
Committee Meeting

of

SENATE ENVIRONMENT COMMITTEE

SENATE BILL No. 1759

(Establishes fine particle diesel emissions reduction programs; establishes tax deduction for compliance; updates current diesel and bus programs; authorizes DOT oversight for truck routes; creates public outreach programs; appropriates \$24 million)

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

DATE: July 22, 2004
11:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Stephen M. Sweeney, Vice Chair



ALSO PRESENT:

Lucinda Tiajolloff
*Office of Legislative Services
Committee Aide*

Kevil Duhon
*Senate Majority
Committee Aide*

John Hutchison
*Senate Republican
Committee Aide*

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SENATOR BOB SMITH (Chair): Let me welcome everybody to the Senate Environment Committee. Let me thank Senator Sweeney for being here today. It's a tough thing to ask people during the summer to come on in for hearings. However, this is such an important piece of legislation that we thought we should begin the process of vetting the issues associated with diesel particulates. I think one of the things that the people here today are going to hear, from some of our witnesses, are the absolutely horrendous morbidity and mortality statistics associated with diesel particulates in New Jersey.

We also-- By way of background, you may know that New Jersey's strategy to diesel particulates is one of the ways in which we're approaching attaining our obligations under the Federal Clean Air Act. And we have Commissioner Campbell here to open the discussion.

We are not releasing a bill today, as is our general practice. Sometimes there's exceptions. (laughter) But, as is our general practice, we're going to start hearing the bill today. And hopefully, sometime this fall, we're going to be releasing an even better bill. But we needed a place to start, and that's what today's bill does -- S-1759.

That all being said, let me ask our Commissioner of the Department of Environmental Protection to come forward.

Lucinda, if you would, just a roll call for the record, first.

MS. TIAJOLOFF (OLS Committee Aide): Senator McNamara.

SENATOR SMITH: Probably can't do anything with it. I have the buttons pushed. (referring to PA microphone)

MS. TIAJOLOFF: Senator McNamara. (no response)

Senator Ciesla. (no response) Not present.

Senator Adler. (no response)

Senator Sweeney.

SENATOR SWEENEY: Here.

MS. TIAJOLOFF: And Senator Smith.

SENATOR SMITH: Good.

All right. We have our Commissioner of the Department of Environmental Protection, who is still on his honeymoon. And we're happy to have him here today to introduce the topic to the people of New Jersey.

Commissioner Campbell, if you'd come forward and tell us a little about the issue, we'd appreciate it.

COMMISSIONER BRADLEY M. CAMPBELL: Good morning, Mr. Chairman and members of the Committee, and thank you for the opportunity to be here today.

I think, simply put, that fine particulate pollution in the State of New Jersey is probably the most significant public health issue linked to environmental causes that we have in the state. I think here the facts are stark and they speak for themselves. Fine particulate pollution contributes to, by EPA estimates -- by studies EPA has conducted and relied on -- 1,000 premature deaths, or more, a year; 68,000 asthma cases. And I think by way of comparison to other issues that are before the Legislature, some of that can be put in perspective by understanding that premature deaths linked to fine particulate pollution in the State of New Jersey cause more premature deaths than traffic fatalities, more premature deaths than homicides.

If we were able to achieve the new, public health standards that EPA has set for fine particulate pollution in the State of New Jersey, we would

save more lives, avoid more premature deaths, than if we were able to stop every traffic fatality, and prevent every murder in the State of New Jersey. That's the low end of the estimates. At the high end of the estimates, it would be more premature deaths averted than if we were able to both avert every traffic fatality and every homicide.

And we know-- And that's before you even get to the other health-care costs short of premature death: the asthma cases, the cost to our educational system of children missing school because asthma rates are epidemic and increasing among children. All of those costs on the communities of New Jersey have to be reduced, mitigated, and avoided by meeting those new, public health standards in a timely way here in the State of New Jersey. But it's a tough challenge. And as we meet that challenge, we also have to recognize that the costs of this pollution problem, the health impacts, do not fall evenly across our state.

While asthma rates are epidemic and increasing among all children, the rates are two, three, in some cases 14 times as high among black and Hispanic children, among low-income children, particularly in densely-populated communities. So this is truly, as I said, the most significant public health problem linked to environmental causes, I believe, in the State of New Jersey.

I think it's also notable here that the new public health standards that have been put forth by EPA for fine particulate pollution were proposed -- they're -- it's among one of the few environmental standards that was proposed by the Clinton administration and that has been strongly upheld and defended by the Bush administration. I think there's a recognition across parties, across

scientific disciplines that the science here is strong and compelling. And it is for that reason that we have sought, and Governor McGreevey committed in his State of the State Address, to an initiative to meet those Federal health-based standards in a timely way, to try to achieve a 20 percent reduction in fine particulate pollution across the State of New Jersey through a variety of initiatives; and as part of that, to begin a retrofit program for -- not for all diesel engines, not for all diesel trucks, but really focused on the those diesel engines in our inventory of roughly 25,000 diesel engines across the state that run the longest and are the dirtiest. And without addressing those sources, New Jersey will have a very difficult time achieving the public health standards that EPA is now set to enforce.

Just by way of illustration, EPA recently proposed 13 counties, across the State of New Jersey, that are currently in non-attainment for fine particulate standards. We know that we can only get to those standards if we address all of the sources that we have that are producing that pollution. And part of the answer has to be a diesel retrofit program.

I also think it's notable-- And I think the leadership of this Committee -- in having this hearing, and highlighting this issue, and in advancing legislation -- is important not just as a matter of public health, although clearly that alone is enough to defend and justify new legislation in this area, but also as a matter of regulatory fairness.

For years, the manufacturing sector in this state, other industrial sectors in this state have complained that every time we need to reduce air pollution to meet new and tougher standards, we keep going back to the manufacturing sector. We keep focusing, as regulators, on what are called

stationary sources to get those reductions. And all the while, the Business and Industry Association and other groups have complained that we don't go for the much more cost-effective reductions that can often be found in other sectors, particularly the mobile source sector.

And so that I think this is -- pursuing legislation in this area, legislative support for a diesel retrofit program, is enormously important as a matter of ensuring that we're getting to those public health standards in a fair and balanced way, as well as to ensuring that we actually meet them in a timely fashion. And for that reason, I think it's notable that the Department's Clean Air Council, from whom I sought advice and recommendations on this topic, has been strongly supportive in a recent report, strongly supportive of this initiative -- has been strongly supportive of addressing this issue. And I would note that that Clean Air Council is broadly represented. It includes not only public health experts, but also significant representation from the affected industry. And I think that, unlike many issues that can be contentious in the Legislature, I think this is one where we are seeing the beginnings of a broad-base consensus that includes the regulated community. And it also includes some of the most regulated entities that would be directly subject to any proposed legislation on retrofits.

By way of example, Joseph Jingoli Construction has already agreed to partner with us and implement the retrofit requirements in advance of any legislation. Because they recognize as a matter of public responsibility, as a matter of public health, it's the right thing to do. They recognize that over the longer term, that those retrofit requirements should be part of public contracting requirements. And they recognize, as a citizen of the State of New Jersey, as

well as a leading construction company, they need to be part of the solution. They are not alone. We are in discussions with three or four other major, private companies in the state that are responsible for a significant amount of the construction and other economic activity in the state, who likewise want to partner with us, want to get ahead of the curve, and want to demonstrate to the public and to this Legislature that they're doing the right thing, that DEP is on the right course, that the Governor is on the right course in identifying this as a priority environmental issue that needs to be addressed.

And I look forward to working with the Chairman, with the members of the Committee, to make sure we address it in a fair and balanced way, that we address the range of concerns that you'll hear today from various constituencies. But that we address it promptly, recognizing that we already suffer too many premature deaths, too many asthma cases, too many impacts to childrens' lives among our families, because of the failure to address this problem in the past.

So with that, I'll divert any questions that you have, Mr. Chairman or members of the Committee.

SENATOR SMITH: The only question that I have, Commissioner, is with regard to New Jersey's attempts to be in -- conforming with the Federal Clean Air Act. What would this plan do for us? What would this legislation do for us, in terms of meeting those attainment goals?

COMMISSIONER CAMPBELL: Our goal is to meet those new standards in a timely way. If we don't meet them in a timely -- and not just through retrofits but through a variety of measures-- For example, the mercury rule, which we'll soon adopt, has benefits for fine particulates as well. From

that rule alone, we would expect, from the power plants and incinerators affected by that rule, we're going to get 50 percent reductions in fine particulates as kind of a side benefit of the mercury reductions.

So, across a range of areas, we're hoping to achieve a 20 percent reduction that allow us to meet those standards in a timely way. If we don't meet those standards in a timely way, permits for new facilities will then require offsets, under the Federal law as we implement the act. And that will mean not only a public health failure in terms of meeting the standards and serving public health, but also an economic drain or impediment for new business location in the state. Because any business coming in that may have some fine particulate emissions will then have to generate offsets in every case. So there is both a public health and a direct economic benefit to meeting those standards on time.

SENATOR SMITH: Great.

Senator Sweeney.

SENATOR SWEENEY: Commissioner -- and I might be off-base or wrong -- but I saw where we filed suit against some other states for air pollution, and particularly -- obviously what we're talking about here. If we do everything we can do to reduce ours, are we still in the same boat? Because, like Gloucester County where I'm from, we have failed. We have failed the last several years. We've gotten reports where we've failed on air quality. But as long as they're polluting in Ohio and in the midwestern states, our air quality is still going to continue to fail, isn't it?

COMMISSIONER CAMPBELL: Well, we think that, through the measures that we're introducing, that we will be able to -- including if we get support on the retrofit legislation -- that we will be able to meet the new

standards in a timely way. We will continue not only on fine particulates, but on ozone, on mercury. We will continue to get, roughly, a third of our pollution from those upwind power plants if they haven't been controlled. But we have had some significant success in our litigation strategy against upwind power plants. We haven't sued other states; we've sued upwind power plants. We secured the closure of the PPL facility just across the river from Warren County. We are continuing against other power plants upwind, and we expect that, as we implement the controls here, we will also continue to have success, plant by plant, in partnership with other states in getting controls on those upwind plants as well.

But you're quite right, and we've -- in some sense, our hand has been weakened by some of the Bush administration's changes in the law. But regardless of what happens upwind, the Federal Government will be compelling us to get the reductions in New Jersey, as unfair as that seems. And by getting ahead of that curve, we can avoid some potentially much more disruptive reductions forced by the Federal Government under the Clean Air Act.

SENATOR SWEENEY: One follow-up question. Again, the Federal Government is pushing us to get in compliance, which I agree we should do everything we can do to clean our air up. But if they're pushing us, how can these other states escape the right thing to do? Do you know what I mean? Commissioner, where we have to go to litigation for these facilities -- how can these other states -- are not-- I guess you might not have this answer, but how is the EPA stronger in some states than others, as far as enforcement?

COMMISSIONER CAMPBELL: Well, the answer, in part, is that those other states also will be forced where they have non-attainment areas.

They also will be forced to make reductions. And they may be forced to make some of those under the gun with EPA, later rather than sooner. And I think what the Governor has charted as a course -- where we don't wait for the train wreck to occur, we don't wait to where EPA is demanding draconian reductions from businesses who need certainty, who need predictability. But we'll get ahead of the curve, get a sensible program in place now, so that we're meeting those standards on time. And by meeting those standards early we'll not only avoid a lot more economic dislocation, but we'll also save, literally, thousands of lives by being ahead of the curve. And that, I think, is the right thing to do.

We will continue to press EPA. They are coming up with a new interstate transport rule, which may contribute somewhat to reducing those emissions. We think it's still too weak, but we will continue to push, whether it's by litigation, through legislation at the Federal level, and other means, to ensure that upwind states are doing their fair share. And in fact, other states, frankly, are moving in this direction as well. New York, as many of you saw in the context of the World Trade Center reconstruction, required this type of retrofit program for all the construction vehicles there, recognizing the public health impacts. And so, I think, we will see the other states moving in that direction. Some already have. But I think because New Jersey suffers disproportionately from the problem, that we need to be leaders in establishing a solution.

SENATOR SWEENEY: Thank you.

SENATOR SMITH: Thank you, Commissioner. We appreciate your coming here today and emphasizing the importance on the issue.

COMMISSIONER CAMPBELL: Thank you, Mr. Chairman.

SENATOR SMITH: As is our practice, we try to go back and forth between points of views.

Our second speaker will be Herb Klein -- former Congressman Klein -- speaking on behalf of the New Jersey Motor Truck Association.

HERB KLEIN: Thank you very much, Senator. I appreciate your courtesy, the courtesies of the Committee, and Senator Sweeney.

I have with me Gail Toth, who is the Executive Director of the New Jersey Motor Truck Association. And we also have here Robert Cohen, who is affiliated with the Shevell Group of companies, which are the largest New Jersey-based trucking operators and, of course, have a very great stake in the economy of the state.

The New Jersey Motor Truck Association has represented the interests of the New Jersey trucking industry since 1914. And for the past 90 years, the industry has worked closely with the State to balance the needs of an efficient and economic transportation system with the needs of the residents. At last count, there were 252,000 people in New Jersey employed in the trucking industry. And most of those are New Jersey residents. And not only are they New Jersey residents but, of course, they have families, so that the number of people who are affected goes into many more hundreds of thousands and millions. And for that reason, and for many others, because we're good citizens, we're concerned about clean air quality, and we're very much supportive of the basic overall goal of achieving clean air quality in this state.

And I will tell you, and I commit right now to the Committee and to Commissioner Campbell, that we stand ready to work with the Committee

and the Commissioner and the Department to achieve standards that will keep New Jersey in the forefront of clean air protection.

As the Committee well knows, the EPA was created in 1970 for the purpose, among other things, of achieving clean air standards, and specifically in the area of working on fine particulate emissions. It has steadily reduced and established standards for reduction of those emissions. I won't go into the specific history of it. We have a statement which we have filed with the Committee. Suffice it to say that the proposed standard for new truck vehicles, as of 2007, has now been dropped to 0.10 (*sic*), which is a huge reduction -- over 90 percent reduction. That means that all new vehicles that come on the market as of 1970 will be required--

GAIL TOTH: 2007.

MR. KLEIN: --I'm sorry, 2007 -- will be required to achieve that standard. Now, what the Committee and what this legislation would do, however, would be to require that in New Jersey, and New Jersey alone, there would be a requirement to jump the gun and to retrofit well in advance of that date. And what that does is really create a disincentive. A fleet operator that intends to purchase vehicles and engines in 2007 that will meet the new EPA standards, which are the -- certainly standards that I think even the Commissioner would totally support -- would be forced to retrofit in advance of that and invest substantial, huge sums of money in retrofitting. We think that makes no sense from a purely business point of view. But worse than that, what it does is impose a terribly onerous economic burden.

What it means, for example, for engines that are pre-1991, the estimated cost may go as high as \$90,000 per engine for retrofitting. For more

modern engines, an estimate in the area of \$8,000 to \$12,000 per engine seems to be an accurate one. For a large fleet operator, that's a huge, huge investment, and it's an investment that the fleet operator says, "I'd rather put my money into buying new engines in 2007."

But what does it do? What it does is create not only a disincentive to invest, but what it also creates is an incentive for that fleet operator to move his base of operations outside the State of New Jersey and to do, in the process, tremendous damage to the state's economy.

Another aspect of this thing that is terribly disturbing-- As you know, one of our main sources of the economy is the attraction of our port. We've done a great deal to develop the port. It is certainly one of the premier ports in the United States. But to the extent that if these extra requirements are imposed upon vehicles that are servicing the port, it increases costs. And to the extent that it increases costs, it puts our operators and our port at a competitive disadvantage with other east coast facilities and the facilities in other parts of the country.

Now, we believe that the requirements of this legislation would deal a serious, serious devastating blow to the New Jersey motor truck industry if it is rigidly enforced in accordance with the legislation.

Another serious defect in the legislation is that the older engines, which for the most part are the ones that are the most troublesome in terms of the amount of pollutants that they occur -- for the most part, those engines are engines on trucks that are owned and operated by small mom-and-pop operations, individual operators, and they're not regulated under the bill. So

that the bill, to that extent, is not going to achieve the purposes which it is intended and for which it was created.

The bill also proposes tax incentives. And I would respectfully submit that those tax incentives are totally illusory. At best, all they do is to accelerate a tax deduction from the State income tax. It doesn't give you an additional deduction. It simply accelerates a deduction that is already available, but it only does so from the State income tax. And the effect is that better than 90 percent of the total cost of retrofitting is going to be borne by the operators. And those operators, for the most part -- I want you to understand that the New Jersey motor truck industry, the motor truck industry throughout the country, is an industry that operates on paper-thin margins. We have seen some big and some small operators go out of business here in New Jersey within the last year. And they go out of business because it is a tough industry at which to make a buck. To impose an additional cost on these folks is in many cases going to result in driving more and more companies out of business.

In addition to that fact, if you're not making much money or making no profit at all, to get a tax deduction gives you absolutely nothing. You don't get any value out of it.

And finally, I wanted to say that while this legislation proposes to apply to all vehicles operated within the state, whether they are based in New Jersey or out of New Jersey, I think it is going to be virtually impossible to enforce it on out-of-state vehicles, because of the Federal preemption and the constitutional restrictions of the commerce clause.

Finally, I want to close by saying that the bill is a very comprehensive one. We've had a very short period of time within which to

study it. We certainly want the opportunity to provide further comments. But more importantly than that, we want the opportunity to meet with the Committee, to meet with the Commissioner -- I already spoke briefly to the Commissioner before he spoke this morning -- and we want to work with the State to try to achieve legislation that does good for everybody, that helps to keep New Jersey in the forefront of clean air emissions, and at the same time makes good sense from an economic standpoint and from the standpoint, most important, of the State's economy.

So I thank you very, very much, and I would be very pleased to answer any questions.

And Gail, I don't know whether you have some additional comments to make, or whether Mr. Robert Cohen, I believe, has a statement to make as well. But we're happy to answer any questions.

SENATOR SMITH: Senator, any questions?

SENATOR SWEENEY: I have a couple. And I know, since you have a lot of speakers, I won't have a lot of them, Chairman.

What I'm hearing, then, is that we're going to put regulations in place that aren't going to be enacted in any other part of the country.

MR. KLEIN: That's correct.

SENATOR SWEENEY: And the volume of truck traffic that runs through this state-- Is there any way of figuring out what the percentage would be of out-of-state trucks that come through the state compared to-- I'm sure it's extreme in numbers.

MR. KLEIN: I don't know the exact percentage but, by far, the vast majority are from other states.

SENATOR SWEENEY: I guess the other thing that I'm looking at is, if we lived in a perfect world where it was only New Jersey trucks driving through New Jersey, and we could put a wall up, then it wouldn't be a competitive disadvantage and we would be accomplishing something.

MR. KLEIN: Right.

SENATOR SWEENEY: But if you can't control all the sources of pollution -- is what you're telling me, just as I asked the Commissioner prior-- Are any other states indicating that they are going to do this, to your research?

MS. TOTH: Can I make a point?

SENATOR SWEENEY: Please.

MR. KLEIN: Go ahead.

MS. TOTH: In 2007, and over the years that he alluded to -- we just didn't get into all the details -- our industry, the trucking industry, has consistently been regulated by the ETA at the manufacturing point of our engines. The 2007 engines will meet the goals that are stated in this legislation. Essentially what's happening with this legislation -- and that's EPA national legislation. That means all trucks across the United States, when they purchase their 2007 engines and, therefore, after, they will be having that 0.01 particulate matter reading. That is what this goal is looking to accomplish. So what we're seeing is, basically, the State of New Jersey is asking us two years in advance of the Federal regulation to go through this retrofit process, when we have a lot of guys that will be buying new trucks in 2007 and 2008. We're asking them to spend millions of dollars that they don't have now, to be in compliance, for what they will be in compliance within two years.

I think it would behoove us to stay with the national system when you're talking about vehicles that go interstate and operate interstate. In addition to that, there's another component that goes with this. In 2006, nationally, we do have that reduction in the sulfur -- the low, ultra sulfur fuel (*sic*) -- which is also in this legislation. Currently, the EPA is testing the 2007 fleets with some fleet owners. They can't even get this ultra-low-sulfur fuel for the test process. It's a specialty fuel, essentially, and as of right now it's not very regularly available. If we have to say in 2005 that all New Jersey trucks are going to have to have this low, ultrasulfur fuel, where are we going to purchase it from? How do we run our trucks? What happens when we run out of state and we can't get the same kind of fuel? You can't mix fuels between one engine and another. So this presents an enormous amount of problems.

What we're looking for is that the Federal Government has set these standards, they're coming very quickly, and there was a very major piece of legislation that was passed since the Governor made his comments in January.

And that is, in May of this past year -- May 10, I believe -- the EPA did announce some dramatic advancements in the Clean Air Act. Up until now, off-road vehicles were not regulated by EPA. They are now. And we believe, with the combination of those Federal rules for off-road, as well as the Federal rules for the on-road diesel emitting vehicles, we are going to tremendously exceed the 20 percent that the DEP is looking for in this legislation.

So I think that we need to focus on what's out there federally. It's a standard; it's a national standard. This way it doesn't impose a burden on New Jersey businesses over other businesses. And as an industry, we have been

cooperating and doing the best that we can. And I'm sure that the other people in the off-road sector are going to be doing the same thing we've had to do.

SENATOR SWEENEY: But I live in southern New Jersey, so my understanding of this: I'm 20 minutes from the Delaware Memorial Bridge. I can have a major trucking firm move their office, not even their yard, but their office to Delaware. And say they're headquartered in Delaware where there's a lot less tax issues to start with--

MR. KLEIN: Right.

SENATOR SWEENEY: --and operate in New Jersey as they always have without this.

MR. KLEIN: Absolutely.

SENATOR SWEENEY: Okay. I just wanted clarification on that. Thank you.

SENATOR SMITH: I think we need one other clarification.

Ms. Toth, you mentioned that the Federal standards kick in, in 2007.

MS. TOTH: Yes.

SENATOR SMITH: Isn't that with regard to the purchase of new vehicles?

MS. TOTH: That's the purchase of the new vehicles.

SENATOR SMITH: Yes. Doesn't that also mean, though, that all of the old vehicles, which Commissioner Campbell identified as the major polluting sources for diesel particulates, can continue on the road?

MS. TOTH: Yes. But they're saying -- well, from an industry perspective, we turn our fleets over every three to four years, the larger fleets, which this bill seems to be directing itself at.

SENATOR SMITH: But the Federal standards won't take the old vehicles off the roads.

MS. TOTH: The Federal Government estimates by the year 2020, 70 percent of all vehicles, including the off-roads, will all be retrofit or in compliance with the new. There are voluntary retrofit programs across the country. And if this state would adopt a retrofit program that would help finance the older vehicles to get off the road, we'd be very glad to do that.

SENATOR SMITH: We'd like to talk to you about that.

MS. TOTH: Definitely a (indiscernible), we'd like to see.

MR. KLEIN: Can I just add one other thing with regard to your question? And that is that the larger fleet operators, who are the ones who will be basically the ones being sought to be regulated here, will likely buy new equipment in 2007, 2008, get rid of their older equipment. And the older equipment is going to end up in the hands of the smaller operators who are not regulated.

SENATOR SMITH: In the current version of the bill?

MS. TOTH: Correct.

MR. KLEIN: Yes.

SENATOR SMITH: Okay.

Thank you, Mr. Klein and the New Jersey Motor Truck Association.

MR. KLEIN: Thank you.

SENATOR SMITH: Our third witness is Jorge Berkowitz, New Jersey Clean Air Council.

JORGE H. BERKOWITZ, Ph.D.: Good morning, Mr. Chairman, Senator.

On behalf of the Clean Air Council in the State of New Jersey, my name is Jorge Berkowitz. I am Chair of the Clean Air Council. Just in the way of a little background and introduction to who the Clean Air Council is and what we do: the Clean Air Council was created in the 1954 Clean Air Act in the State of New Jersey, the purpose of which is to serve in an advisory capacity to the NJDEP and make recommendations to the Department regarding air quality issues. Of course, NJDEP didn't exist back then, so initially it linked with the Department of Health and Conservation and Economic Development.

The Council is comprised of 17 members, 14 of which are appointed by the Governor; in addition to the Commissioner of Community Affairs, or their representative; the Secretary of Agriculture, or their representative; Commissioner of Commerce and Economic Development, or their representative.

The Commissioner alluded to the very diverse nature of the Council. And let me identify the nature of the Council. Six members are from the public and the others are from the NJBIA, New Jersey Chamber of Commerce, The American Association of Industrial Hygienist, New Jersey Association of Counties, New Jersey Health Affairs Association, New Jersey League of Municipalities, New Jersey AFL-CIO, New Jersey Society of Professional Engineers, and New Jersey Department of Health and Human (*sic*) Services.

Each year the Council selects a topic which it thinks is particularly important and timely regarding air pollution and air quality issues. On April 14 of this year, we held our hearing, the subject of which was fine particulate matter in the atmosphere. The hearing received testimony from national and regional experts. In all my years on the Council, I would say that the quality of the presentations was the best that I've ever personally heard.

As the subject matter of our hearing is germane to the interest of this Committee, I am here to report to you on the Clean Air Council's findings and recommendations. And I have provided copies of the Council's report to you, and I commend it for you for your further deliberation.

I'll briefly identify the recommendations of the Council regarding fine particulate matter. The Council believes that great strides have been made in controlling emissions from both stationary sources and mobile sources. However, diesel-powered mobile sources, which are a major contributor of fine particulate pollution, in our opinion, have not received the regulatory attention which we believe they deserve.

Significant epidemiological evidence implicates and correlates fine particulate matter with increases in asthma -- and let's make no mistake about it, ladies and gentlemen, we're in the midst of an unexplained asthma epidemic, not only in our state, but this country -- emphysema, and even coronary incidents.

Though diesel engines continue to be the most important local source of particulate matter, there exists effective technologies to control these emissions. New diesel engines produce far less particulate matter than the older ones. Retrofits for some of the older diesel engines are effective and can be cost-

effective. However, diesel engines manufactured prior to 1990 represent a particular problem, and in our belief, should be incrementally removed from the fleet.

While fine particulate matter impacts potentially all New Jerseyans, it is particularly exacerbated in highly trafficked areas of our state -- read urban centers. These are areas where we are directing our future growth so as to comport with the principles of smart growth. Therefore, it is incumbent upon us to reduce fine particulate loads in these areas so the population growth may occur in these areas without attendant, unnecessary exposure to what we believe, as I demonstrated, a health impact.

The Council believes that the exposure to air exceeding the present 2.5 micron standard is indeed unhealthy. As you know, a significant portion of our state is now noncompliant with the Federal standard for the fine particulate matter. Therefore, the Council supports an array of initiatives focused on reducing fine particulate matter from diesels, including using only clean diesel technology and ultra-low-sulfur fuel for State-funded construction projects. The Council also supports the retrofitting of older diesel engines on a cost-effective, incremental basis with appropriate financial incentives. In passing, we might note that NJ Transit has already gone to ultra-low-sulfur diesel fuel where possible. And they should be commended for doing so. We also recommend that New Jersey Transit purchase only clean diesel technology engines.

Diesel-powered school buses represent a special significant problem. Incentives and education should be provided to school boards and municipalities in an effort to reduce the exposure of children to bus diesel emissions. Recently there was an exposure assessment done on children to diesel

and fine particulates in the New England areas. I will tell you the information is contained in the report as an appendix, and I commend that to your reading.

The Council supports the EPA initiatives requiring nonroad diesels to have particulate controls by 2012. The State should require retrofits of nonroad diesels on a schedule that is technically and economically practical. The Council supports vigorous enforcement of anti-idling regulations. Truck queues in Port Newark area are legendary. We all know what happens at truck stops. We have regulation on the books which are presently not being enforced regarding idling. We think that, from a local perspective, this could have some impact.

Getting to the issue of truck stops, electrification of truck stops are now being done on the Turnpike at select areas. Wherein, rather than rely upon the diesel engine to power up the cab, particularly when you're in queue waiting to go into the major metropolitan areas, you electrify the cab and reduce the attendant diesel emissions that would otherwise be associated with powering up the cab. This is a sound practice and should be encouraged.

Finally, the Council recognizes that the science and understanding of, and monitoring of fine particulate needs to be advanced and refined. The role of regional sources versus local sources must be better understood. And clearly, there are both. It's not just a regional problem. It's not just a transport problem. As much as 30 to 40 percent of particulate loads, as reported to us in the hearing, comes from local sources. Therefore, the Council supports funding research in these areas and also initiatives addressed to figure out how we do fight our upwind sources.

On behalf of the Council, I thank you for the opportunity to present our recommendations regarding the fine particulate matter. We appreciate the efforts of this Committee, and particularly Senator Smith, for advancing this important issue to the public arena for discussion and debate.

The Council encourages practicable and economical regulation of control of fine particulates. The day is long overdue for recognizing that the most important source of air toxics in this state is no longer stationary sources. It is mobile sources of which we believe that diesel is an important source.

Thank you for the time to present these findings to you.

SENATOR SMITH: Thank you, Mr. Berkowitz.

Senator, any questions? (no response)

All right. Our next witness will be Joseph Suchecki, from the Engine Manufacturers Association.

JOSEPH SUCHECKI: Thank you, Mr. Chairman. Good morning.

I am Joe Suchecki, Director of Public Affairs for the Engine Manufacturers Association. EMA is the international trade association representing the manufacturers of internal combustion engines, including those diesel engines that are proposed to be regulated by the current bill. EMA's 28 member companies manufacture diesel, gasoline, and natural gas engines used in a variety of applications, including on-highway, and off-road and stationary sources as well. We work extensively with the U.S. EPA, the state of California, and other state and local air agencies on legislative and regulatory issues affecting emissions.

EMA appreciates the opportunity to provide our views on the mandatory retrofit provisions in the proposed Senate Bill 1759. First, as you've

heard, engine manufacturers have made tremendous strides in reducing emissions from new diesel engines. In fact, with implementation of the new U.S. EPA 2007 on-highway emissions standards and the recently finalized nonroad emissions standards beginning in 2011, particulate matter and nitrogen oxide emissions will be further reduced from today's low levels, and by 99 percent compared to uncontrolled emissions. Clearly, emissions from new clean diesel equipment should no longer be a concern.

While the introduction of new diesel technology will significantly reduce emissions from new vehicles and equipment, large numbers of legacy equipment will continue to be in service for many years. One of the great advantages of diesels is that they're very durable, which of course means they last a long time. So we have engines out there that are 30, 40 years old, and those will continue to operate. EMA believes that there are opportunities for states to obtain significant emissions reductions from these existing in-use diesel vehicles, through the introduction of ultra-low-sulfur diesel fuel and programs that encourage the purchase of new engines and technology, increase fleet turnover, and include retrofitting with after-treatment technology. In fact, engine manufacturers are already providing retrofit hardware and support, and have taken the initiative to develop and market technical solutions to serve the retrofit market. EMA members also are involved in various national and state retrofit programs across the country.

Through this experience, we have come to understand that the most successful efforts are voluntary, incentive-based programs rather than mandates that force the replacement, rebuild, or retrofit of engines long before their useful lives are over. Voluntary programs provide the most cost-effective way to

reduce emissions from existing diesel engines because they can target the engines and vehicles that can be retrofitted successfully, foster a working, cooperative relationship between business and government, and can achieve state emissions reduction goals while minimizing costs to both government and vehicle owners.

Accordingly, EMA strongly supports broadly defined retrofit programs that are cost-effective, workable, and incentive-based. We also believe that mandatory programs to retrofit diesel vehicles and equipment, as proposed in Senate Bill 1759, create enormous problems for industry and business, and impose substantial cost burdens on the state and on owners of diesel vehicles and equipment.

But there are a number of technical, financial, and legal reasons why EMA does not support mandatory programs. First, retrofitting existing diesel vehicles is not a simple process. Owners cannot just order generic, off-the-shelf, after-treatment devices, install them on their engines, and expect them to work. The availability of after-treatment equipment depends on the age of the engine, its existing emissions load, its operating and duty-cycle characteristics, and the vehicle or equipment's configuration. In order to be effective, the passive after-treatment technology available today requires the engine exhaust to fit certain parameters, including meeting and maintaining a specified exhaust temperature, in order to regenerate the catalyst. Many existing engines cannot meet the required profile and cannot be successfully retrofitted. In particular, nonroad equipment is extremely variable in terms of power range, design, market size, and application, making the development of effective after-treatment systems not only more difficult but more costly. Nonroad construction and farm equipment must operate under harsh conditions with

constantly changing engine speed and load conditions, making them poor candidates for emissions control devices. This creates a significant problem for owners under a mandatory program.

Second, mandatory programs are not cost-effective ways to reduce emissions because they impose a one-size-fits-all approach requiring all owners to reduce emissions, regardless of the costs or feasibility of making the required changes. Some owners may be able to reduce emissions easily, such as certain on-highway trucks where the emissions reduction technology is further along and farther advanced, while others may be forced to make large investments to engineer and manufacture solutions that are not available commercially. Mandatory programs force inefficiencies in emissions reduction.

Third, the mandatory program proposed necessarily creates a large effort on behalf of DEP, not only to administer the program, but to identify and determine technology and enforce its requirements. New Jersey proposes to duplicate ongoing efforts, already being completed by the U.S. EPA and the California Air Resources Board, in identifying and verifying acceptable retrofit technologies. This will be a very costly program that will create chaos in New Jersey and national fleet owners by defining what is acceptable in New Jersey, which may not be the same as what is acceptable nationally or in other states. We believe this is simply a bad and costly idea.

Fourth, and not of least importance, New Jersey's proposed program violates the Federal Clean Air Act. Under the Federal preemption provisions of the Clean Air Act, New Jersey and other states are not free to impose emissions controls on vehicles or equipment until the engine is no longer new. While that is not a well-defined point in time, according to court decisions

and EPA regulations, an engine is considered new until after the time of first rebuild. The mandatory retrofit requirements of Senate Bill 1759 would impose new standards, by requiring owners and operators to add additional emissions control equipment onto all diesel-powered vehicles and engines that do not meet a 0.01 grams for brake horsepower standard. Essentially, this would require a buyer of a brand new 2005 to 2006 heavy-duty truck that is certified to meet all applicable U.S. EPA emissions standards to retrofit that vehicle before the end of its useful life, which is clearly contrary to Federal law.

In addition, the bill defines and proposes reduction of “fine” particulate emissions, which effectively creates a new emission standard that would require measurement and enforcement. This creation of a new nonmass-based standard is clearly not aligned with either Federal or California emission standards, and presents a new level of control on diesel particulate emissions, which is also preempted by Federal law. And the bill also seeks to impose mandatory retrofit requirements on certain out-of-state vehicles and equipment, so the proposed legislation also has Interstate Commerce clause ramifications.

So for these reasons, EMA opposes the passage of the current bill. We strongly believe that mandatory retrofit programs are not the best approach to achieve emissions reductions from existing diesel fleets in the state, and in this case is not legal.

As a better alternative, EMA recommends that New Jersey consider a voluntary, incentivized approach which could easily achieve the 20 percent emissions reductions that the administration has set out a goal for the program. A well-designed, voluntary program will avoid the overwhelming technical

problems associated with a mandatory program, since only vehicle and equipment owners who can cost-effectively and successfully apply proven emissions reductions technology will participate. A voluntary program will avoid the legal issues and would not be subject to challenge in the courts. And finally, a voluntary approach can be targeted to maximize emissions reductions in a cost-effective way that will provide incentives for owners and operators to reduce those emissions.

EMA recommends that New Jersey consider legislation based on some very successful programs that EMA and its member companies support, such as the Clean School USA program; California's Carl Moyer program; the Texas TERP, or Texas Emissions Reduction Program; and the innovative retrofit initiatives being implemented in the Puget Sound area. These voluntary programs are working to reduce emissions and to serve as good models.

Mr. Chairman and members of the Committee, I urge you to redirect your efforts from the heavy-handed regulatory approach proposed in the current legislation in favor of a more reasonable and voluntary approach. EMA and its member companies are available to help New Jersey craft a better approach to reducing emissions from existing fleets in the state.

I want to thank you for the opportunity to appear today, and would be happy to answer any questions you may have.

SENATOR SMITH: Mr. Suchecki, the four programs that you mentioned, would it be possible for you to get us some information about the programs--

MR. SUCHECKI: Certainly, I'd be able to do that.

SENATOR SMITH: ---with some specifics, etc.? If you'd forward, to our attention, we'd appreciate it.

MR. SUCHECKI: Sure.

SENATOR SMITH: Senator Sweeney, any questions?

SENATOR SWEENEY: No.

SENATOR SMITH: All right.

Our next witness will be the American Lung Association -- Michael Calvin, John Elston.

MICHAEL CALVIN: Thank you. I'm very glad to be here to talk about this. This is a very important issue for the American Lung Association.

I agree with the Commissioner that this is the most compelling outdoor environmental health issue that the State faces right now. Diesel, as other people have said, is linked very closely with heart disease, lung diseases, especially asthma -- and I won't go into all the details on that. But as we've said before, there is an ongoing epidemic of asthma. And speaking as someone who has two small children, there's nothing worse in the world than seeing a small child in pain or sick. The fact is, right now, that the air in New Jersey is making all of us sick in some ways, and especially children.

I think everyone here agrees that the health issues here are very compelling. The question is just how do we address that? I think the key part of this legislation is that it allows DEP to do targeted retrofits. It's not just producing the overall volume, 20 percent. It allows DEP to address the worse 20 percent. If a diesel engine is out in a rural area, it's not as much of a threat to health as a diesel engine that's going through a residential neighborhood. And that's why I'm particularly glad that the diesel school buses are mentioned in

this bill. That's a particular area of concern for the Lung Association, because the school buses are the largest source of exposure for, basically, the most vulnerable people to diesel emissions and to the health effects of diesel.

So other than that, I'd just like to say that we strongly support this bill. I'd like to see the idling program become part of a larger program to address health issues in our schools. Right now, the children in our schools are sort of falling in a gap between DEP and the Department of Health that isn't being addressed. That's an issue for another day. But I think this diesel idling program is a step in the right direction to address those issues.

Other than that, I brought with me John Elston, who many of you already know. He is the Chair of our Environmental Policy Committee and has many years of experience in this issue, and let him address those things.

JOHN ELSTON: Yes. Good morning, senators, and thank you, Mike.

I've worked for 36 years in DEP. I can say from the get-go that the largest single complaint that we had was from diesel smoke. And this was from the public at large and for the course of the years. True, the amount of soot in diesels has gone down, certainly, in the last decade, but we still have the fine particulates, which is hard to see. And this is the health effects issues. So even though the amount of black, dirty smoke that you see on the highways has decreased, you still have the very fines that are there and need to be controlled. So try to draw that distinction if you can from this issue.

One of the things while I worked in DEP -- and I had the good fortune of being appointed as a State's representative to the Federal Government EPA, Clean Air Science Advisory Committee. And in that period of time that I served there, we studied the public health issues of diesel smoke. I was very

impressed by the science that was done and the wide range of health benefits. It's just as the Commissioner said, the asthma and issues like that. But there is a cancer-causing element in diesel emissions that needs to be addressed, and that is very difficult to address because of the ongoing -- people who, 20, 30 years ago, were smokers then and are dying, perhaps, today of premature cancer. But a lot of them -- is because of the fine particulates in diesel smoke. And this has been shown by studies, for example, of railroad workers and those who are associated with diesels, in general. So I bring your attention to the cancer-causing issues of this as well.

The other thing about diesel fine particulates is that -- and the Committee could not really find out. What is on the particle of the fine particulate? There are literally hundreds of different molecules, some of which are dirtier or more of a health threshold, health issue than others. The diesel industry and the fuel industries have used-- This is for cross purposes -- the diesel industry saying that, "I don't know what to control, how to control a diesel, unless you tell me what molecule I have to get rid of," and the fuel industry saying, "That's not our fault, because it's part of the diesel mix." And so in Washington, one of the major debates was, "Is it fuel or is it the engine?"

Now, to address this issue, and this is probably one of past Governor Whitman's finest moments within EPA, as administrator, where she essentially regulated both, and said this is an issue of such concern, let's do both. And therefore, the stringent standards of 0.01 came into be, as well as the clean sulfur fuel.

The legislation that we're discussing here today is a very important adjunct, and complements -- it doesn't work against the Federal -- it

complements the Federal rule. In fact, the incentives are there in a positive way. The Truck Association -- the past testimony, I would dispute in that -- many of the same people who are in Washington saying that these 2007 new standards, the engine manufacturers, are going to cost the trucker much more money. And therefore, they had said in Washington, that you'll see people and truckers holding onto their engines and trucks longer. Today, now that that is passed, you hear, well, putting retrofits on is going to encourage or to stop the purchase of these new diesels. Well, I would maintain to you all that by installing retrofits, a trucking fleet now has to make a distinction: Should I purchase a new diesel in 2007; or should I hold onto my older diesel, and perhaps with a retrofit it's going to cost me, somewhat, a little bit more, and maybe I will be pushed into the new diesel fleet or buy a newer diesel. And I think that's the kind of incentives that this program would complement and not hinder.

This is a very important program. There is many, many components that we could discuss further in this long bill. But I do think that the diesel program, and particularly the engines that are manufactured in the past, need to have a look at, over a period of time, in order to be controlled.

So with that, I thank you very much.

SENATOR SMITH: Thank you very much.

Senator Sweeney, any questions? (no response)

All right.

Then our next witness will be from, representing Academy Bus -- I have Riker, Danzig (*sic*). Is Riker, Danzig present?

UNIDENTIFIED SPEAKER FROM AUDIENCE: (indiscernible)

SENATOR SMITH: Would you like to testify? All right.

C A R O L R. K A T Z: Good morning. I'm Carol Katz, from Katz Government Affairs, and I'm here today on behalf of the Bus Association of New Jersey. With me is Michael Horak, from Academy Bus, and just after Mike will be John Solomita, from Coach USA.

M I C H A E L H O R A K: Actually, John will go first.

MS. KATZ: Oh. Just before Mike will be John Solomita, from Coach USA.

We thank you for the opportunity to testify today, and we want to let you know that the Bus Association is very committed to clean air and working with the Committee and the Department to work toward improving air quality. We appreciate that this bill is being considered for discussion only today, because as you can imagine, because it is relatively new, it is still under review within our membership as well.

We do have a number of preliminary questions and concerns about the legislation that we would like to raise in general terms today. The Bus Association represents New Jersey's private motor bus industry. New Jersey, unlike some states, has the advantage of having an experienced, private bus industry, as well as a State-owned transportation company. Privately operated bus operations in New Jersey run the gamut from commuter routes to New York and other destinations, local transit, intercity services, regular routes to Atlantic City, and charter buses.

We estimate that privately operated buses carry at least one-third of the total commuting bus passengers statewide and about 50 percent of the total trans-Hudson commuters. In other words, like New Jersey Transit, we are major providers of public transportation. It's our business to provide a public

service. While a small portion of the routes served by private carriers are operated under contract with New Jersey Transit, the majority of our service is operated at risk. Of course, the major outcome of this service is the environmental benefit that results from people leaving their cars at home and taking public transportation, whether it's privately or publicly operated, to work or other destinations.

Today we wanted to make sure that you are aware that whatever requirements are imposed in the bill on buses appear to be imposed not just on publicly funded New Jersey Transit, but on private operators as well. We urge you not to take any action on this legislation that could have the inadvertent effect of sending people back to their cars and away from mass transit.

If S-1759 were to pass as is, the fact is that the State would have to find funds for New Jersey Transit's compliance. Unfortunately, there is no provision in the bill providing funding for the private providers of public transportation. The private bus companies have to compete with New Jersey Transit on many routes. They already face steep increases -- and Mike is going to get into this a little bit later -- in the cost of insurance and fuel costs, and in security costs. And they have to rely, for the most part, on the fare box to cover those increased costs. Virtually all private carriers receive no operating subsidy, and we receive only modest capital assistance.

The bill as written would further skew what is already an uneven playing field. If it were to cause a fare increase by private operators or curtail service, it would disadvantage one segment of the riding public, simply because they happen to ride a privately operated bus rather than a New Jersey Transit bus. As important, it could drive some of those passengers back to private

automobiles and frustrate the very environmental benefits that it's designed to promote.

And with that, I'm going to defer to John, who will talk a little bit about our current efforts towards clean air, and also will get into a little bit more detail about some of the issues that we have with the provisions of the bill. And Mike will follow that.

JOHN SOLOMITA: Good morning. Good afternoon now.

The Bus Association, over the years, has been here many times. We supported the Department of Transportation when it appeared at one point we were going to be losing our inspections. We feel the New Jersey Department of Transportation inspections are probably the best in the country. And we voluntarily agreed to have our inspection fees rise from a \$5 fee to an \$85 fee. And also \$30 a bus, as we inspect ourselves. We sat in front of committees and we supported the Bus Safety Compliance Act, because we want our buses to be safe. We don't want to be confused with out-of-state carriers that don't go through the very extreme inspections that we have from the State of New Jersey.

Usually when I come out here and speak about the DOT, they're wondering if I'm somebody's brother out there, because we're so impressed by them. And so should the people in the State of New Jersey.

And partially, we operate the service, but we're also consumers of the service. Our kids ride the buses, we take buses. So it's not like we just operate them and we're not involved. Certainly we all breath the air.

With that, we certainly will support and work with the Committee for legislation that will clean up the air. We just feel it should be applied

evenly, fairly, and realistically. And we'd be happy to work with you to those points.

A little about our company, Coach USA. We turned over approximately 10 percent of our fleet this year. We purchased 31 J-model buses, approximately \$460,000 each. The L-models are \$350,000 apiece. So about 10 percent of our fleet was turned over this year, approximately the same amount last year. So we are not running older equipment, because it's not our nature to.

Coach USA -- like Academy, like New Jersey Transit -- that's not how we do business. To go on another side, we have too much to lose to operate poorly. And it's not what we do, so we turn our vehicles over. A large percentage of our vehicles are probably past what's in here, and we probably wouldn't apply it to a lot of our vehicles. But as the folks from the Truck Association was saying, a big problem of -- to use the word *smaller operators* -- operators that aren't 10 or more vehicles. Because just like them, they'll buy our older vehicles, and they'll be on the road. We feel that perhaps the legislation should be flipped over. We should go with older vehicles first. Anybody that's running anything 20 years old or older, they should be earmarked for this first, then go up the hill to newer vehicles, which probably wouldn't have the problems anyway.

Other problems of -- if everybody came into retrofitting the vehicles, probably the kits necessary to be used wouldn't be available. Having a timetable would be very difficult. Because if everybody is clamoring for the same parts -- as we'd had experiences in the past with various types of retrofits -- the parts wouldn't be available as well.

Other areas that we have some questions about was applying a routing restrictions to -- in the statement it says, "trucks," but in the bill it says, "trucks and other diesel vehicles." Because we're very sensitive about our routes. Our routes are franchised by the State of New Jersey. But there is a remedy that already exists in the bill. That's a \$1,000-a-day, per vehicle fine. So it would seem that if a vehicle is violating regulations -- and we have this tremendous incentive, by the way of a fine -- I think we have the remedy, where we shouldn't have to reroute the vehicles. I don't know why the guy would take a \$1,000-a-day fine, in lieu of going around the block. So we think that's an important aspect.

But the one point I want to point out in the legislation is this: A lot of the things that are in there, we do anyway, and we do anyway by State and Federal law. For example, we're inspected -- the DOT inspectors come to my property, and they inspect my bus. And they're going to inspect emissions. And if any part of my bus fails, down to a brake light or emissions, they slap that ugly red sticker on my windshield that says, "This bus does not operate." And it doesn't operate until it's repaired. So there's a lot of references to that in the bill. And that's already standards that apply to us.

The fuel is a critical issue as well, and we've been hearing that come up already a bit. The fuel -- it's actually a good fuel. It's better than -- to operate than the number one diesel. It treats the engines a lot better, but it's not readily available right now. There's also a cost consideration with the fuel. The ultra-low-sulfur fuel costs about 15 cents a gallon more than No. 1 diesel. For Coach USA, in this region, that would give us an additional cost of between a

million and a million-and-a-half dollars a year, just to this point, if we could get the fuel, which is questionable.

We're supposed to go to Federal standards in 2006. If the fuel becomes, as it's suggested, is the only fuel that will be sold in New Jersey -- whether or not that actually occurs -- then, hopefully, the price of the fuel will come down and the availability will be there, because it will be the only fuel on the road. And certainly for buses, just like trucks, we have a major problem when buses go out of state. And if you retrofit for the new fuel, you can't run the older fuel through the bus. And that would certainly cause a real chaos in the industry.

MR. HORAK: Just to expand on what John said, and the members-

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SENATOR SMITH: Your name, sir?

MR. HORAK: I'm Michael Horak from Academy Bus--

SENATOR SMITH: Okay.

MR. HORAK: --and the New Jersey Motor Truck Association, and the diesel manufacturers' testimony, not to reiterate any of it, but it's all on target that there is a lot of complexities in this bill that need to be sorted through, line item by line item, and we would like the opportunity to do that with the Committee, as we move forward.

The Federal EPA guidelines, strict as they are, we believe also allow for funding for public agencies and commercial carriers to retrofit their equipment, as well as towards the purchase of new equipment. So we would look to see some kind of parity with New Jersey's DEP legislation.

We operate a public service, but also at the same time compete with New Jersey Transit. And as was said earlier, the profit margins are paper thin. And anything that would be detrimental to a public mass transit operation in New Jersey would be detrimental to the public.

Private carriers face daunting challenges already, as I said, with the paper-thin margins. Insurance has quadrupled in the last three years for us, and forced some of us larger operators to retain our own liability insurance and self-insure at a huge cost. Fuel -- no need to comment on where fuel has gone over the last two years.

Security issues. Security issues on mass transportation is a major priority by Homeland Security. And for instance, our company, alone, has expended \$600,000 in the last three months just to put GPS units, security cameras, additional security in our operation. The upcoming Republican Convention issues-- All of that has weighed extremely hard on our operating ability, and we just ask that even though we are completely for clean air incentives and have been in the past, we just ask for opportunities to make this work in a balanced situation, rather than forcing the regulations that may not seek the end result that we all want. Anything that would force people back into their cars in New Jersey, because of the potential of putting private carriers out of business or restricting their ability to service, would be the complete contrary of what we're trying to achieve here. More aggressive enforcement of already existing exhaust emission laws would probably be a big step in the right direction to cleaning up the air in New Jersey, in combination with the already proposed EPA regulations.

For example, how many times have you and I seen an old bus or an old truck, operated by an unregulated independent, pulling out of a toll booth polluting the world, and you're breathing it, as opposed to a larger carrier, where we are regulated by New Jersey DEP? We're regulated by New Jersey DOT, New York DOT, the FMCSA, and that includes, as John said, emissions regulations.

So, in a nutshell, we feel that it's meritorious -- the bill, as presented, with the bottom-line thought process, but we would like opportunities as we move forward to present our case on working through -- that it would be pro-business as well as pro-environment.

Thank you for the opportunity to comment.

SENATOR SMITH: One question for you, gentlemen.

The engines mandated by EPA for 2007, are they currently available?

MR. HORAK: I believe-- They're in the test mode.

We, as John said, just have purchased, also, new equipment that is compliant to 2006 regulations. And as we were just told, the new 2007 is in test mode.

SENATOR SMITH: Great.

MR. HORAK: Being that 2005, 2006, and 2007 would still need to be retrofitted if this bill went through as proposed.

SENATOR SMITH: Thank you.

MR. HORAK: Thank you.

MR. SOLOMITA: All right. Thank you.

SENATOR SMITH: Thank you, gentlemen.

We actually have two witnesses from -- with a point of view. Let me get two, perhaps, with an opposing point of view or a different point of view. Let me ask Mr. Tittel to come up from the Sierra Club, and Dena Mottola, from New Jersey PIRG.

JEFF TITTEL: Thank you. Where did Dena go? I'm looking for Dena.

Thank you. I'll be brief.

Jeff Tittel, Director of the New Jersey Sierra Club. I actually came in today, even though I know you're not voting it out. It's actually a vacation day for me, and I know there are some people here who hoped that I would take a very long vacation, but I thought that this was an important issue, enough to come forward, on a day off, to talk about.

New Jersey has, as we all know, a lot of serious air problems. Not one county in New Jersey meets all standards for ground-level ozone. We have serious problems with particulate matter. At least 13 counties, probably more -- because I know EPA was looking to amend the list and add some more counties in south Jersey. And all you have to do to understand why this bill makes sense is to be stuck in the Lincoln Tunnel behind an old bus and realize how bad it feels to be behind that bus, and how when your eyes start watering and your chest starts closing in on you, to know that we need to retire those kinds of vehicles. Or when you're driving down a road, and there's a dump truck or something else in front of you just spewing black gook in the air, and you know that we need to come up with a way to get some of these buses cleaner, and trucks cleaner, or get them off the road.

And I think that's what this bill does. And that's why it's important. Because it only targets the dirtiest and oldest vehicles, whether

they're on-road or off-road. When they're buying those new 2005 buses, they don't need to be retrofitted. It's those buses that are still around prior to 1990s -- are the ones that we're talking about. And I think it does it in a way that will help the air quality, especially in a lot of our urban areas, which between bus and truck traffic, they get clobbered. Quite frankly, one of the things, I think, is also important in this bill is allowing municipalities to designate truck routes, so you can make sure that trucks aren't going passed schools.

We've had serious incidences in the state, in places like Jersey City and others, because of heavy truck traffic, kids in schools getting sick when windows are open in the springtime. We also see that there's an attempt to try to go after school buses. The children are our most vulnerable population when it comes to air. We see the rates of asthma going up and childhood leukemia going up, and a lot of this is related to particulates in the air. Leukemia is directly related to diesel emissions and the toxins that come from diesel emissions. So what we're doing here is, we're saying we're going to take an important step forward in New Jersey in getting those worst offenders, when it comes to air pollution, to clean up, and I think that's what's important.

There's other things we should also be looking to try to do. I think we need to come up with more funding to help the school districts and the private bus contractors to get them to retrofit, because we need to do more with school buses than we're currently doing with this bill, but we're taking the steps in the right direction.

It's easy to criticize air pollution from another state and to sue them. But it takes more courage to stand up in the State of New Jersey to make sure that we're doing the right thing, because it does impact businesses, and we

don't want to hurt businesses in the state; and it may impact taxpayers. But the bottom line is, it makes the state healthier and a better place for all of us. And that, in turn, will save us tax dollars, because of health benefits and other things that we wouldn't have to be putting out and paying for when we start cleaning up air pollution in the state.

Thank you.

SENATOR SMITH: Thank you, Mr. Tittel.

Ms. Mottola.

D E N A M O T T O L A: Hi. My name is Dena Mottola, and I'm the Executive Director of New Jersey PIRG. I actually -- I think I understood this legislation a little differently, in that it is important because what it will do is get us, in the state, to be retrofitting the trucks and buses that are actually going to be running longer. So, while the EPA has adopted very strong, new standards that are actually, I think, 90 percent cleaner than the old standards, those will go into effect in 2007. But for all the vehicles produced in 2005, this year, or 2006, they'll be on the road for a long time. Diesel-powered engines are very durable and last a very long time, and so those are the ones that I think we most need to be retrofitting. So I'll say with that, that I think a lot of us are still reviewing the bill, but certainly the issue I'd like to speak on-- And I do think that cleaning up diesel emissions and cleaning up air pollution in New Jersey is -- I agree with Commissioner Campbell -- the most important environmental issue and environmental health issue in our state, with one amendment to that statement, which is that I think it shares, sort of, the important spotlight with land-use practices in the state. I think taking those together, and they're not

unrelated issues, those are the two issues that affect our health most in New Jersey.

With that being said, though, that our air pollution levels have been progressing and getting better over the years, but nonetheless we find that the levels of air pollution in New Jersey are still taking a tremendous toll on our health. Diesel pollution is a big part of our air pollution problem. It is a likely human carcinogen. It does have at least three dozen toxic chemicals within in, including arsenic, benzene, and formaldehyde. It also has chemicals that have been suspected or known to cause birth defects, neurological damage, and other serious health effects. More well-known than that, though, is the soot and smog that we know is linked to serious respiratory, heart and lung disease, asthma, bronchitis, congestive heart failure, coronary artery disease, heart attacks, and premature deaths. So pretty much every single major disease that we face in the state and in the nation are exacerbated by diesel pollution.

The sources of diesel pollution are really very many. But on- and off-road mobile sources account for about 60 percent of all diesel particulate matter in our air in New Jersey. So then the rest, the other 40 percent, come from power plants and industrial facilities.

New Jersey and Maryland end up being the states with the highest number of counties that violate or will soon be considered in violation of the new standard. That means 13 of our counties have high levels of lung-clogging particulates in the air.

I included in your packet a list of all the counties and the soot levels that we have in each county. Some of the counties -- Senator Sweeney, Salem County ends up being one of the counties that, actually, is within reach

of the EPA's new and tougher standards, though that's still under review and the final decision has not been made. The ones that have the highest levels of soot pollution are Essex, Hudson, Union, and -- I can't think of the other one.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Middlesex.

MS. MOTTOLA: No. Oh, and Bergen County. And those four counties end up being the most populated, the most densely developed counties in our state. And if you look in the packet, you have a map that shows all the level of open space left in each county in the state. And you look at that, and then you look at the soot levels, you'll see there's almost an exact correlation between dense population and development and high soot pollution, which is important to draw the link between air pollution and land use.

The other thing that you have is New Jersey PIRG's recent report, that we put out in December, on the public health impacts of soot pollution in our air. And I gave you that because I wanted to -- for you to have the data so you could get your hands around just exactly how we're impacted by soot pollution. I should say, though, that it is a study of total soot pollution in the state, so it's not just diesel pollution or just the diesel pollution that we're dealing with in this bill, but, in fact, just a study of the soot pollution levels in our state and how it affects our health. And what we found in the report is that between 2,300 and 5,400 premature deaths a year can be attributed to the levels of soot in our air, and over 5,000 respiratory hospital admissions can be attributed to the soot levels in our air. It also takes an economic toll on our state, in that about half a million missed work days can be attributed to soot pollution in our air -- so both health and economic impacts.

And then the other thing that's helpful about the report that I gave you is a lot of review of the science that's out there about the exact links between soot pollution and how -- and we've heard a lot about that already. I won't talk too much about it. I just want to highlight one study, because it shows you how a little bit of an increase of soot pollution can really impact our health, and it really drives the point home.

The study was done by Dr. Annette Peters at Harvard University. And what she found is that an increase of fine particulate matter, as small as 25 micrograms per cubic meter, resulted in a 69 percent increase in the relative risk of having a heart attack over the following day. And just to put that in perspective for you, a 25 microgram difference -- if you look at Bergen County and you look at Salem County, Bergen County is the one that's going to have the 69 percent higher risk factor for heart attack, because they have about the 25 microgram higher level of soot pollution in their air. So, within New Jersey, you have these kinds of situations where you have one county that has very high soot pollution, and you can see how dramatic the way the health of those people in that county are impacted by soot pollution.

Children are especially at risk, as Michael talked about, and this is just obvious. But they spend more time outside, so they breath more air. They breath a higher amount of air pollution. And their bodies are smaller, so the percentage of air pollution that ends up in their bodies is higher per pound of their body weight. And there's also a lot of science being done now on the impacts of air pollution on children. And one of the studies that I also wanted to note was one that actually draws a link between soot pollution and Sudden Infant Death Syndrome. There's a growing body of knowledge that believes

that that air pollution, and soot pollution in particular, is one of the causes of that disease.

So I think, in closing, I just want to say that we obviously think this legislation is really important. We think there's a gap in -- and the EPA leaves a gap, a big gap, where we're going to continue to have pollution from trucks and buses that are produced in the next couple years, that are going to be around for a very long time. This bill would complement what's being done to clean up power plants in New Jersey, not just this administration, but previous years. New Jersey ends up being a leader on how we regulate power plants.

Of course, clean cars is also going to reduce soot pollution, just like it reduces smog and soot. But there are other sources of diesel pollution that we also need to look at, and some of those include marine vessels, boats; trains that run on diesel engines; and backup diesel generators, which are becoming more and more in use in the state. So there are other types of diesel engines that need to be regulated. And since -- as Brad Campbell talked about -- since diesel pollution is such a high, it ranks third in the whole state for public health impact. So that means only smoking and obesity account for more premature deaths a year than our level of air pollution, specifically soot. I think it's the kind of problem that deserves a lot of attention and a comprehensive approach, meaning that we should be attacking all the sources that are affecting our health.

And then lastly, certainly our land-use practices need to be looked at. The fact that we rely a lot on cars, and some of that is just life and we can't change all of that. But we can certainly increase money and the work that needs to be done to expand our mass transit system in the state, use more rail freight,

and think of other ways to just build around transportation hubs so that we're not driving as much. Which -- even though we don't talk about it as much, and we're talking more about cleaning up diesel pollution, and it's important -- that actually, as I mentioned earlier, showing you the development patterns, ends up being a big part of our air pollution problem in the state.

Thank you.

SENATOR SMITH: Thank you, Ms. Mottola.

Senator Sweeney, you had a question?

SENATOR SWEENEY: Yes, I do.

Thank you, Senator Smith.

Now I was actually very happy to see you here today, Jeff, because I have a couple questions for Mr. Tittel. When I mentioned about suing other states, the issue is I always thought the point of generation of pollution, which adds to the load--

MR. TITTEL: Yes.

SENATOR SWEENEY: --which creates the problem. Does the Sierra Club, which I know does keep very good records, have a percentage number? I've heard percentages thrown around of states, like Ohio and other states, what that percentage is to the load of New Jersey's pollution problem.

MR. TITTEL: Sure. It's about a third of our pollution comes from those states. And that's why we are also part of the lawsuit of -- with the other states in the Northeast, suing to clean up those facilities. What I said, I was talking more about -- part of what I was talking about is that we can go after other states, but it's a lot tougher sometimes when we have to -- when you hear other companies that are here today, you know, talk about the impacts. It's

tougher sometimes, politically, to put regulations on ourselves, because of the impacts it has to businesses in our own communities. And so it takes a lot of courage sometimes to do that, but it is as important as going after what's going on in other states.

In your area -- is a big transport region as well, southern New Jersey, because of the Turnpike. About a third of the trucks and vehicles that come through the state come from out of state and come up those corridors. But we need to make sure that we do what we can here. But it's about a third.

SENATOR SWEENEY: Okay. And the other question is, because I heard you comment, saying that we were going to capture all the old vehicles.

MR. TITTEL: Or a certain percentage.

SENATOR SWEENEY: Will we capture them all or--

MR. TITTEL: Well, according to this bill--

SENATOR SWEENEY: Because that -- you know, I mean-- Knowing that we're going to go forward and retrofit the new stuff with the large haulers, my understanding is the small guys escaped us.

SENATOR SMITH: In the current version?

MR. TITTEL: The current version, yes.

SENATOR SWEENEY: Current version. We've done Highlands. We know how (indiscernible).

SENATOR SMITH: Things change. Things change.

MR. TITTEL: Yes, that's exactly my point. Just like I thought, we need to do more with incentives, I think, for schools to try to capture more school buses. But, yes, you're right. There are -- according to the statistics

behind the bill, there's about 10 percent of the vehicles out there that generate about 20 percent of the pollution, and that's what we're trying to capture.

SENATOR SWEENEY: But, again, in talking about potential amendments as we go forward, it would actually motivate -- this legislation would actually motivate maybe larger haulers to form some more companies and break out in spider units so they wouldn't have to accomplish this. That's a potential, too, isn't it?

MR. TITTEL: Yes, that could be. And the other concern would be if companies try to move out of state. I think there are -- I mean, that's why you have a process. You try to either close loopholes or come up with incentives so that you can get to the same goals. And maybe one of the things we can do -- and again, it's tough because the budget's already set -- but I think the best way to help those companies retrofit is to come up with incentives for them to do it financially, as well as the hammer. Because I think we do want to make sure that we don't drive independent truckers out of state, and the companies into breaking up or to try to get around the law. Because the idea of having the law is to get people to actually use it, not to try to figure ways around it.

SENATOR SWEENEY: And I'll end with this, Senator Smith. I am 100 percent for clean air. I have children also. It's just reading this through, obviously, this bill is going to need serious amendments, because we can handle what we can handle here in New Jersey, but we're not going-- It's basically taking a thimble out of the ocean if everyone else is going to continue to pollute, that's not regulated by our rules.

MR. TITTEL: The only thing I would say, and maybe this is a better way of looking at it: We can't control other states, but we are trying by

litigating against them. But we can control in New Jersey. And in some ways it becomes more important for us to do things here so that we mitigate for damage from other states. Meaning that, if there's pollution coming in from Ohio and Pennsylvania, we may not be able to stop it, because we can't put up big fans at our border and blow the wind toward New York, or something. But we can make our air better, and that, in turn, will help mitigate for anything we get from the other states.

SENATOR SWEENEY: One last one?

SENATOR SMITH: Sure.

SENATOR SWEENEY: If this is enacted, what -- with these new standards-- I know we just found out a third comes from out of state, and any improvement is an improvement. When you improve, about how much of an improvement are we going to gain?

MR. TITTEL: Well, it's a 20 percent reduction of in-state sources. So it's a fairly -- for particulates and soot -- and that's a fairly sizeable number. And when you deal with the out-of-state pollution, a lot of it is (indiscernible) -- it's a whole range of things. And ground level ozone doesn't come from out of state. And a lot of the particulate matters that children are breathing are not coming from out of state. But overall, a third is coming. So we're actually going to have a bigger impact on the particulate soot issue than we would, and the 20 percent is a fairly sizeable reduction, because not all our soot--

SENATOR SMITH: Wait, let me try to be helpful on that, too. The stuff that you're reducing here is the stuff that's extremely dangerous. In other words, the diesel particulates, as was mentioned by many of the witnesses, have carcinogenic properties. And because they're fine particulates, they reach

the lower regions of the lung, as opposed to other kinds of particulates. It's not just tons of particulates that you're reducing; you're taking out the really bad stuff out of the air that's generated locally, and it's exposed to our populations locally.

SENATOR SWEENEY: I agree, Senator Smith.

My understanding is that if you're not regulating neighboring states that are running through-- And again, I look at Delaware. It's just easy enough for someone to pick up and move an office into Delaware and say that's their headquarters, and operate. I mean, I want to see the air cleaned.

SENATOR SMITH: Right.

SENATOR SWEENEY: That's the end goal. We want to have clean air.

SENATOR SMITH: That's the balancing we have to do.

SENATOR SWEENEY: Let's see if we can find it through this.

MR. TITTEL: On the other side of it, New York complains about us.

SENATOR SWEENEY: I'm sure. New York complains about everybody.

MR. TITTEL: No, but I meant, our pollution goes to them, and they complain. People in Staten Island complain about Linden.

SENATOR SMITH: Dena.

MS. MOTTOLA: I just wanted to add just one point, which is that -- I talked about one study. There's a lot of studies that have been done, and also that you have some information about them that shows that even just a small decrease in air pollution actually has a large benefit for health. So I think

it was something like 8 percent increase in lung cancer risk, even if you're increasing soot pollution by 10 micrograms, which is nothing. It's the difference between -- it's just minimal. It's not a dramatic difference. It's the difference between, maybe, Salem and Gloucester County, or something, which basically has the same air shed. So it's that this type of pollution is very potent and it does have a tremendous impact on our health, even at very low levels.

And there's also been a lot of work done -- and Rutgers EOSHI would be a source for this -- that shows that people who live around transportation centers and highways actually have a higher risk of all these diseases than people who live further away from them. So you can't just say -- throw up your hands and say, "Well, we're just getting pollution from out of state, so there's nothing we can do." If there's air pollution, you can also make local changes and impact the health locally, by making local changes.

SENATOR SMITH: Good.

Thank you very much.

Mr. Robert Cohen, from Shevell Industries.

Mr. Cohen.

ROBERT COHEN: Good afternoon.

After listening to what I've heard so far-- Let me just introduce myself. My name is Robert Cohen. I'm the Vice President of New England Motor Freight, which is the biggest part of the Shevell Group of companies. We're a family-owned business, which I am a member of the family. I was born and raised in this state. My children are in this state. My nieces and nephews are in this state. As a family member, we are also very concerned about the air quality of the air in New Jersey.

Like I said, New England Motor Freight is a family-owned company. It's a less-than-truckload motor carrier, which currently is celebrating our 80th anniversary of operating in the State of New Jersey. Our domiciled and world headquarters is located in Elizabeth, New Jersey. In addition, we have terminals in Edison, South Brunswick, Pennsauken, and South Plainfield.

New England Motor Freight employs approximately -- the Shevell Group of companies -- 3,000 employees in the State of New Jersey, which constitutes approximately 9,000 people, including family members. New England Motor Freight is also an AFL/CIO Union carrier.

I appear before you today to oppose this Senate Bill No. 1759. While the goals of the bill are admirable, the means, however, are not. The bill would have a devastating and dramatic effect on our company and the economy of the region, and I will explain. Quite simply put, we are in a business that operates on very small margins. And you are aware of -- the insurance costs, the fuel costs, and the labor costs have skyrocketed in the past few years. You also know many competitors, most recently, went out of business because they couldn't afford to operate. Most recently Red Star and, prior to that, APA, which a few years ago were your number one operating LTL companies on the east coast, including the State of New Jersey.

In New Jersey, we pay extraordinary high fees which, you know, are taxes and tolls. The financial obligation that would be placed on our company and the industry, I should add, would have a devastating effect on the economy of the state.

New England Motor Freight -- as concerned, as I said we were before -- we are already testing the engines for 2007. The preliminary tests are

showing that when -- those engines that we have now are operating at extremely high temperatures. We are losing a mile per gallon. Along with that, the maintenance on these engines are costing us to maintain them 40 to 50 percent more than the engines of today, which we're going to be looking forward to in the future, as far as costs are concerned.

Another thing that everybody, I think, needs to know and they, kind of, lose sight of when they see the big trucks on the road and they don't like them, is that we have over 1,500 tractors. We buy 200 to 300 a year. We have over 6,000 trailers. And every piece of that freight on all that equipment is for the citizens of this state -- for their lives to be better, for the food to be consumed, for the clothes to be worn on their back. Everything on our trucks that's in this state are for the people of this state.

The government should embrace the transportation industry for that use and not try to hurt us. The passage of this legislation will either drive truckers out of business or out of state. Thousands of jobs will be lost. There will be an enormous impact on the state's economy, as well as the pockets of the state's residents and consumers. Without trucks, who will move the millions of containers from the ports? Without trucks, who will have the bread and the milk reach the supermarkets?

I urge you, seriously -- as I stated before, not only a person that's in the industry, but I'm also a resident of the state -- to consider the consequences of enacting this legislation. I am giving you a trucker's perspective, as long (*sic*) as a voter's perspective. This bill is wrong for the trucking industry and is wrong for the citizens of the State of New Jersey. And to put it a little more frankly, as I said before as a family member, if the

legislation is passed the way it is, if we chose to continue to operate in this state -- and we are profitable -- it would bankrupt us. That's the cost that you have to realize that are being incurred. It's so serious, you have no idea. And I'm sitting up here telling you, if the legislation is passed the way it is, our company, as big as it is and as profitable as it is -- if we chose to stay in this state, as opposed to moving outside to our other facilities -- it would bankrupt us.

And another part of the legislation, which the gentleman mentioned, was allowing the municipalities to change the truck routes. It hasn't been mentioned much, but if you could just visualize -- I don't know how many municipalities are in this state, a couple hundred maybe?

SENATOR SMITH: Five hundred sixty-seven.

MR. COHEN: Okay, thank you.

Five hundred and sixty-seven municipalities being able to change the truck routes at will. How would you maneuver around the states? How would you maneuver around it? It would be gridlocked. The trucks wouldn't be able to move on the municipality end of the bill. Just picture it -- 567 different laws on where your trucks can and cannot move, and that municipality can change that any time they want. Just think about it. I implore you. It would be gridlock, nothing would move.

I want to thank you for allowing me to voice my concerns, and I'm sorry you missed me before and called me up a little later.

Thank you.

SENATOR SMITH: Thank you very much, Mr. Cohen.

Our next witness will be the New Jersey Environmental Justice Alliance, Valorie Caffee and Nicky Sheets.

VALORIE CAFFEE: Good morning. My name is Valorie Caffee, and this is my colleague, Nicky Sheets, and we are representing the New Jersey Environmental Justice Alliance. And like so many of others have mentioned, we haven't had an opportunity to review the bill, line by line, with a fine-tooth comb, but we've done the best we can in a short period of time.

The New Jersey Environmental Justice Alliance is a volunteer, statewide coalition that's comprised of 40 different organizations working to identify, prevent, and reduce and/or eliminate environmental injustices that exist in communities of color and low-income communities.

The Environmental Justice Alliance supports meaningful efforts to reduce ambient, airborne, fine particulate matter concentrations and diesel emissions as well. And we note that the introduction to S-1759 acknowledges the links between polluted air and poor health and premature death. The Alliance agrees that high concentrations of diesel emissions and PM2.5 contribute to adverse health. And this is actually especially true for vulnerable populations, as has been mentioned -- children, and also the elderly, and for blacks, Latinos, and low-income residents who are disproportionately exposed to industrial and commercial pollution.

However, we do have some concerns about S-1759 as written, because we have some doubts that the legislation would significantly reduce diesel emissions to adequately address the health threats that fine particulate matter and diesel emissions pose to the residents of New Jersey. In looking at the bill -- and again we haven't had the opportunity to thoroughly analyze it -- but we're interpreting the bill as saying that the goal is to reduce emissions from regulated diesel engines by 20 percent over a 10-year period, and that perhaps

only 11 percent of the regulated diesel engines in the state would be targeted for such reduction. If this is true, then the result could be very low levels of diesel emissions reductions, and not significant reductions.

SENATOR SMITH: We apologize for that ambiguity. We've heard that from at least one other constituency. And the goal is an overall 20 percent reduction, not 20 percent of just the 11 percent.

MS. CAFFEE: Okay. Thank you very much, because that was going to be our next question -- is that the case? And thank you for clarifying that. Because as you can see, actually, we would not be supportive of, certainly, such a low amount; and it wouldn't be worthwhile to even -- to go forward with the legislation. So we thank you for that clarification.

Also, I just wanted to mention that the other thing that we were looking forward to was to see higher reductions immediately, or soon thereafter the legislation's adopted, particularly in the urbanized areas where we have such high concentrations of PM2.5 and diesel emissions. Because these are the areas that are really being hardest hit, and these are the areas where you will see the epidemic of asthma that we're talking about, some forms of cancer, and heart ailments that are really disproportionately impacting on certain communities and populations.

But anyway, I want to turn over some suggestions that we do have to my colleague, Nicky Sheets.

NICKY SHEETS: Good morning.

And maybe we can get back to the 20 percent. But before we do, let me just read some suggestions that we have that we think would make the bill better and result in more reductions. And kind of a comprehensive plan,

also, and maybe touch on other areas where you could reduce PM pollution.

We urge the Legislature to institute the 12.0 microgram per cubic meter annual PM_{2.5} concentration standard that California uses, instead of the less protective 15.0 Federal standard that New Jersey currently uses. We'd also like to see all diesel-powered vehicles in urban areas that cannot accommodate ultra-low-sulfur diesel fuel and a catalyzed particulate trap be retired within four years of the enactment of the legislation -- that's arbitrary, but we want it a goal -- and replaced with vehicles that emit no more pollution than diesel-powered vehicles equipped with the aforementioned pollution controls.

Senator Smith, this gets to a point you kind of alluded to, that we want to take the dirtiest diesel engines off the road. You buy a diesel engine in 2006, it won't be regulated by Federal standards, and it could be there for 20 more years. And especially in urban areas, we want to get those vehicles off the road with the latest, newest control technology.

We also would like the State to somewhere codify the new Federal standards that will come into effect sometime between 2007 and 2010. Commissioner Campbell is probably a little bit more confident of the Bush administration than we are, and we just want to make sure that those regulations are enacted in New Jersey, even if sometime down the road the Bush administration sees fit not to implement those standards.

We also urge the diesel-powered marine vehicles, that provide services to ports in New Jersey on a regular basis, and trains -- owned by the State, local government, and public entity -- be equipped with appropriate pollution-control devices. We believe that these kinds of vehicles contribute significantly to New Jersey's air pollution, and therefore should be addressed.

So we're really talking there about tugboats, or other boats that work all the time, in ports. And we're talking about commuter trains that may add significantly to pollution in urban areas.

To assess the impact of legislation, the DEP should establish a statewide, air quality monitoring program that measures concentrations of PM_{2.5} and other contaminants. The monitoring program should use a community-based participatory approach in its design and implementation. We want to make sure that, especially in urban areas, we're not missing hot spots. We don't think there are enough 2.5 monitors out there, and we think the concentrations may differ in different parts of urban areas, especially since, in urban areas, you have the most dense population of diesel engines, through buses. And we'd like to see the community involved in that monitoring also.

And finally, if the air in the community -- if the PM_{2.5} concentration in the community exceeds the standards, then we think the DEP should have a right not to issue any more discharge permits in that community. And as I said, some of these suggestions you may think fall outside of the confines of the bill, but we still urge you to take them into account and consider legislation that would complement the current bill.

And, I guess, coming off the script for a minute, I just want to emphasize what Valorie was talking about before. Our constituency is poor people and people of color, who live disproportionately in urban areas. And so they're going to be disproportionately affected by these diesel fumes and diesel particulate matter. It's killing people everywhere, but particularly in urban areas. So we certainly will support mandatory retrofitting efforts, but we want to be sure that it does result in significant decline in diesel emissions. And as we

read the bill, 11 percent of -- if there's only 20 percent of 11 percent of all diesel engines, we really question how much that would lower diesel emissions. So we'd like a clarification on that, and just exactly how much do you think emissions would be reduced? And also, how much will ambient PM levels be reduced because of diesel emissions?

MS. CAFFEE: We've also submitted written testimony as well, and certainly would like to continue to work with the Committee as it goes through the amendment process.

SENATOR SMITH: We appreciate the suggestions, very much so.

MR. SHEETS: You surely made us feel a lot better by saying you think it's overall a 20 percent reduction.

SENATOR SMITH: Oh, yes. Absolutely. We couldn't justify 1 or 2 percent reductions to the taxpayers of the state. So we're looking for much bigger reductions. And I think your point about the older vehicles is absolutely on target as well. We need maybe to focus our fire a little bit more. And we do appreciate that.

Our next witnesses -- unless there are questions (no response) -- will be the New Jersey Petroleum Council, Jim Benton, John Maxwell.

Is Mr. Benton here today?

JOHN MAXWELL: No, he is not.

SENATOR SMITH: Okay.

MR. MAXWELL: You'll find this hard to believe, but he's playing golf. (laughter) I'm shocked. But right next to me, in invisible ink, is Michael Egenton, and I'm bringing a message from Michael, who is down in your part of the state today.

SENATOR SMITH: Also playing golf, probably.

MR. MAXWELL: No, he's not playing golf. As a matter of fact, he's meeting one of the local legislators down there.

First of all, thank you very much, Mr. Chairman and members of the Committee, for this very interesting public hearing on a very, very significant health-related topic, which is soot in the air, and which we as an industry, the petroleum industry, are very concerned about and have been working to address this problem, both from our refinery point of view, from our stationary sources, but also in terms of the past several decades developing cleaner and better fuels.

Let me, right at the top, say that Mike Egerton and the Chamber, who I believe has spoken to you, has some concerns about this bill, and in particular from their members in the trucking industry and the construction industry, and are very alarmed and concerned, as we heard testimony earlier about the high cost and the impact of this. The Chamber very much would like to see an incentive-based approach, and is going to reach out to you and discuss that with you.

We've heard a lot about engine retrofits, and I just want to spend a brief moment or two talking about the fuels. Gail mentioned something about the fuels earlier this morning. A little history of fuel, not to belabor this. But since the elimination of lead in the 1970s, we've seen a reduction of something like 99 percent of the airborne lead, which is a tremendous public health benefit for everyone. Statewide here in New Jersey, as a result of the Clean Air Act of 1990, we are currently using Federal reformulated gasoline, which has lower toxics level, lower benzene level, has a lower volatility, and it also has an

addition of an oxygenate to help clean up the burning, especially in the older carbureted cars that are currently being phased out.

We believe that the State should work in parallel with the Federal rules and regulations to require a boutique fuel. And I'm talking about the early introduction of ultra-low-sulfur diesel -- is simply going to have some very, very serious and significant ramifications. In the Northeast right here, we are in-- In the Northeast as a whole, about 25 percent of the fuel that we consume is coming from abroad. It's a foreign source of supply. We've seen other issues in terms of supplying fuel, especially ULSD, ultra-low-sulfur diesel.

For example, Colonial Pipeline refuses to ship any of them currently, as we currently understand, because of contamination concerns coming up the pipeline. They have to be able to certify that it's going to be at that 15 PPM spec that's required. So you're looking at -- even if it were available, and we're not sure to what extent, I've been advised by my members that it's not available in quantities to be able to meet the requirements of this legislation.

So anyhow, looking ahead -- the time line on this stuff is June 1 of 2006 -- we heard, to be a little more precise -- the refineries are required to produce the ultra-low-sulfur diesel with a maximum of 15 parts per million. And this reflects a 97 percent reduction from the current 500 parts per million standard. So we're looking at a 97 percent reduction in just about two years that will be in the tanks. And then there's part of the Federal rules that deal with averaging and banking and trading, but we're going to see 15 parts per million here in New Jersey in mid-2006.

In terms of nonroad diesel, in the year 2007, the maximum parts per million of sulfur will be 500, down from the current maximum of 3,400 parts per million. And this will include fuels that are being used in locomotive and marine engines or tugboats, so they're non-ocean going. Then looking out a little farther in the year 2010, we're looking at 15 parts per million for farm and construction equipment; and in 2012, it would be required for locomotive and marine. So there's reductions coming. They're in the pipeline. Our members have told me that the hundreds of millions of dollars of capital investment that they are putting into this is very carefully designed to coincide with the requirement of the phase-in date of the Federal rule. If you think about refineries around the country, and now we're in competition with refineries abroad, the dollars that they keep-- They keep a very close watch. They don't want to put a dollar out unless they really have to. And they've been planning for years now, and this Federal rule is the result of years of negotiation back and forth with the industry and EPA, with all kinds of things. They finally came to this rule, which everybody felt they could agree with. It sets a timetable, and they're marching forward.

Now, in terms of gasoline sulfur, this year, 2004, refineries and importers have capped sulfur at a 300 part per million, with a corporate average of 120 parts per million. And then next year, the refinery average is 30 parts per million that we'll see in the state. And in 2006, the refineries will meet a 30 part per million average sulfur level with a maximum cap of 80. And the reason for the different numbers there reflect some of the smaller refineries out West, that maybe produce 30,000 barrels a day, that just can't keep up. They needed some

more time. We haven't built a refinery in this country in 30 years, and there's no plans to do anything any sooner.

So that's my testimony. I thank you. We look forward to working with you. I appreciate the openness.

SENATOR SMITH: We appreciate the information.

MR. MAXWELL: Thank you.

SENATOR SMITH: Thank you so much.

Our next witness, David Pringle, New Jersey Environmental Federation.

DAVID PRINGLE: Thank you, Mr. Chairman.

Again, my name is David Pringle. I'm the Campaign Director for the New Jersey Environmental Federation. We support the comments from the New Jersey Environmental Justice Alliance, who are a member of American Lung, PIRG, and Sierra Club. In addition, I wanted to make a few other comments. We obviously support any and all efforts to reduce fine particulate emissions and appreciate the issue this is getting.

My own 8-year-old daughter has asthma and has been hospitalized on an emergency basis overnight with it, and I can personally attest to the fact that even if this legislation results in one less parent having to go through the ordeal of -- in a daze, being awakened by a monitor at 3:30 in the morning, at a hospital, because they're daughter's oxygen is too low in their blood -- even if it results in one less parent having to go through it, this legislation would be well worth it.

As you've heard and you've seen in much greater detail from the first paragraph of this legislation, the fine particulates pose an extraordinary

health risk in New Jersey -- cancer, cardiovascular disease, asthma, other respiratory ailments, allergies. The premature deaths that can be saved here and that result from particulate emissions are greater than the deaths we see from motor vehicles and homicides in New Jersey. And diesel burning is the greatest source of that pollution, approximately 60 percent. And the diesel engines that are out there, they can last. One of the things that makes diesel engines so successful is they're much longer lasting than conventional gas-powered engines, and upwards of 40 years.

Reducing these types of emissions is absolutely critical. This is an environmental justice issue. This problem is disproportionately impacting urban and poor and minority areas in New Jersey, in particular places like Essex, Union, Camden, Hudson Counties. It is also particularly needed because the "EZ Pass for Polluters" legislation is going to increase particulate emissions, and we can't afford anything. We need to offset the likely results of that legislation.

Accordingly, anything less than bold action is inexcusable here, and this legislation has the potential to do just that. I'm glad to hear -- I thought it was the goal. I'm glad to hear it's reiterated that the goal here is 20 percent overall, not 20 percent of some subset. There are a lot of numbers involved here, and I don't think anybody has a good enough handle on the numbers. As the process moves forward, I think a lot more research on everybody's part needs to be done to figure out the details and how best to proceed.

But I would like to state a couple things. One is that, if anything, the 20 percent number is even too low, and I think we should shoot higher than that. I also think the legislation shouldn't have it as a goal, but as a mandate that DEP develop a program that's going to result in 20 percent, not a goal of

20 percent. And maybe that's semantics, but it could very easily be interpreted with the difference between a *may* and a *shall*, for example.

Also, I'd like to see codified in New Jersey that we adopt the California standard 12.5, as opposed to the Federal standard of 15, for all the obvious health benefits that result on that. Also, our monitoring in this state is, frankly, pathetic. There are a variety of reasons for that, and I think we need to do the research and get the numbers we kind of want, as well as provide the health impacts to figure out how best to tailor the program. We need a much more comprehensive monitoring program for ambient particulate concentrations throughout the state, particularly in urban areas where they're more highly concentrated.

Also, pardon my skepticism, but given that one of the Bush administration's greatest environmental accomplishments, from their own words, is that they did not repeal the Clinton diesel rule, I'm skeptical that, when that rule fully comes into effect in three or four years, that it won't get further delayed or rolled back. So we'd like to see the legislation codified as much as possible, legally, the Federal rules and standards as much as possible, in case they ever get rolled back, as well as adopt the California standards wherever possible.

In addition to the other recommendations, some of the other groups mentioned that-- I mention in support. I guess the last point I'd like to make is that, again, this disproportionately impacts urban areas. And even within urban areas, there are going to be hot spots. We need to have the monitoring in place to identify those hot spots, and also the mandate to come up with, essentially, hot-spot action plans, moratoriums on new air permits in

areas that have hot spots, until those hot spots are addressed, and the like. I think that should be looked at in this legislation.

A couple of other just quick comments in response to some of the testimony I heard-- I know we hear this every time when we talk about mandates, but each time it surprises me and shocks me and makes me laugh that industry calls for voluntary standards. Everybody knows they don't work and shouldn't even be considered, and probably wasn't even worth me commenting on it.

In terms of the out-of-state nature of the problem, of how much of the out-of-state nature is a problem here in New Jersey, a couple of thoughts. One is, well, we certainly need to address the out-of-state truck issue. I think the research shows that most of the problem in New Jersey is from local roads and local problems. So I don't want to dismiss the out-of-state truck issue, but the problems that we're seeing in the Ironbound and the Waterfront South aren't from trucks coming from Ohio. It's from trucks in the local roads.

That said, we don't want to dismiss the out-of-state issue, and there are a couple of things that we can do. In particular, the Federal courts have ruled that there is a public health exception to the commerce clause, and I think the evidence here is quite clear that there are really public health issues at stake here, and to the degree that out-of-state trucks and the like are a significant source in New Jersey. I think -- we're quite confident that the courts would have no problem with us regulating that. I would encourage the Legislature to do so.

I think that that will be the end of my testimony, other than to say that we look forward to working with you in ensuring that this legislation is bold. It is desperately needed for all the reasons that we've laid out.

Thank you very much.

SENATOR SMITH: Thank you, Mr. Pringle.

Any questions, Senator Sweeney? (no response)

Our next witness will be Sam Cunninghame, Bi-State Motor Carriers. Mr. Cunninghame, are you here? (no response) Or Mr. Brogan? (no response)

UNIDENTIFIED SPEAKER FROM AUDIENCE: They were here earlier.

SENATOR SMITH: Okay.

Our next witness will be Jim Sinclair, New Jersey Business and Industry.

JIM SINCLAIR: Thank you, Mr. Chairman.

My name is Jim Sinclair. I am First Vice President of the New Jersey Business and Industry Association. The Association represents 22,000 businesses throughout the state. We represent many of the large industries that were represented here in the trucking, construction industry. But we also represent a lot of the mom and pops that -- the little guys that, with shock-- I heard you saying that this legislation may change to affect--

So I'm going to-- I've given you our best shot at looking at this in the brief. So I will try to not wander off into hyperbole and political rhetoric, because I'm going to try to be positive. My job isn't dependent on going door-to-door selling fear.

In urban areas, there are a lot of small companies who, just like the large companies, with an economic investment that is misplaced or improper

will put them out of business, whether it's one person with one dump truck or a small vehicle. So these are important economic considerations.

But I understand, because I've listened to the Clean Air Council, the PM2.5 problem is a serious problem in the state. It's a problem that focuses on urban areas. It is a problem that needs to be addressed over time. This is a health issue. This is something in society that we, in fact, are doing something about. The question, here, on this bill is, what additional things are we going to do, what's going to be the cost of those additional things, and what kind of benefit will we get from doing these additional things, and over what time are we doing these things.

We oppose the current version of the bill because of the uncertainty about the costs and the benefits. And we understand there may be an additional version of this that looks at things. So we're at the table, and we want to be helpful in this process.

We know that there's an economic impact for doing the wrong thing in the process. And there is some experience that we can see from California and some other places, and that information should be brought to the table. We don't want to dislocate trucking firms out of the state, because there's no environmental impact on it, but certainly a tremendous economic impact.

There are, floating around -- and I didn't hear from the DEP -- because I know that there are estimates on what retrofitting costs. And I wish they had come and put those on the table here. Because we hear costs that range anywhere from \$3,000 to \$8,000 for doing the retrofitting. We also hear that the post- -- or the units that are older than 1990 really can't be retrofitted.

And that's really the units that are probably the worst units out there. To replace those engines, there's an average cost of around \$50,000 -- is the number that I had heard -- if you keep the vehicle or the piece of equipment.

Some points that I'll just bring up -- and I'll just go through those because I think they're important. The other thing that I've heard, that hasn't been talked about today, is, as we make corrections in engines to get to that 2.5 -- to deal with the 2.5-- As we make corrections, there's always the danger -- you're on the borderline of increasing NOx. And so we have to be careful on what it is that we say, because we don't want to go out of whack on that side of it.

And the issue of low-sulfur fuel-- I think that that's really a timing problem. Clearly, you can't really mandate the low-sulfur fuel before it's available. And so you need to phase that into the Federal time line.

If we're going to do a New Jersey-only solution here on vehicles, then we-- If we have to do this, and it's going to make sense, I think there are some models that we can look at. We can look at California's model. If we are looking at environmental justice neighborhoods -- whatever they are and however you define them -- but if we say for urban areas -- what kind of vehicles are in urban areas? And I'll give you three that move around: buses on a fixed route; school buses that move around and have the children inside of them, which has been raised; and the third is municipal vehicles, garbage trucks, governmental vehicles. This is a huge fleet of vehicles in the State of New Jersey. And it's a fleet of vehicles that impacts on urban areas because of their fixed routes.

And I lay this on the table: If this is the health impact, if we want to do the marginal-- It's important to deal with the marginal here. And that's what we're talking about -- is the marginal. Because on the national level, the new fuel is going to reduce dramatically -- like 90 percent, if those numbers that I heard this morning -- a 90 percent reduction. And the new engines, as they phase in, are going to give us a 90 percent reduction over time. Then it is the marginal ones. And so the things that government deals with are the three areas that I looked at.

This is where we should, if it is important -- and we're drawing the line on what's important -- be allocating resources to do. And if it's having the health impact on those neighborhoods, having the health impact on children, then, when you have a \$26 billion State budget, this is a drop in the bucket over a -- if we use a four-year period, which somebody just said, to phase in putting new equipment, or rebuilding, or retrofitting these units-- And what you get from this is, if you're looking to make a difference -- because you only really get to make a difference at the beginning, not at the end -- because once the Federal thing kicks in-- The air is, now, getting cleaner all the time because of new vehicles coming in or the new gasoline coming in.

I understand, from Caterpillar, there was a 40 percent reduction in emissions since 1995 on their equipment. And then they're going to get another additional 90 percent on that equipment.

The Federal standards will drive major changes. This is marginal. The marginal area to look at is where government has an impact, where government buys things, can do things, and do it right in the front where you get

the biggest bang for the buck, from a public health standpoint. Because doing this later on gets lost in what's going on.

I agree, and I say that -- with David -- we were on television the other day. I actually agree with him. We need to do better on the monitoring. This is really silly that we're having this discussion about impact without having good monitoring data in the areas where people are being impacted. And we should be able to come to the table. As a matter of fact, the Department or somebody should have come to the table -- and maybe you have this data. But if I was sitting up there, what I would like to know is, what are those lines in reductions. Graphing it out over time, with all of the things that are on the table: the change in the Federal fuel, the change in the engines as they get phased in as fleets get turned over -- the impact in the reduction of emissions coming from out of state, due to the same thing -- the change in the gasoline, the change in the Federal rules, the change in the engines, pollution prevention at facilities upstate or out of state, facilities shutting down out of state; and look, with our lawsuit. If we looked at that coming in-- Those are important things. And then we add to that the changes that are happening to the off-road vehicles in the Federal legislation. That's going to reduce it. The use of the different fuel on those off-road vehicles is going to show a dramatic decrease in the amount of pollution on the out years, as we move out. And I understand that this is all about timing and when do you do things.

So we would be pleased to work with you on this. I think that, as I said in the beginning, this is an important issue. This is something that we can do to improve the quality of life in urban areas. I would not want to see one of the things happen -- to see people that are just starting a little business in an

urban area, that have one truck and a couple employees, have to go out of business because of something we do here in the process. That, overall, would have a greater health and environmental impact on the neighborhood, if businesses disintegrated.

So that's all I have to bring to the table on this.

SENATOR SMITH: Thank you very much.

Glenn Goldstein, NESCAUM, Northeast States for Coordinated Air Use Management.

GLENN P. GOLDSTEIN: Thank you, Mr. Chairman.

Folks before me have spoken quite eloquently to the health effects associated with human -- with personal exposure to diesel-particulate matter. I will not dwell on that subject matter, although I do offer, in my written testimony, a list of studies in support of the health effects that I mention.

Let me, however, bring to your attention a study from the California Air Resources Board from June of this year, just last month. This study was a landmark, 10-year, \$18 million perspective children's health study by the ARB and the University of Southern California, released last month, that demonstrated how air pollution reduces children's lung growth and function, impacts respiratory health in asthmatics, and contributes to increased school absences. And the major findings from that study are provided in my written comments. I would point your attention to them.

My organization, the Northeast States for Coordinated Air Use Management, is a Boston-based non-profit that was founded in 1967, to represent the New England states, New York and New Jersey on regional air quality policy planning and technical issues. Our work in the mobile source

sector, more specifically the control of diesel exhaust emissions, dates to Boston's Big Dig program in 1997, where cleaner fuel and diesel exhaust, after treatment devices or retrofits, were introduced to control diesel emissions in a densely populated urban environment.

In 2000, we initiated, with Cummins and Mack, consent decree projects with the New York City Department of Sanitation, Waste Management, and United Parcel Service using a combination of devices and fuel technologies to retrofit almost 200 vehicles.

In 2001, we initiated a Norwich, Connecticut, school bus retrofit pilot of 40 vehicles, which then led to the Greater Connecticut School Bus Retrofit project in New Haven, Bridgeport, and Hartford, currently ongoing. That same year, we funded and began the Lower Manhattan Clean Construction Demonstration at the World Trade Center.

And just last year, we extended our work into the marine sector, on behalf of the New York City DOT and NYSERDA, to address emissions from the private ferry fleet operating in the harbor.

In the region -- let me convey to you that both the Department of Sanitation and the New York City Transit Authority are probably the best broad-scale examples of the fleet-wide implementation of diesel emission control programs on the east coast. And that by the end of the year, 2004, these agencies will have approximately 3,000 buses, vehicles, and construction equipment in service with retrofit technology, operating on ultra-low-sulfur fuel.

The Transit Authority has operated on ultra-low-sulfur fuel since January of 2000, and your State transit authority, New Jersey Transit, switched

in July of 2002. And this year, they will work with us to initiate a retrofit pilot on their vehicles.

Combined, these agencies account for over 60 million gallons of ultra-low-sulfur fuel consumption annually in the metropolitan region. Our experience with diesel controls and the demonstrated track record of successful fleet programs leads us to conclude that both the emission control technology and the fuel technology infrastructure is sound, reliable, and in place to support further expansion.

SENATOR SMITH: Mr. Goldstein, we didn't receive your written comments. You're going to give us a copy?

MR. GOLDSTEIN: I certainly will.

SENATOR SMITH: And I have to ask the question to this. This is driving me crazy.

Mr. Maxwell.

MR. MAXWELL: Yes. (speaking from audience)

SENATOR SMITH: I thought I heard from you there's no low-sulfur-fuel currently available.

And I'm hearing from you that we have low--

He has to come over and speak from here.

We do have low-sulfur fuel, and it's currently being used by the agencies in the tri-state--

MR. GOLDSTEIN: By both the New York City Transit Authority, who is a consumer of approximately 45 million gallons a year, since the year 2000; and by your transit authority.

SENATOR SMITH: Okay.

Mr. Maxwell, can you come over to the microphone and try and explain to me what the discrepancy is, because it sounds like night and day here.

Don't go away. Stay where you are.

MR. MAXWELL: I don't think it's night and day at all. I think what I said was that my members have told me that-- We sell about 4 billion gallons of gasoline in this state every year.

SENATOR SMITH: Right.

MR. MAXWELL: That's four with a *B* -- billion.

SENATOR SMITH: Right.

MR. MAXWELL: And I think the number we heard here was something like 45 million. So I'm talking gasoline -- not the diesel numbers. Probably Eric has the diesel numbers.

But I believe what I said was that our members are telling us that there is no ultra-low-sulfur diesel available in the quantities that this bill would mandate.

SENATOR SMITH: Any idea what the quantities are, Glenn?

MR. GOLDSTEIN: I'm sorry, sir?

SENATOR SMITH: The comment from Mr. Maxwell is that there wouldn't be enough low-sulfur fuel available in the quantities necessary if the low-sulfur fuel is mandated earlier than the Federal date. Any response to that?

MR. GOLDSTEIN: Well, my response is one of operational perspective, and that is that these types of ultra-low-sulfur programs are happening.

SENATOR SMITH: They exist.

MR. GOLDSTEIN: They certainly exist, and have existed both in New York and New Jersey.

SENATOR SMITH: All right. We're going to have to follow up then and find out if -- on that particular issue. Because that becomes a non-starter on the issue of the low-sulfur fuel. So we'll try to independently verify quantities available.

We appreciate you both for bringing that issue up and elucidating it so we don't miss it.

Thank you.

MR. MAXWELL: Thank you.

SENATOR SMITH: Okay, Glenn, back to you.

And if I can ask you -- only because it is 1:35 -- if you can kind of summarize your points, especially now that we have the written testimony, which we'll distribute to all the members and attach to the record.

MR. GOLDSTEIN: Thank you, Mr. Chairman.

You will not be the first to enact such a legislation. California does have mandatory legislation passed in the state.

However, will this legislation be viewed as forward-thinking and innovative environmental leadership? Absolutely. This is not without precedent for New Jersey. And, in fact, you have been a leader in controlling diesel pollution with your first-in-the-nation diesel opacity enforcement program. And you certainly will continue to be a trendsetter by supporting clean diesel programs modeled in this legislation.

In summary, let me say -- as I've elucidated in my written testimony -- that this legislation is unquestionably justified by the science of air pollution.

It's certainly supported by the technology -- a long list of highly effective and successfully implemented programs. And, therefore, it's ready to be championed by this Legislature. It's measured, it's realistic, necessary and, most importantly, it's responsive to what is a pervasive, occupational, and public health problem that is endemic to this state and the other states of this nation who rely on the diesel economy.

And I thank you for your time.

SENATOR SMITH: Thank you, sir.

Eric DeGesero, Fuel Merchants Association of New Jersey.

ERIC DeGESERO: Thank you, Mr. Chairman.

Eric DeGesero, Fuel Merchants Association of New Jersey.

To pick up on the point that you had just raised, I think what you see in those sanitation department issues is a beta test. You see what is done when new drugs come to market, for example. And what they're doing is they're doing -- is their prototype tests for the new engine technology. There's also prototype tests for the new fuel. And it's an issue of the quantity in which it is available.

A few months ago -- actually twice in the last decade, but as recently as a few months ago -- this Legislature, in this Committee, looked at the issue of the California car, and you did it without vulcanizing the fuel market. And our concern is that that is being done here. So it's a sort of 180 degrees from where we were just a couple of months ago when we looked at other vehicle issues, if you will.

SENATOR SMITH: We understand the issue.

MR. DeGESERO: I guess I have a couple of very specific points about the bill. And I want to start with one big-picture question that I'd like clarification on, because there's been a lot of talk today about 10-vehicle fleets and little guys not being impacted. My reading of the bill, in Section 4 A-1, is that if I own one truck -- if I own a dump truck-- If I'm a landscaper, I own a dump truck that's 35,000 pounds, I'm required to meet the retrofit technology -- or pardon me, the best available retrofit technology.

SENATOR SMITH: That's off-road equipment.

MR. DeGESERO: In 4 A-1, starting at the end of Line 16, "An on-road diesel vehicles greater than 14,000 pounds, gross vehicle weight, that are types and classes of vehicles equivalent to the regulated diesel apportioned vehicles, whether apportioned vehicles or some other class."

SENATOR SMITH: If it's in a regulated fleet. Do you see where it says *regulated fleet* at the beginning of the paragraph?

MR. DeGESERO: I see--

SENATOR SMITH: I think you may be parsing it the wrong way. But let me give you the better answer, which is, I think a great point was made that we have two different standards, and maybe all the vehicles should be in it.

MR. DeGESERO: And there seems to be a lot of confusion -- that it's my reading that if you have one vehicle that's over the 14,000 pounds, that it's in there. And if it's not--

SENATOR SMITH: We don't think this version says that, but the future version may.

MR. DeGESERO: So I'm disagreeing, even -- I'm perspective-ly disagreeing then.

There was a good deal of talk on the--

SENATOR SMITH: We're going to take your perspective objection. (laughter)

MR. DeGESERO: Thank you.

I won't go in any more regarding the New Jersey-only fuel.

I would like to bring out, though, the issue-- Nowhere in here is there a definition of the term *diesel fuel*. And that's important because as we get into the other uses -- and there's been mention of marine, and tug boats, and things like that -- the issue of home heating oil is not -- it would be impacted by this. We, as an industry -- others of my counterparts up in the Northeast are actually working with Mr. Goldstein's group to look at reducing the sulfur concentration in home heating oil, outside, over and above, what the EPA requires. But we would be adversely impacted if you went to one pool that was just 15 parts per million, from a capacity perspective.

SENATOR SMITH: Got it. It's the vulcanizing issue again.

MR. DeGESERO: Yes.

SENATOR SMITH: Got it.

MR. DeGESERO: In Section 4 C, Lines 25 to 27, regarding school buses. In the bill, it discusses negotiating the replacement of school buses powered by diesel engines with school buses powered by engines with lower fine particulate emissions.

I'm a little confused. Is that saying that we want buses that have even lower-- Do we want buses that run on other fuels? And we had a debate

a number of years ago in the Legislature on compressed natural gas buses, for example, where you actually have ultra-fine particulate emissions from the combustion of CNG. And I'm curious as to what that--

SENATOR SMITH: I think the lower there means reduced emissions. It's probably not said artfully.

MR. DeGESERO: Okay.

SENATOR SMITH: But I do think it includes the possibility of allowing other technologies, other types of engines, etc., other types of fuels.

MR. DeGESERO: We don't have a problem-- Our concern is that, let's have a standard and tell us what that standard is, and what the fuels were to achieve it, as opposed to writing a standard that is only achieved by one fuel. Because in the trade-off, you have higher CO₂ emissions, CO emissions, hydrocarbon emissions from natural gas -- buses in particular.

SENATOR SMITH: A little flexibility would be a winner. We got it.

MR. DeGESERO: Okay. Section 9 CV and 7 EV require two years of record keeping for fuel purchases. And I don't know if that's related to the Section 32, with the New Jersey-only fuel. If that's why that's required in there, that seems like an enormous paperwork nightmare for businesses that are buying fuel -- to have to keep a record for every piece of equipment for every load of fuel that they get delivered to them over a two-year period.

The issue of interstate commerce was raised before. In Section 22 of the bill, where we're exempting the technology from the Sales and Use Tax, at times-- Say the State of New Jersey were to have a budget issue, and we would be -- have a budget shortfall -- a creative reading of that section could

lead one to think that you could impose the sales tax on motor fuels, which currently there is a prohibition from sales tax being assessed on motor fuels in the State of New Jersey. So we would just hope that that was just a drafting issue, and not an issue of potentially wanting to assess the sales tax on the new fuel.

SENATOR SMITH: Thank you.

MR. DeGESERO: If the State wants to encourage -- regarding the deduction from the definition of net income -- the purchase of the -- to incentivize individuals, although a mandate is a little more than incentivization -- a piece of equipment loses operating life. That's why individuals or corporations are allowed to depreciate equipment -- in that, that doesn't change. And we think that it's unfair that vehicle -- the Legislature is mandating the purchase of something in an effort to help someone -- takes away their ability to depreciate that over a period of time.

We have a very significant problem with Section 25 of the bill, relative to the local delivery prohibitions. We think that the section should be removed in its entirety. If it is not removed in its entirety, it must be amended to include a prohibition for municipalities and counties from regulating local deliveries. How in the heck are things going to get to where they need to get to if they're allowed to regulate local deliveries, as opposed to pass-through traffic? Although, again, we think that the section should be removed in its entirety, as the gentleman commented before.

And lastly, how -- with all of these reports and what not that have to be sent to the Department -- and lots of folks that are going to need to go through and review that, and folks are going to need to go review two years of

records that are being kept on what kind of fuel somebody's buying. Either we're going to need a funding source to pay a lot of new people to do that, or we're going to have to reallocate a lot of people that are -- might not have enough to do currently there. So we have a question as to how that's going to be handled, administratively.

SENATOR SMITH: We appreciate those comments. Did you put them in writing?

MR. DeGESERO: Yes, they've been submitted for the record.

SENATOR SMITH: Great.

MR. DeGESERO: Thank you.

SENATOR SMITH: We appreciate it.

MR. DeGESERO: Yes.

SENATOR SMITH: Marie Curtis, from the New Jersey Environmental Lobby.

MARIE A. CURTIS: Good afternoon.

I'm Marie Curtis, Director of the New Jersey Environmental Lobby, and we represent a lot of small, local, and regional environmental and conservation groups throughout the state, as well as individual members.

I'm going to be very brief, because most of my points have been covered by previous speakers. But a few things I would like to point out. Number one, I would reemphasize what the speaker from NESCAUM said about the most recent California Air Resource Board's study -- the 10-year study of children's health impacts. I think that that is really a revelation for all of us, and it just reemphasizes the importance of this legislation in dealing with this matter.

We, of course, do support the bill. We support the change to low-sulfur fuel and requiring retrofits. But we are very especially concerned with school buses, because we have found that-- Studies have indicated that the diesel fumes are present on the buses when the children are riding. It's not just a question of exposure during boarding and exiting, which some people have thought. But these fumes are present. It's almost impossible to make a school bus that is totally air tight, and you wouldn't want to. So this is a very severe problem and a very big problem for all of us.

Truck routes away from schools and populated areas-- This was mentioned by previous speakers, as well. But we do believe that it's essential to protect public health and the children's health. Now, however and whoever sets those truck routes-- I agree with one of the previous speakers, the 567 ordinances changing at will could be a bit difficult to work with. However, I do think that making provision to take these routes away from schools, especially in our most populated areas, is essential.

And while new trucks may be cleaner in 2007, we know about the long life of diesels. We've heard that earlier today. Retrofitting those with the long life span, and the dirtiest-- We think this is absolutely essential. We can't wait for 2007, and eventually 2020, to have a turnover here. We have to act now. We can't wait. It's a question of health.

We've heard about out-of-state trucks. I'd like to point out that, right now, we have roadside inspections of out-of-state trucks. Opacity is tested. And there's a standard that is enforced. And the fines are substantial: \$750 for a first offense, 1,500 for a second. I think that's a major deterrent to out-of-state trucks coming in and blowing the worst of the soot at us. But I do

think that those inspections could be changed or improved to include some of the new requirements. I don't believe that we've been violating the commerce clause of the Constitution.

Idling is another thing I would like to point out. I think it's about time that somebody stepped in and enforced the idling laws in the State of New Jersey. And I would commend the Borough of Princeton, New Jersey. Three or four years ago, they passed a local ordinance requiring local police officers to enforce the idling -- the State idling law. And they pointed out, specifically, that officers concerned with parking tickets and traffic could, without any change or any additional time on their schedule, could also hand out tickets on idling. And I think that that might be something that could be -- that ordinance could be copied in every municipality in this state.

SENATOR SMITH: Marie, are you saying that an ordinance is necessary, because locals can't enforce it without the ordinance?

MS. CURTIS: They weren't sure. And Princeton did pass an ordinance requiring their police officers to enforce it. Because we know the law is on the books, but it's not being enforced. And somebody said, "Well, it's a State law, and it's for state vehicles on state highways," or something. Evidently, there was some confusion. But I do know that the Borough of Princeton passed an ordinance, and it goes back three or four years now.

SENATOR SMITH: All right, we'll take a look at it.

MS. CURTIS: Yes, it was at the recommendation of the Princeton Board of Health. Okay.

Also, we did mention -- somebody mentioned cost. And we know there is a cost involved to industry. And it may be very high, but I would point

out that we're already paying a cost that is much, much higher. And the cost is in our citizens' health, in our children's lives, and in the greater health insurance premiums that all of us are paying, even if we're in the best of health.

So, at this point, we in the driving public have already paid a share for cleaning up the air, because the catalytic converters on our cars weren't inexpensive, and we're all paying in the price of our vehicles for that. And we're doing it very happily.

We know that this is important. So we think it's time for everybody to pull their share of the weight. We don't think it should wait any longer. And as this bill moves ahead, we'd be very happy to work with you.

Thank you very much.

SENATOR SMITH: Thank you very much.

Katie Watson. I don't know who you're testifying for, but you called in to testify. Are you here, Katie? (no response)

All right, then Emanuel Brito, New Jersey Warehousemen and Movers Association. Mr. Brito? (no response)

Ariel Teshler, Environmental Defense.

A R I E L T E S H E R: Good morning.

My name is Ariel Teshler, and I'm here representing Environmental Defense.

Environmental Defense is a national, nonprofit, environmental organization. We're headquartered in New York City, with 400,000 members around the country, and more than 14,000 members and activists in New Jersey.

I'll keep my comments brief, because a lot has already been said.

Public health hazards of diesel have been established. They're severe. There's no need to repeat them. The science is as established as it is depressing.

That said, we are encouraged to see New Jersey taking action. And the spirit behind this law is one that we applaud. We would like to point out, as has been hinted at, that there are other jurisdictions that are doing retrofits. New Jersey is at the vanguard, but is not doing this alone, is not doing it without any prior experience. New York City, New York state, California, and Texas have been mentioned. They've implemented retrofit laws, and we think those precedents should be used by New Jersey to make sure that the laws being developed here are even more sound and even more effective.

Environmental Defense is committed to working with New Jersey in establishing its retrofit program, and we would appreciate being involved in the process.

SENATOR SMITH: Great. We appreciate your comments.

Kevin Monaco, Utility and Transportation Contractors Association.

KEVIN P. MONACO: Thank you, Mr. Chairman.

Kevin Monaco, Utility and Transportation Contractors Association of New Jersey.

UTCA currently numbers approximately 1,200 member firms active in all phases of heavy highway utility and environmental remediation construction throughout the state. We're opposed to the legislation in its current form.

While we commend you, as a sponsor, for seeking to reduce fine-particle diesel emissions, we believe current EPA rules being phased in at the

national level, with the cooperation of the equipment manufacturing industry, is the most reasonable approach to this issue.

The construction industry and the marketplace are working to improve air quality, fuel efficiency, and emissions standards. Most contractors that I represent replace their trucks and their equipment on a five-to-seven year cycle. So the natural progression of the marketplace is already addressing this issue.

We've heard from-- Mr. Sinclair has already indicated Caterpillar equipment has reduced the emissions from their off-road vehicles 40 percent since 1995, and will reduce that by another 90 percent once they reach the stringent Tier 4 standards.

I've submitted written testimony, Mr. Chairman, and I've learned quite a bit today. I think I'd like to submit some revised comments based on what I've learned here today.

I'd just like to point out our major concern. We have several concerns with various components of the bill. The major concern is the mandatory retrofitting. Even a medium-sized firm that I represent has literally hundreds of diesel engines that could be impacted by this. We heard a variety of cost estimates. The cost estimates that I received from Caterpillar representatives was \$6,000 to \$9,000 per engine. So in an environment -- in our segment of the construction industry -- transportation construction, in particular -- has really seen little or no growth. The DOT program for construction projects has really be stagnant over the last decade.

We operate, again, as the truckers have mentioned, on razor-thin profit margins. And we have very high labor costs, very high equipment costs.

To mandate a \$6,000 to \$9,000 retrofit of equipment, you're talking hundreds of thousands of dollars, when there is limited amount of work available and very low profit margins.

We think this will provide a tremendous negative economic impact on our contractors, on the labor organizations that we employ. I think if some contractors have an opportunity to -- the choice is either retrofit equipment for \$120,000, or \$180,000, or \$240,000, or reduce their crew sizes and reduce the number of crews that they have so they can reduce their administrative costs and their overheads. I think layoffs could be a reasonable approach to dealing with this until the economic environment improves.

I think the equipment suppliers and sales of equipment could potentially suffer as contractors, again based on tight economic times to begin with, delay purchase of equipment until at least 2007 and, perhaps, on off-road -- I'm understanding until maybe even 2011.

Some of the other concerns that we've heard, and that we share, are the readily -- whether or not ultra-low-sulfur fuel is readily available, the cost of that fuel, and also its impact on engines. I'm told that retrofitting cannot necessarily be done on all engines. I'm told, again, that you cannot necessarily put ultra-low-sulfur fuel into an engine that's not specifically designed for it. You may not even be able to retrofit it to meet those needs.

We have a number of concerns with the local police enforcement and the debarment provisions in here, as well. Certainly, though--

SENATOR SMITH: Other than that, you like it. (laughter)

MR. MONACO: Well, we love clean air. We're all family owned businesses. We all have children. I have children.

SENATOR SMITH: I'm joking.

MR. MONACO: But as I said, we commend you. We'd like to work with you. We think we're going to achieve these standards, going forward, through the national level anywhere.

And, again, I'm encouraged by what I've heard today. I don't know that I read the bill this way, but I've heard today that the target is really the oldest, dirtiest engines.

SENATOR SMITH: Right.

MR. MONACO: And if that's what we want to do, that's fine. Our concern, again, is someone buying a brand new, \$150,000, \$200,000 piece of equipment in 2005 and having to then pay another \$10,000 to retrofit it to meet standards for 2007.

SENATOR SMITH: How far do the standards differ between 2005 and 2007?

MR. MONACO: I don't have the Tier 3, Tier 4 standards right in front of me. I have them in my bag. I can get them to you.

SENATOR SMITH: Our Engines Manufacturers guy -- you need to come forward, if it's okay, so it gets on the record.

And your name, again, sir, was?

MR. SUCHECKI: Joe Suchecki, with the Engines Manufacturers Association.

For the on-road vehicles, the current standards for PM -- which went into effect 2004 through 2006 -- is 0.1 grams per brake horsepower hour. The 2007 standard will be 0.01 grams per brake horsepower hour. So those 2004, 2006 engines are already reduced by 90 percent from like a 1 gram engine

of -- back in the '80s and '90s. And then the 2007 will be another 90 percent from today's standards.

On the non-road equipment, it's much more complicated, because the Federal system is phased in, depending on the size of your engine, or what have you. But, currently, some engines are at 0.15 grams. And then the new Tier 4 standards, again, will be at 0.01 grams, again being phased in starting in 2011 and 2014, depending on the size of the engine.

SENATOR SMITH: Great. We appreciate the information. It's very helpful.

Yes, sir.

MR. MONACO: That's it, Mr. Chairman. We look forward to working with you. We commend you for the goals, but we really want to -- as I think another speaker said -- we want to address these goals in a technologically and economically feasible manner.

SENATOR SMITH: Got it.

Thank you, Mr. Monaco.

MR. MONACO: Thank you.

SENATOR SMITH: Carol Fulton, ACG (*sic*) of NJ.

C A R O L M. F U L T O N: AGC of New Jersey.

SENATOR SMITH: AGC -- and AGC is?

MS. FULTON: The Associated General Contractors of New Jersey, and the New Jersey Asphalt Pavement Association.

I will spare you my testimony today, because I don't think that there's any point that I have that has not already been made.

Our two associations consist of members that are large contractors, medium, and small -- all of whom will be impacted greatly by the legislation.

Mr. Chairman, we do want to commend, too, for the goal. And we are very, very encouraged that you are willing to listen to our concerns about this bill and are looking forward to being part of that process.

SENATOR SMITH: Great.

MS. FULTON: We have -- just finishing, now, our prepared paperwork, which we'll get to you in the next day or so.

Thank you.

SENATOR SMITH: Wonderful.

Is there anybody we missed? Anybody want to say anything? (no response)

All right. Let me thank all the people who participated in today's hearing. As we say in the business: to be continued September and October of this year. Thanks for all your help. You are helping to make it a better bill.

Meeting is adjourned.

(MEETING CONCLUDED)