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# *Committee Meeting*

of

## SENATE LEGISLATIVE OVERSIGHT COMMITTEE

*"Testimony regarding the implementation of the Department of Environmental Protection's  
Water Quality Management Planning Rules"*

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**LOCATION:** Committee Room 1  
State House Annex  
Trenton, New Jersey

**DATE:** June 4, 2009  
10:00 a.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator Paul A. Sarlo, Chair

**ALSO PRESENT:**

Carrie Anne Calvo-Hahn  
*Office of Legislative Services*  
*Committee Aide*

Kevil Duhon  
*Senate Majority*  
*Committee Aide*



***Meeting Recorded and Transcribed by***  
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**SENATOR PAUL A. SARLO, (Chair):** Good morning, everybody. Welcome to the June 4, 2009, Senate Legislative Oversight Committee meeting.

This morning our hearing is on the Department of Environmental Protection's Water Quality Management Planning Rules.

Unfortunately, I am it for the Committee. We had some last-minute cancellations. But we are recording. Transcripts will be available to the public, as well as to the members of the Committee.

This is an important issue to the State of New Jersey, especially in the severe economic crisis that we are currently in. Of course we want to preserve our environment, and we want to strike the right balance. And today we want to hear from the stakeholders who are involved in the process of implementing this policy, those who are in the building community and those from the environmental community.

We actually -- this Committee met May 1 of 2008, and we had a series of hearings -- on May 1, 2008 -- with regard to these Rules. The Rules were ultimately adopted in July of 2008 and went into effect April of 2009 -- of this year. In February and March of this year, I had begun an open dialogue with the Department of Environmental Protection and their Commissioner, sharing some of the concerns of the Legislature with regard to counties following through and having their plans approved. And as we know, there are many counties, as we sit here today, whose plans are not approved. What is the impact on the building community with these plans not being approved?

So that's why we're here today. The plans were supposed to be submitted by April 2009. And we would like to get an update from the

Department of Environmental Protection, and then hear from the stakeholders who are involved in this very important public policy.

So why don't we jump right in? Our first panel is going to be Assistant Commissioner for Land Use Management, Scott Brubaker; and Larry Baier, the Director of the Division of Watershed Management, from the New Jersey Department of Environmental Protection.

I'm going to give the Department of Environmental Protection not as much time -- as much time as they need to explain their position on these rules. I'm going to ask the remaining panels that are brought up to keep their remarks -- if you can provide written testimony, that would be great -- keep your remarks to five minutes per person. And then we'll take it from there.

Good morning.

**A C T I N G   A S S T.   C O M M.   S C O T T   B R U B A K E R:**  
Good morning, Senator Sarlo.

Can you hear me all right, sir?

**SENATOR SARLO:** We hear you fine.

**ASSISTANT COMMISSIONER BRUBAKER:** Thank you, Senator, for the opportunity to address the Committee today, or yourself today, and hopefully to dispel some erroneous information we've been made aware of that is out there in the public.

My name is Scott Brubaker, Acting Assistant Commissioner for Land Use Management. I have Larry Baier, the Director of the Division of Watershed Management, with me today. Larry, of course, needs no introduction to most people in this room. He's been with the Rules since the beginning.

Sir, I have about five minutes or so of comments. And then, at your pleasure, we can take questions.

Much of the wastewater infrastructure in New Jersey has received financial assistance from the DEP and the EPA. We believe, and the current Rules reflect, that it would be poor public policy to extend sewer service at public expense to subsidize and encourage the development of resources the agency is charged to protect. Promoting the extension of sewers and to threaten endangered species habitats, unique and rare ecological communities, and wetlands just does not make sense to us.

Prior to the current Rules, we had a system where areas would be sewered only to find out later that, due to the above conditions, development could not ultimately occur. We know builders and others have raised concerns during these economic times that the current Rules are an impediment to economic recovery. We continue to believe that it benefits no one at this or any other time to extend infrastructure into areas unfit for development or where there is insufficient wastewater treatment to support development.

Properly prepared, the sewer service area and adopted Wastewater Management Plan should tell the world four things: the area has limited environmental sensitivity; it is a region where the local, regional, and State government all agree development should occur; wastewater capacity exists to support the development; and sufficient water supply exists to support development.

These plans should remove, at a glance, much of the uncertainty faced by the development community, by the regulating

community. We believe this certainty is preferable to the former way of doing business.

The regulations adopted last July seek to leverage the assistance of the counties to help integrate local and regional land use plans with updated Wastewater Management Plans. County planning and resources are among the most capable in the state. Counties are also keenly positioned to coordinate municipal land use plans.

The Department developed the Draft Resource Coverage Maps based on the best resources available at the time, which meant using aerial photographs that were six years old. We knew going into this process that the draft map wouldn't be totally correct, but someone had to put the first line on the paper. We asked the counties, working with their municipalities, to reform and refine our draft line to identify sites that are under construction or that have received their local approvals. The drafts of our service area are being corrected to include these projects that have been approved at the local level, and will be corrected right up to the time the WQMP is formally adopted, probably, in most cases, around a year from now.

So for now, nothing has prevented or will prevent entities from moving forward and obtaining those permits or approvals for the near future. Counties have also identified sites with site-specific information, such as letters of interpretation that demonstrate that the GIS layers are incorrect. The sewer service area is being corrected to include these sites.

Senator Sarlo, I know that many present here have expressed concern to you over the draft line, and I know that Acting Commissioner Mauriello has been in communication with you on this issue. Foremost,

there was significant concern that the Department would withdraw all future sewer service area on April 7 for counties or on July 9 for municipalities if they did not submit their Wastewater Management Plans. The counties are crucial to the success of this project. We are bound to them in partnership. As you know, the Department has extended the counties' submission deadlines, and will continue to work with them as necessary and appropriate to see this process through. We have no plans, at this time, to unilaterally withdraw a sewer service area from counties that do not have current Water Quality Management Plans.

Secondly, much criticism has been leveled against the landscape mapping of threatened and endangered species habitats. The landscape project is the best information source available to the Department concerning the actual potential habitats for the state's imperiled wildlife. We recognize that there are limits to the accuracy of these data layers. Where counties and municipalities have identified sites of particular interest or importance, we have taken a closer look at these sites to determine whether we believe these sites can continue to support the identified species, given changes in land use on and adjacent to those sites. There are several sites -- I won't mention -- that we have actually done site-specific investigations into and have changed our draft sewer service lines because of that.

In some cases, a more detailed assessment of site conditions will be necessary. Where that more detailed assessment demonstrates that the site does not contain enough resources, the site will be eligible for reinclusion through a streamlined amendment process with no application fee.

We believe we can do a good job of making impacted property owners aware of these changes if they're reasonably connected to modern methods of communication. We are committed to an open, inclusive information and transparent process. Such a process is indeed necessary to getting the mapping correct. The Department has agreed that where the counties are satisfied that the wastewater service area boundaries are as correct as possible, we will immediately put them up on our Web site as draft maps, and issue press releases and legal advertisements notifying the public of the maps availability, and directing them where they may submit comments and information. We will post these notices in advance of the formal proposal of the Wastewater Management Plans. In fact, the maps will be available while we work with the counties to complete build-out analysis and prepare the narrative parts of the Wastewater Management Plans. The public will then have a second opportunity to comment on the Wastewater Management Plans when it is formally proposed, at which time we will also hold a public hearing in the county to afford further opportunity for public comment.

In a place where a commenter demonstrates that a wastewater service area boundary was modified in error through the submission of letters of interpretation, habitat suitability determinations, valid permits, etc., we will adopt a simple map correction to correct the error. I do want to note that even areas that are documented to be habitat may be included in the sewer service area in order to promote clustering and center-based development, as long as development is coupled with environmental protection outside of the center.

Although each county is at a slightly different place in regard to having their WQMP adopted, one county has had its plan adopted, and 16 are working with the Department and making progress toward completion. We believe these counties should be commended for their efforts.

In closing, I want to again stress that this comprehensive planning approach is intended to eliminate public incentives for the destruction of sensitive natural resources and, in so doing, it will save developers from spending time and money pursuing sites and projects that ultimately won't get built. We think it's a long-term benefit for everyone.

Thank you, again, for allowing us to address the Committee.

Chris Mauriello sends his regrets in not being here today. He had an appointment he could not change with the Governor of New York City.

I'm here with Director Larry Baier to answer any questions you may have, Senator.

SENATOR SARLO: Thank you, Commissioner.

I did speak with Commissioner Mauriello yesterday, and I appreciate his willingness to be here. He actually preferred to be here than traveling all the way up to New York state. But he got the call of the Governor, so--

Just to clarify -- and you did say it, but I kind of missed it -- how many of the counties have submitted plans? Back in February it was seven counties. To date, how many counties have submitted?

LAWRENCE J. BAIER: At present, counties with plans-- Well, Hudson County's plan was just adopted earlier this year. Sussex County and Monmouth County have plans pending in front of us, but we're

continuing to work with those counties. All 17 counties have agreed to prepare countywide Wastewater Management Plans. Again, Hudson is being done, so I have 16 that remain.

SENATOR SARLO: Okay. What about the balance of the counties?

MR. BAIER: The four counties that declined wastewater responsibility -- Wastewater Management Planning responsibility are Union, Bergen, Passaic, and Warren. Passaic County -- actually, the lower peninsula is all covered by Passaic Valley Sewerage Commissioners, and their plan is actually up-to-date. The upper part -- the upper peninsula, if you will, of Passaic County is largely in the Highlands and actually largely in the Highlands Preservation area. So Passaic is going to be fairly simple to deal with.

Bergen County and Union County are both covered by large regional sewer authorities. Those regional sewer authorities brought plans into us before the adoption of the rule in July. We are continuing to work with those large regional sewer authorities to bring those plans to fruition. There's a total of four or five towns in each of those counties, that aren't covered by plans, that are already submitted under the old rules.

Which leads us to Warren County, which is the big nut for us to crack -- 22 municipalities in Warren County. At present, 15 of the 22 have applied for volunteer assignment of Wastewater Management planning responsibility. And we'll be working with those individual municipalities. It's not my preference, but certainly-- My preference would have been to work with the county as opposed to 22 municipalities. But

certainly we will do everything we can to aid those municipalities in accomplishing this.

SENATOR SARLO: So essentially Union, Bergen, and Passaic -- you're going to use their existing sewer mapping from -- for instance, in Bergen, the Bergen County Utilities Authority -- you're going to use their existing sewer mapping and fold them-- I mean, the goal here is to take not 21, but 17 plans, and then the Department will create this overall map. Is that correct?

MR. BAIER: No, the 17 plans will remain individual plans.

SENATOR SARLO: Individual plans.

MR. BAIER: That's correct.

But, yes, you are correct that in Bergen County, we will take BCUA's plan; in Passaic County, we will take Passaic Valley Sewerage Commissioners' plan. They will essentially become the county plan, if you will.

SENATOR SARLO: And there will be no penalties to Union, Bergen, Passaic for not participating in the plan or process that was originally laid out?

MR. BAIER: The only penalty is that unfortunately the grant money that we made available to the counties will not be available to those large regional sewerage authorities. We did take the money that we originally set aside for those four counties and assembled it into one pot, divided it by the number of municipalities we thought were not covered by something already in-house. And basically it came down to offering each of those municipalities about \$10,000 to assist them. We recognize that's a paltry sum compared to what the actual cost will probably be, but

unfortunately we've lost the economies of scale from regionalization at the county level.

SENATOR SARLO: Okay. And I just want to clarify that with Hudson being the only one approved right now -- everything else pending, the other 16 pending, and the other four -- the other three submitting their sewer authority maps, and Warren not participating at all -- currently, today, if a plan is not adopted yet or approved by the Department, are we placing any moratorium on any projects that are currently pending before local boards -- land use boards?

MR. BAIER: Absolutely not. There are plans of various age that cover the majority of the state. Some of those plans are as much as 30 years old. But they will remain in place until we adopt a new plan to replace those. Presently, there is no plan on the part of the Department, no plans going forward, to withdraw a sewer service area as a punitive action for the lateness of submission.

SENATOR SARLO: If there are any projects that currently have been approved, not being built because of the difficult economic times, and then they fall within these restricted areas, how are we going to deal with those projects?

MR. BAIER: Plans that have approvals at the local level, preliminary and/or final, building permits at the local level, and a wastewater approval -- wherever that wastewater approval needs to come from -- sometimes it has to come from the local health department; sometimes, if it's less than 8,000 gallons, it's a connection permit that comes from the local sewer authority that is actually going to provide treatment; sometimes it comes from the State. As long as they have the

wastewater approval, the local approval, and those approvals remain valid, they will continue to remain in the sewer service area.

ACTING ASSISTANT COMMISSIONER BRUBAKER:  
That's important, Senator, just like--

SENATOR SARLO: It's very important.

ACTING ASSISTANT COMMISSIONER BRUBAKER: It's important that even today, as we speak, entities are available to come in, get their permits, go to the municipality and get permits. So I meant -- when I said that process will continue until these plans are finally adopted, probably in a year from now -- there's been no halt or no delay in any of that up until now, and won't be until that county plan is actually adopted.

SENATOR SARLO: Have we given the counties a definitive date? I know we've-- And we appreciate the extension, and I think it's the right thing to do from a public policy standpoint. But has a definitive date been provided?

MR. BAIER: Yes, actually we've asked each of the counties to submit a revised schedule to the Department for their actual Wastewater Management Plan submission. The way that we'll set up -- we actually have to adopt a revision into each of the areawide Water Quality Management Plans to alter the schedule. So we go through and actually alter -- or adopt a revision that includes a new schedule. Each county, therefore, then has a new deadline.

ACTING ASSISTANT COMMISSIONER BRUBAKER: So far, Senator, we've not approved any extension beyond calendar year 2009. We haven't been asked to, and we haven't.

SENATOR SARLO: By any county at this point in time?

ACTING ASSISTANT COMMISSIONER BRUBAKER: Yes.

SENATOR SARLO: You mentioned briefly, and this is from some conversations I've had. And I know some other members of the Legislature had similar concerns. What is going to be the notice? I live out of state -- well, I live in the state, of course. I'm giving an example. (laughter) Somebody lives out of state-- Let me clarify that. Make sure we get that clarified. I live in Woodridge, where I serve as Mayor. Somebody lives out of state, owns a piece of property in New Jersey, and their property has been clipped from the sewer service area. How is that property owner going to know that his property has been clipped from that sewer service area? He lives out of state and is not paying attention. He's not going on the Internet, he's not paying attention to what's happening in New Jersey, but he owns a valuable piece of property.

MR. BAIER: Unless the property owner actually secures copies of their local newspaper where they actually own the property -- or where the property (indiscernible) resides, he probably would not know about this unless the county or municipality decides to individually notify. We're just not in a position where we can individually, through certified mail, notify every potentially affected property owner.

SENATOR SARLO: Isn't that troubling, though, that property owners are not going to get notified, even if they live in New Jersey? Using out of state was a bad example. But what if they live in New Jersey and don't pay attention to the local newspaper? I mean, isn't that troubling that somebody may not get notified? All of a sudden their property is just going to be clipped.

MR. BAIER: It's a concern, Senator, but I'm not sure how to resolve that concern, given our present resource constraints. I mean, we will do the best we can by issuing press releases, by issuing legal notices in papers in case the papers don't pick up the press releases, by making the information available on our Web site as soon as those maps are at a place where both we and the county are comfortable with their accuracy. Unfortunately, if you're not staying on top of what's happening in New Jersey, then you probably might get passed by.

SENATOR SARLO: I just have a concern about that. I mean, I have a concern that the perception here is, here is government coming in, taking away your rights as a property owner, and you have no say. You don't have the ability to make a statement or make a say. If you're sitting on a piece of property, perhaps it's an investment property for down the road. And then you turn around to try and invest in it, you've made an investment, and now your property, in a way, has been devalued. So that is a concern of mine and I'm sure many others in the Legislature.

MR. BAIER: If I may, sir. Just because your particular piece of property has been removed from a sewer service area because we believe it contains environmentally sensitive resources, you still have the opportunity -- the property owner has the opportunity to demonstrate that our information was bad, was incorrect, and be added back into that service area. So I don't think it's *game-over*, if you will. And I will also say that just because sewer service isn't available as a wastewater management alternative, those properties do continue to have some residual development potential through alternative wastewater treatment mechanisms, on-site systems.

SENATOR SARLO: Some people have said this new planning process that we're working on here could fall victim to the same pitfalls as a cross-acceptance process, where a county could delegate their responsibility to a county utility authority, presumably one that provides sewer service, which might streamline, in certain instances, the planning process. Are we concerned that we may run into a situation where we're not going to be consistent with -- same situation we were with the cross-acceptance plans, where a different county utility authority is not being consistent in their message and their thought process? Any concern on that, or have you seen that so far in what's been submitted?

MR. BAIER: Clearly, I think there are areas where counties have identified specific concerns either because sites are integral to local fair share housing plans or integral to a business' ability to grow. We have taken a very close look at those sites, if they were removed from sewer service, to try and verify whether or not our data is, in fact, correct. Unfortunately, the landscape mapping and much of the mapping resources that we had to use was based on 2002 aerial photography. We now have 2007 aerial photography. So we're able to pull that up now and look to see whether or not land use has changed either on the site or adjacent to the site that would no longer -- or would have compromised the ability of the site to support what we thought originally was there. When we find that, we're putting those sites back in.

I can't promise you that we'll come to amicable resolution of every site. But where we can make that determination, Senator, we are certainly doing that.

SENATOR SARLO: What is the process going to be with amended sewer plans after the fact? You established some criteria. Now, this is not the governing criteria -- limited environmental impact areas where development should occur by planning officials, water capacity, and wastewater capacity, of course.

First of all, are they the governing criteria, or is that just kind of guidelines?

MR. BAIER: I'm not sure I understand where those criteria are coming from, Senator. Could you repeat that again, one more time?

SENATOR SARLO: The Assistant Commissioner mentioned -- I'll just paraphrase, I wrote them down here -- limited environmental impact areas where development should occur by planning officials, wastewater capacity, and water supply -- available water capacity.

MR. BAIER: I mean, ultimately, that's what this process should yield. It should yield a wastewater service area that tells you those things. Ultimately, you asked a question about how you get the map changed and what the process is for changing the map.

SENATOR SARLO: Right.

MR. BAIER: There are two different processes that are established in the reg. One is a very simple process for projects that essentially have no particular environmental impact; no potential for secondary impact -- so not running a sewer line through a large, undeveloped agricultural area or something like that; and that have relatively small volumes of wastewater involved so we don't have issues with capacity at the sewage treatment plant.

They go through a revision process. A revision process just means that the locals get notified, the Wastewater Management Planning agency gets notified, the sewer authority or whoever is accepting the wastewater gets notified. They're asked to consent. If they consent, we adopt a revision. There's no public notice process, there's no delay. It's a very simple process.

For things that are larger than that, that have some potential impact either due to capacity constraints at the sewage treatment plant, or environmental impact because it's an extension of sewer into an area that previously was completely -- it's not adjacent to a sewer service area; it's a completely new area. In those cases, we go through an amendment process. It's essentially-- We haven't altered that process from what it used to be. It does require a New Jersey register notice, and a 30-day public comment period, and potentially a public hearing before we can actually move to adopt. So it's basically a two-step process, as opposed to the one-step process of the revision.

SENATOR SARLO: And just one final question: Are we concerned that-- Is the Department concerned that some of these rules may provide local officials with kind of a back-door method to deny an unwanted project in their community? Could they use this to hang over -- not-in-my-backyard type of syndrome on a project? Could they say, "Down the road they can amend it, and your property may fall within that area that's going to no longer be a sewer service area. So we should deny your project now"? Is there any concern by the Department on that -- that it could be abused by the local municipalities?

MR. BAIER: I don't necessarily have that concern, Senator. Really, these Wastewater Management Plans are supposed to reflect local land use master planning and zoning. So it would have had to have been a thought process by the municipality for a long time that was consistent with their vision of how they were going to grow.

And it's not an easy process to get through. It's not something where you can just sort of make a snap decision and decide, "Okay. I don't like your project, so now I am going to cut you out." In order to cut somebody out, you have to follow that same process as it is to put somebody back in.

SENATOR SARLO: Well, I want to keep this moving along.

I want to thank both of you for being here to provide this update. I am glad to hear that you are providing these extensions. I'm glad to hear publicly that there is no moratoriums being placed or punitive damages being placed on counties that have not followed through yet at this point in time.

It is concerning to me that certain property owners may not be properly notified. And I would urge the Department to continue to work to find a way that we do provide proper notification, and that we're not sending the wrong message that government is going to come in and perhaps devalue your property. I understand there are provisions in place. They do have options available to them to make their case if it doesn't fall within the map. But I think we need to find a way to at least give proper notification. But I'm glad to hear that there is no moratorium that we're expecting.

So I want to thank both of you for taking the time to be here. It seems like you both have a very good handle on this plan, especially Larry. I know you testified on May 1, 2008. And we appreciate the work you're doing.

Thank you, both of you.

**ACTING ASSISTANT COMMISSIONER BRUBAKER:**

Thank you, Senator.

**MR. BAIER:** Thank you, Senator.

**SENATOR SARLO:** The next panel will be PlanSmart NJ, Dianne Brake, President; New Jersey County Planners Association, Kamal Saleh, President; and the Association of Environmental Authorities, Ellen Gulbinsky, Executive Director.

And I know he's here in the background -- I just want to acknowledge Nick DiRocco, from the Association of Counties, who has been weighing in heavily on this issue. He has no need to testify. He's going to leave it up to his planners.

Ellen is not here, but we'll go ahead with PlanSmart NJ and the New Jersey County Planners Association.

**D I A N N E R. B R A K E:** Thank you for holding this important hearing and inviting me to speak.

I'm Dianne Brake, and I've been a land use planner for almost 30 years, 25 of them at PlanSmart NJ. And PlanSmart itself celebrated it's 40th anniversary last year.

Sewer service areas may not be a sexy topic, but it is the most important underpinnings of society. And we planners take sewers very seriously. Without them, we'd have squalor, disease, death.

In 2007, we brought all of our experience to bear on the evaluation of the proposed Water Rules, and we submitted six pages of comments, which I've included in my packet.

SENATOR SARLO: Please don't read all six pages. (laughter)

MS. BRAKE: I'm not, I promise.

And we had some praise for the new direction and the Rules. But overall, our assessment was very concerned. What we saw in the Rules was that it was likely to obstruct growth in growth areas, promote sprawl in nonsewered areas, and therefore degrade the environment. And in this economic climate, to have those conditions be a rule that even has some improvements to the old system in it, is what we consider to be unacceptable.

We felt, with the best of intentions, DEP had written rules that would end up protecting land from sewers rather than protecting water quality overall. And therefore it would deny New Jersey the ability to grow in a planned way to create the future that we want and the communities that we want.

I listened carefully to what the Deputy (*sic*) Commissioner said about what their intent was on the Rules. And we certainly have no disagreement over protecting sensitive areas. And we certainly agree that there should be agreement on where growth areas should be. But the problem is that by coming up with their own assessment of where growth areas should be, they already violated one of those tenets. It isn't where everybody has agreed that growth should be. The maps created by DEP are different from the cross-acceptance maps. There's less growth area in the

new Rules and in the new maps. So it isn't where we all agree on growth areas.

And his last point about where there is already capacity in the infrastructure system-- That is definitely important information to have. But I've seen the scope of work for the plans that the counties are supposed to produce. And the way it's written, it's as if once you determine the current capacity of the system, you're supposed to contain the land use within that capacity. The idea of infrastructure and growth management is to have a land use plan that meets the needs of the economy, the environment, and society, and then create the infrastructure needed to support it. The capping on existing constraints of wastewater doesn't allow for new technology, for conservation, for all kinds of improvements that could be made as development happens. And so just saying, "What is the capacity now," and saying that as the cap, is not how we interpret capacity-based planning to mean.

There are four ways that the regs obstruct growth. First, drawing back the sewer service boundaries; secondly, taking out 25-acre parcels within the sewer service boundaries just because they're undeveloped. And I understand that DEP allows for the expansion and so forth of correcting mistakes. But it's very unclear what criteria DEP will use in order to make those changes and, therefore, it makes it very unpredictable, probably lengthy, and costly in order to go through those changes. So we feel that undermines planning that has taken place, painstakingly, for the growth areas that we have already established.

And then I think that what we really want to say is that we believe that DEP could have created rules that need not threaten the

economy. There are ways to go forward. And I think it depends upon the State agencies sharing a vision of what's important for the future of New Jersey. And that vision must then be the criteria by which you evaluate all the State agencies' rules. There are ways to improve the environment and to protect the economy. And that's what you will find in our comments.

SENATOR SARLO: Thank you.

I do have a question for you, but I'd like to hear first from Mr. Saleh.

**KAMAL SALEH:** My name is Kamal Saleh. I am the 2009 New Jersey County Planners Association President.

What I'm going to go over right now -- and we've provided it to the secretary -- is a list of concerns that we have, along with solutions. But because of the time frame, we'll just go over the concerns. And if you'd like, you can ask any questions.

Anyway, we'll go down the line here.

The first item is the WQMP, or WMP, lack of consistency. The concern is that there is no consistent written guidance for each technical area that needs to be addressed in the Wastewater Management Plan. There is a template document that is on the Web site -- DEP Web site -- as a placeholder. The Model Builder -- that is an application provided by the DEP -- relies on parcel mapping that overestimates future flows based on some of our counties.

Again, these comments are not any individual county, but overall counties. So this is not one particular county this relates to.

SENATOR SARLO: It's cumulative -- it's collecting cumulative from all the county planners.

MR. SALEH: Absolutely. And just to go back, we represent 21 counties in the entire state. And those representatives who are on our Association are county planners, per se, and directors, and what have you who participate basically on a monthly basis -- go over concerns like COAH, DEP, and other issues that relate to counties.

Anyway, going ahead. Still on the lack of consistency, another concern is that some DEP review policies are inconsistent with the written DEP Rules -- so that inconsistency is an issue.

Item number two is the habitat suitability and sewer service area boundaries concern. It's that the recommended habitat suitability component of the analysis should be removed, as areas are being clipped from the existing sewer service areas based on data that is not reliable and, in some cases, not available for the public to review.

Item three: the WMP deadline. There's a discrepancy between the plan and the WMP grant deadline so that there -- provides an issue. And I know that we've recommended other timeframes, and I know we've heard earlier about the way DEP is going to handle that.

Number four is the appeal process. This is something-- And, again, these items that we're discussing here we discussed with the DEP's Commissioner at our last meeting.

Anyway, one of the other recommendations is an appeal process that will review WMP and the DEP Rules. This is a needed appeal process that would include other agencies like the Office on Smart Growth, and county planners, and other groups, as well as DEP, to resolve issues that may come about in terms of the Rules.

Item number five: the State agency communication coordination. We feel that there's a need for improved communication between State agencies and key initiatives such as housing, economic development, and obviously sewer service planning areas.

Number six: There is a concern -- I guess it relates to this as well -- is the DEP COAH set-aside in terms of COAH percentages. There should be a requirement between COAH and the proposed DEP in terms of the set-aside.

SENATOR SARLO: Let me just interrupt you there -- to either one of you. Currently, COAH has no impact on how they're establishing these areas, correct?

MR. SALEH: I believe so.

SENATOR SARLO: Am I correct?

MS. BRAKE: You mean DEP's boundaries for the sewer service?

SENATOR SARLO: Yes.

MS. BRAKE: As far as I know, no.

SENATOR SARLO: COAH has no impact on it. Okay.

MR. SALEH: Item number seven: the State plan/landscape project. There's an inconsistency with the OSG mapping. The DEP has its own mapping which, at times, is inconsistent with the mapping established by the negotiations of the Office of Smart Growth, the State Planning Commission, in relation to the county and municipal agencies in the State Plan. Another concern with that one is the sewer service areas that are routinely removed in centers, even though those centers are approved by the State Planning Commission.

Item number eight: the Highlands Planning Area. There is a concern that the DEP has removed sewer service areas in the Highlands Planning Area, even if they're not consistent with the Highlands Regional Master Plan. DEP is requiring consistency, and that is contrary to the Highlands Act. According to some of our counties in the planning area, that should be voluntary for each municipality.

Okay, number nine: sewer service area lines and the impact on economic development. Redevelopment plans are currently not addressed in the WMP process rules, hence sites in the redevelopment areas can be removed from the sewer service area boundaries. The removal of sewer service for key redevelopment properties can impact the growth of a town or county.

And number 10: the county nonparticipation in wastewater management. As Wastewater Management Plan participation is voluntary, and participation for counties -- and the counties that choose not to participate are usually due to economic concerns, staff limitations, or other reasons, they should not be portrayed in a negative manner if they don't participate.

That's it.

SENATOR SARLO: I guess number 10 is to protect your friends in Warren, I guess. (laughter)

MR. SALEH: Union and Bergen.

SENATOR SARLO: Bergen? Make sure you protect Bergen first. (laughter)

A question with regard to some of these concerns. You had mentioned one of the concerns: redevelopment plans aren't addressed in the

WMP Rules, hence sites in redevelopment areas -- your number nine -- can be removed from the sewer service area boundaries. Can you just expand upon that a little bit?

MR. SALEH: I think it's just that some of counties have a concern that -- I guess in the rules that they've interpreted, they don't find a relationship to redevelopment plans. And as some municipalities or counties that have these redevelopment plans -- they've considered -- placed a considerable amount of time and effort in looking at -- over these areas for future development. And they feel if these redevelopment plans existed prior to the WMP process, that if they are included in, say, an area that's clipped or what have you -- may significantly reduce the importance or the ability for those redevelopment plans to continue and to be developed.

SENATOR SARLO: The DEP has assured other policy makers and the Legislature that they've been providing, at the beginning of this process -- providing a lot of the data and the draft -- some of the draft plans. Do you believe this has truly been a bottom-up process with the counties in the driver's seat? If you don't want to answer that, you don't have to answer that.

MS. BRAKE: I don't mind answering that. I'm not accountable to any government.

I would say that it has been more of a top-down process than ever before. That's not necessarily bad if they have recognition that this is a planning process and not a regulatory process. The regulations need to bubble up for detailed parcels. The plans should be meeting overall plans. Sewers support all kinds of development. They support more density in transit areas, they support economic development where jobs have been

lost, they support regeneration. Making it difficult to grow in growth areas impacts cities. There are some cities that don't have any capacity. And it's very unclear how they're going to be growing that capacity given these rules. So it's a-- These are very much rules only from DEP's point of view. And I would argue that that point of view is not even necessarily the most supportive of environmental protection. If that were the only purpose, that would be in itself laudable. But I would argue that the effect of these rules is not going to protect the environment the way they hope. And therefore, all the pain that it's causing to interrupt plans and economic development is not worth it.

What we could do is to have infrastructure planning support the multiple goals that the State needs to produce. And I would argue that's to reduce the concentration of poverty, regenerate in cities, retrofit suburban areas so that we can have transit. Those are the kinds of things we need to do.

SENATOR SARLO: So if I'm hearing you correctly, you don't believe it's been a bottom-up process. It's been more from the top-down. And you think these plans could have a detrimental effect on the environment.

Something in your bulletin -- I don't know if I necessarily agree with you. Maybe you could help clarify it for me. In your written testimony, you had said that these regs promote sprawl.

MS. BRAKE: Yes.

SENATOR SARLO: I don't know if I necessarily agree with that. How can you say that these regs promote sprawl?

MS. BRAKE: Well, in two ways. One is in the fact that they obstruct growth in growth areas. They're going to put more pressure on non-sewered areas. The way in which DEP hopes to protect non-sewered areas is through a model that everybody agrees will likely promote, across a watershed area, densities of about 4 to 7 acres per unit. That is the most elitist kind of sprawl that we could have. It may not be the result, but it's across a HUC 11. These watershed boundaries actually cross municipal and county boundaries. And counties don't have the power to change land use in local areas or to cross their boundaries. Only DEP could come up with a watershed approach and articulate exactly how they want development to happen in non-sewered areas. Otherwise sprawl will happen. The zoning is there.

SENATOR SARLO: For the record, I am a licensed professional planner. You may not know that.

MS. BRAKE: I'm pleased to hear that.

SENATOR SARLO: I'm a licensed professional planner (indiscernible) to be a professional engineer. I don't practice planning, but I do have the license.

MS. BRAKE: A lot of planners don't.

SENATOR SARLO: One final -- to the counties.

Go ahead, sir.

MR. SALEH: I was just going to add one point. I think in terms of the -- obviously with the Water Quality Management-- I think one of the main concerns too is the State planning. Because as county planners, we've considered -- or we've put in a considerable amount of time and effort into working with the State Planning Commission.

MS. BRAKE: Five years.

MR. SALEH: And three rounds -- in terms of putting that together as a guide for the development in our state. And that's a valuable item that seems, at times, to be at odds with what some of the Rules are doing.

SENATOR SARLO: Have any of the counties gone outside, for outside consultants to do this work, or have most of the counties done it in-house?

MR. SALEH: I think it's a mix.

SENATOR SARLO: It's a mix? Some have hired outside consultants?

MS. BRAKE: Yes.

MR. SALEH: Right.

MS. BRAKE: At great price. I know Mercer County had to bond for it.

SENATOR SARLO: Okay. Well thank you both for your testimony.

MR. SALEH: Thank you for having us.

SENATOR SARLO: And we appreciate you being here. Hopefully some of your concerns that you have mentioned -- you're going to continue to have an open dialogue with the Department.

MR. SALEH: I just would add that we did meet with the Commissioner at the last meeting, and there seems to be some positive movement on some of the items we've requested.

SENATOR SARLO: And if anything comes out of this, hopefully that's-- One of the things that will come out of this hearing is

that we're going to continue to have an open dialogue and continue to kind of work together to resolve some of these outstanding concerns.

Thank you.

MR. SALEH: Thank you.

SENATOR SARLO: The next panel actually was a large panel. I have to break it up, unfortunately, because I only have two or three seats here. It was going to include folks from NAIOP, and the Builders Association, and the International Council of Shopping Centers. But what we'll do is -- no disrespect to any group -- we'll just break this up. We'll have the Builders Association, Tim Touhey, CEO; and Mike Karmatz, President, come up first. And then we'll follow up with NAIOP.

**MICHAEL H. KARMA TZ:** Good morning.

My name is Michael Karmatz. I'm Senior Vice President of Orleans Homebuilders, and I am the current President of the New Jersey Builders Association.

I want to thank you for allowing us to testify today. I would also like to acknowledge Mark Mauriello and Larry Baier for their efforts. We've worked with them, and we will continue to work with them to try and make a better situation for the State of New Jersey.

I won't go into the history, because Senator Sarlo has adequately said what the history is. And we too, a year ago, voiced concern about the timing and the methodology that was being proposed. But rather than dwell on that, I think it's more important that we try to move forward to correct the situation that we're in.

As we know now, the counties have not been able to meet the deadline. Where municipalities have been charged to make the plans where

the counties won't, they haven't completed them. The bottom line is there should be an extension of time, and we're recommending the two years.

Part of our recommendations are that there should be an oversight board that looks at the DEP plans. It's unfortunate that they have to use plans that are seven to eight years old, and they're aerial photography. When municipalities have tried -- and I say this from experience -- have tried to point out to the DEP their errors, the maps that come out still show the incorrectness.

As investors, who wants to come to a state where you can't be sure of where you can make your investment and have at least a chance of having it profitable? There has to be some certainty in these plans. After the fact does not do any good. If they need two years to get it right, they should have the two years to get it right.

The previous testifier said it's a top-down procedure. There's no question in our minds that it is a top-down procedure. The DEP has said, "This is where we think there should be growth," and have disregarded, in many instances -- which is one of the reasons that this process is being delayed. Because in most instances, the municipalities who have tried to plan over these years for where they want growth, their ideas are being disregarded.

You have Somerset County that was able to give notice to everyone. It's been brought up. There has to be a way to give notice to landowners.

SENATOR SARLO: That's what I said previously.

MR. KARMATZ: And it's a very important point.

SENATOR SARLO: And not to interrupt you sir: I think everybody agrees with that, even those who are very supportive of the Rules. I think everybody agrees that people deserve to be properly noticed.

MR. KARMAZ: So the recommendations, to make a very brief presentation -- we should adopt at least a two-year extension, and there should be an oversight board that certainly all groups should be involved in. But there should be a consensus before maps are put out that are totally inconsistent with what lies on the ground or what the municipalities have intended.

With that, I commend the Committee for having this hearing, and know that the Builders Association will gladly work with all groups for a better state.

SENATOR SARLO: Question: oversight board. That oversight board -- would that be a board that would be involved in the planning process or an oversight board that would deal with appeals?

MR. KARMAZ: You need it on both ends. You need it for the planning process and for the working of regulations before they're promulgated. The concern I have is, it's easy to say, "We're going to change mistakes." But if you do it after the fact, you're talking years. By their own admission, they don't have the personnel to do all of this.

**TIMOTHY J. TOUHEY:** Tim Touhey.

Senator, let me add to this.

The thought here -- and I've heard Dianne many times before. And I'm talking now about my former role as a chairman of the State Planning Commission. It would be wonderful if we could amend maps so easily. We still haven't gotten the State to plan out right.

And in a process where we're facing-- And it's not a word that should be overused. We are in a fragile economy where you sit every day trying to figure out how to get revenues into the State; where credit investors -- capital markets and banks -- are trying to figure out where they're going to lend and how they're going to lend. And we're going to get into this discussion of: Is this the right area to cut off sewer service areas or not, based on this criteria? And we'll work through the process.

Well, a year ago we sat here and listened to how flawless and easy this process was going to be, that we'd be sitting here a year now with consistency, and understanding where we were going to grow and not grow. We're deeply concerned that if there's not an oversight board that looks at the discrepancies that maybe a municipality, county, or DEP have in this process, that you need to bring some integrity to that -- very similar to what's being discussed under the licensed site remediation professional bill that was just passed.

SENATOR SARLO: So you're saying an oversight board now, as the planning process is going on.

MR. TOUHEY: Right.

SENATOR SARLO: And then there could be something separate with an appeals process.

MR. TOUHEY: Exactly.

SENATOR SARLO: Do you feel, from your side, if a property falls within the SSA -- I know we're talking a lot about proper notification -- does it affect-- Are you concerned it will have a significant effect on the value of that property?

MR. TOUHEY: Yes, and I can go through a litany. We've already had pressure on property. There's so much uncertainty, Senator, on how we deal with a variety of regs that have come to the business community, the housing community in New Jersey -- whether it's COAH, this, the Highlands Act, where the Meadowlands is going, how we're dealing with the Pinelands. It's almost impossible to keep up with all of this. So we need to get some sanity back into this process, and slow it down, and get it right.

SENATOR SARLO: Any ideas on how we can notify affected property owners?

MR. TOUHEY: Mail works. (laughter) I'm not sure.

I had two thoughts. And, again, I do want to underscore that Larry and the Commissioner have been tremendous in dialogue with us. But I guess there will be so much removal that the mail system won't be able to handle it. So I think mail will work.

SENATOR SARLO: Registered mail or something like that.

MR. TOUHEY: Yes.

SENATOR SARLO: Okay. I have no further questions.

Thank you. And I would hope you will also continue to have a dialogue with the Department on these Rules.

The next panel is National Association of Industrial and Office Properties, Mike McGuinness, their CEO. And I believe he's joined by--

UNIDENTIFIED SPEAKER FROM AUDIENCE:  
(indiscernible)

SENATOR SARLO: Yes. And I'm also going to have Ted Zangari, from the International Council of Shopping Centers.

Can we get--

You're representing?

**M I C H A E L A. S E M E R A R O JR.:** The International Council of Shopping Centers.

Mike Semeraro.

**SENATOR SARLO:** Okay.

**M I C H A E L M c G U I N N E S S:** Thank you, Mr. Chairman, for the opportunity to give you our perspective on the Water Quality Management Planning Rules process.

First off, we represent NAIOP New Jersey, which represents the owners and investors of commercial real estate properties in the state. We have about 500 members. We contribute about \$800 million a year in property tax, have a billion square feet of space in the state. We're also part of a group that represents North America, chapters in Mexico and Canada with about 20,000 members.

We first learned about the seriousness of this matter back in March, when we had the Governor to our annual Public Policy Symposium. And at that time, many of the members were asking questions on the topic. The Governor asked us to provide him with more detail, and we did. It appeared back then that DEP was moving very quickly, unilaterally, to usurp local land use decisions and stopping much-needed economic development. So obviously we were concerned.

I've since spoken with Commissioner Mauriello, and he has assured me -- he's at least told me -- that that's not at all the case and that was not their intent. Nevertheless, there are still a lot of issues hanging out there which need to be addressed.

This really all boils down to communication and coordination. Communication in terms of communicating with the regulated community what their intent is. And then secondly, perhaps even more importantly, is just coordination among State agencies. You've got the State Planning Commission, you've got COAH, DCA, and you've got DEP all sort of going down different tracks in different directions. So it's really important for those agencies to coordinate their act so that we have some predictability here.

At this point, let me introduce George Sowa, who is our Vice President for Public Affairs. And he is also a EVP for Brandywine Realty Trust.

**GEORGE D. SOWA:** Thank you, Mike.

Good morning, Senator Sarlo.

Thank you for allowing me to testify before you and the Committee.

I'd like to start off by emphasizing that NAIOP and its members are absolutely fully supportive of endorsing ideas that improve the quality of life for the residents of New Jersey. However, we are absolutely not supportive of actions that don't support that objective.

It's interesting, following the builders -- where they mention how difficult it is to track residents of the state. If you can imagine how difficult it is to get someone to invest \$100,000, \$500,000, \$1 million or whatever it is for that house; if you amplify that multiple times over to try to attract companies and retain companies to the state right now, where the investments are \$1 million, \$5 million, \$50 million or more in some cases -- especially in the environment we're in today.

One of the things that NAIOP -- we do provide a broad spectrum of employment opportunities throughout the state from the professionals, the engineers, the attorneys, the finance-related jobs, all the way through the construction and maintenance of the properties as well. I think it's an important aspect that we do provide not only the jobs themselves, through the construction process, but also the acting as the home for a lot of the companies that do actually add to the vitality of the economy of the State. And we have been working in a coordinated way with the administration, trying to resolve the issues that are out there today. And I commend DEP for some of their commentary earlier today, because it sounds like they absolutely recognize some of the issues. And hopefully we'll be able to resolve the issues that are still outstanding here today.

But as Mike had mentioned, really the issue is derived from two fundamental areas. Number one is a lack of coordination between the State agencies. And secondly, the lack of notice and disclosure concerning the revised sewer service maps. The lack of coordination among the agencies is evidenced by the proposed Rules being inconsistent with the State Plan -- which has already been mentioned -- where the State Plan actually has some growth areas in designated sewer areas. And really the proposed rules aren't consistent with the State Plan. Further, it's not consistent with COAH, where the COAH regulations right now are around three -- the proposed regulations actually are trying to have growth in areas that, right now, would not be consistent with these Rules for the water quality.

Also, the fact that the revised maps are dated could result in many of the proposed revisions being unwarranted or improper. The lack of

the formal notice -- in trying to go back and correct after the fact -- would absolutely create a tremendous amount of uncertainty. And to do it is going to take time, it's going to take the cost in actually the expense of trying to do that after the fact. It doesn't seem right, nor does it seem fair.

Now, as a real-time example-- As Mike had mentioned, I'm currently serving as Executive Vice President and Senior Managing Director for Brandywine Realty Trust. We're a national real estate investment trust, publicly traded, about 37 million square feet of properties across the country. And right here, locally, in Princeton Pike Corporate Center, in Lawrence Township near the intersection of Route 1 and 95 -- clearly a development corridor -- existing park where we have eight buildings, 850,000 square feet of existing property valued at nearly \$200 million. We also have three development sites that could accommodate another 315,000 square feet of space. With the current rules that are being proposed, two of our development sites would be wiped out, about 250,000 square feet of new office buildings within the park.

Why is that important? Number one, there's \$65 million of investment that would not be made as a result, the elimination of a thousand jobs that would no longer be there. Plus, the tenants within our park who may need expansion or who are considering coming into the park would no longer have a home for those jobs -- those clean ratables that are so duly needed.

The other thing-- Again, I mentioned just the business attraction and retention. Again, I mentioned at Brandywine we do business across the country. And the state versus state, especially with the border being so close to us of Pennsylvania -- being exceptionally aggressive these

days -- just makes the uncertainty associated with getting a tenant-- Again, if you could imagine how difficult it is, when we're playing building versus building within our own world -- which we're fine with doing by the way. But when you go state versus state -- in the inherent uncertainty in terms of what we can get approved, when we can get it approved -- tenants aren't in the decision-making process. With the uncertainty override-- Where they need to have certainty in terms of where they go, what they do, and the timing associated with that, they're typically driven by leases or some other decision process that needs to be hit with some absolute certainty.

So as a result, we respectfully request that you consider the following recommendations related to DEP's Water Quality Management Planning Rules.

First, immediately suspend the Water Quality Management Planning Rules until the DEP has coordinated it's actions with the State Planning Commission and COAH. Secondly, we grandfather the sewer service area designation for projects that are fully or partially developed or acquired, upon reliance on the sewer service area in existence as of the date of the property's acquisition. Third, that we publicize the current program now underway so that property owners have the opportunity to study the potential impact in advance of final delineation. And finally, fourth, place all draft-revised sewer service maps on a readily accessible Web site so that owners are apprised at all times of the current state of the sewer service area maps as they proceed through the revision process.

In closing, we recognize that business has always been highly competitive, with a significant investment of capital at risk well in advance of project completion. We as developers, and in turn our tenants, are

willing to accept the significant risk inherent with the development and construction of buildings. However, neither we nor our tenants can accept the risk in connection with the time, expense, and uncertainty associated with the viability of any project potentially impacted by the revised sewer service maps.

Thank you for your consideration and your time.

SENATOR SARLO: Thank you.

Michael Semeraro, from the International Council of Shopping Centers.

MR. SEMERARO: Yes, good morning.

I'm Mike Semeraro. I'm a Senior Principal at Langan Engineering and Environmental Services. And I am also the International Council of Shopping Centers' New Jersey State Government Relations Chair.

On behalf of ICSC, I would like to thank Senator Sarlo for allowing ICSC to give testimony on the implementation of the Water Quality Management Rules, which were adopted on the 28th of July, 2008. ICSC concurs with the State that the current Wastewater Management Plans, which in part regulate the high quality of the waters of the state, need to be updated for proper development throughout the state.

The goal of the 2008 Water Quality Management Plan Rules were to have all of our State Wastewater Management Plans resubmitted and approved using an updated, consistent set of criteria which was included within the approved Rules. The revised county/areawide plans were to be submitted to the New Jersey DEP prior to April 7, 2009. Prior to this date, most county or areawide Wastewater Management Plans

throughout our state were out-of-date and were in need of recertification. To date, we understand that only two counties have submitted their Wastewater Management Plans to the New Jersey DEP. We further understand that 13 additional counties are in the process of requesting or have received deadline extensions for the submission of the Wastewater Management Plans.

In reviewing this process, we have three recommendations that we believe will be beneficial to the process of updating these Wastewater Management Plans.

Our first recommendation is in relation to New Jersey DEP GIS database, which is referred to as the Department's "Landscape Maps of Habitat for Endangered, Threatened, and Other Priority Wildlife," as well as the Department's wetland maps. These maps are excellent planning tools. But due to the scale of our state, site-specific studies and specific site data are more accurate than the statewide maps. To use these statewide maps to identify where development should take place is positive, as any development must provide site-specific documentation to the New Jersey DEP to receive New Jersey DEP permits. However, we believe that the use of these statewide maps to remove a site that was within a sewer service area under a prior Wastewater Management Plan, without site-specific data, is inappropriate. New Jersey DEP should encourage the use of site-specific data and documentation to override the statewide maps wherever that site-specific data is available.

Our second recommendation is that we believe that any property that will have its sewer service area removed or limited when compared to the prior Wastewater Management Plan for that property

should be notified individually in the same manner as if this property were to be rezoned by a municipality. This notification, as well as giving the property owner a means where they can present site-specific documentation which could show that their property meets the New Jersey DEP criteria to be included within the sewer service area, should be provided to the property owner.

Our final recommendation is to extend the timeframe for submission of the Wastewater Management Plans to the end of 2010. Only two counties have submitted to date. Also, we understand that only published public notices have been issued. Since these Wastewater Management Plans are removing sewer service areas from private property owners, we believe the counties or areawide districts should be given time to properly notify the affected property owners and to compile local documentation to support the statewide GIS maps. This time extension would also allow time for the individual private property owner, who may be affected by a sanitary service area removal, to compile site-specific information and to justify their property's compliance, if it is so applicable, to the New Jersey DEP criteria for inclusion in the sanitary service areas. During these economic times, we should take the time to get it right. And providing an extension will afford the shareholders of the state an opportunity to do so.

ICSC would like to thank the Committee for allowing our input. And we remain available to work with all regulators throughout the State to improve the quality of our environment and our lives throughout New Jersey.

SENATOR SARLO: We've heard a lot this morning. We haven't raised this issue yet -- I have not raised the issue -- with regard to what both ICSC and NAIOP have raised here extensively with regard to more site-specific data.

The question I have is-- You're telling me, in your opinion these maps are being generated off of maps that are five to seven years old. Is that your opinion, or is that fact, or is that your thought process?

MR. SEMERARO: That is also what DEP had indicated initially here.

SENATOR SARLO: Okay. So the maps that are currently being generated are based upon maps that are five to seven years old.

MR. SEMERARO: And then supplemented periodically as things are brought to their attention.

MR. McGUINNESS: Mr. Chairman, if I might.

SENATOR SARLO: Yes, sure.

MR. McGUINNESS: And during that time period, certainly, lots of permit applications go into DEP. DEP, of course, is challenged for resources. They don't have the proper computer technology, and they do need help there, in terms of funding for their IT work. And a lot of the applications that go in do have current data, but they don't take the time -- maybe for good reason -- to update their data based on current applications. That's my understanding.

SENATOR SARLO: So you would recommend-- From this panel, you recommend that taking permits that have been approved by the DEP -- take that site-specific data where there have been reports prepared

by outside environmental consultants -- take that data and use that data to get more specific and update this statewide GIS map.

MR. McGUINNESS: Why not? We've already spent a lot of money doing the research to provide them with data, because they have to do that. Why not just incorporate it into their plan? Perhaps it's Herculean. I don't know how it's done.

MR. SEMERARO: Well, the regulations -- they could require the applicant to have it in a certain format.

MR. SOWA: It kind of underscores the disconnect that exists currently, where you can spend a lot of time, a lot of money in the designing and getting approvals, and not end up with your sewer at the end of the day. And so it's critical that we get the inconsistencies and uncertainty out of the equation.

MR. SEMERARO: Chairman, the point is that they're using that data to remove a property -- a private property from an existing sewer service area from a prior plan. And it just seems that if that's the case, that private property owner should be individually notified and have the opportunity to present his own site-specific information, that would be more up-to-date than the State maps, to justify inclusion if it is so appropriate. And it will take-- I mean, a modification to the Wastewater Management Plan will take years. Typically two years is what you have to budget yourself. I mean, you could probably get it done in one year if you follow the exact timeline, but nothing ever goes by the exact timeline. And if you have a property that doesn't have a sewer service area, anyone coming in from a business to go develop on that site isn't going to look at

the site. They have to waste two years even before they can start their development plans.

SENATOR SARLO: Okay.

Thank you.

MS. SEMERARO: Thank you.

MR. McGUINNESS: Thank you.

MR. SOWA: Thank you.

SENATOR SARLO: Okay. The final panel is the New Jersey Environmental Federation, David Pringle; New Jersey Sierra Club, Jeff Tittel; and the Association of New Jersey Environmental Commissions, Abby Fair.

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

Jeff Tittel, Director, New Jersey Sierra Club. And I have a written statement that I will hand in.

I also want to spend a few minutes talking about some of the things that I've heard, because I think there's a lot of misinformation out there about the Water Quality Planning Rules.

You have to understand that we support the Rules. We've also had concerns with them in certain areas, and you will see that in my more detailed, written testimony.

But I just want to start out by saying that New Jersey has a very serious water problem. We have seen cycles of flood and drought. In any given year, northeastern New Jersey, meaning Bergen and Passaic counties, could run out of water. Overdevelopment -- we've seen the impact it's had on water quality where, in the summertime, 90 percent of the flow in the

Passaic River is sewer effluent. We've also seen a water planning process that's been broken for too long.

And the reason we supported the Rules wasn't because these were great environmental rules and the environmentalists got everything we wanted to. I would rate the Rules at about 65 percent. But the system before was at about 20 percent, because it was broken. We've had towns and counties -- Water Quality Planning Rules have been outdated for over 20 to 30 years. Many sewer service areas in the state, especially in some of the more rural and ex-urban areas, go back to water planning grants that were given out when Lyndon Johnson was President. And many of them were designed for regional sewer plants that were never built, because either the Federal money dried up or the towns didn't want to get that kind of development.

And so the concept of these Rules was to pull back environmentally sensitive areas; areas that didn't have major sewer plants; also to regulate septic for the first time, which was critical; and to look at water supply. Because many times we have areas where we're putting in sewers, and we have no water. A good example of that is Woolwich Township, where all of a sudden it becomes a growth area and they approve 4,000 units of housing because it's in the middle of a sewer service area. Meanwhile, there's no way to get water there.

We've seen areas that are in sewer service areas literally on the banks of New Jersey's major reservoirs. Union Township and Clinton Township, in Hunterdon County, on the banks of Spruce Run Reservoir -- on sewer service areas that go back to a regional sewer plant that had never been built. The same thing up in the Highlands region, where along the

Pequannock River system -- right above major water supply intakes. And so it's been a broken system.

And what was happening in the past -- instead of towns coming in or counties coming in and redoing their plans, basing it on protection of natural resources, making sure they have adequate water and wastewater supply -- we would have this piecemeal system where there would be one amendment after another; or in some of the more rural areas, they'd be coming in with package systems where they couldn't even get a sewer plant permit to dump the effluent into the stream, because the stream is either too high-quality or goes into a reservoir. And so we had this mishmash system. So these Rules were an attempt to try to bring that all together. And they're not perfect, but they're a major step forward.

A couple of things I just wanted to talk about when I hear some of the things about the State Plan. These Rules -- and part of your job is to look at these Rules and how they meet with the guiding authorities, legally, for these Rules, which were the State and Federal Clean Water Act, the New Jersey Water Quality Planning Act, and the Pollution Control Act. And they fit. There's no violation of those laws. In fact, in some areas, these Rules don't go far enough in implementing those laws.

The State Planning Act cannot be used. First of all, the State Planning Act cannot be used for regulation, and that's in the law. Secondly, these are regulatory boundaries -- part of regulatory programs, and so the State Plan can't be used. Secondly, the State Planning Act -- the State planning maps are based on 1986 flyovers and 1991 data. So talk about something that's obsolete and outdated.

Also, in the State Plan they never looked at water quality issues, water supply issues, wastewater issues, or endangered species, because that information was not available back in 1991. So the State Plan legally cannot drive water quality planning. And also, the State Plan is even more obsolete.

And when they say this was a top-down approach, for some of us in the room -- we went to stakeholder meetings for years to discuss these Rules from 1994 on, and we had proposals on these Rules in '96 and '98. So there's been a lot of bottom-up fighting over these Rules.

And the main thing I want to just end with is that sewers determine land use more than anything else. And if you run sewers into environmentally sensitive areas, you will create not only sprawl, but high-density sprawl, and it will have direct impact on water quality.

By running sewer lines into environmentally sensitive and rural areas, you're taking capacity and the assimilation out of your streams, and you actually hurt the redevelopment of urban areas. So one of the things that the State was trying to do with these Rules -- by clipping environmentally sensitive areas -- was allowing for more growth in the areas that already had sewers. Because there's only so much -- there's a finite amount of pollution we can put into our streams and rivers.

And so, again, we think these Rules are far from perfect. They're relatively balanced. The counties and the towns are getting more time to implement them. But they're an important step forward if we want to have drinking water for the future and to make sure that our land use patterns don't destroy New Jersey's water supply and create a cycle of flooding and drought.

Thank you.

SENATOR SARLO: Thank you, Jeff.

**ABIGAIL FAIR:** My name is Abigail Fair.

I'm here on behalf of the Association of New Jersey Environmental Commissions. We are a statewide, educational, nonprofit organization serving environmental commissions, local officials, and the public. ANJEC, which we call ourselves, aims to promote the public interest in natural resources, especially water resources -- their preservation and sustainable development.

There's been a lot of information put out today. I want to go back a little bit. I probably will be repeating a little bit of what Jeff just said.

DEP does have the authority to protect environmentally sensitive areas, and they have to use the best available data they have. And I've heard a lot of criticism of that data, but they have to start with something.

The original 1990 WMP regulations did not require plans to protect waters from secondary or nonpoint source impacts caused by zoned-for growth that the wastewater infrastructure would have to support. As a result, in 2000, Governor Whitman acted to correct the problem after all the stakeholder meetings -- or before them even. She issued Executive Order 109, which has been in place until these new regulations incorporated the Executive Order. It directs DEP to ensure that WMPs examine alternatives, depletive and consumptive water use, pollutant loading; and it directs DEP to conduct environmental build-out analysis to take into account the constraints to development from the presence of

environmentally sensitive areas. So that was nine years ago. Anyway, the Rules were proposed, and they incorporated Executive Order 109. We support the Rules. As Jeff said, they're a much-improved version of the Water Quality Management Planning process.

We do have problems with them. We have deep concerns that they allow -- and perhaps this is an important part, but we are concerned about how it is going to happen. If development is going to happen outside of suburban or urban areas, the rules do provide that they can, in fact, have cluster development and that, in fact, the standards will be lower in the cluster development. So we are concerned about that.

The rules only protect environmentally sensitive areas that are over 25 acres in size. Wow, that excludes a lot of areas that could, in fact, create terrible impacts. The steep slopes are defined, but they're apparently not required to be mapped so that they could be taken into account in the build-out. Open space under 10 acres is excluded from mapping in the build-out analysis. This could create the perception that there's a lot more really easily developed land out there than there really is.

Use of GIS is very convenient, and it means that the scale of the mapping, most often, is very broad. And this is one of the criticisms we've heard from the building community. However, the rules do provide that more detailed maps will be accepted by DEP. And it's going to be a process of, in fact, incorporating the more detailed maps.

Again, DEP is using the best data available. And this data has been used in the wetlands program, the flood hazard area program, and other programs of the State without being challenged.

I would like to point out that I was a municipal official for 27 years. Our planning process depended on data from the State, which was broad. And our caution has always been, "Please, this isn't site-specific. This is a broad planning document. We've zoned in accordance with it. But there might be site-specific information that you have to be aware of; but we can't deal with it until it comes down to a development proposal." This is -- unless it's different in your town, that's the way our town used to work, because we just didn't have good site-specific information.

I think the Rules were no surprise. I think I'm getting the feeling from the developers they knew they were coming. And it's the specifics of the mapping that seem to be the most contentious.

The one recommendation I would have is that the DEP require public hearings in each municipality. This would be one way that those poor folks who don't know that they might not, all of a sudden, be in a sewer service area could find out. And then they could start the process of getting their information into the whole process.

That concludes my recommendations.

I would just like to say that we need these current regulations implemented. We need to avoid extending permits forever, based on very old data. We need to give predictability to building interests and municipalities, and I believe that these rules can do that. We need to prevent escalating costs from sprawl development.

Thank you very much.

SENATOR SARLO: Thank you.

David.

**DAVID PRINGLE:** Thank you, Mr. Chairman.

David Pringle, Campaign Director for the New Jersey Environmental Federation.

I also appreciate being here. It feels a little bit like Groundhog's Day, because 13 months ago pretty much everybody said the same thing at the last hearing before this Committee on this issue, before the Rules were adopted. But now that they're a reality, I think it's important for all to be heard.

SENATOR SARLO: Actually, Jeff said 50 percent then. He went up to 65 percent. So 13 months--

MR. PRINGLE: And if you ask him in three days, he'll probably give you a different--

SENATOR SARLO: He never gives you 100.

MR. TITTEL: I'm over 50 now. I'm getting Alzheimer's.

SENATOR SARLO: Jeff will never give you a 100 percent grade.

MR. PRINGLE: It's art. It's not precision or science.

In addition to our testimonies, several other environmental groups will, and/or have already submitted testimony. I know the American Littoral Society has, and the Pinelands Alliance is planning on it, and I'm sure there are others.

The first question I want to tackle is legal authority. The Federal Clean Water Act is a presiding operative law here. New Jersey has passed several laws to implement the Clean Water Act, as well as go beyond that -- the Water Quality Planning Act, the Water Pollution Control Act, Endangered Species Act, etc. All of those give plenty of underlying authority for these Rules. So we really don't think it's germane for testifiers

to be questioning whether DEP has the authority to propose these Rules in the current form or not.

Second, I want to talk about -- and I heard someone say that these Rules threaten the economy. Nothing could be further from the truth. They don't stop growth. They help ensure growth is better than it has been in the past, that it's a step in the right direction to ensure that we're developing in the right places as opposed to the "wrong" ones. Sprawl is incredibly expensive and unsustainable. And it is good business to grow right. And these Rules help grow right.

New Jersey's three largest industries are water reliant: pharmaceuticals, food processing, and tourism. Anheuser-Busch is in Newark because of the clean and plentiful water supply in New Jersey. And these Rules help sustain that.

In the testimony that the Pinelands Preservation Alliance will be submitting, Carleton Montgomery writes, "Barnegat Bay is dying. It is people who are killing it." And we have the science to back it up. It is because of how we have developed in Ocean County that Barnegat Bay is in the sorry state that it is. Without stronger rules like this, that will get worse. And what is the economic cost if we lose Barnegat Bay or if it becomes a glorified sewer retention basin, which it is on a path to become?

That includes what is of value to our crabbing, clam, shellfish industries. New Jersey used to be a leader in oysters, and they are no more, because of crashes. So there are many economic factors that need to be looked at here, not just whether a builder on a hundred acres is getting premium return on the investment that they made.

In the movie *Field of Dreams*, Kevin Costner says, “If you build it, they will come.” And that’s the same with sewers. Just like roads, they determine how much growth occurs and where it will occur. These Rules are the sixth effort in 20 years to update these sewer plants. The first five all failed. The first was never even proposed. The four were so horrible that the environmental community and many others -- and sometimes in league with the builders -- opposed them. And we finally have these Rules before us. They’re far from perfect, but they are a significant step in the right direction. They’re moderate, they’re balanced. Several of the pieces are quite reasonable. We’re starting to look at developments on septic when it’s six or more units, as opposed to the past where there was 50 or more; to strengthen the standard for nitrates, which is a fancy name for where we go number two, so that the standards are much stronger to protect human health as well as the environment; and to remove environmentally sensitive lands from overdevelopment on sewers.

There are several provisions in the Rules that aren’t strong enough, or actually weaken standards. Looking at watersheds at a HUC 11, which is a much larger scale than at a HUC 14, the Rules omit absolutely critical data in terms of what is an environmentally sensitive property, where recharge areas are, where our surface water intakes are, wellhead protection areas, contiguous forest. All of this data is not in the Rules. So to suggest that these Rules go too far is a hyperbole at best.

The same flaws that (indiscernible) lack when we talk about the State Plan -- the State Plan is even more flawed than these Rules, because they lack that kind of key data. So these Rules were 20 years in the making. It’s the sixth effort. To suggest that we need to wait or slow down

to get it right-- How long do we need to wait? How slow? When we're entirely built out and it's after the fact? Business as usual in the sewer business is killing the state. And it would be -- and killing irreplaceable treasures like the Barnegat Bay.

So we urge the Committee to provide the political support to the DEP, to make these Rules a reality, to strengthen them over time, to ensure that we develop in the right places, and to give the DEP the courage to not permit the kinds of delays they're already permitting. They've acknowledged there are huge flaws, and they're already delaying their own Rules. So we would respectfully urge the Committee to give the DEP the political cover they need, as well as the resources. DEP, in the last few years, has been cut by 30 percent. That's on top of the Whitman cuts. And they're being asked to do more and more.

So with that, I thank you for the opportunity to testify, and look forward to working with you on this issue.

SENATOR SARLO: Thank you, David.

Thank you to the panel.

I just want to-- Back when we did meet 13 months ago, this Committee -- not that it was binding -- but we did find that these Rules, the Water Quality Management Rules, did fall within the intent of the Federal Clean Water Act. We did find that back then and still believe that today.

However, one of the reasons we're here today is, we're taking this Committee a step further. We're kind of hearing a little bit about the implementation and the process. And I think the Committee did find that, yes, this was the intent of the Federal Clean Water Act. And if the

Legislature felt it wasn't the intent, there would be some type of resolution to try to overturn these Rules. That's not happened.

But I think there is some concern with the implementation and the process, to make sure we're striking a balance. And I think that's the key word here, to make sure we're striking a balance. We all agree we need good water quality. I hear you loud and clear about Barnegat Bay. It upsets me to know about the Barnegat Bay. Having something down the shore and being on the Barnegat Bay often, it does upset me to know of the environmental conditions of the Barnegat Bay. So I just want to make it clear here: We're not questioning the intent here, but we're concerned about the process and the implementation.

A question I have is: From the environmental community, do you believe if we had more site-specific information, it would make these Rules better?

MR. TITTEL: I think it can. Because, again, I think the more information we have, the better the transparency. One of the reasons we think these Rules are a step in the right direction is because, right now, it's a piecemeal approach where people come in-- Because plans are out-of-date, everybody has to come in for an amendment to try to move a line a few feet one way or the other for a project. So the better the data we have, I think the better you can make decisions. So absolutely.

I mean, part of the problem we have is, we have limited resources. I'd like to see, as part of this whole planning process, more public involvement. But the problem is, DEP doesn't even have the staff for it. Just like when someone mentioned we should mail to everybody-- If we mail to all the property owners, there would be no money for anything

else in DEP. I mean, that's one of the problems we're facing right now -- that DEP doesn't always have the access to the data because they don't have the money. It takes them a number of years to take their flyovers and to digitize them.

SENATOR SARLO: But you do agree that people should be notified?

MR. TITTEL: I do. But how do we do it in a way -- when we don't have the resources? I mean, that's what you have to look at -- is that balance of-- And part of the reason it may take longer to get some of the plans approved is they don't have enough staff. Because the average person in land use, for instance, has to handle 40 applications at one time. DEP has had bare-bones budgets for a long time. They've now had a series of cuts. So the resources aren't there. I mean, I wish we had the money we had back during the Water Quality Planning days, when they were throwing money all over the place, so that we could actually do a better job and give more input into the process. Absolutely.

SENATOR SARLO: Do you have concerns that these Rules will lead to more suburban sprawl, more septic?

MR. TITTEL: I actually think that septic that are properly installed in rural areas do a much better job than sewers. And I'll use Lake Hopatcong as an example, because you've seen all of the stories about not having water. Two million gallons a day out of that watershed gets removed because of the sewer system, and dumped downstream. And so that's robbing that watershed, which is a relatively small watershed, of water.

In the rural areas, having large-lot zoning is the only way you can go. Because if you run sewer lines in there, instead of getting large-lot

sprawl, you're going to get high-density sprawl, which is going to have bigger water quality impacts. What we really need is to have a better system of transferring development from those rural areas into urban and growth areas, and to have a better program in place to buy some of those environmentally sensitive lands to limit development in those areas.

One thing I just wanted to follow up with is -- because one of the concerns I've heard-- We don't want to see COAH plans drive water quality planning. It should be the other way around. Sites for affordable housing should be based on the best site where you have the availability for infrastructure, you have available water and sewer, not to put them in the middle of nowhere and create a sprawl zone out in the middle of nowhere, like a Windy Acres or something like that.

SENATOR SARLO: David, did you want to answer that?

MR. PRINGLE: I just wanted to go back to the -- can we use more site-specific information? We can't know enough. But not knowing enough can't be an excuse for delay. These Rules should have been in place 15 years ago. So we can continue striving to learn more, but we have to push forward fast, and we can continue to refine the process as it moves forward.

MS. FAIR: I'd like to also comment on that. It seems to me that including the municipality is very essential. The basis for the Wastewater Management Plan is local planning and zoning. Local planning has a much better opportunity to, in fact, identify more site-specific data than the State does. I think it would be just too resource-intensive to say the State has to go to more site-specific information.

This (indiscernible) process, unfortunately, does take time. But that's the way it has to work to be economically feasible, in my opinion.

MR. PRINGLE: You can always build later. It's much harder to unbuild later. So we kind of follow the Hippocratic oath of--

SENATOR SARLO: Anyone on the panel, do you believe there is a conflict between what COAH and various overlays have been approved, with regard to the restriction?

MR. PRINGLE: COAH has a conflict with everything.  
(laughter)

MR. TITTEL: I mean, some of the worst projects-- I'll use the example, again in Hunterdon County, of Clinton Township and Union Township out there. These are areas next to reservoirs. And they were environmentally sensitive areas, CI streams. And yet Windy Acres becomes a COAH site, 900 units on top of a trout stream. They could never get a sewer plant there. It just doesn't make sense.

SENATOR SARLO: I'm not sure -- I haven't seen any mapping -- but I can guarantee you there's vacant land on there that COAH's assuming is going to be available for affordable housing.

MR. TITTEL: Right. And it's not.

SENATOR SARLO: And DEP is coming along on the other side -- is taking that same parcel of land, and taking it outside of a sewer service area.

MR. TITTEL: There is a piece of property in Washington Valley, Morris County, which was a COAH site. The County wanted it for a jail. The County planning department wanted to buy it for open space.

DOT wanted to put a garage on it for Route 24. So you had basically four different agencies fighting over the same piece of property.

SENATOR SARLO: Well, thank you. Thank you, the three of you, for being here.

And I just want to acknowledge what David said. There have been various other environmental groups that have submitted testimony. Their testimony will be compiled as part of the transcript.

I also want to acknowledge -- just acknowledge that they have provided written testimony -- New Jersey Future has provided written testimony; as well as the Somerset County Planning Board, on how they have been working through this process. And it appears to us that they are kind of ahead of the curve in trying to deal with this issue.

This wraps up our hearing this morning. I want to thank everybody for being here. I do apologize that there are not more members here. But everybody will be provided a transcript.

And, again, I just wanted to acknowledge that this does -- one second folks -- that back on May 1 of last year, this Committee did find that these Rules were within the intent of the Federal Clean Water Act, and we've monitored over the period of the last 13 months. As we sit here today, we hear from stakeholders on both sides of the issue. And there are some areas where these Rules need to be improved and need to be taken a step further, and cleaned up.

Just a few comments I want to finalize and make here. I would hope that we continue an open dialogue between all the stakeholders and the Department. I would urge the DEP not to provide a definitive date at this time until some of these submissions get further along. I would hope

there are no punitive damages to any counties that are currently working on these and trying to comply with these Rules. There has to be a way to notify affected property owners. There has to be a way. In this day and age, we have to find a way. It's kind of unacceptable, I think, to the Legislature that we're not going to notify affected property owners.

I would think the DEP, with the stakeholders, need to rely on more site-specific information data that's out there. Whether it's coming from the counties or other stakeholders in this process, the more data that we can put toward these, the better off we're going to be. And we need to also look at the inconsistencies between what COAH is planning and what the Department is planning, as I said previously. I believe there are probably some conflicts. Vacant pieces of land, where they think affordable housing can be built on, no longer will have a sewer service area. It doesn't make sense for the planning community to go forward with things like this.

And then the final thing I just wanted to mention is-- Well, just one other thing with inconsistencies. It also goes for not just COAH, but the State Plan map where there are inconsistencies between those two.

And then the final thing is, I believe there should be some type of appeals process. In this day and age, taxpaying citizens in New Jersey at least deserve to be heard in an appeals process. The everyday person is paying taxes on the property. Just because he's not been a vocal critique or -- he may support the environment -- I hope everybody in this room supports the environment and supports good water quality -- but they at least deserve the right -- their property is being affected.

I want to thank everybody for their input. All the panels were excellent. And I want to thank you for your input. Hopefully you'll

continue to work together with the Department to make these Rules even better.

**(MEETING CONCLUDED)**