
Committee Meeting

of

SENATE ENVIRONMENT COMMITTEE
ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE
Senate Committee Substitute for Senate No. 1897
Assembly Committee Substitute for Assembly No. 2962

*(Establishes licensed site professional program of
site remediation and makes various changes to site remediation laws)*

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: February 26, 2009
2:00 p.m.

MEMBERS OF COMMITTEES PRESENT:

Senator Bob Smith, Chair
Senator Jeff Van Drew, Vice Chair
Senator James Beach
Senator Robert M. Gordon
Senator Christopher "Kip" Bateman
Senator Andrew R. Ciesla

Assemblyman John F. McKeon, Chair
Assemblyman Reed Gusciora, Vice Chair
Assemblyman Peter J. Barnes III
Assemblyman Matthew W. Milam
Assemblyman John E. Rooney
Assemblywoman Valerie Vainieri Huttle
Assemblyman Daniel M. Van Pelt



ALSO PRESENT:

Judith L. Horowitz
Algis P. Matioska
Carrie Anne Calvo-Hahn
*Office of Legislative Services
Committee Aides*

Kevil Duhon
Senate Majority
Kate McDonnell
*Assembly Majority
Committee Aides*

John Hutchison
Senate Republican
Thea M. Sheridan
*Assembly Republican
Committee Aides*

***Meeting Recorded and Transcribed by
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TABLE OF CONTENTS

	<u>Page</u>
Irene Kropp Assistant Commissioner Site Remediation and Waste Management New Jersey Department of Environmental Protection	3
David Pringle Campaign Director New Jersey Environmental Federation	7
David Brogan Vice President Environmental Policy and Small Business Issues New Jersey Business and Industry Association	8
Michael Egenton Vice President Environment and Transportation New Jersey Chamber of Commerce	9
Kara Seymour Representing New Jersey Chapter Sierra Club	11
Michael McGuinness Chief Executive Officer New Jersey Chapter National Association of Industrial and Office Properties	13
Michael L. Pisauro Jr., Esq. Legislative Director New Jersey Environmental Lobby	13
Nicholas DeRose Representing LSP Consulting Coalition	17
Steven T. Senior, Esq. Representing LSP Consulting Coalition	20

TABLE OF CONTENTS (continued)

	<u>Page</u>
Roy L. Jones Co-Chair and Coordinator South Jersey Environmental Coalition	21
Jorge H. Berkowitz, Ph.D. Representing Environmental Business Council Commerce and Industry Association of New Jersey	25
Adam Liebttag Lead Staff Representative Local 1034 Communication Workers of America	28
Olga Pomar, Esq. Representing South Jersey Legal Services	29
Andrew B. Robins, Esq. Representing New Jersey Builders Association	33
Kim Thompson-Gaddy Representing North Jersey Environmental Justice Alliance, and Co-Chair Environmental Justice Advisory Council Environmental Justice Program New Jersey Department of Environmental Protection	36
Cynthia Mellon Environmental Justice Organizer Ironbound Community Corporation	38
Tony Russo Representing Site Remediation Industry Network	40

TABLE OF CONTENTS (continued)

	<u>Page</u>
Richard J. Katz President Pennjersey Environmental Consulting, Inc.	45
John M. Cannel Executive Director New Jersey Law Revision Commission	48
Jane Nogaki Representing Coalition Against Toxics	49
Denise Patel Chemical Security Campaign Organizer New Jersey Work Environment Council	53
APPENDIX:	
Letter addressed to Members of the Senate and Assembly Environment Committees plus attachment from David Brogan	1x
“Breaking the Backlog: Site Remediation Reform Crucial to Economic Development, Healthy Environment” submitted by Michael Egenton	3x
Memorandum addressed to Senate and Assembly Environment Committees from Kara Seymour	5x
Report submitted by Roy L. Jones	7x

TABLE OF CONTENTS (continued)

APPENDIX (continued):

	<u>Page</u>
Testimony submitted by Adam Liebttag	32x
Letter addressed to Assemblyman John F. McKeon from Olga Pomar, Esq.	34x
Memorandum addressed to Members of the Senate and Assembly Environment Committees from Christina M. Genovese Manager Government Relations Chamber of Commerce Southern New Jersey	44x
Memorandum addressed to Members of the Senate and Assembly Environment Committees from Stephen A. Patron President New Jersey Builders Association	47x
rs: 1-68	

ASSEMBLYMAN JOHN F. McKEON (Co-Chair): Welcome to everyone, and thank you for accommodating us. Obviously, with the number of witnesses, and crowd, and the unprecedented Joint Committee for a matter for action, this was a better facility for us. So we all apologize about the delay in getting started.

Can we have a roll call?

MS. CALVO-HAHN (Committee Aide): Yes.
Assemblyman Van Pelt.

ASSEMBLYMAN VAN PELT: Here.

MS. CALVO-HAHN: Assemblyman Rooney.

ASSEMBLYMAN ROONEY: Here.

MS. CALVO-HAHN: Assemblywoman Huttle.

ASSEMBLYWOMAN VAINIERI HUTTLE: Here.

MS. CALVO-HAHN: Assemblyman Milam.

ASSEMBLYMAN MILAM: Here.

MS. CALVO-HAHN: Assemblyman Barnes.

ASSEMBLYMAN BARNES: Here.

MS. CALVO-HAHN: Assemblyman Gusciora.

ASSEMBLYMAN GUSCIORA: Here.

MS. CALVO-HAHN: Chairman McKeon.

ASSEMBLYMAN McKEON: Present.

SENATOR BOB SMITH (Co-Chair): Can we have a roll call on the Senate side?

MS. HOROWITZ (Committee Aide): Senator Smith.

SENATOR SMITH: Present.

MS. HOROWITZ: Senator Van Drew is present.

Senator Beach.

SENATOR BEACH: Here.

MS. HOROWITZ: Senator Gordon.

SENATOR GORDON: Here.

MS. HOROWITZ: Senator Bateman.

SENATOR BATEMAN: Here.

MS. HOROWITZ: Senator Ciesla.

SENATOR CIESLA: Here.

ASSEMBLYMAN McKEON: Mr. Chairman, first and foremost, on behalf of my colleagues in the Assembly, thank you for inviting us to be part of this Joint and historic Committee hearing today.

I have to start in complementing you for an effort that was gargantuan, to say the least, as it relates to the amount of time, effort, and judicious reasoning I think that went into this. I think it's a 107-page piece of legislation.

What we had talked about, for all who are here, is after we have the Deputy (*sic*) Commissioner speak to start things off, we will open it to those who have signed up as witnesses. We're going to maintain a very strict time limitation of five minutes. So for all of you who may have given us written testimony, we appreciate that. We always take that into consideration, and it will be part of the record. So please time your statements to the point that you know you'll have five minutes of time.

And we do that well-knowing that this process has been ongoing for close to two years now. And I don't think there's anybody in the audience that hasn't had the opportunity to speak to either one of the

two of us, or many of the members of the Committees, or staff on multiple, multiple occasions.

So with that, Senator Smith, perhaps you can lead us off with a few words.

SENATOR SMITH: Sure.

Chairman McKeon, thank you for your kind comments. What we have today in front of us -- in front of both Committees -- is the product of two-and-a-half years of very hard work by the DEP, by the two Committees, by the Office of Legislative Services, by the partisan staff. Everybody's worked together. We've had so many hearings that it's not in our ability to count them at this point. There's been stakeholder groups.

And I think at the end of the day, Chairman McKeon, we have here a very, very balanced bill. It will be protective of New Jersey's environment, the health of our citizens, and at the same time help us get to the finish line in getting these thousands of contaminated sites cleaned up in an expeditious way.

With that, and your indulgence, we'll ask Deputy Commissioner Kropp to give us a little introduction and to warm us up to the topic.

ASSISTANT COMMISSIONER IRENE KROPP:

Thank you.

Good afternoon, everybody.

Thank you to Chairman Smith, Chairman McKeon for all the work that we've done together in the last two-and-a-half years. And thanks to all the members of the Committees who have been gracious in listening to me and talking with me. And especially thanks to all the legislative staff,

including Judy and Kevil, who have really had their way -- working extremely hard.

I want to talk very briefly -- and I will be within the five minutes, I promise -- very briefly about the bill, what it does and doesn't do; and what I see moving forward.

To debunk some of what I think are rumors floating around with regard to the bill, I want to just talk about what I believe, after two-and-a-half years of working closely with the bill, what it does and what it doesn't do.

It's very important to note for everyone here that this bill does not lower cleanup standards or lessen any cleanups that the Department would do. In fact, the bill strengthens DEP's enforcement capabilities. It provides for greater protection at schools, childcare facilities, and residential housing. It furthers our ability to require cleanups to unrestricted standards in those cases. It prohibits those types of developments on landfills that require leachate or methane collection. It does allow us for some flexibility when -- in a situation of developing a school -- you can't put it on an unrestricted standard. It allows us some flexibility to meet presumptive standards or alternate presumptive standards. So, again, it strengthens what we have today.

It does not privatize, it does not deregulate, it does not eliminate DEP enforcement or limit our review to only 10 percent of submittals that come in the door. The bill does ensure DEP review of all documents, something that we do not do now. It does provide for greater protection at the most contaminated sites. It does provide for greater protection at the most recalcitrant sites. It's very clear on who is

recalcitrant. It does not change the role of DEP staff. It merely lays out a different business process for how we review documents. It absolutely reinforces the polluter-pays concept, and it strengthens it not only in the Spill Act, but in the release of grant funds to municipalities under the HDSRF program.

The bill does not change the fact that, right now, consultants are paid by clients. It does hold those consultants to a higher standard of performance. It does hold them accountable for their work. It does, for the very first time, allow enforcement action to be taken against consultants who violate site remediation laws and regulations. It also holds those consultants to a strict code of ethics.

I understand that the bill creates a climate of change among many parties. All stakeholders, in fact, are subject to this change. Many DEP staff are rightfully nervous because of fear, through fearmongering, that they will lose their jobs. That is not the case. Change is sometimes good, sometimes necessary, and sometimes absolutely critical for survival. In this case, it is critical to both the environment and economic survival of New Jersey that this bill be passed today.

Not only are we dealing with an existing backlog that slows the economy and hurts the environment. But as you all know, we are on the brink of economic disaster to the degree that we now have a new American Recovery and Reinvestment Act that will provide billions of dollars to New Jersey in hopes of economy recovery.

What many may not know is that the Site Remediation Program, my staff, will be playing a major role in this process in New Jersey. Site Remediation staff will be involved in many of the economic stimulus

projects: the Transit Hudson River Tunnel, the Port Authority bridge, DOT projects, Schools Development Authority projects, Environmental Infrastructure Trust projects. We will be involved in all of those projects moving forward. We will be directly overseeing the expenditure of Federal moneys that will be spent on brownfield grant projects, leaking underground storage tank grant projects, and Superfund projects.

As you are all well aware, tight timeframes are in the American Recovery and Reinvestment Act. And you're aware that these mandates on Federal agencies to oversee these expenditures are very, very, very tight. We need to get the money out the door, into contractors' hands, and spent quickly.

I have fought for this legislation under the pressure that we were facing two-and-a-half years ago. The pressure has only increased based on the current economy. I know that the State Legislature understands what's best for New Jersey as a whole. I'm optimistic that this new program will provide the DEP with the opportunity that we need to meet the challenges that lie ahead and that are just around the corner. Because this money needs to be spent soon.

I am certain that the environmental protections that are now strengthened in this bill exist for us, for the residents of New Jersey, and for the future residents of New Jersey. I challenge anyone who does not fully support the legislation, that both of you Chairmen have proposed, to provide a solution that will equally position us for economic recovery ahead while ensuring this greater degree of environmental protection.

ASSEMBLYMAN McKEON: Thank you very, very much.

If you could stay with us, if you wouldn't mind, just in case there are points of clarification. We're going to hope to avoid a lot of questions and interplay.

Dave Pringle, from the New Jersey Environmental Federation.

Dave, you look like Mickey Rivers walking up to the plate there. What was that?

DAVID PRINGLE: I'd like for the Assembly to run for reelection this year on more than this bill (indiscernible) -- or permanent extension and a bankrupt Green Acres. So it's not a happy day for the environment in New Jersey.

I distributed our testimony yesterday. And we also support the testimony you'll hear and has been submitted by our colleagues from the South Jersey Environmental Justice Alliance, South Jersey Legal Services, Ironbound, and many others.

I am more than happy to meet the challenge that Irene just laid to you. Amend this legislation, narrow the universe so that when you're taking on something like 20,000 sites all at once, as a total overhaul of three major environmental laws and about 12 regulations, where the DEP currently doesn't have the ability to process information-- You're asking them to turn overnight. That can't be done. Narrow the universe, at least initially, to the least problematic sites to ensure this gets done right.

The oversight in this legislation is much less than the oversight in Massachusetts. There's twice as many audits in the Massachusetts program as is proposed in this legislation. In Massachusetts, they found in the audits they did do that 50 percent of the sites had violations. There is an inherent conflict of interest when you're having the folks doing the

cleanups signing off on the cleanups. So, yes, consultants are paid by the responsible parties, but they weren't paid to sign off on the cleanups the way it occurs in this legislation.

Each successive version of this bill has gotten weaker. Yes, there are some things in there that strengthen the law from current situation. But with each iteration of this bill, those protections have gotten weaker and weaker. For example, I thought it was in this morning's version -- I've been told it was in Friday's version -- it was the first time it appeared, regardless of when it appeared -- to eliminate the provision that you could only have a weaker cleanup for a school, daycare, or home when it was physically or technologically impractical. To make it flat-out *impractical* brings in costs. That's a significant weakening of what had been a protection in this legislation.

I could go-- The licensed site professional board is controlled by the folks who are regulating. It doesn't make sense. And we urge that this bill be held until you can narrow the universe to make it be a pilot project to make sure we get it right; to greatly strengthen the community, and public oversight, and government oversight in this legislation; and to require, not just permit, greater cleanups at schools, daycares, playgrounds, and ball fields.

SENATOR SMITH: Thank you for your comments.

David Brogan, Mike Egerton, NJBIA and the State Chamber of Commerce.

DAVID BROGAN: Thank you, Mr. Chairmen.

My name is David Brogan. I'm Vice President of Environmental Policy at the New Jersey Business and Industry Association.

We were part of the stakeholder group that has worked on the licensed site professional program, the site remediation program overhaul over the last two years -- two-and-a-half years.

We support S-1897. And the licensed site professional program is the only viable option that we've seen to reform site remediation in the State of New Jersey. We have 20,000 known contaminated sites. That number is growing. The number of case managers has gone down. And the only viable solution is to basically harness the power of the private sector and provide more authority for them to process those sites.

And the one thing that occurred time and time again is that the oversight has gone down. And realistically, DEP inspects every document that comes through under this bill. There's an increased -- higher code of conduct, higher code of ethics for the licensed site professionals than there is now, civil and criminal penalties that didn't exist before.

We've worked very hard on this. And I want to thank both you and all the members of the Committees, as well as Irene Kropp for her work on this. But again, I think when we're looking at -- and I'll keep this brief -- when we're looking at trying to tackle this problem, there really is no other viable solution.

So with that, I'll turn it over to Mike.

MICHAEL EGENTON: Thank you, Chairmen.

And the same thing, I'm going to keep it sort of like an Academy Award speech. I just wanted to thank you, Chairmen, for your leadership, for the hard work that Irene has done -- and actually put up with us in so many reiterations of this legislation.

As I told you before, Chairman, I was -- about, I guess, 10 or 11 years ago, when we worked on the brownfields bill with your predecessor, Senator McNamara, we went through this type of scenario as well. And I recognize the hard work that you've done, that staff has done, Judy's time in this legislation. We really appreciate it.

The State Chamber, as you know, embarked on a benchmarking study about three years ago, and we called for an LSP program and said you should look at Massachusetts. You've done that. We're happy with the changes that have been made.

Obviously, there are a couple of things that we could always tweak to make it an even much better bill. But considering all the different stakeholders, we appreciate the hard work and, again, the time and effort that Irene and the Department has spent on this bill. We just wanted to say thank you.

MR. BROGAN: Mr. Chairman, if I may ask one quick question: We've been, as discussed-- We have seen a large number of our amendments to this bill. There's one section, Section 27, that deals with direct oversight that I'd just like to bring up for your consideration. Under that section, there was a specific timeframe for the remedial investigation to be completed before a responsible party swept into direct oversight.

We have concerns about that, because the Department already has the authority to create any timeframe it wants for any stage of a cleanup. And by having a statutory timeframe, there may be a situation where you have a site, they're working with the Department, everything is going smoothly, but it's taking a certain period of time. And that would trigger, then, direct oversight. And the Department may not, in fact, want

to take direct oversight. And the only way they could deal with this is by violating the provisions of the law. So we would ask that that section be deleted, if possible, only because the Department already has the ability, under this bill, to establish any timeframe it wants for any step of the process.

SENATOR SMITH: We're happy that you're concerned.
(laughter) That is a good thing. And that shows some of the balance.

That was a very deliberate provision in the bill. One of our problems in New Jersey is that a lot of the sites have been warehoused. And we want strict time limits to get these things cleaned up.

Irene, do you have any comment?

ASSISTANT COMMISSIONER KROPP: I understand the concern. I do understand, after meeting with staff -- and just for the record, we have a lot of staff working on provisions of how to implement this bill right now -- that the mandatory timeframe could, theoretically, trump the 10 and 5 -- the RI investigation piece. It's okay to be in there. It's okay to lose it, for all intents and purposes. I think mandatory timeframes may make Mr. Brogan a little more nervous.

SENATOR SMITH: Good.

ASSEMBLYMAN McKEON: Thank you, both.

Kara Seymour, New Jersey Sierra Club.

K A R A S E Y M O U R: Good afternoon.

I also submitted a written statement from our Director, Jeff Tittel. But I'll just highlight a couple of points in that statement.

Our main concern with this bill is the lack of oversight that will inevitably occur once private consultants are in charge of cleaning up some

of New Jersey's most toxic sites. We believe this lack of oversight will put our communities at risk.

We don't think outsourcing is the solution to this problem. And we believe it will result in disaster for the people of New Jersey, putting toxins in our water sources and placing our communities at risk.

As proposed, under this LSP program, the DEP will review just a fraction of the paperwork in conjunction with the cleanup of toxic sites and will not conduct audits. Rather, the audits will be in the hands of the licensed site professional board, which is made up of the very professionals they're intended to police.

Instead of removing the toxic materials from the sites, we're concerned that private consultants will be more inclined to offer superficial remedies. We don't think that that approach is beneficial. In fact, we think it will exacerbate the problem and be detrimental to the health and environment in New Jersey.

Under this proposal, the private consultant will not be held responsible after the cleanup. We think that is wrong, and we believe that the private consultants must have insurance to protect the site's future owner and the taxpayers as a whole.

To combat that, we take issue with the covenant not to sue, putting the State on the hook for future problems. We agree that the Site Remediation Program must be fixed, but we do not think outsourcing is the solution.

Thank you.

SENATOR SMITH: Thank you.

ASSEMBLYMAN McKEON: Thank you.

SENATOR SMITH: Mike McGuinness, NAIOP.

M I C H A E L M c G U I N N E S S: Thank you, Senator Smith, Assemblyman McKeon.

I just want to express our support for the bill. It's about time that action was taken on it. We think that it will do a lot to help revitalize areas that have been vacant, underutilized, and prone to increasing crime -- just to get them back on the payroll, get some jobs into those areas.

So, again, we do support it with the changes as proposed.

Thank you.

ASSEMBLYMAN McKEON: Thank you very much.

Mike Pisauero, New Jersey Environmental Lobby.

M I C H A E L L. P I S A U R O J R., E S Q.: Thank you very much, Mr. Chairmen and Committee members.

I represent the New Jersey Environmental Lobby. We are against this bill.

Some things-- The bill does have some good points. There are some provisions that may allow for greater protection -- the resident stake (indiscernible) and schools. That is good. I think those protections may end up being exclusionary, as I will discuss in a few moments.

Also, we've requested on multiple occasions that playgrounds, recreational facilities where our children are there playing, getting dirty, getting in the dirt are also afforded those protections. That's not in the bill. And I focus on children, because children are developing. Their brains are developing, their neuromuscular systems are developing. They are most susceptible to pollution. Levels that you and I may find safe and adequate may -- are actually harmful for children, because their bodies are using

materials that they're getting from the environment and are incorporating them in their bodies. So that is one area of weakness.

This bill is, in part, based on a Massachusetts model. In taking a look at the Massachusetts model, I think you will find the program is inadequate to really, truly protect the environment and the economy. Fast cleanups that have to be redone over and over again aren't really efficient and economic motivators.

I've submitted comments based upon the bill that was in effect on February 2. At the back of that, I attached a copy of a Massachusetts DEP report. Of the RAOs, 50 percent of them had to have more work or were invalidated. Batting 500 baseball makes you an all-star and a top earner. A 50-50 in chance of having a real cleanup for our children and our families -- I don't know that that is a risk that we want to take.

A 2006 Law Review article that looked at the Massachusetts program found some very interesting things. It found that audits indicate that LSPs routinely permit deviations from state regulations, sometimes creating serious risks to health and the environment. Massachusetts has a three-level audit program. That third level, which is the most serious, is random as well as targeted, but finds 75 percent of those sites audited have violations.

Also, in Section 47 of this bill, it provides that properties that are residences and daycares should be cleaned up to an unrestricted or presumptive remedy. That is very good. It has in there an exception, "Unless it is impractical." The Massachusetts experience finds that only 32 percent of the sites there get cleaned up to the unrestricted level, because

the remainder of those sites -- those 67 percent -- are impractical to do. And a lot of that is because of economics.

The oversight in-- We have over 20,000 sites. Each site will generate hundreds if not thousands of documents. DEP's reviewing of only 10 percent -- giving a good look at only 10 percent of those documents is not sufficient. DEP may request the LSP Board to do an audit. There's nothing in the bill that requires the LSP Board to actually act upon that audit request by DEP. The LSP Board can say no.

Also, there is no provision in the LSP bill that if an LSP Board member is looking to audit one of his coworkers that LSP member has to recuse himself. That seems to me to be common sense. You don't want coworkers auditing each other.

Another aspect: The Government Accounting Office did a report looking at the nation's Superfund sites. And they found that the EPA had serious problems ensuring financial--

SENATOR SMITH: Thirty-second warning.

MR. PISAURO: --financial surety from its responsible parties. If the Federal government can't go after people with all its resources to make sure sites are cleaned up because of bankruptcies and restructurings, we need to make sure that those sites that are not cleaned up to an unrestricted level -- we have financial assurances so that people are protected.

And lastly, because of the LSPs, the RAOs operate as a covenant not to sue. When the DEP cannot independently verify that the work has been done and has been done adequately, institutional controls are in and the engineering controls were put in properly and are operating,

binding the hands of the State by a private contractor paid by the responsible party seems to be a constitutional issue.

Thank you.

ASSEMBLYMAN McKEON: Thank you, Michael.

SENATOR SMITH: Thank you, Mike.

Irene, this bill, as I understand, is tougher than anything we have in the law now with regard to schools and daycares -- that you now have the ability to have hotspots removed, as opposed to the existing legislation -- the existing law -- that allows pave and wave to occur. Am I correct in that? Are the school children of our state at risk or are they in a safer condition as a result of this?

ASSISTANT COMMISSIONER KROPP: Under this bill, I definitely believe that they are afforded greater protection. And I absolutely respect Mike's concerns with regard to school children, especially in playgrounds and recreational facilities.

Just point blank, right now we allow municipalities to get HDSRF grant moneys to clean up recreational facilities to unrestricted standards. So we are supportive of that type of a concept. We have presumptive remedies in here -- the ability to establish presumptive remedies in here. I understand that everybody in the audience doesn't know what the Department is doing with regard to presumptive remedies, but the presumptive remedies that we are putting together do not just deal with the school, and the paved parking lot, and the building itself, but the playgrounds and the recreational facilities. I think down the road, when people actually get to see the guidelines that we have proposed, as well as the regulations for presumptive remedies, they will understand that we are

trying to protect playgrounds as well as recreational facilities, schools, daycares, housing under the bill.

Just one other really quick point as-- Senator Madden, and Assemblyman Moriarty, and Assemblywoman Love have legislation out there to amend the Kiddie Kollege bill. That will greatly expand protections for future residential and properties associated with residential, schools, and daycares. So I think that we have the environmentalists' concerns covered there.

SENATOR SMITH: Great.

ASSEMBLYMAN McKEON: Thank you very much.

Nick DeRose and Steve Senior, LSP Coalition.

Good afternoon.

NICHOLAS DeROSE: And good afternoon, Senator Smith and Assemblyman McKeon.

Thank you, and thank you to the members of the Senate and Assembly Environment Committees for providing this opportunity to testify on the anticipated legislation to establish an environmental licensed site professional program to conduct site remediation in New Jersey.

I know many of you know me from previous meetings. But for everyone's sake, my name is Nick DeRose. I'm a professional geologist who's worked in the field of environmental consulting in New Jersey for almost 30 years. I'm here on behalf of the LSP Consultant Coalition, which was formed specifically in response to this legislation. It includes 33 member consulting firms in the State of New Jersey. Those member firms represent small practitioners, large national firms with a significant presence

in New Jersey, 1,500 professionals working in the environmental consulting field, and over 4,000 employees working in the State of New Jersey.

The LSP Consultant Coalition supports the enactment of the Site Remediation Reform Act, and we feel privileged to have been able to participate in this extraordinary process that has allowed for comment and input from all stakeholders, in an open and transparent manner, to arrive at the current version of the bill before you today.

I would also, and the Coalition in total, would be remiss in not acknowledging the work of Irene and her staff, and the open dialogue that she has granted to go deep into some of the technical and regulatory concerns that we've had.

Before I go further, however, I feel it's my obligation to point out some frustration with continued misrepresentation of the legislation. These misrepresentations can continue to mislead the public regarding the experience and effectiveness of the Massachusetts LSP program. First, there were false statements that the Massachusetts LSP board had not taken any enforcement actions against LSPs in the state when, in fact, there's a history of rigorous enforcement, and license suspensions and revocations by the LSP board. They are visible on the LSP board's Web site.

More recently and, in fact, just in previous testimony regarding Massachusetts' audit program, statements regarding problems found in audits done on Level 3 sites have been discussed. What is not explained is that the tier -- the Level 3 sites, excuse me, are a very small subset of all sites that are first screened by Massachusetts DEP.

In 2007, out of thousands of sites subject to the Massachusetts DEP review, only 40 went to Level 3. We talk about 50-50, we talk about

78 percent. In total, of the thousands of sites submitted, we're really talking about tenths, or hundredths, of a percent.

Or as summarized by one Massachusetts LSP whom I asked about this -- he said, "The proportion of LSP -- of Level 3 audits is miniscule to the number of audits in total number of LSPs -- sites LSPs work on and make filings for." Massachusetts has a rigorous auditing program that has demonstrated over time that an LSP program works. The current bill includes an even more rigorous audit program than in Massachusetts.

This bill does represent important reform that leaves in place New Jersey's conservative and strict cleanup standards. I also ask you to bear in mind that I am here as a consultant. And we were not folks who initiated this legislative action. We responded to it. And in that response, we have crafted our input to the best that we could, hearing that this bill--

SENATOR SMITH: Thirty-second warning.

MR. DeROSE: Okay. Thank you.

We still have cleanup standards in the State that are not being reformed. And we don't suggest that they should be -- we respect the intent of this Committee not to take that on. But those cleanup standards will protect the public, just as they have. And they will set New Jersey on a very high bar with respect to other states that do have more liberal cleanup standards.

To finish up here, we believe that the bill will be successful. We believe that with this program, we can have a groundswell of increased sites that will come forward into the remediation program. We believe

there is pent up interest and demand on all sides. We look forward to seeing that and revitalizing New Jersey's remediation program.

SENATOR SMITH: Thank you.

Is that another 30 seconds?

ASSEMBLYMAN McKEON: We don't have a ruling on this. I'd like to go to the rules committee. (laughter) We would have stopped your colleague at two-and-a-half if we--

STEVEN T. SENIOR, ESQ.: I won't need five minutes.

ASSEMBLYMAN McKEON: All right, we'll let you go.

MR. SENIOR: Thank you, Chairman.

I just want to add a couple of points to what Nick has said. And as he has indicated, our Coalition of consultants supports the bill.

I was a participant -- direct participant in the stakeholder process over the last two-and-a-half years. There are many compromises, as you well know, in this legislation. It's not perfect, certainly from our perspective. And there are some things that we remain concerned about.

As the Senator indicated when Mr. Brogan was speaking, there are still plenty of folks who are nervous about this bill. The LSPs are certainly among them. They're nervous about whether they can get insurance and whether they can get it at an affordable cost. They're nervous about performing their services. Some have said, "We're going to have to be overly conservative to protect our licenses." They're nervous about being sued whether or not they perform their services properly.

We've suggested, and we've offered specific language, to provide them with a safe harbor from liability, not from being sued, if they're not negligent; meaning, if they perform their services properly. It's

something that exists in the Spill Act for certain professionals in this area. It's something that exists in other State laws. We feel it's appropriate in the circumstance where you're putting all of these obligations on a licensed site professional. So we hope that you will consider that.

Thank you.

ASSEMBLYMAN McKEON: Thank you very, very much.

MR. DeROSE: Two points that I just want to--

SENATOR SMITH: No.

ASSEMBLYMAN McKEON: You know what? Thank you very much.

Mr. Jones, South Jersey Environmental Justice Alliance.

ROY L. JONES: Good afternoon.

My name is Roy Jones. I'm the Co-Chair of the South Jersey Environmental Justice Alliance, and I'm also part of a statewide environmental justice alliance organization. And I want to--

Some of the comments I heard from-- Well, some comments we've heard-- You ladies and men have had an opportunity to weigh our comments that have gone on the record and the evidence that we're going to present to you, versus the conversations that may be put out here as to a fact or not.

So if you actually asked the question: why site-- This legislation should absolutely protect the health, and safety, and welfare of children -- especially sites where schools are going to be built, daycare centers are going to be built, and recreational centers. You want to ask yourself that question: Why should this legislation absolutely protect the health and welfare of children? And you have to-- As you look at this

legislation, you want to ask that question. And then you want to balance that question against those who have a financial interest in seeing this bill work or passed -- in terms of the consultants, not the legislators -- and those who are here in the interest of children and want to see the interest of children protected. I think you ought to weigh that and see-- I think you're going to see a vast difference.

But if you ask that question and you answer it, the reason why this bill should absolutely protect children: because children are absolutely powerless when it comes to this issue of toxic sites, and contaminated sites, and things that actually compromise the health and welfare of children in schools, and daycare centers, and recreational centers where these children are residing.

So as we look at this legislation, then we can affirmatively say that this legislation does not fully protect the health, safety, and welfare of children. It absolutely does not do that. And one of the things that this bill allows to occur is that the practice of capping sites is continued under this particular reform legislation. The use of caps is continued under this legislation.

And so what is the problem with caps? Well, first of all, in New Jersey, there's an obsession with caps with LSP-type folks. They have an obsession with it. And one of the-- This is what a writer said about this -- he said in New Jersey, there are 540 sites that use caps. And this was a research -- actually an article in the *Bergen Record* in 2007. This was a reporter -- Alex Nussbaum -- saying that in New Jersey we have 540 sites that use caps. We need to look further and ask the DEP actually, "As of

this day, how many sites use caps?" And I'm going to go into this issue of why caps are a problem.

And so this is what the writer says. The writer maintained that, "Developers love caps because they save millions when they don't have to dig up contamination and haul it away." And at a hearing in 2006, Commissioner Jackson said this: "Developers pursue the cheapest solutions in order to get quick profits." This is the former DEP Commissioner, now U.S. EPA Commissioner, saying this to this. Maybe some of you, in 2006 -- that these LSP people and developers that they work for -- which, by the way, is an absolute conflict of interest -- that you would actually take their--

SENATOR SMITH: Thirty-second warning.

MR. JONES: Okay. I wanted to give you some examples -- and I'm going to leave my report with you -- of egregious examples of caps. One is the early childhood educational center in Camden. It's built on a landfill. These kids go there that are educationally and health impaired. And there's a KROC Center on a landfill that's 90 acres in dimension. They're going to build a community center, recreation center on this site. The site is 75 percent not cleaned up. And the DEP and LSP people have allowed such a situation to occur in the State of New Jersey -- where 3,000 children and 1,000 adults a year are going to be on this site, being exposed to contamination that exists on the whole site. So I want you to imagine a landfill--

ASSEMBLYMAN McKEON: I'm going to ask you--

MR. JONES: I'll be finished in a second.

I want you to imagine a landfill 90 acres long, 35 years in the making, a community center on it, with 3,000 kids -- a daycare center and

all kinds of other activities for kids. I want you to imagine a 90-acre site -- a community center that's on the one-tenth of the site that's going to be cleaned up, and the other 90 percent is completely contaminated. And these kids are going to be exposed to this contamination each day.

This is what the LSP and the DEP allowed. And this is why we must stop this practice of capping sites and allowing the wolf to watch the hens.

Thank you.

ASSEMBLYMAN McKEON: Thank you, Mr. Jones. We appreciate your passion.

Jorge Berkowitz, Environmental Business Council.

Irene, would you mind just responding to a couple of things, because I'm inherently uncomfortable thinking anything we're doing whatsoever is putting children at risk in the state.

ASSISTANT COMMISSIONER KROPP: I respect Mr. Jones' comments. Commissioner Jackson -- former Commissioner Jackson was very much involved with the development of the KROC Center in Camden. The Camden community received a grant from the Salvation Army to a tune of millions of dollars -- that I do not recall at this particular point in time. Camden community leaders and Redevelopment Authority, perhaps -- I don't remember the exact individuals -- made the decision as to the location.

The Department -- and for the record, no LSPs -- but the Department itself undertook remediation at the landfill, knowing that the center was going to be located there. We did a massive soil removal action using public funds. We ensured that the location of the facility was not

directly on the landfill but off to one side. I agree, it might not be the most perfect place to put a community center. But one of the biggest complaints and concerns with urban communities -- and that goes to any location of a school, a daycare center, etc. -- is it's an urban community. A lot of the urban communities have historic fill issues. So we have gone out of our way with all the appropriate members in Camden -- and there has been a lot of public outreach and outreach to the community -- to ensure the safeguards of the children and the individuals.

ASSEMBLYMAN McKEON: Jorge.

J O R G E H. B E R K O W I T Z, Ph.D.: Thank you, Mr. Chairman.

Chairman Smith, Chairman McKeon, members of the Committee, my name is Jorge Berkowitz. I'm a Senior Associate with Langan Engineering. I'm here providing testimony on behalf of the Environmental Business Council of the Commerce and Industry Association of New Jersey, representing over 100 environmental companies in the state.

I've been at this for nearly two-and-a-half years. I've been in on the original stakeholders process. I've been involved in commenting on the legislation. And I appreciate the opportunity to provide this testimony.

This bill addresses complex issues. Therefore, it is easy to misunderstand or misrepresent the precepts on which the proposed legislation is based. Unfortunately, some have chosen to conveniently misinform the public with cutely worded barbs, half-truths rather than full-truths. And the public is left wondering about the worthiness of this legislation.

So let's attempt to be clear. The Site Remediation Program is in crisis. Environmental contamination is left to linger and exacerbate

because of the inability to deal with these sites in a timely manner. The faster sites are addressed, the more environmental contamination is mitigated, the better off the environment. While the program authorizing well-qualified environmental professionals to remediate sites is controversial and different in New Jersey, we would submit that Massachusetts has 15 years of experience proving that a program of intense nurturing, intense care can work and will work.

Let's take a look at who is supporting this legislation. The Governor of the State of New Jersey, who suggests that it's an important element in stimulating economic growth for the State; the Commissioner of the Department of Environmental Protection, the chief environmental regulator for the State of New Jersey; Assistant Commissioner for Site Remediation Irene Kropp, one of the most knowledgeable, respected professionals to ever hold that position, a dedicated civil servant for her entire life -- her entire professional career I should say; and U.S. EPA Administrator Lisa Jackson, the highest ranking environmental official in the country, started -- initiated this program. Further, this bill is co-sponsored by two legislators who have an impeccable record for supporting strong environmental legislation. These individuals are notable, as is their support. And I would submit that none of these individuals would casually support a program as important as this one without assurance and safeguards that it can be done right.

Let's take a look at some of those safeguards. This bill is one which will allow New Jersey to readvance to the forefront of the science and technologies involved in site remediation, and not be mired in archaic, Byzantine procedures that are embraced in the technical regulations. This

bill, for the first time in our state, formally creates a profession for site remediation scientists, a bill which mandates a code of professional behavior and ethics where one previously did not exist. The bill creates, for the first time, severe sanctions, even the loss of the ability to practice in the State of New Jersey, as well as criminal penalties for violations of ethical or professional misconduct. The bill requires, for the first time, an environmental professional to prove their regulatory and technical comprehension of the field before they are allowed to practice in New Jersey. This is a bill that has strategic regulatory involvement on behalf of DEP for all sites. And this is a bill which has a fair and balanced process which will judge the performance of the licensed site remediation professional, allow for appropriate sanctions and penalties, and is a process that can be triggered by any person in the State of New Jersey.

The public needs to understand that this bill was created to assure a high level of professionalism. This bill is one which requires and has had serious debate. Quick, clever, but inaccurate sound bytes do nothing to add to the discourse.

On behalf of EBC, I want to commend your leadership, Senator Smith, Assemblyman McKeon, Assistant Commissioner Kropp. We support this bill. Is this bill perfect? No. Is this bill good? Yes.

Thank you very much.

ASSEMBLYMAN McKEON: Jorge, you still have a couple of minutes if you want to continue. (laughter)

DR. BERKOWITZ: Sure. I can go on for a couple more if you'd like.

SENATOR SMITH: Just for the record, the League of Municipalities weighed in, and they are in favor, but they don't wish to give any testimony.

The next one will be Adam Liebttag, from the CWA Local 1034, in opposition.

Mr. Liebttag.

A D A M L I E B T A G: Thank you.

Unfortunately, I can not be so effusive in my thank yous and congratulations.

CWA 1034 represents the rank and file technical professionals, scientists, case managers, and others who work in the Site Remediation Program, and they are opposed to this bill, as is the union.

I have sheets of petitions that have been signed by those employees opposing this legislation not only on the grounds that it is privatization, but on the grounds that they deal with these contractors, these consultants, and these site cleanups every day. And they have deep, deep concerns about the lack of oversight and the deregulation that this bill represents. They're concerned about the low audit threshold of 10 percent. That is a fact that is in this bill. That means that as many as 18,000 cases will not be audited. And that's a pretty staggering number.

What this bill does is give the entire universe of sites over to LSPs. It is not a phase-in, it is not a pilot program. At one point during the debate and the stakeholder process, there was discussion of a smaller universe of sites -- being homeowner oil tanks. That has gone by the wayside. This is all in. This bill is 20,000 sites to LSPs, a very low audit threshold. And we're deeply, deeply opposed and deeply concerned about

the impact this bill will have on the future of site remediation and the potential problems that we will uncover after the site is certified as clean.

Thank you.

And I was not able to get my testimony distributed beforehand, so I will leave it up here and someone can help me with that.

Thank you.

ASSEMBLYMAN McKEON: Thank you very, very much.

Olga Pomar, from South Jersey Legal Services.

O L G A P O M A R, ESQ.: Thank you very much for the opportunity to address the Committee.

I submitted comments, that are much more detailed than my testimony will be, by e-mail two days ago. But I am leaving another copy here to make sure they'll be part of the record.

I work at South Jersey Legal Services, which is a legal services program that provides assistance to low-income communities and individuals. As such, I've worked with many community groups who are concerned about pollution contamination in urban, low-income areas -- what are often known as EJ communities.

As I'm sure this Committee is aware, site remediation is a huge environmental justice issue because it is my clients who live with the most prevalent contamination -- kids who play on contaminated dirt and historic fill; homes that are built on unsafe polluted land; industry that surrounds residential areas, schools, and daycares.

So it is our concern that when site remediation is done that it be done in a way that is truly protective of health. Everybody agrees the Site Remediation Program is not working and that the remedies that are

being used -- the capping, the controls -- don't adequately protect people who are living in these contaminated environments, and that the sites aren't being cleaned up.

We also recognize that the DEP and the drafters of this legislation did put provisions in this bill that do create, supposedly, more protective remedies and certain authority to the DEP to make sure that cleanups are done correctly. Unfortunately, however, from looking at the bill -- and my comments address this in specific detail -- the bill creates a system where DEP can't effectively exercise this authority to require more protective remedies, to make sure that if someone uses presumptive remedies these presumptive remedies are safe, to make sure that toxic hotspots are removed. Because the DEP is taken out of the process of these sites. There is no requirement that the DEP look at a remedial action work plan before the remedy is implemented and make sure that these supposedly more protective remedies are being used.

The bill also has a lot of very vague language. Presumptive, or alternative, or unrestricted use remedies can be used. It doesn't clearly mandate that unrestricted use remedies are always the preferred choice and there should be the burden on the party doing the remediation to show that they can't meet that standard before they can use a less protective remedy.

But under the system that this bill proposes, DEP is going to be sitting on the sidelines. And while it has theoretically this authority to require these remedies, it won't even know what's happening with the 18,000, 19,000 sites that it's not directly overseeing.

So I support the positions some other people have taken that to do this outsourcing on the least toxic sites, the least complex sites, the sites

that don't involve the kinds of uses that we all recognize need greater protection, could be a way to make the DEP operate more effectively and could be an effective way to avoid professionals. But to turn over all of these sites and relinquish DEP oversight would really make it impossible for the DEP to do the good things that this bill authorizes it to do.

It will also make it more difficult for the DEP to exercise its authority now, for example, of their alternate soil standards proposed -- not meeting the regular soil remediation standards but proposing an alternate site-specific standard. Well, it used to be that the party had to prove to the DEP that this standard was safe. If the DEP is out of the mix, then how is -- how are we going to have any assurance that these alternate soil standards are being designed and used properly?

So it's a concern that there isn't much provision for the public to be involved, for the public to oversee the process. There is no provision that anyone be directly accountable to the public and the community because it's in the hands of the LSPs.

Finally, I have known, from reviewing many sites -- the files of many contaminated sites at DEP -- that a lot of the delay in processing these sites is because these very consultants who are now going to have full authority over the cleanup submit incomplete documents, don't provide full site investigations, haven't done as much delineation of the contamination as they should, and the DEP caseworkers are on their backs telling them, "No, you have to do more testing; and, no, you have to do a more protective remedy; and, no, what you've proposed isn't good enough." So we are now saying the very parties that may have done inadequate

investigation, inadequate cleanup, now can certify that the site is thoroughly safe without that DEP oversight.

So I will stop now. I will leave my comments.

ASSEMBLYMAN McKEON: Thank you very much.

SENATOR SMITH: I think just one or two comments are in order.

First of all, we have put into the bill the technical assistance grants for community service organizations to have some resources to help in terms of watchdogging the sites. And I'm trying to remember our provision on the public input. We do have a public input provision.

Irene, do you remember what it was?

ASSISTANT COMMISSIONER KROPP: We've expanded public input underneath the direct oversight cases. So there's expanded public input there.

With regard to Olga's comment, with regard to who would be held accountable, the entire intent of this bill is to hold the LSPs accountable. And at Olga's request, we've put in a provision that made it clear that even the public could hold the LSPs accountable. So people will be held accountable moving forward.

Just a couple more real quick points.

SENATOR SMITH: Please.

ASSISTANT COMMISSIONER KROPP: With regard to only doing a pilot for the low-priority cases, we have been doing pilots for the low-priority cases for over the last year-and-a-half. Through legislation and through rules, all underground -- unregulated heating oil tanks are now being handled through an LSP approach, and it has been greatly successful.

However, clearly it is not helping with the overall issues. So the pilot is way passed us, and it's working, and it's working very well.

With regard to mandating unrestricted use, I could mandate unrestricted use, but for all intents and purposes, you'd get absolutely no development in urban communities, especially for schools and daycare facilities. And with regard to the audit -- we're only going to audit 10 percent. I keep hearing that. That is not the case. We are going to be reviewing every single document. We had a series of triggers that will require additional audit and review. One of those triggers is, absolutely, sites that are in EJ communities. Although the words *environmental justice* is not there, it's clear that was what our intent was.

So we'll be looking at more cases, we'll be auditing more cases. Environmental justice is a reason that we'd be auditing more cases. And the 10 percent was just a safeguard to make sure that the Department never fell behind in a certain number of document reviews -- not case reviews, the number of documents that come in the door every single year. Ten percent of the documents have to be reviewed.

SENATOR SMITH: Thank you.

Andrew Robins, New Jersey Builders Association.

A N D R E W B. R O B I N S, E S Q.: Thank you.

We, too, have been involved in the stakeholder process, going back many years. We have always strongly supported the concept of the licensed site remediation professional program. And in our prepared testimony, which I will not read, we note that we strongly support this bill.

We do so not because it encourages brownfield development. In fact, it creates more obstacles for brownfield development. It does not

increase the incentives for brownfield development. In fact, in some places it makes -- it pulls back from the incentives that are there now. It's not that it lessens the standards when you're building residential development on a contaminated site. In fact, it increases the standards and creates presumptive remedies -- is another impediment to getting those sites cleaned up.

We strongly support the bill because our goal all along has been to get a system that works. It's not a question of pro-development or pro-industry. It's either pro-it-works or pro-it-doesn't. And for that, we commend the Committee Chairs, the Committees, Committee staff, and more particularly Assistant Commissioner Kropp and her staff in working with us and other interested parties to try to develop a bill where the system can work. And that's the critical aspect that we have pushed for and we continue to push for.

And we look forward to the opportunity to work with--
(microphone malfunction due to cellular phone ringing)

ASSEMBLYMAN McKEON: That was Jeff Tittel calling in from California. (laughter)

MR. ROBINS: He has my direct line. (laughter) -- to make sure it works to get sites cleaned up. Because our members, the builders, not only clean up sites and provide the capital to get it done, but they also provide the capital to people who are doing the work themselves. And we want to make sure the sites are clean when it goes through the process.

And the changes that have been put in to this date have made that plan much more workable. And I'd like to focus on one particular aspect, and that is the multiple changes that have been put into the bill to

make sure that the liability protections available today for people who receive no further action letters also carry forward in this bill to people who receive response action outcomes. Because in the investment community, that's the critical aspect. Are the liability protections -- if you do it right -- are they going to still be there? And the changes that have been put in the bill -- and there are many. Many changes have been put in to make sure that happens -- are there now. And we recognize that, we commend that, and we think it is a positive development.

But there is one aspect that it doesn't address, and that is the tremendously long and complex learning curve that the investment community has to go through to recognize that NFA, today, is the RAO of tomorrow. And the bill has the pieces in there. But assembling those pieces and walking them through -- I don't know how many notes and comments I have of each section that's in there -- is a cumbersome process. So we would like the Committees to consider adding in their Committee statement a notation -- and it's in our prepared testimony -- that the liability protections currently available for no further action letters carry forward in this bill to be available for RAOs. That's a critical aspect. Because otherwise, even though the economic recovery is going to take some time, the learning curves for the investment community -- now, I've been doing this for over two decades -- their learning curve is five to 10, sometimes longer. It's only now that some banks wanted to get letters of nonapplicability that Irene doesn't have the staff to be able to provide anymore. That curve is critical, and that's the particular aspect that we have at this point -- to make sure that that message gets through, and a Committee statement could accomplish that.

Thank you.

ASSEMBLYMAN McKEON: Thank you very, very much.

Kim Thompson-Gaddy, of North Jersey Environmental; and
Cynthia Mellon, of Ironbound Community center (*sic*).

You both have five each. I'm just going to call you together.

Kim, you can lead us off.

KIM THOMPSON - GADDY: Thank you.

My name is Kim Gaddy. I represent the North Jersey Environmental Justice Alliance. I am the Co-Chair of the New Jersey DEP Environmental Justice Advisory Council. I am a member of the DEP Permit Efficiency Task Force, and I am a Commissioner of the Essex County Environmental Commission. I am also a mother of three children who suffer from asthma. And I live in the City of Newark, where in stark contrast to New Jersey's top per capita income -- ranking nationwide -- over one-third of Newark's population live in poverty. Newark is also disproportionately overburdened with harmful polluting facilities, traffic, and poor housing stock. So I am here because the communities I represent are victims of these environmental injustices.

In addition to supporting the comments of NJEF, NJEL, Olga, Roy, Sierra, Jane, and Cynthia, I wanted to provide my own local and personal perspective. I understand the goal of the bill is to get better and faster cleanup, but it falls very short. Contaminated sites in the communities that North Jersey Environmental Justice Alliance represents -- like Newark, Linden, Jersey City, and Elizabeth, to name a few -- are an eyesore, a drag on taxpayers, and they threaten the public health of all of the residents.

They only exist because of irresponsible polluters. And the current draft of the bill gives more power with less oversight to those who made the mess, have not cleaned up this mess, and now have a financial incentive to do as little as possible. This is very, very problematic.

The bill does not provide the necessary assurances that sites slated for schools, daycares, and housing are cleaned up to-- The current assurances in the bill do not apply to playgrounds, as was stated before, and ball fields, despite our request. Our children are more susceptible to the effects of pollution than we are and thus need extra protection to ensure they stay healthy as they grow.

I especially urge you to withhold your support for this bill until the universe of sites that can be privatized is narrowed -- areas of environmental injustice especially should not be privatized; restore the polluter-pay 5 percent provisions to provide an incentive for greater cleanup, as well as provide New Jersey DEP and communities resources to clean up abandoned sites; and watchdog polluters, developers, and their hired guns. Strengthen the provisions affecting the level of cleanups where kids live, work, and play. And strengthen the enforcement provisions -- more auditing and higher penalties.

I also just would like to say that the New Jersey Environmental Justice Alliance is an alliance of New Jersey-based organizations and individuals working together to identify, prevent, and reduce and/or eliminate environmental injustices that exist in communities of color and low-income communities. Environmental justice is the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and

enforcement of environmental laws, regulations, and policies. And that's all we ask for -- is fair treatment -- and I don't see it in this bill.

Thank you.

ASSEMBLYMAN McKEON: Thank you very much.

Ms. Mellon.

CYNTHIA MELLON: My name is Cynthia Mellon, and I am the Environmental Justice Organizer for the Ironbound Community Corporation, a community-based, nonprofit organization in the Ironbound Community in Newark's East Ward. I am also a resident of the Ironbound.

We represent a very densely populated and diverse community with more than 50,000 people. The Ironbound has historically been an industrial and residential community. Because of our industrial past, we face the daunting challenge of dealing with many former industrial sites that are contaminated and often abandoned in close proximity to homes, schools, and playgrounds. According to the New Jersey Department of Environmental Protection, Ironbound has close to 100 documented brownfield sites.

We thank the Legislature for taking on this important issue, which is intended to prevent tragic accidents that can harm public health and the environment. Our primary concern with the proposed bill is the level of public oversight of the cleanups, which has a tremendous impact on the outcome of cleanup efforts.

There are many contaminated sites in our community. Most of them are in densely populated areas close to sensitive populations in homes, recreation spaces, schools, and daycare centers. We fear that absent adequate oversight from the DEP or opportunities for public participation,

private entities and responsible parties will not be held accountable for complete and safe cleanups.

One of our main concerns is focused on the issue of using engineering and institutional controls, such as caps, for cleanups at residential homes. In our community, we've seen many former industrial sites redeveloped into two- and three-family homes with these caps in place as the restricted-use remedial actions. Although caps are cheaper and easier to implement, they pose a potential risk to current and future homeowners. Immigrant homeowners often do not understand the deed restrictions put in place by these remedial actions. And we have seen instances where homeowners break the (indiscernible) caps in their properties, for example, to plant gardens. There are also incidents where tenants, rather than owners, are living in a house with no knowledge of the deed restrictions related to the cap. And they have broken the caps for landscaping and gardening without understanding about the underlying contamination.

We're concerned about the long-term liability of these caps. For example, what happens when the home changes hands 20 years after the cap was put in place or if the home goes into foreclosure? At that point in time, who is ultimately responsible for maintaining the integrity of the cap?

We therefore strongly urge you to consider giving greater authority and guidance to DEP in cases where more protective remedies are in order, at sites that potentially pose higher public health risks such as residential developments, schools, or active recreation sites.

This legislation takes a step toward addressing this issue by creating a category of sites for which more than capping with minimal

controls is required. It does not go far enough in promoting unrestricted use remedial actions or provide a mechanism to give DEP sufficient oversight to ensure that such remedies are implemented.

Finally, the bill contains very few provisions for public participation in the site remediation process. We believe very strongly that the involvement and input of the people most directly affected by contaminated sites -- by that we mean residents, workers, community-based organizations, and local officials -- is vitally important. The bill should incorporate a process for notifying and involving the public in the site remediation processes, and it should explicitly provide a complaint process by which any concerned person can request an investigation by the LSP Board or by the DEP -- in particular LSP -- or the remediation of a particular contaminated site.

Thank you for your consideration of these comments.

ASSEMBLYMAN McKEON: Thank you very much for your testimony, both of you.

Tony Russo, of the Site Remediation Industry Network.

Now, that's marked conditional support, although that would be an opposite to a long conversation we had yesterday.

T O N Y R U S S O: I'd like to clarify that.

First, I want to thank the Committee and the Chairmen for the opportunity to come back and present some more views.

My name is Tony Russo, and I represent companies, that are truly responsible companies, that really don't have a financial axe to grind in this process, but rather they have one goal, and that's to clean up these

sites, protect the public, protect the environment, and put these sites back into beneficial use.

We understand that the problem exists that there are 20,000 cases backlogged. And we commend the Department for initiating this LSP concept. And I want to be on record to support the licensing of site professionals.

The bill before you today is much improved, and I want to thank Senator Smith and the DEP for their leadership in taking out the taxes and the limits on self-guarantees. So we've definitely seen an improvement. So we don't want to be seen as not supporting a fix to the program.

But we're down to one issue and one issue only, and that's Section 27, which is the direct oversight section, in the sense -- and you've heard it in prior testimony. We need certainty and predictability in this section. Nobody is arguing that recalcitrant sites should be taken over by the DEP. And if I could just address Senator Smith's concern about warehousing of sites, that's going to be taken care of by the remediation timeframes. And we've said on a few occasions that we want to see a list of who these warehoused sites are. If they're there, let's call them out, let's label the recalcitrant, and get them out of the way.

The problem with this section is, it goes beyond recalcitrants. The fact is, there's a criteria in the bill that basically says, "If you fail to complete your remedial investigation within five years of enactment, you're deemed a recalcitrant. You're in that *shall* category. Your site is taken over by the Department." And what I mean by that is, the Department controls the money and the remedy selection. So the responsible party is cast aside.

Think about that from a business community standpoint in the sense that there's no certainty there.

And then you have the *may* section that says there are several criteria that basically say that, "If you have an impact to a natural resource, maybe the Department is going to come in and take control of your site," *maybe*. The reason why we're in the cleanup program is that we have an impact to a natural resource.

So we need to clarify this language. We're almost there. Again, industry wants to support this fix to the program. We have one more need, one more section that needs to be addressed. And we hope that, at the end of the day, that section is clarified to avoid the possibility of being back before these two Committees two years from now seeking amendments.

So here's an opportunity to get it right from the start.

Again, two words I keep hearing from our members all the time are *predictability* and *certainty*. And we don't have that in this section. And I think we could just fix it.

Thank you very much.

SENATOR SMITH: Respectfully, that is certainty. If you don't get the job done, we're taking over the site. And the industry may not like that, but that's one of the problems in New Jersey. There are too many ways for these things to go on forever. There has to be an end date. And you're going to know, the property owners are going to know, the responsible parties are going to know there's an end date. If you don't get your investigation done within that end date-- And the actual time limits are, I think, unbelievably liberal. But there is an end date. There is a certainty. This is as certain as death and taxes. Your industry needs to

know that, or property owners who are responsible parties need to know that. The actual language is--

MR. RUSSO: It's five years from enactment for a remedial investigation.

SENATOR SMITH: Yes, you have to complete the remedial investigation, not the cleanup. You have to complete the remedial investigation of the entire contaminated site "10 years after discovery of a discharge at the site, and has failed to complete the remedial investigation of the entire contaminated site within five years after the date of enactment." Isn't 15 years enough?

MR. RUSSO: If I could just respond, Senator, it seems like to the lay person that 15 years is enough. And I'm not a remediation professional.

SENATOR SMITH: It's enough.

MR. RUSSO: But I've been told by some of our members that there are complexities involved. These are large sites. They have hundreds of area of concern. It takes time. So I guess the point I'm trying to make here is, I'm in agreement with you that you should set those timeframes and work it out that way. And if they don't meet those timeframes, they become recalcitrant. By putting the label right in the bill to say that you have five years to complete your remedial investigation, I think, doesn't appreciate the fact that these are very complicated issues and very complicated sites. And more importantly, it's the *may* section. That *may* section, that impact to sediments-- Again, certainty and predictability. We ought to know the rules of the game before we start playing it. And I need to go back to our members and say, "Here's your certainty and

predictability.” And I think if this passes with that language as is, I think you’re going to create a lot of uncertainty as far as are they going to lose control of their sites.

SENATOR SMITH: Irene, any comment you’d like to make on this?

ASSISTANT COMMISSIONER KROPP: I guess I’m less concerned about Tony’s members than I am about the residents of the State of New Jersey and the environment. So I do agree that 10 years, plus five years, to complete a remedial investigation -- not a cleanup -- from my perspective, with my 26 years in the Department, is enough time to complete a remedial investigation.

With regard to impact to sediments, we put it in the *may* category because a lot of sites may impact sediments, but there are sites out there that have very serious impacts to river sediments, the Passaic River being one. So I think that the *may* gave us some flexibility. The *shall* -- 15 years to complete a remedial investigation only is not a deal breaker.

ASSEMBLYMAN McKEON: Thank you very much.

Thank you, Tony.

We have three more witnesses.

Richard Katz, of Pennjersey Environmental; and Denise Patel, of New Jersey Work Environment Council. You’ll both get your five minutes.

My comment, as you’re coming up, as to what Tony’s point is -- and what the Commissioner said -- this whole movement had its genesis in DEP, indicating that they saw the gargantuan nature of this task as one they would never be able to dig out of. So to think they’re going to misuse

discretion in getting back involved as to what they're looking to dig out to begin with -- I just think is a concern that's nonexistent.

Richard.

RICHARD J. KATZ: Thank you.

Good afternoon.

My name is Richard Katz. I'm the President of the Pennjersey Environmental Consulting.

By way of introduction, I was employed by the New Jersey DEP over a period of 13 years. For the past 22 years, I've worked as an environmental consultant dealing with remediation projects.

I'd like to focus on some of the broader issues rather than the specifics I've been hearing today.

The problems confronting the Site Remediation Program are of its own making. For the past 35 years, I have watched the DEP bury itself in layer upon layer of intertwined requirements that have left the working staff with less and less discretionary power to evaluate and close cases.

The DEP claims that the current backlog is caused by substandard submissions. In part, that's true. But in truth, the majority of the issues raised in notices of deficiency stem from the failure or inability of the DEP staff to read the information submitted and/or from requirements imposed haphazardly that go beyond the minimum requirements of the tech regs, and/or simple nitpicking.

Now the Department is looking to the consultant community for a bailout. However, the planned licensed site remediation professional program is inherently unworkable. It attempts to squeeze the square peg of the Massachusetts model into the round hole of the New Jersey regulatory

structure. There are simply too many differences between the two frameworks for the program to be an effective solution.

First, the Massachusetts regulatory structure and the LSP program largely developed together. Even so, it took from three to five years before the two groups could overcome the basic distrust and begin to work together. Given the much more mature New Jersey structure, and the additional 15 years of animus, it's likely that the accommodation time will be substantially longer.

Second, when the Massachusetts LSP program was started in 1993, their backlog was 1,800 cases, less than one-tenth of those facing New Jersey. In the past 15 years, the 500 or so LSPs in Massachusetts have issued some 25,000 response action outlooks. Using simple arithmetic, that comes to around three RAOs per LSP per year. Presuming that New Jersey can come up with a similar number of qualified LSRPs, it would then take until the year 2023 to clear the current backlog, during which time another 13,000 or so cases would have been initiated. And that timing ignores the extended adaptation period to develop a useful working relationship between DEP personnel and LSRPs.

Third, Massachusetts uses a risk-based model that allows considerable leeway in approaching, identifying, and rectifying contamination. The New Jersey system is highly proscriptive, requiring investigation and delineation of virtually every molecule of contamination before a site can be declared environmentally acceptable. This practice leaves no room for professional judgement.

So while looking to this program to provide itself with cover for its own actions, the DEP is showing extreme distrust of the presumptive

LSRPs. By the very nature of the case closure process, where an LSRP will issue an RAO rather than a no further action letter, there is an aura of lowered value placed on the RAO as compared to an NFA. Given the three-year period during which the agency can choose to audit an RAO, there can be no sense of closure for responsible parties, lenders, or any other parties to a transaction while the sword of Damocles hangs over the head of the LSRP.

Finally, with the LSRP forced to stand in the shoes of the DEP, there will be no one to serve as an advocate for the responsible parties, clearly viewed by the agency as *irresponsible* parties. It's been my experience that the majority of people required to remediate properties are not the ones who created the contamination or, if responsible, did so inadvertently, rather than with intent to defile the environment. They tend to be inheritors, purchasers, innocent parties, and others who have become involved in investigating and remediating problems either through their voluntary investigation or through regulatory stricture, and should be entitled to representation.

There are a number of alternatives to the LSRP program: let the DEP hire sufficient staff to conduct reviews within a timeframe that does not unduly delay business activities; hire consultants to work directly for and with the case management teams as manpower extenders; or develop a small and highly select group of LSRPs to serve as the reviewing party, standing in the footsteps of the DEP, either individually or in panels, and allow the majority of consultants to continue to represent their clients.

My unscientific survey of a number of DEP case managers and working-level supervisors has not found a single individual who doesn't hate the program.

SENATOR SMITH: Thirty-second warning.

MR. KATZ: Similarly, there is little or no support for the LSRP concept among consultants, although I've found their attempts to gear up for the program somewhat reassuring.

The bottom line appears to be that we are being asked to stand in the DEP's shoes, but those shoes are nailed to the floor and the Department reserves the right to knot the laces.

I hope you will consider these matters and reconsider this legislation before releasing it from Committee.

I apologize for the two second delay.

ASSEMBLYMAN McKEON: Thank you, sir, very much.

The last witness we have is John Cannel, from the New Jersey Law Revision Commission.

J O H N M. C A N N E L: Thank you for hearing me today.

SENATOR SMITH: John, if I could shorten your five minutes. You had a request in to us about whether or not the bill should be amended to have a certain deed restriction provision.

MR. CANNEL: Yes.

SENATOR SMITH: We're studying that. It will not be included in this bill. We'll take a look at it and see if it's meritorious for another bill.

MR. CANNEL: Thank you.

SENATOR SMITH: Thank you.

ASSEMBLYMAN McKEON: Senator Smith, thank you very much.

I'll just finish by making a record of who else has signed in with no need to testify.

SENATOR SMITH: Oh, you missed Jane Nogaki.

ASSEMBLYMAN McKEON: Oh, Jane, yes, I called you before, and I didn't see that you came up. So I thought maybe you had left.

JANE NOGAKI: Oh, I didn't hear my name called.

ASSEMBLYMAN McKEON: Because you were riveted so much by the excitement of the-- (laughter)

MS. NOGAKI: I didn't hear my name called.

Denise Patel, from Work Environment Council is here as well.

Good afternoon.

My name is Jane Nogaki. I represent the Coalition Against Toxics, a local group in Burlington, County. We've had experience as a grassroots group with various Superfund and toxic waste sites in the Evesham area, but also in Camden County for the Gems Landfill.

I know that each and every one of you have not one but several sites in your town that are undergoing cleanup. And so it affects every person in this group.

What I want to mention is a couple of deficiencies that we see in the bill. While it gives DEP more power, and rightly so, to exact higher levels of cleanup, there are undermining provisions that allow what's called *alternative remedial standards* or *alternative remedies*, which totally undercut the ability to have a higher level of cleanup for residences, schools, and daycares. And it's up to the site professional to propose this and DEP to

approve it. But really the burden is on the DEP to disprove it. How do they disprove that a remedy is not going to be acceptable? And so the bill needs to be more explicit. But it's up to the LSP to make that determination or that justification of why they can't clean up to a residential standard. After all, that's what this bill is elevating; and the acknowledgment that schools, daycare centers, residences, and recreation sites should have the highest standard of cleanup -- and health-based cleanup, and unrestricted use.

And so I think that all these provisions that allow alternative remedies, alternative standards-- You know, not meeting the standard, using a lesser standard, and showing that it's protective -- it's hypothetical. When we enacted -- the DEP enacted standards, those are the standards that should be met. An alternative is just a way of saying, "I'm not going to meet the standard. It's going to cost too much or it's impossible to get everything out." That really isn't acceptable. When the Department sets standards that are health-based, those are the standards that should be met. And I understand that in certain industrial areas you'll never get to clean. But absent knowing what those presumptive remedies are, how they're going to address groundwater contamination, how they're going to address volatile organics, we don't have a comfort level with this whole ability of an LSP to prove -- to presume, or predict, or assume that an alternative remedy is going to be as protective.

It's not. Two hundred parts per million of lead left in the ground is not as protective as 100. And so the general public gets this. And we don't buy the idea that an alternative remedy is going to work. The alternative remedy is usually a cap. It leaves the groundwater

contamination there, leaves soil contamination there. It's really unacceptable.

The other thing that we are disappointed with is that there was a 5 percent funding mechanism that was in the original bill that's been removed. That was a funding mechanism that was going to supply money for TAG grants and for assurances that if a cleanup measure failed this fund would be able to be used to rectify that. We suggest that that surcharge should be restored. It was in the version of the bill that was February 6. And it was a polluter-pay provision. And we would like to see that reinstated to help pay for TAG grants that allow reputable licensed site professionals to be hired by community groups and municipalities to help oversee cleanups and make sure that it comes out right.

The other thing that's basically flawed about this bill is that the oversight and privatization is basically a conflict, because the LSP is working for a private party, not the DEP. And so we think that this inherent conflict could be overcome by Senator Smith's suggestion -- actually that was on April 15 -- and Assemblyman Rooney's proposed amendment that would make sure that there was an escrow account that's paid for through the DEP so that the LSP is not working for a private party but he's, in essence, paid for by the DEP.

Senator Smith, you had said if we are not actually paying them, we, the State of New Jersey, are not actually the employer. I'm worried about the ethical firewall that's been broken, because a professional may be subject to some influence or pressure from the applicant to get paid. This inherent contradiction is very troubling to us. It's why we have government agencies to oversee cleanups, not private individuals.

ASSEMBLYMAN McKEON: Okay. Thank you very much.
Senator Smith.

SENATOR SMITH: I have to do a couple of quick comments.

I changed my position on the escrow account because of the Massachusetts bill. It worked there without the professionals being tainted. And I also changed my position because we put in both civil penalties, loss of license, and criminal penalties for the professionals. So I believe the citizens of the State of New Jersey are well protected.

Two other comments: There is-- We did-- While we took out the 5 percent, on the 1 percent money there is provision there for technical assistance grants to local communities who may be fighting a particular project. So that grant provision is still in the bill.

And then finally, I think you're reading the bill incorrectly, Jane. On Page 92, Section 10 -- this is with regard to the presumptive remedies. The bill says, "If the person responsible for conducting the remediation demonstrates to the Department that an alternative remedy would be equally protective over time" -- that's the presumptive remedy -- "then the alternative remedy for the site that is protective of the public health and safety may be proposed for review and approval by the Department." So if you're going to come up with something that's different than what the Department says is a presumptive remedy -- presumptive remedy is synonymous for digging it out, digging out the hotspots -- you're going to have to prove to the Department that it's as good or better. So the comment that the Department has to prove it in the reverse is not true. It is the responsible party or the cleanup party that has to prove to the Department that it's an acceptable alternative.

MS. NOGAKI: Well, it's just in that Section 10 on Page 92 -- it says, "the use of an unrestricted use remedial action or a presumptive remedy is impractical due to conditions of the site," the person can propose the alternative remedy -- just *impractical*. What's the burden of impractical?

SENATOR SMITH: They have the ability to propose it. The Department doesn't have to accept. The Department is not going to accept an alternative that is not as protective of the public health as their presumptive remedy, which is the dig out. They may have something else. I have no idea what it might be, but we're not giving away anything in that section.

MS. NOGAKI: Well, it just needs to be very explicit that the burden is on the LSP to provide this.

SENATOR SMITH: I think it says that now.

ASSEMBLYMAN McKEON: Ms. Patel, you get the final word, if you choose to.

D E N I S E P A T E L: Thank you very much.

I'm Denise Patel, with the New Jersey Work Environment Council. We're a coalition of 70 labor community environmental organizations working across the State of New Jersey.

A lot of what I was going to say has been said, so I will keep it short. We do agree with the testimony provided by the New Jersey Environmental Federation, the Sierra Club, Communications Workers, and the Environmental Justice Alliances.

On behalf of the Work Environment Council, we do believe that this responsibility should be held by the DEP, and the whole process shouldn't be privatized. But since we are moving forward in that direction,

the bill does have serious problems, and you've heard a lot about them already today. And I just wanted to make two points from some of the things that I heard today.

One was that Assistant Commissioner Kropp alluded to a bill to make the Kiddie Kollege legislation stronger, and that would be the mechanism by which DEP is assuring that kids would be protected from these toxic sites. I don't think that it makes a lot of sense to move forward with this bill while the other one hasn't been passed yet. We need to make sure that there are no loopholes when it comes to kids in making sure that toxic sites are cleaned up.

In addition, we also heard from some industry folks and a lot of people who are -- who have created these toxic sites -- that they're truly concerned about cleaning them up and that they want to ensure that we have a safe and healthy environment. If that was truly the case, I don't think we would be in a situation where there are 20,000 toxic sites still across New Jersey. And I think there needs to be stricter oversight of the LSP program. And as it's proposed, it needs to be a little bit stronger. The audits need to be more rigorous, and we need to make sure that there are no loopholes in cleaning up these sites. Because these are the places where we live, these are the places where we work, and these are the places where our kids play.

So thank you very much for giving me the opportunity to speak, and letting all of us speak during the hearing.

ASSEMBLYMAN McKEON: Thank you very much, Ms. Patel.

And thanks to all of the witnesses for their learned testimony today.

For the record, John Maxwell, from the New Jersey Petroleum Council, is in favor; Evan Piscitelli is here from UTCA, in favor; Joseph Simonetta, from Public Strategies for the New Jersey Society of Professional Engineers, in favor; Christina Genovese, from the Chamber of Commerce Southern New Jersey, in favor; Michael Cerra, League of Municipalities, in favor; and Eric Orlando, IMTT, in favor. Many of those witnesses were good enough to give us written testimony.

Senator Smith, I understand that you're going to move first, and then we'll move on the Assembly side.

SENATOR SMITH: Sure.

First of all, there are no amendments to the bill with the exception of technical amendments. We have the Assembly Committee Substitute, and I understand there is one awkward phrase that has to be -- yes, we're doing the Substitute. There's one awkward phrase -- that 10 and 5. We have to make sure that it's very clear in the English language so that everyone knows what the intent is.

Beyond that, there are no changes. Correct?

All right, on the -- starting with the Senate Environment Committee.

I guess we could take a vote. And as we're taking a vote, you can make your comments, unless somebody feels the need to make comments prior to the vote.

If not, can I have a motion to release?

SENATOR VAN DREW: I move it.

SENATOR SMITH: Moved to release.

SENATOR GORDON: Second.

SENATOR SMITH: And seconded by Senator Gordon.

MS. HOROWITZ: On Senate Bill 1897, the Senate Committee Substitute, Senator Ciesla.

SENATOR CIESLA: Yes.

MS. HOROWITZ: Senator Bateman.

SENATOR BATEMAN: Yes.

MS. HOROWITZ: Senator Gordon.

SENATOR GORDON: Yes.

MS. HOROWITZ: Senator Beach.

SENATOR BEACH: Yes.

MS. HOROWITZ: Senator Van Drew.

SENATOR VAN DREW: Just a quick comment. I just truly want to compliment Senator Smith, Assemblyman McKeon, Irene Kropp.

Somebody -- I think it was you, Assemblyman -- said this was a gargantuan undertaking. I think that is the word, *gargantuan*. And no piece of legislation is perfect. But what certainly wasn't perfect was the site remediation process. We were in crisis. This has many or most of the answers that we truly need. And I'm not going to detail one by one what I think is so good about the bill.

Everybody will have a concern or two. That shows that obviously it was a difficult issue. It also shows that it's a very good piece of legislation.

Often, as I've been involved in government for almost 20 years now, I have, at times, felt that the answer or the cure put us in a worse

situation. That is absolutely not the case with this piece of legislation. I truly believe that the answer and the cure puts us in a much, much better place.

Congratulations to you, Irene; to your staff; Senator, Assemblyman -- to both of you.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Just one or two comments. (laughter)

MS. HOROWITZ: Say yes.

SENATOR SMITH: I should just say yes and let it go at that.

But I have to publicly acknowledge the work of Irene Kropp and her staff, which was unbelievable.

And if Al Porroni is listening, Judy Horowitz deserves a raise. (laughter) Al, are you listening out there?

ASSEMBLYMAN McKEON: I hear through the grapevine he's in South Beach. I don't want to throw him under the bus. (laughter)

SENATOR SMITH: Well, I hope it's in -- and we're taking a transcript. I hope it goes into the record. Because Judy has gone way above the call of duty on this.

And, Kevil, I don't know if you still have a marriage as a result of this piece of legislation. I know how hard you worked on it as well.

I think the bill goes a long way to solving a real problem in the State of New Jersey. And we didn't start from scratch. We started with the Massachusetts program, which has been in effect since 1993. Somebody was incorrect in their testimony. We had the Massachusetts people down here. They had an over 20,000 case backlog in 1993. And now they're at the point where they have 4,000 cases coming in every year, 4,000 cases

going out every year, sites are cleaned up properly and safely, and the LSPs act responsibly. Mike Pisauro's testimony convinced me of that, when he tells me that there were some revoked RAOs and there was discipline to LSPs. That tells me that's a program that's working, not evidence to the contrary.

The other thing -- and I kept on hearing it in the testimony, but I don't know how many times we can say it. This is more protective of children than anything we have in the law now. Right now, you literally can pave and wave. And now, for sites that are going to be used residentially, for schools, or for daycares, the DEP can now set the standard for the remedy. And that means they're going to have the responsible party take out the contaminated substance. That's something that's not available under New Jersey law now. That is a dramatic improvement in the environmental law of the State.

And then the comment that people are going to do whatever they want to do is just not true. Forget all the penalties to the LSPs and the liability of the responsible party. At the end of the day, the DEP is still going to be supervising the 400 to 500 most complicated and difficult sites in the State of New Jersey. And those sites that are of a lesser impact on the environment -- it's only proper that LSPs do this so that we get our state cleaned up and back on the economic rolls in generating taxes, and jobs, and whatever.

So I think this is a very good bill. We've heard a lot about: it's imperfect. Those are the comments we want to hear. If everybody's happy, "John McKeon, and Bob Smith, and these two Committees did the wrong

thing.” When we hear some grouching, we’ve done the right thing. So I’m really thrilled to vote yes and release it on the Senate side.

ASSEMBLYMAN McKEON: Thank you, Senator Smith.

I’ll entertain a motion on the Assembly Committee.

ASSEMBLYMAN GUSCIORA: I’ll move it.

ASSEMBLYMAN McKEON: Moved and seconded.

Kevil, did you just join the Assembly? (laughter)

SENATOR SMITH: (indiscernible) a clarification.

ASSEMBLYMAN McKEON: You know what? You’re right.

Excuse me.

And we do have a motion and second.

Commissioner, could you please set forth the clarification? We talked about it offline, and we wanted to publicly get something clarified for the record.

ASSISTANT COMMISSIONER KROPP: And this goes to Mr. Brogan’s and Mr. Russo’s concerns previously.

In Section 27a(3), where we talk about the need to conduct a remedial investigation within a certain timeframe-- If you think about today -- or let’s just say March 1 the bill is enacted. You would have had to have been in the system for 10 years prior to March 1 doing a remedial investigation. And then you have an additional five years to complete your remedial investigation. And if you don’t get it done within that 15-year total timeframe, that’s when the Department would take over the cleanup at the site. So you’ve been in the system for 10 years, the bill’s been enacted -- or greater than 10 years -- the bill’s been enacted. You have another five full years to just complete the remedial investigation. If it

doesn't happen within that 15-year total is when direct oversight would ensue.

There was confusion that it was only five years from the enactment, and it didn't include people who have been in the system already for a very long time.

ASSEMBLYMAN McKEON: Thank you very much, Commissioner. Thanks for that clarification.

There's a motion that's been seconded to approve the Substitute to be released from Committee.

Can I have a roll call?

MS. CALVO-HAHN: Yes. On the motion to release the proposed Assembly Committee Substitute for A-2962, identical to the Senate Committee Substitute, Assemblyman Van Pelt.

ASSEMBLYMAN VAN PELT: Yes.

MS. CALVO-HAHN: Thank you.

Assemblyman Rooney.

ASSEMBLYMAN ROONEY: I think this is a first that I've seen where you have a vote before there's any discussion by the Committee. And, frankly, I have to tell you that I resent it. There have been many meetings. I've been at almost every meeting. And to do this without discussion by the Committee members, I think, is unfair and it's probably unethical.

ASSEMBLYMAN McKEON: John, excuse me. I'm going to use the prerogative of the Chair to tell you that I have a track record of six years of treating you with the utmost respect and dignity. If you would like

to discuss this bill, we will give you every opportunity. Please, so take that opportunity now.

ASSEMBLYMAN ROONEY: I don't think it's proper to discuss the bill while it's being voted on. I think the proper time for discussion is prior to the vote. And that has been the practice of every Committee I've ever served on for almost 26 years. In May it will be 26 years that I'm down here. This is the first time this has ever happened. So I would have liked to have seen it being done--

ASSEMBLYMAN McKEON: Well, I appreciate you accusing me of unethical behavior. That having been said, say what you would like to say and vote.

ASSEMBLYMAN ROONEY: I would have preferred to see this being done with the democratic, small *d*, type of procedure.

I did have an amendment. I wanted to discuss that potential amendment. It wasn't something of my making. It was something that was given to me by my site professional in my town. His concern -- and he's done many of these--

ASSEMBLYMAN McKEON: You're welcome to discuss your amendment, and the Committee will consider it, and we'll vote in a Democratic, big *D*, way to see how it goes.

ASSEMBLYMAN ROONEY: I only want to tell you what the background-- It was not my amendment. The amendment was from a prospective licensed site professional. Basically what he said was he did not like the idea of this bill.

ASSEMBLYMAN McKEON: Is he elected to the Legislature? It's his amendment or yours?

ASSEMBLYMAN ROONEY: If you'll let me continue, Mr. Chairman.

ASSEMBLYMAN McKEON: Okay.

ASSEMBLYMAN ROONEY: What he said was that this put him in a position, and every licensed site professional in a position, where he would be pretty well-- It would be a possible site -- a possible conflict of interest, a perceived conflict of interest -- the fact that he wasn't being paid by the Department, he was being paid by the PRP, the potential responsible party. He did not like that position. A lot of the other licensed -- well the prospective licensed site professionals are going to be put into that position. All I'm saying is that the amendment would have dealt with that particular issue. And I believe that the environmentalists also told you that that is their preference -- that it did not look like the professional was being hired by the PRP.

That's the position of my bill. I've had many, many experiences. I know this is a good policy. I am going to vote in favor of this particular bill. It's about time we did something. In my own town, I have two sites. One of them, this year, will be 10 years old. And what's happened is, because of the overload in the Department-- And this is municipal sites. This is where the municipality actually foreclosed for tax purposes. We didn't have to clean it up, but we started immediately, in 1999, to get the site cleaned up. And what's happened is, because of the overload in DEP, this has dragged on for 10 years. It's about time that we took care of that particular issue. The bill does it. That's why I'm going to vote for it.

But I think it needed some more discussion. It needs that particular amendment to allow the site professionals not to have a potential conflict of interest.

I'm not going to offer the amendment at this time, because I don't think it's proper, after the bill is passed. Basically, that's not the time. I'll offer it on the floor in the next session. But, again, I would appreciate, again, being given some respect, as you have in the past. I admit, very definitely, you have given me respect in the past. And I'm surprised and shocked that this happened today.

Thank you.

My vote is yes.

ASSEMBLYMAN McKEON: Notwithstanding my rage, I will allow you to have the persons who put forward the bill to withdraw that and to allow you to put forward the amendment now if you would like to.

Do you want to have that opportunity? I'll ask the movers to withdraw that, and we'll start again.

ASSEMBLYMAN ROONEY: I don't think that's necessary at this time. I'll put it forth on the floor.

Thank you.

ASSEMBLYMAN McKEON: Okay.

Thank you for your yes vote.

MS. CALVO-HAHN: Assemblywoman Huttle.

ASSEMBLYWOMAN VAINIERI HUTTLE: Thank you, Mr. Chairman.

I think it was about a year-and-a-half ago that we sat here, and I sat next to my colleague John Rooney, and we did have much discussion on this piece of legislation.

Quite frankly, about a year-and-a-half ago I did have some skepticism on the bill. As we moved forward with the due diligence of Irene, DEP, and this Committee, some of my fears have been allayed, I will say. I think the cost of inaction and the continuing status quo is more alarming than not voting for this bill.

LSPs will be licensed, they will be professional. If there are any areas of illegalities, there will be penalties -- harsh penalties -- which places the safeguards in this bill. I am also concerned with the schools, daycares, residences, and recreational sites. Again, there are safeguards in oversight with the DEP in this bill.

But I will say that today we are taking a new and bold step in the way we manage environmental cleanup in this state. And I will also say that I pledge to the environmental groups here today, and all the stakeholders, that this Committee will certainly continue to watch this program in its implementation. Because if we are not satisfied, I can assure you that we will not hesitate to voice our opposition with another piece of legislation.

With that being said, Mr. Chairman, I will vote yes for this bill.

ASSEMBLYMAN McKEON: Thank you very much.

MS. CALVO-HAHN: Assemblyman Milam.

ASSEMBLYMAN MILAM: Just real quick, I do want to acknowledge the hard work that went into this by Chairman Smith,

Chairman McKeon, and of course the staff on both the Senate and Assembly side, and of course Irene's hard work as well.

I had a numerous amount of questions that have been answered to my satisfaction -- the concerns of job loss; and, in turn, it's actually job creation. I'm very appreciative of the hard work. I think the State of New Jersey is on its way to becoming a cleaner state.

Having said that, I vote yes.

MS. CALVO-HAHN: Thank you.

Assemblyman Barnes.

ASSEMBLYMAN BARNES: Yes.

MS. CALVO-HAHN: Assemblyman Gusciora.

ASSEMBLYMAN GUSCIORA: I just wanted to congratulate the two Chairmen, the Solomons, who I know have put a number of hours in this process, as well as Irene, and all the stakeholders. And I know it's been a painstaking process. And I've certainly enjoyed my little, limited participation.

But nonetheless, I know, Mr. Chairmen, you both have worked very hard, as well as the staff, and that there was that whole opportunity for input.

That said, having the luxury of coming from Princeton, we always dream of what could be. And we'd all like to live in the most ideal world. At the same time, I also understand that the financial restraints of the State -- what would happen if -- what we would need to increase the budget to do this through the State, and how many more people we would need to hire to fulfill what we'd all like to accomplish. That is just not a possibility, and this is our only route. And so while it's not a perfect bill,

it's a great start. And at the end of the day, it's going to clean up a lot of the waste sites that are throughout the state, particularly in the urban districts and the ones that I represent. We're just a block away from the Magic Marker site. And look how many years that has taken to clean up.

So I look forward to the day when we have more cleanups in the state. And while it's not the most ideal provision, it's the best possible way we're going to get through this maze.

And while I congratulate you -- I think you did a great job -- I'm going to vote yes.

MS. CALVO-HAHN: Thank you.

Chairman McKeon.

ASSEMBLYMAN McKEON: Thank you very much.

That leaves me.

Let me take another two minutes of everybody's time and get back to the thank yous.

First and foremost, to the stakeholders. All of you were very civil, very informational in this long and arduous process. And I appreciate all of your consummate professionalism. It certainly helped me and helped us get to a much better place. So thank you for that.

To the DEP professionals: Irene, you've gotten much plaudits, but you had a great team, much of which is sitting behind you, who worked equally as hard. And I appreciate all of them.

To our nonpartisan staff: Judy, I'm always afraid to talk to you, as I'll be the one responsible for you quitting, which would be a disaster. (laughter) So thank you.

And, Carrie, you are always a delight. And thank you.

Kate, you were involved not only in the housing issue and all that had gone with that, but then you got stuck with LSPs, so you get a double star. You've done a wonderful job.

And my own Ron, who really immersed himself in all of this -- I thank you.

Senator Smith and all my colleagues, it's so much fun to be with many of you again. And I appreciate all the hard work that you do.

And, Senator Smith, you've always been my role model for six years now. You do an incredible job, and in this, more than ever. And as we both maybe shared off camera, I feel as strongly about this bill as I did about the Highlands. It's just as important.

I also tell you that, when you think about what we're doing -- the bipartisan nature of what happened-- I was kidding with Thea before about the prospect that this might even be on consent on the Assembly side -- maybe not with what John's feelings are. But at the end of the day, bipartisan is an important way to move forward. And we're moving in a way of public/private partnerships. That's the future of how we provide the services that are essential to the people in this state.

When Lisa Jackson first became Commissioner there were 3,500 employees at DEP. There are now 3,000. Knowing the climate that we live in, as much as we -- God forbid anybody else loses their jobs at DEP. I would never want to see that. But knowing the climate we're in, there's going to be less. There's not going to be more. And just saying that we're going to hire another thousand individuals to clean up this backlog is just not realistic, not the solution, and not what's going to happen.

And I guess, just in my own view, I'm still uncomfortable, and have been for two years, to be in a different stated place from where my friends in the environmental community are. And I just think the difference here is that in certain regulations, inertia with the environment can be a good thing -- because the trees stay there, or things don't happen to mess with the natural environment that you never can take back what you do.

But this is different. These are 20,000 preexisting sites that lie in all the contaminants, and in fallow and unusable property that would just be allowed to continue to exist for many, many years, and decades into the future, but for this action today.

And I also say to all of you, that it's clear to me that at some point in time, just as it has under the past system, that there will be a site where there will be a mistake made. That's inevitable. But when you weigh that against the 19,999 that are going to get up to speed in a short period of time, what we're doing today has a great -- I hope -- level of wisdom about it.

So I appreciate everybody from the bottom of my heart. And I think this is the kind of thing as to what we're all here for and why it's meaningful to us to serve in the way that we are.

So thanks to all of the public servants involved in this. And I look forward, as the process continues.

I vote yes.

SENATOR SMITH: Meeting adjourned.

(MEETING CONCLUDED)