always going to be a gap until that happens.

SENATOR SMITH: I understand your position.

MR. CANTOR: You know, if everything works out perfectly-- Again, we always have, at a maximum, one year to adopt a rule. So if the rule is published in the Register in the next month, we have one year. So by next May, next June we have to adopt that rule.

SENATOR SMITH: Or not.

MR. CANTOR: Or not -- but, again, it all depends on the comments. Theoretically, we can get comments that say, "Hey, you missed the mark on wet floodproofing," or whatever, and then we make adjustments accordingly. But, again, if everything works out well -- and this is a much more confined, constrained rule than what we just proposed -- we should be able to adopt it, I would say, in the next six to eight months. Again, we'll lock Vinnie back up in the room again, as he's used to--

MS. KOPKASH: No, no. (laughter)

MR. CANTOR: Okay, we can't; I'm sorry. Six to eight months.

SENATOR THOMPSON: The Chairman's concern is, again, you are proposing these changes. Okay, you adopt the rules that are there without these changes. So during the interval before you can get these adopted, the things you (indiscernible) said, "No, we really don't want

that.” People could apply and, according to the regulations you’ve adopted, they can get it.

SENATOR SMITH: Yes.

SENATOR THOMPSON: And that’s where his concerns lies.

SENATOR SMITH: And here’s one other thing, Sam. I tried to find out a little bit more about how the Administrative Procedures Act works. And I understand that because you have proposed a rule, and it’s gone through a comment period, there is an additional alternative available to you. I understand the part of it that says you can’t do new stuff. On the other hand, you can file, with new stuff, a Consolidated Rule; and my understanding is you then have six months -- an additional six months to a year where you can adopt a Consolidated Proposal.

And there are a couple of issues floating around here. One is, as I understand your schedule, you’re planning to pull the trigger on the Rule early in the first week of June. Am I wrong?

MR. CANTOR: Senator, we’ve already made the decision to move forward with the Rule.

SENATOR SMITH: Right.

MR. CANTOR: The Commissioner has already signed, moving forward--

SENATOR SMITH: I understand that. But the Legislature, now, is three out of four. We have three legs on a four-legged stool. And the Legislature -- overturning regulations is DEFCON 4, in terms of the Legislature responding to its own government. We don’t want to do any of that. We really would like to -- and I think we have been -- work with the Department to get a set of Flood Rules that are environmentally protective.

And as you yourself said in your earlier comments, the rules have improved because of this process. Or did I mishear it?

MS. KOPKASH: Let me make it clear. The rule that we are proposing to adopt is a better rule.

SENATOR SMITH: There's no question about it.

MS. KOPKASH: No question.

SENATOR SMITH: No question at all.

MS. KOPKASH: Environmentally, it is better. People pointed out to us that that quarter-acre in f(1)--

SENATOR SMITH: Right.

MS. KOPKASH: --it could have been abused in the inner 150.

SENATOR SMITH: Got it.

MS. KOPKASH: And we were not-- We missed the mark on that one, for sure.

SENATOR SMITH: So let's give the devil, or the commenters, their due. They actually have helped you to make a better rule in a number of ways -- not just a quarter-acre; there are some other things that you mentioned that were significant improvements.

MS. KOPKASH: Yes.

SENATOR SMITH: So I think the process is working wonderfully, all right? And it's a good thing. I mean, you were about to adopt the rule without making those changes; it's a good thing that the Legislature -- both houses -- passed a Concurrent Resolution to say, "We're not happy with these rules and we want them changed." And now, in this new session, the Assembly has gone forward with the Resolution; and now it's on the Senate side. And what we've tried to do is provide you with an

opportunity to make the rules better, and you have. Don't take this as criticism; you have. There's no question that it's better than it was.

However, there's a problem, and the problem is that when you do it in two packages -- when you do the Rule Proposal and then the Concurrent Rule Proposal -- which you have described as making the rules better -- you create confusion and uncertainty. You really should be doing a Consolidated Rule Proposal. And my understanding of the Administrative Procedures Act -- subject to being kicked in the shins by Judy (laughter) -- is that if you do it as a Consolidated Rule Proposal, it just adds six months, and it also gives the public a little bit of a chance to comment. And the problem with adopting this in the first month (*sic*) of June -- no comments.

So we think it's -- at least I personally think it would be superior, and would create a lot of good will with the Legislature, with regard to maybe not overturning these rules, by putting a Consolidated Proposal together. You already know what you want to do; it's not like you have to start from scratch. Just merge them together and propose a Consolidated Rule, and let the public get its chance to weigh in.

MR. CANTOR: Senator, with all due respect, I think we disagree with you on the process part of this.

When we met several months ago, at this point in time -- and Ginger just said, we have our Rule Team, we have our lawyers, and everyone else -- we had the absolute goal of making sure that when we adopted this particular rule, that it addressed everyone's concerns. And as I've said several times, the rule adoption stands on its own, and we think it is a good -- a better rule, in response to your concerns, Mr. Chairman, the legislative

concerns -- but definitely because of the public comment period and our conversations with EPA. It stands on its own.

The Concurrent Proposal is really a separate animal; it's one that we were mostly planning to do anyway. This is now just an opportunity to avail ourselves. If we were to do your suggestion, Mr. Chairman, and put them all together for a separate -- change upon adoption, is what the EPA calls it -- the commentators could not comment, really, on the other provisions. They could only comment on the new provisions. So it really doesn't add anything to that.

We think we've gone further than anyone else would have done, as far as having all the public outreach; as far as having a year now worth of comment period--

SENATOR SMITH: Yes, yes, yes.

MR. CANTOR: --of having these stakeholder meetings. So we think we're there. And again, there are a lot of good things in the adoption document -- in the original proposal -- with acid soils, with streamlining of permits, with allowing of daylighting of streams. So we believe, you know, it's essential that we get that Rule adopted as soon as possible. The Concurrent Proposal will be out there; we'll take comment on that, and we will act accordingly on that one.

SENATOR SMITH: So there is no question that the Rule and the Concurrent Proposal together are better than what we had; no question about it. But this is the same set of rules that we did get a letter from the U.S. EPA -- as the Rule was proposed -- saying, "There's a problem here." Have we gotten a subsequent letter from EPA saying, "The Rule, as now proposed, passes our tests"?

MR. CANTOR: By the way, EPA did not say there is a problem. They said they have concerns.

SENATOR SMITH: Okay. Do they still have concerns, or not?

MR. CANTOR: We sat with EPA--

SENATOR SMITH: And?

MR. CANTOR: We went over all the changes we planned to make. They understood them, but they said they will not comment until they have read the entire Rule package.

SENATOR SMITH: Which is, again, another argument for making one Rule -- one Consolidated Rule.

MR. CANTOR: No, even if we were to do what you recommend, Mr. Chairman, EPA would still, then, not comment until we are done. So there's never going to be a point in time until after we adopt that the EPA will officially comment. But we are confident in our working with EPA and our going through every single word and line of this Rule Proposal that we have addressed all the concerns that EPA may have. So we have a high level of confidence in that--

SENATOR SMITH: Yes, I know.

MR. CANTOR: But there's never going to be a point in time, until we adopt -- even in six months from now -- that EPA will comment back to us, even if they comment then. It's more likely than not that EPA is going to say nothing at all, as opposed to commenting back, because that -- they said they will only comment to us if there's really an issue. They will not comment back to us and say, "Oh, there's no issue."

SENATOR SMITH: Well, I don't know about that.

MR. CANTOR: Well, that's what they've told us, Mr. Chairman.

SENATOR SMITH: I mean, if they did the initial letter saying, "We have concerns," I think the ball's in their court when there's a new proposal on the table to write a letter saying, "We don't have those concerns."

MR. CANTOR: And Mr. Chairman, we asked them specifically for that.

SENATOR SMITH: Governor Codey, you're trying to get a question.

SENATOR CODEY: Yes, there were two people shaking their heads "no."

SENATOR SMITH: There was probably more.

SENATOR CODEY: The young lady and the gentleman there -- do you want to say why you were shaking your heads?

JENNIFER COFFEY: (off mike) Yes--

SENATOR CODEY: I put you on the spot. (laughter) Don't worry about it.

MS. COFFEY: How do you want to do this?

Jennifer Coffey, Executive Director from ANJEC.

I'm shaking my head "no" because I was in a conversation with EPA last week. And they said they had not received the Rules as of that point in time, and that they would comment on these Rules when they did receive them.

MR. CANTOR: Well, I will say, Mr. Chairman -- again, we have not sent it to EPA yet; we plan to do it after today's meeting. We will send it off to them.

SENATOR SMITH: Yes.

MR. CANTOR: But we sat down with EPA in the room -- three of them across from all of us -- and we-- What date was that?

MR. MAZZEI: Twice.

MS. KOPKASH: Twice.

MR. CANTOR: Twice we've done this. And we said, "Do you have any further concerns?" And they said, "We will not say that until after we've read that." We said, "Will you send us a letter saying afterwards if you have any concerns?" And they said, "At best -- we might, we might not -- at best, what you'll probably get is no response from us whatsoever."

SENATOR SMITH: Okay. So Ray, how long has the Department been working on these Rules?

MR. CANTOR: Quite some time.

SENATOR SMITH: More than a year?

MR. CANTOR: It's been proposed, out there in the public domain, for a year -- so yes. We've been working on this for several years.

SENATOR SMITH: Yes, and you just didn't put it on the table; you've been probably working for a good long period. How long were you working on it, Vince, before that?

MR. MAZZEI: About four-and-a-half years, on and off.

SENATOR SMITH: Okay. So you have five-and-a-half years invested in these Rules. Save yourselves some heartbreak -- put it in one Rule; give it the additional six months; let the EPA react to it, because--

You know, if we didn't have the letter of concern already on file, it would be a different story. But they have already expressed that they had issues with the prior proposal, and you're saying they haven't read the new proposal. Before wasting five-and-a-half years of Department time, put the Consolidated Rule on the table and let the public comment. You will admit, yourselves, that the Rules are now better as a result of this process. And they may be at a point where they're ripe and ready to go. But let's not blow the five-and-a-half years.

MR. CANTOR: Mr. Chairman, this falls in the category of no good deed goes unpunished.

SENATOR SMITH: Pretty much. (laughter)

MR. CANTOR: We did not have to do the Concurrent Proposal whatsoever. The Concurrent Proposal has nothing to do with the concerns raised on the existing Rule.

SENATOR SMITH: All right.

MR. CANTOR: From our perspective, all this does is delay a very good Rule from being put into effect. So from a process perspective, we respectfully disagree with you.

SENATOR SMITH: And the great thing about this country is that we can disagree, all right? So let us note for the record that we disagree.

I'd like to save you from yourselves. Put together a Consolidated Rule; get the additional six months; let's do it right the first time. Let's not have to have the Legislature go to DEFCON 4. You've already had three out of four votes that take these Rules and blow them up. We don't want to be the fourth leg on the stool. We'd like you to finish

the process in what we think is a proper way and not create confusion, not have a gap in the Rules.

And by the way, do you have anybody right now going through this process? How are you treating the existing applications?

MR. MAZZEI: I'm not sure I understand the question, Senator; I'm sorry.

SENATOR SMITH: You must have people who have made applications saying, "We need some modification from the existing set of rules." Not the one to be proposed; not even the Concurrent. Do you have existing applications in front of the DEP for either hardship waivers, or just seeking permits in general that would be greatly affected by the Rule Proposal or the Concurrent Proposal? How are you treating them?

MR. MAZZEI: Well, projects that -- when an applicant applies for a permit before a rule change, then the rules that are in place when they apply govern. So the rule change would not affect projects that are deemed *complete for review* before the rule changes.

SENATOR SMITH: So anything that's deemed complete now goes under the existing rules?

MR. MAZZEI: Correct.

SENATOR SMITH: I got it; okay.

MR. CANTOR: And Mr. Chairman--

SENATOR SMITH: And by the way, that may be a little unfair too, especially if there's such a fairly dramatic change in the rules being proposed. But that's another issue for another day.

MR. CANTOR: Mr. Chairman, I will mention that there are significant changes that are coming in the Rule proposal. And I know there

are people, even in this audience today, whose projects and whose funding for their projects can fall apart if we do not adopt this Rule in the very near future. A six-month delay for some of these projects will essentially kill those projects.

SENATOR SMITH: Name them.

MR. CANTOR: I don't want to -- I'm not sure if anyone wants to speak up who is in the audience, but again, we know of projects that are waiting--

SENATOR SMITH: Is there anybody in the audience whose project will be killed if there is six months in additional review of the Combined Rule? Raise your hand and tell me who you are. Stand up.

J E F F K O L A K O W S K I: (off mike) Jeff Kolakowski, from the New Jersey Builders Association.

SENATOR SMITH: One of the finest organizations in the state.

MR. KOLAKOWSKI: Thank you.

Not my projects--

SENATOR SMITH: Oh, you don't have a project?

MR. KOLAKOWSKI: (Indiscernible).

SENATOR SMITH: You're just saying your members would like to see the Rules adopted, sooner rather than later.

MR. KOLAKOWSKI: Right. (Indiscernible).

SENATOR SMITH: I got it.

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike) (Indiscernible) project. Who can name a project?

SENATOR CODEY: Whoa, whoa -- (indiscernible). That's not been approved.

SENATOR SMITH: All right. So anyway, we're not doing anything today. I'm not even going to take testimony, because the people who would want to testify haven't seen anything. So please, put this stuff on the Internet so people can see what it looks like. My personal suggestion is don't pull the trigger on the Rule. My personal suggestion is put it in a Consolidated Rule; don't force us to go to DEFCON 4. Let's do this right the first time.

You've put a lot of work into this. I can tell it's -- there's an awful lot of really good work here. But the thing that's unfair about the process is people have not had a chance to even read it or react to it. We don't know where the EPA stands on it, and you're about to pull the trigger in the first week of June. Nobody is going to know anything in the first week of June. It would have been nice if we had put all this stuff on the Internet so people-- So today we could have had a productive dialogue.

So what we're going to do -- Ms. Alison, note for the record that at the next meeting-- When is the next meeting?

MS. ACCETTOLA (Committee Aide): The next meeting is the 23rd.

SENATOR SMITH: May 23 -- does that sound right?

It's not the 23rd--

SENATOR CODEY: It's the day after Memorial Day, right?

MS. HOROWITZ: Is it June 3, or something?

SENATOR SMITH: Yes, I think it's in June.

SENATOR CODEY: Yes.

SENATOR SMITH: I have it down for June 6.

And that's one of the problems. I can't even get a response to the Rules or the Proposed Rule -- the new Rule -- because people won't have a chance to read them until June 6. So I understand your schedule; you're planning to pull the trigger on the Rule in that week. Don't do it.

MR. CANTOR: I don't have a problem--

SENATOR SMITH: Do a Consolidated Rule.

MR. CANTOR: --distributing the Rule to everybody as soon as possible so people can see the Rule.

SENATOR SMITH: Terrific. And we're going to take testimony for the people who came specifically to respond today. We'll take testimony on June 6 so we can hear what's out there in the world of the commenters; and we'll see where we stand at that point. And like I said, Ray, take back to the Commissioner -- we do not want to go to DEFCON 4; we want to work with you. But a Consolidated Rule is the right way to go.

Any questions from members? (no response)

I want to thank you for working so hard on the Rules -- putting together what sounds like a pretty good work product. I'm just asking for a little forbearance to do it the right way so that there is no paranoia in the room, all right?

Thank you for coming by.

MR. CANTOR: Thank you.

SENATOR SMITH: And by the way, you're welcome to come back on June 6 to hear what people have to say.

SENATOR THOMPSON: We commend you for the work you've done here--

SENATOR SMITH: Yes; excellent.

SENATOR THOMPSON: --and in modifying this and trying to improve it, etc. I commend you for that.

MR. MAZZEI: Thank you.

SENATOR CODEY: I want to, again, thank you for your forbearance.

MR. MAZZEI: Thank you, Senators.

SENATOR SMITH: In addition to getting some really good intellectual give-and-take here, you also get a little comedy once in a while here -- which adds to making this the most interesting Committee in the Legislature.

Thank you for coming in, guys and gals.

Now we have three important bills to do.

SENATOR CODEY: So moved. (laughter)

SENATOR SMITH: I think there's a little opposition.

All right, let's go to a really controversial one -- S-580, Senator Doherty's Bill, establishing the New Jersey Water Supply and Pharmaceutical Product Study Commission.

And I would just say a word on behalf of the person who is not here. I talked to him this morning, and he didn't know that this Bill was up. And that's Tom Fote, who is a huge advocate for fishing in the State of New Jersey -- recreational, that is -- and who has believed for many years that pharmaceutical residues, even those left in wastewater after treatment, are dramatically impacting our water supplies in a very negative way, and

also creating issues with our fish population. Tom would be here, but for he did not know that this Bill was on.

Let's get a couple of witnesses up on it. And what you're doing here is setting up a study Commission to figure out what we need to do about this issue.

Dave Pringle, Clean Water Action, in favor.

Mr. Pringle.

DAVID PRINGLE: Thank you, Mr. Chairman.

We support the Bill. I was the Assembly Speaker's representative for health for the Drinking Water Quality Institute for 10 years, and we've worked on this issue. My organization also proposed a project for DEP -- that started under the McGreevey Administration, but has unfortunately recently been deep-sixed -- to look at alternative ways to treat, given the hundreds of chemicals that are out there. We would break-- There is not enough money in the world to deal with all the different chemicals and individual standards that we would need for all them -- to treat them as a class of chemicals and treat them at all.

So we support the Bill; it's a huge problem. Tom Fote is on my board; he's a Vietnam vet who was exposed to Agent Orange. This is an issue that is very near and dear to his heart from that perspective, as well as just all the science that is coming out about species and sexes being changed because of pharmaceuticals in the water. It's a complex problem. The largest source isn't what we flush down the drain; it's how we design our drugs, because of what passes through our body -- 95 percent of the drugs we consume don't stay in our body, they go right out in the wastewater; and in the pharmaceutical manufacturing process.

So we're glad that this is getting the attention it deserves.

SENATOR SMITH: Thank you, Mr. Pringle.

Mary Kay Roberts, are you here?

MARY KAY ROBERTS, Esq.: (off mike) I am here.

SENATOR SMITH: All right. Mary Kay is in opposition. You represent PhRMA -- Pharmaceutical Research and Manufacturers of America. And a statement was submitted. Would you give us the benefit of just 30 seconds of why the pharmaceutical manufacturers are opposed to this? That's this one, right? (indicates testimony)

MS. ROBERTS: Yes, (indiscernible).

SENATOR SMITH: Yes. Just a synopsis; 30 seconds.

MS. ROBERTS: Okay.

Thank you, Mr. Chairman.

The industry was very much in support of Project Medicine Drop that the Attorney General's Office launched a couple of years ago. And it was actually codified by the Legislature just last year. We believe DEP--

SENATOR SMITH: That's a great program.

MS. ROBERTS: Absolutely; and it really is working. They do a renewed effort every spring to really promote it through the police officers. And that's in all of the counties and many, many police departments throughout the state.

In addition, DEP has guidance that is out there with respect to the disposal -- the proper disposal of pharmaceuticals. And we think that folks should follow that, versus flushing. I mean, that's been something we've been trying to get out through education efforts.

But we work through our scientists to come up with better products that--

SENATOR SMITH: Sure, sure, sure. But why would you be opposed to a study commission to do, in effect, a little continuing monitoring of the program to see if there's a continuing problem?

MS. ROBERTS: Well, we think that it has been studied in a number of instances. And I think that, you know, as-- You look at the water supply that used to look at things in parts-per-million; we're now into parts-per-trillion. Needless to say, I don't have membership on this particular study commission. It's not really something that we would go out--

SENATOR SMITH: So if you had membership -- that would be a little better for you?

MS. ROBERTS: Well, I would certainly say, you know--

SENATOR SMITH: Why don't you talk to Senator Doherty, because that's not an unreasonable amendment.

MS. ROBERTS: Yes, absolutely, absolutely.

SENATOR SMITH: All the stakeholders should be at the table.

MS. ROBERTS: Certainly.

SENATOR SMITH: Thank you for your comments.

MS. ROBERTS: Thank you.

SENATOR SMITH: Jeff Tittel, Sierra Club, in favor.

Mr. Tittel.

J E F F T I T T E L: (off mike) Yes.

In New Jersey, this is a significant problem, and there have been studies that have laid out, for decades, higher levels of everything from caffeine, to hormones, to high blood pressure medicine. And we really do not know enough about what those impacts are, even in parts-per-trillion or less. But some of those are actually coming in quite high in even parts-per-billion. And the question is, when you have a glass of water, are you actually drinking somebody else's medicine chest?

And I think this is an important study commission to go forward, because we need to finally start dealing with this issue. You know, we see impacts with fish with multiple sex organs; we see amphibians being born deformed with extra limbs. Much of the scientific research shows that may be related to endocrine disrupters, and hormones, and other things in our water.

So I think it's an important issue, especially in a state that, when you look at the Passaic River in the summertime, 90 percent of that water is coming from sewage effluent; and 70 percent or more in the Raritan. And so there are high levels, and we have even found it here in Trenton. So I think it's worthwhile to go forward with. And even Senator Doherty, every once in a while, does something good for the environment, which is--

SENATOR SMITH: Now, now, now. Let's stop picking on Senator Doherty. (laughter)

MR. TITTEL: I'm only kidding. I like Senator-- He's been good on a lot of things.

And I just will end with my old line from 10 years ago, when we first started studying it -- that when you look at the Passaic River, and you

go to the Great Falls in Paterson -- on most days, you could call it *Viagra Falls*.

SENATOR SMITH: Oh, God. (laughter)

MR. TITTEL: Thank you.

SENATOR SMITH: All right.

Ed Waters, Chemistry Council of New Jersey, opposed, no need to testify.

Ed, no need to testify? You have to give me at least 30 seconds. What is the chemical industry concerned about?

E D W A T E R S: Mr. Chairman, other than echoing what Mary Kay had said, we would like to see it more geared towards water filtration, water treatment. Because that's where we think--

SENATOR SMITH: It is. They've taken out proper disposal, and focused on potential filtering techniques to remove pharmaceutical products from waste.

MR. WATERS: Okay. Well, that's-- We just think it should be a little stronger. We're working with a sponsor on it; I've talked to his staff.

SENATOR SMITH: All right. And you would also like a seat at the table, as well?

MR. WATERS: Sure.

SENATOR SMITH: Your industry? Good.

All right; we'd like to get you "in favor" of it at some point.

MR. WATERS: Okay.

SENATOR SMITH: All right?

Thank you for your comments.

That concludes all the witnesses on S-580.

Any questions from members?

SENATOR THOMPSON: I would just state that I am going to abstain on the Bill--

SENATOR SMITH: Okay.

SENATOR THOMPSON: --simply because it's directed strictly at pharmaceuticals in the water. There may be some data out there which I haven't seen. I mean, if we're addressing contaminants in the water in general, yet we're looking for a method of specifically removing pharmaceuticals, I'm not sure whether there are methods for removing pharmaceuticals in particular. So I'd like a little more information. We want to just target pharmaceuticals, as opposed to -- okay, looking at removing chemicals and etc., fine.

So for the moment, I'll abstain.

SENATOR SMITH: Okay.

A motion to release by Senator--

What's that?

MS. HOROWITZ: (Indiscernible).

SENATOR SMITH: Oh, yes, yes, yes. And there are some amendments. Judy, would you describe them, please?

MS. HOROWITZ: The amendments would take out the disposal element to the Commission's responsibilities, and would also require that the members be appointed no later than the 60th day after the effective date.

SENATOR SMITH: Okay.

Senator Greenstein moves the Bill, as amended.

I'll second that motion.

Let's take a roll call on it, please.

MS. HOROWITZ: On Senate Bill 580, with Senate Committee amendments, Senator Thompson.

SENATOR THOMPSON: Abstain.

MS. HOROWITZ: Governor Codey left a "yes" vote.

Senator Greenstein.

SENATOR GREENSTEIN: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes.

The Bill is released.

The next Bill is Senate Bill 885 by Senator Greenstein. Senator Greenstein, would you describe your Bill for everybody?

SENATOR GREENSTEIN: Yes.

This Bill directs the Drinking Water Quality Institute to study the issue of TCP levels -- a contaminant -- in drinking water, and recommend within 90 days, to the DEP, a maximum contaminant level for this.

This Bill is a legislative effort to make the DEP act on this. This has been going on for about six years. I know, on the Budget Committee, we often talk about the Institute -- the Drinking Water Quality Institute -- which really has not been active for the last couple of years. But they're a scientific body, and they made the recommendation that the chemicals should be regulated. This Bill does not say what the level should be of the chemical. It just says, "Please have the Drinking Water Quality Institute act on it, and adopt levels."

So that's what the Bill is trying to do. I think it's straightforward, and I think it's important.

SENATOR SMITH: Good. Thank you, Senator.

Drew Tompkins, New Jersey League of Conservation Voters, in favor, no need to testify; Mike Pisauro, in favor, no need to testify -- and that's the Stony Brook-Millstone Watershed Association; Doug O'Malley, Environment New Jersey, in favor, no need to testify; Bill Kibler, Raritan Headwaters, in favor, no need to testify; Dave Pringle, in favor, and he has a need to testify.

MR. PRINGLE: (off mike) Yes. (laughter)

Very quickly -- we appreciate the Senator's leadership; we obviously support the Bill. It's a real shame -- this essentially passing a law to tell the DEP to obey the law. And we shouldn't have to do it, but the reality is we do. The Drinking Water Quality Institute, under the Christie Administration -- Commissioner Martin refused to let them meet for five years; the second through the sixth year of his term, basically. They are starting to meet now, but it's very slow. And there's currently a tremendous amount of political interference.

So I thank you again for your leadership. I'm glad that it was passed last year. Hopefully the Governor will have a change of heart and sign it; and if not, then we'll go for an override.

SENATOR SMITH: Thank you very much.

Jeff Tittel, Sierra Club, in favor.

MR. TITTEL: I'll be real-- I'll be brief.

We're finding TCE (*sic*) in New Jersey in at least 20 percent of the water systems. It may be higher, because we're not always testing for it

-- but from Ringwood, to Morristown, to Brick, and other places. And a lot of it comes from dry cleaning, and gasoline, and other things.

And there's a serious problem in Morristown. We've been working with the community there, and Assemblyman Conaway, for the last couple of years on it. And because there's not a standard -- and maybe it is going to sound stupid, but there's a simple remedy which would be to require the water systems to put in a carbon filter. And it's not hard, but it costs money and they don't want to spend the money unless they're mandated. And meanwhile, people are drinking water that may put their health at risk.

And so the failure for five years for the Drinking Water Quality Institute to meet is one thing; this Administration has not adopted a new standard because you don't need the Drinking Water Quality Institute to adopt a standard; DEP can do it without the Drinking Water Quality Institute. There's enough peer reviewed information to set a standard. And I think that we're putting people at risk if we don't adopt standards, because we're not cleaning up the chemicals that are in the waterway that are threatening people's health.

Thank you.

SENATOR SMITH: Thank you, Mr. Tittel.

Any questions from Committee members? (no response)

All right; if not, a motion to release by Senator Greenstein, seconded by Senator Smith.

Can we take a roll call vote?

MS. HOROWITZ: On Senate Bill 885, Senator Thompson.

SENATOR THOMPSON: No.

MS. HOROWITZ: Governor Codey left a “yes” vote.
Senator Greenstein.

SENATOR GREENSTEIN: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes.

The Bill is released.

And our last Bill of the day is Senate Bill 1251 by Senator Vitale, which allows tax credits for development of qualified wind energy facilities in certain portfield sites.

This Bill is designed to amend the Offshore Wind and Economic Development Act to expand the definition of *wind energy zone* to include property located in the project area of the Portfields Initiative.

So it’s an expansion of where they can happen. That being said, when and if they will ever happen in New Jersey is another issue; to which I add my mantra, “Go BP, you go.”

And we have a couple of witnesses -- Doug O’Malley, Environment New Jersey, no need to testify, in favor; Drew Tompkins, New Jersey League of Conservation Voters, in favor, no need to testify; Jeff Tittel, in favor.

Mr. Tittel.

MR. TITTEL: I’m just-- Briefly, this Bill has been around for a while. And we have companies that are willing to put windmills off our coast. We have the Federal government that has leased out enough wind potential for 3,500 megawatts, or a third of our energy needs. Those companies are there; they’re looking to move forward and build windmills. We have the potential for billions of dollars in private investment for these

port facilities, for a manufacturing facility in South Jersey. And the Administration, by holding up the financial rules for six years on the Offshore Wind Economic Development Act, has really stifled economic development. And so I think this Bill, hopefully, can go forward and send a message that we can create jobs, and reduce greenhouse gases, and do a lot of good things by starting to move forward on offshore wind like other states are doing.

SENATOR SMITH: Thank you for your comments.

Dave Pringle, in favor -- Mr. Pringle, no need to testify by a thumb's up.

Any questions from Committee members?

SENATOR THOMPSON: Move the Bill.

SENATOR SMITH: Move the Bill?

Move the Bill.

SENATOR GREENSTEIN: Second.

SENATOR SMITH: Second.

Let's take a vote on release. (laughter)

MS. HOROWITZ: On Senate Bill 1251, Senator Thompson.

SENATOR THOMPSON: Yes.

MS. HOROWITZ: Governor Codey left a "yes" vote.

Senator Greenstein.

SENATOR GREENSTEIN: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes; the Bill is released.

And that concludes another episode of the most interesting Committee in the Legislature.

(MEETING CONCLUDED)