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# Public Hearing

before

## SENATE ENVIRONMENT COMMITTEE ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE

*"Testimony concerning proposed reforms to the  
Department of Environmental Protection's Site Remediation Program"*

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

**DATE:** April 15, 2008  
10:00 a.m.

### **MEMBERS OF COMMITTEES PRESENT:**

Senator Bob Smith, Co-Chair  
Assemblyman John F. McKeon, Co-Chair  
Senator Jeff Van Drew, Co-Vice Chair  
Senator Robert M. Gordon  
Senator Christopher "Kip" Bateman  
Assemblyman Peter J. Barnes III  
Assemblyman Matthew W. Milam  
Assemblywoman Valerie Vainieri Huttle  
Assemblyman John E. Rooney  
Assemblyman Daniel M. Van Pelt



### **ALSO PRESENT:**

Judith L. Horowitz  
Algis P. Matisoska  
Carrie Anne Calvo-Hahn  
Philip R. Gennace  
*Office of Legislative Services  
Committee Aides*

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

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

***Hearing Recorded and Transcribed by  
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Hearing Unit, State House Annex, PO 068, Trenton, New Jersey***

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**SENATOR BOB SMITH (Co-Chair):** Good morning, everyone.

The significance, of course, of today is that if you haven't cast your vote in the school board election, please make sure you do it before 9:00 tonight. If you haven't paid your taxes, you might want to run out of here right now and get those taxes in the mail. And, of course, this is Earth Week.

And it's a pleasure to be co-hosting, with Assemblyman John McKeon, the joint meeting of the Assembly Environment Committee and the Senate Environment Committee. That is something that occurs rarely, when Committees in both Houses meet jointly. But it, I think, emphasizes the importance of the issue that we're going to discuss today.

I have a couple of words about that. But before I do that, I'd like to at least introduce the members from the Senate Environment Committee who are with us today.

We have Senator Bob Gordon. Bob, if you'd raise your hand. We have Senator Jeff Van Drew and Senator "Kip" Bateman. And we may have others, but at the moment, that's our starting point on the Senate side.

Just to put things in perspective a little bit, the environment, I believe, in the last number of years has had a pretty good run. We've been doing some very significant things, whether it's the Highlands legislation, the diesel particulates legislation. We just recently modernized all the environmental enforcement laws of the State of New Jersey in the last session, just established an enhanced recycling program, an electronic waste management program. We've done a lot of good things.

And that being said, what we're going to examine today is as important, and perhaps even more important, than some of the issues that we've already addressed.

Just to put this in historic context, you may remember that about a year ago our Commissioner of the Department of Environmental Protection, Lisa Jackson, came to us and said, "We believe we have a problem with the way in which site remediation is done in this state." She indicated some of the initial ideas that the DEP had. But she then set up a year-long stakeholder program, where there were frequent meetings of the people involved in this particular problem in this industry.

And that process is now over. And I believe today one of the things that we'll start off with is the DEP coming back to us with specific recommendations about how the program should be fixed. Some of the things that we're going to hear today is that we have at least a 20,000-plus backlog of cases and that the DEP believes that it needs our help to reform the process. So we're going to be very interested to see what reforms they're going to suggest.

I think we all in this room know that New Jersey, like the rest of the country, is in economic malaise. And one of the things that I hear both from the DEP and the regulated community is that one of the ways to get New Jersey back into the game economically is to help get these sites cleaned up in an expeditious fashion. We all are committed to the concept of smart growth. Everybody agrees that these are sites, especially the brownfield sites, where they've had a prior use and an opportunity to bring them back into the mainstream of our economic life, and produce good jobs, and industries, etc. At the same time, we have a paramount

responsibility to protect the citizens of the state. We have to make certain that the cleanups are done properly and that our citizens are protected.

Chairman McKeon, and myself, and both parties have been informally discussing this issue. And we've agreed that this is -- we want this to be the focus of our attention over the next number of months. We're hoping by the end of this year to have site remediation reform accomplished. And I can't emphasize enough that both parties are fully engaged in this. The environment should always be bipartisan. We don't have Democrats and Republicans when it comes to the environment. We're all trying to do the right thing by the people of this state.

So I want to-- Before we would start, I want to thank all the people who are participating today, people who have participated over the last year. And we want all that constructive criticism and all the positive suggestions that you can make.

With that, let me turn it over to my Co-Chair, Assemblyman John McKeon.

John.

**ASSEMBLYMAN JOHN F. McKEON (Co-Chair):** Senator Smith, thank you very much.

Chairman, you were kind enough to chronicle some of the things that have happened over the last five years that are so positive for the environment. And I can say with certainty that none of them would have happened without your leadership. And the State owes a great debt of gratitude for your public service.

The truth is, we had this joint meeting because I missed Senator Kip, Senator Bob, and Senator Jeff very much. (laughter)

SENATOR BATEMAN: Thank you.

ASSEMBLYMAN McKEON: It's good to be together. We're getting the band together again.

But I do have some incredible colleagues that are very hardworking on this Committee and in all of their legislative work. And for those of you who don't know: Assemblyman Van Pelt; Assemblyman Rooney, who has been the longest-seated member of the New Jersey Legislature; Assemblyman Milam; Assemblyman Barnes; and I know Assemblywoman Huttle is on her way, and said that we should go ahead and start without her.

Just a couple general thoughts: I want to really talk procedure and ground rules as to what we'll do. Now that we've introduced everyone, I'll defer to staff.

We don't need to take a formal roll, do we? (negative response)

After I finish speaking, I'm going to give each of my elected colleagues an opportunity just to address the general topic before we call our first witness, which will be the Commissioner of DEP. But as it relates to the way that we're going to proceed, we have the traditional sign-up slips. They've all been ordered. And although we're going to give the Commissioner, as well as Assistant Commissioner Kropp, a little extra time in light of -- to get us going, we're going to limit the testimony to 10 minutes per witness. So please keep that in mind. If you have written testimony, we would all much appreciate it. We will make it part of the record. And furthermore, we'll ask that you try to do your best to not read through it, but to summarize that testimony to give that time within that 10 minute ambit for questions.

Senator Smith touched on the thing that's most important to me. This is how government should work. This is our first public meeting, but there have been other meetings that have been included, of course -- professional staff that have included bipartisan representation, both Houses of the Legislature, and members of the administration. When we've vetted some of the issues and potential solutions to them, together and collectively, I'm certain that there's enough integrity, practical sense as it relates to having to do what is right by the economic interest of the state. But always of paramount concern being our environment, as the line in the sand -- that we, together, can come up with a solution to this very significant problem in our state.

Senator? (no response)

With that, I guess we'll start with the Senate. I don't know-- No one has to speak, but Senator Bateman, just because you're first in line-- I don't know if you'd like to say a few words.

SENATOR BATEMAN: Thank you, Mr. Chairman. It is nice to get back together with my former Assembly colleagues.

This is, obviously, a very important issue. And I look forward to the testimony this morning from the professionals, and some suggestions. And I offer my services to co-sponsor any legislation in this regard, because there's nothing more important than the environment in New Jersey.

And I have enjoyed my short tenure here on this Committee. I think there are many more things we could do. And I look forward to working with everyone.

Thank you, Mr. Chairman.

SENATOR GORDON: Thank you, Mr. Chairman.

It's great to be back with you again and see my colleagues from the -- former colleagues from the Assembly.

I do believe that New Jersey is at an economic crossroads now. We can either stagnate and see economic activity wither away; or we can grow, have a vibrant economy, we can accommodate the million new people expected over the next 10 years.

The major impediments to the bright future, I think, first: our fiscal house, which we're attempting to get in order. And the other is our need to reinvest in our older cities and suburbs. And clearly the site remediation process is critical to that. And I think as they are -- as the leadership of the DEP will admit, the system is now broken. These sites are not getting cleaned up, properties are being underutilized, and most importantly we're not dealing with these toxic materials that may pose a risk to our citizens.

What's happening is that the paper is flowing back and forth between consultants and the agency, and nothing is really getting done. And that has to come to an end. I'm hopeful that through this process, these reform efforts we're going to put in place, we can make a major contribution to creating a brighter future for New Jersey.

And I applaud our two Chairs for putting this process in place so that we can achieve those goals. So I'm looking forward to working with you.

Thank you very much.

SENATOR VAN DREW: Thank you, Chairman. It is good to see you again, and of course it's always good to be with my Chair here on the Senate side.

There are two reasons that I asked to be on this Committee. One of them being because I deeply do care about the environment; and obviously, everything we do, the way that we live, the quality of our lives is affected by that. And it's so very important, most especially in a state that's been challenged so much environmentally over the years.

The second reason is because, in order to effectuate that goal, to reach that finish line -- and I've had the pleasure of working with our Commissioner often on many issues that affect my district in the southern part, the southern region of New Jersey -- we need to do so in an effective way, in a relatively rapid way, in a way that the business community can understand, and that the environmental community can think is appropriate and adequate. And quite frankly, I think we need to do better in order to get the job done.

Senator Gordon was so right in what he said. There are two main areas that we need to be focused on. One, we have to improve and keep our environment, and make it better. And the second area that we have to focus on is making sure that this economic engine in this State of New Jersey -- I would say, continues to thrive but -- quite frankly, thrives, and is energized, and is incentivized more. We need to create more jobs, we need to create more economic energy, and we need to do that in a clean, and healthful, and environmentally responsible way. I do not believe those two goals are mutually exclusive, and I believe the unique challenge for this Committee, and both of these Committees, is to reach those goals. And if we don't, it is going to be the economy and the working people of the State of New Jersey who are affected.

Thank you, Chairman.

ASSEMBLYMAN McKEON: Thank you, Senator.

Assemblyman Van Pelt.

ASSEMBLYMAN VAN PELT: Thank you, Chairman.

I just wanted to say thank you for the opportunity to listen today. I'm looking forward to hearing some of the testimony.

And being a new member, I've learned quickly that I would like to just yield the balance of my time to Assemblyman Rooney. (laughter)

ASSEMBLYMAN McKEON: We're going to remind everybody on the procedure on the 10-minute time rule.

Assemblyman Rooney.

ASSEMBLYMAN ROONEY: I thank my colleague for yielding the time.

One correction: I'm the longest-serving member in the Assembly. I don't think I'm the longest-serving member in the -- including the Senate.

But I am pleased to be on this Committee. I've been on the Environment Committee since practically the first time I came into the Legislature almost 25 years ago. I served under Maureen Ogden, when she was Chair of the Environment Committee, and I was Vice Chair. And since that time, I've had a role in the Hazardous and Solid Waste Committee, Environment Committee.

And it's interesting, unfortunately, that I have probably the greatest amount of firsthand experience with these cleanup sites. And I say *unfortunately* for the simple reason that it's in my own hometown. My town consists of 4,700 people, 1.2 square miles, and probably is the most contaminated 1.2 square miles, barring a few sites, in the state.

We found, in I think it was 1984, that there was a potentially contaminated site in our town, and eventually we found out what it was. There were over 500 barrels of solvents that were buried on that site -- two-acre site, front half facing the main street in town, the back half was surrounded by woods. And this guy just piled up some barrels on the side, dug some trenches, and put in over 500 barrels of chemicals. And it was deliberate.

You would have said, "Okay. Well, if you found certain chemicals there that he dealt with, that's one thing." But when he added, for a little spice -- to the solvents, he added some PCBs and some other chemicals, you know that he was doing something really illegal. So that one site-- We have a Deluxe Cleaners site.

And then the other thing that's in the Commissioner's paper is about dry cleaning solvents. It just happened, again, in Northvale -- little, bitty town -- one of the largest manufacturers of dry cleaning machinery was in my town. So I got a pretty good education on dry cleaning solvents, and dry cleaning machines, and how they can be harmful, and how you can prevent all that.

I've really been glad to be on this Committee. Because we have the site -- we started cleaning it up probably in 1999, with the 500 barrels. We got the drums out of the ground. And then we're trying to find out where the plume is going.

The solvents that are there -- basically, if they're in air, they dissolve. The problem is, when they're in the ground, they go into the groundwater, and they contaminate wells, etc. Fortunately, in our area of the state, we don't have wells for drinking water. However, a thousand feet

from this site is Rockland County, New York, and they have over 800 wells in Rockland County. And that plume has been going toward that site since 1968 -- the nearest we could figure. So it's really important that we work within the state, and also with our neighboring state, to help this.

I am really glad that Commissioner Jackson and Assistant Commissioner Kropp have finally gotten to the point and the problems of site remediation. Because I can tell you all of the evils that we have gotten through. One of the most critical, as far as I'm concerned -- and I've stressed this at our regular meetings -- is the fact that you can't hire politically connected firms to do clean-up work. You have to hire professional firms. They have to be qualified.

For the past eight years, we had a firm that was ranked fifth in the world in environmental cleanup. They're the same firm that are cleaning up the Hudson River for GE. They're the same firm that are cleaning up the Ford site in Mahwah. And when I left as Mayor of Northvale a year ago -- a year ago January -- my replacement hired an unqualified firm rated zero in anything. And for the last year, they've screwed up so badly that the DEP, on a small side -- the Deluxe Cleaners side -- the DEP issued a notice of deficiencies, 13 deficiencies. When they were supposed to do vapor intrusion studies for 13 homes, they missed five homes. One of the homes belonged to the town. And the comment was, "We couldn't get access."

This is nonsense. It has to be corrected.

This program -- the site remediation program has to be changed to get professionally qualified people to get in there and do this cleanup.

We can't play politics as usual. We can't use pay to play. That has to be left outside the door when you're talking about the environment.

I'm tired of this in my town, I'm tired of my neighbors and my community being subject to this kind of nonsense. We want to basically clean up the environment, we want to protect our citizens, and we want to do something about changing the reputation of New Jersey of being one of the most polluted states. The Garden State is no longer the Garden State, as far as we're concerned -- what we're seeing.

So again, I'm very positive about the changes. I thank the Commissioner, the Assistant Commissioner, the Committee Chairs. And I really want to work hard to make the changes necessary to protect our citizens.

Thank you.

ASSEMBLYMAN McKEON: Thank you, Assemblyman.

Assemblywoman Vainieri Huttle.

ASSEMBLYWOMAN VAINIERI HUTTLE: Thank you.

I don't know if I should yield my time.

But you took enough time, Assemblyman Rooney.

Thank you.

ASSEMBLYMAN ROONEY: I didn't take 10 minutes.

(laughter)

ASSEMBLYWOMAN VAINIERI HUTTLE: First of all, thank you Chairman Smith and Chairman McKeon for holding this important meeting today.

I think we're all stakeholders, whether we sit on this Environment Committee or not. Each one of us that lives in the State of New Jersey are stakeholders to protect the environment.

Last year, we had the climate change -- the Global Warming Response Act. And now we need the DEP to enforce that and help us implement that great global act.

I sat on the Highlands Commission -- the task force -- so I understand -- even though coming from Bergen County, we are all subject to the drinking water coming from the Highlands -- to protect those areas.

I also understand that we need affordable housing. And we need -- we have many challenges when we want to build in those sensitive areas. We need to balance that.

But I think today -- I think what we're focused on, that we heard, also is the backlogs for the remediation sites. And I think we really need to find remedies, and incentives, and efficiencies for that. Because they're the challenges today that -- although I just heard another school in Paramus with a toxic site now. It's a playground area. With those toxic sites in Bergen County, and with the waiting and the backlogs of getting case managers out to look at these sites, we also need to balance that with getting the business community, also, so they don't wait. So I know there are many challenges. We need to balance the business community and the sites to provide incentives to hopefully make this more efficient.

So I look forward to working with the DEP and hoping that we'll find some solutions, and remedies, and incentives to make this state the Garden State that it was named to be. So I appreciate being here and look forward to working with each and every one of us.

Thank you.

ASSEMBLYMAN McKEON: Thank you, Assemblywoman.  
Assemblyman Milam.

ASSEMBLYMAN MILAM: Thank you, Chairman McKeon.  
Just for the record, I'm going to teach you the pronunciation of  
my name.

ASSEMBLYMAN McKEON: Oh, my. (laughter)

ASSEMBLYMAN MILAM: Before '09 I promise I'm going to  
do that.

It's Milam. (indicating pronunciation)

ASSEMBLYMAN McKEON: Milam. (indicating  
pronunciation)

ASSEMBLYMAN MILAM: It sounds nothing like it looks. It's  
okay. But I'm going to just keep correcting you, if that's okay.

ASSEMBLYMAN McKEON: I was going to say Matt, but I'm  
just getting to know you. (laughter)

ASSEMBLYMAN MILAM: Matt's fine, too. I will answer to  
that, as well.

Thank you, Chairmen Smith and McKeon, for seeing -- having  
the insight to put this together. It's very important.

I look forward to hearing the testimony, learning about what's  
been going on, and then working with the DEP to give the tools that they  
need to get this taken care of right away. It needs to be. It's a very  
important issue.

There are a lot of issues that are going on with the state. But  
this sounds like it needs to be the start of the issue to get more economic

things going. And I do look forward to serving on this Committee and being part of the process to get this thing moving.

Thank you.

ASSEMBLYMAN McKEON: Thank you, Assemblyman.

Assemblyman Barnes.

ASSEMBLYMAN BARNES: Yes, Mr. Chairman.

Do me a favor please. Do not allow Mr. Van Pelt to yield any more time to Mr. Rooney. (laughter)

ASSEMBLYMAN ROONEY: Your father wouldn't have said that. (laughter)

ASSEMBLYMAN BARNES: I'm only kidding.

It's a pleasure to be here. I agree with Mr. Rooney's sentiments very much. We can't forget our history here in New Jersey in some of the environmental problems that we've had. I realize that we need to balance the interests of the economy, but we can't forget -- and I respectfully say it -- a-not-so-proud tradition. And I think we need site remediation reform. And it's a pleasure to be here with my colleagues in the Senate and the Assembly to learn more about the issues.

ASSEMBLYMAN McKEON: Again, thanks to all the elected officials for being so diligent and giving us this extra time.

And I believe, with no further ado, we're going to invite Commissioner Lisa Jackson, along with Irene Kropp, the Assistant Commissioner as it relates to site remediation, to come--

I note in the back the very new Deputy Commissioner Jennifer Godoski -- has just been named, replacing Adam Zellner as-- I don't know if that's good, bad, or indifferent.

But congratulations to you, and we'll all look forward to working with you.

Commissioner.

**COMMISSIONER LISA P. JACKSON:** Thank you.

Thank you, Mr. Chairmen, thank you members of the Committee, for allowing me the opportunity to spend just a few minutes.

I will also yield most of my time so that you can hear the substance of the recommendations this morning, rather than my overview.

And thank you for recognizing Deputy Commissioner Jennifer Godoski. Today is her very first day, and we're excited to have her in the Department.

Today, for me, is really about promises made and promises kept. I did promise this Committee, back in October of 2006, that we would take a comprehensive look at our site clean-up program, that we would find a way to sift through all the good -- and there is good in that program -- and the bad, and maybe a little bit of ugly, to try to make recommendations that we felt represented the best thinking on the issue of what a site clean-up program should look like as we enter this new millennium.

Our Site Program at the DEP is decades old, and so we have benefit of experience, and maybe a little bit of the curse of that same experience and a belief that doing things the same way will make things change.

There are promises that have been made here, not just to this Committee but, I feel, to the Governor, as well, who has challenged each of the cabinet members to find a way to serve the citizens of the state and the

varied interests of the state in very, very tough budget times. And so I think the proposals you will hear today are all about trying to become efficient; as well as continuing to do business and making sure that, above and beyond all, we protect human health and the environment, which is our goal at the Department of Environmental Protection.

It's also promises made to mayors and towns all over our city -- towns all over our state, and cities all over our state, and to business people, and to the environmental community, and to any number of stakeholders, all of whom have been involved in the process that led to today's recommendations.

There's also one other kind of promise I'd like to bring up, and that's the promise that's in the kinds of pictures that dot the halls of the DEP. On our good days, we take a minute to look at them. And that picture (indicating) is of a *site*, as we call it, in Butler, Morris County. And the before picture clearly is a sight to see, and that's what we work on. But the after picture is a community. That's a mixed-use development, residential, commercial, streetscape. It's what we are all aiming for. And so that's the promise that I hope these recommendations will keep in front of us, as well. Because that is the goal and the vision for what a site clean-up program should be.

I heard Assemblyman -- Senator -- I'm so sorry -- Senator Gordon say that the program is broken. And I will soften that just a bit to say that some things work well. But as I said before, I really believe that there is a curse in doing the same thing over and over, and expecting a different result with, quite frankly, fewer and fewer resources that can be used to patch problems as they come along.

You did hear already this morning that when I was here a year-and-a-half ago, we had 16,000 sites. We are above 20,000 sites now. And the Assistant Commissioner Irene Kropp, who I will introduce in a second, will take you through how that happens in her program.

What's important is that this set of recommendations is stakeholder-driven. I call it *organic*, kind of homegrown. We like those terms at the DEP, but they mean something here. Because I think for transformational change in a program, for Assemblyman Rooney to feel at the end of the day that something will happen different than is happening now, the entire program and all stakeholders have to have been involved in that discussion. And I welcome and thank you for your support of that kind of discussion as well.

I think the recommendations you will hear increase accountability, increase enforceability, increase the potential for economic growth in programs that-- Our brownfield program, for example, gives away hundreds of millions of dollars in grants and loans in order to stimulate economic growth -- everything from clean-up jobs, which are, after all, green-collar jobs; to the jobs that come once a community has been transformed by a cleanup. And so I think -- and I'm excited by all those things as well.

The last thing I'll ask is that this Committee listen to the recommendations, and obviously to the criticism. And the democratic process says we have to listen to people who like and don't like what we come up with. And then you have the job of weighing all that and, I hope, assisting us in making the legislative changes that will be needed to transform this program.

In doing that, I ask that you just ask yourself one thing, because we've done this for 18 months -- actually, the Assistant Commissioner has done much more of it than me -- and that's to ask what's real versus what's rhetoric. If someone believes that there's a better way, we're all ears to hear it. But I ask you to also remember that the good old days are gone, the days when this was a young program where we were excited by the idea of cleaning up a couple thousand sites are gone. And now we have a program where we are requested daily by communities all over this state to make a difference, to move something forward, and to ensure that their health is not being compromised at the same time. And that 2,000 sites has morphed into 20,000 sites. And that's the reality that we face with resources that are not going to increase, at least not in my mind, in this budget climate.

One last caveat: Doing something fast doesn't mean you do it worse. Doing something fast and carefully, with the appropriate amount of checks and balances -- which I feel sure this Committee could help ensure -- means that work will happen, and that a cleanup actually takes place, because this is about enabling cleanups. And that, in and of itself, I think is a very good thing.

I have become fond of saying we should not let the perfect become the enemy of good. There is much good in the recommendations that you will hear. And there may even be some perfection in places. I'll leave that to you to find and to create.

So thank you.

With that, I'll turn it over to the Assistant Commissioner for Site Remediation Programs, Irene Kropp. Irene's been in the Department for--

**ASSISTANT COMMISSIONER IRENE S. KROPP:**  
Twenty-five.

**COMMISSIONER JACKSON:** --25 years. She's worked in just about every area and, most recently, was head of our management and budget group before I begged her to move over to site remediation.

**ASSISTANT COMMISSIONER KROPP:** Good morning, everybody.

I'm going to go through the major recommendations that are cited in the testimony today. There are some other recommendations, legislative reforms, that the Commissioner and I are supporting that I won't go into because they're smaller, less detailed, less meaty. But they will be posted on our Web site later today so everyone can see those. And I'll be glad to send copies of those recommendations to the Chairs of the Committees.

I also wanted to say that the recommendations that we're supporting today are not contained in the white papers that the stakeholder group put together. The issues are contained in our stakeholder white papers; the recommendations are those of the Department. They don't represent necessarily the recommendations of the stakeholder groups.

I also want to say that we have not fleshed out all the details of these recommendations. There's a lot of work that has yet to be done with the staff from OLS and the Committee members so that we can come up with a comprehensive package that's acceptable to everyone.

The first thing that I'm going to talk about, which is the keystone of our legislative reform, is licensing environmental consultants. As the Commissioner noted when we spoke in front of -- or when the Commissioner spoke in 2006 in front of the Senate Environment Committee, there were 16,000 cases in the Department. There is now over 20,000 cases. We have a chart that is basically showing new cases as they come into the Department and the number of NFAs, or no further action, letters that we issue each year. No further action letters primarily are when a case is closed, although no further action letters can be issued for just a piece of a site also.

So there is a growing gap between the number of new cases and the number of cases that have closed out. The majority of the cases that are coming into the Department now, in addition to daycare cases that are the result of the Kiddie Kollege legislation, are transactional cases. They're cases that are in need of a no further action letter or a remedial action work plan approval from the Department, not necessarily because it's legislated, but because financial institutions, environmental insurance companies, mortgage companies are requiring homeowners and businesses to get no further action letters and remedial action work plans from the Department.

We often get requests from everyone in the State of New Jersey -- from mayors, local community leaders, environmentalists, legislators -- to expedite a lot of the transactional cases, because there are financial deadlines associated with those cases. We like to do that, we try to do that. We cannot prioritize every redevelopment site in this way.

And two problems result from this growing transactional impact to the Department. The problems are: Number one, there are a lot of cases

out there that have more serious environmental concerns that we're not getting to. And, number two, there are really good economic redevelopment projects that we're not getting to, which is a problem for municipalities because those sites remain off the tax rolls.

So we're recommending a two-pronged approach to handle this problem: the growing case load and the need to move cases through the system for environmental and economic purposes. The two-pronged approach is: number one, dealing with our current business practices. We are looking at how we are handling the review of cases and documents that come into the Department. We are trying to streamline that process. We have done that in the case of homeowner heating oil tanks and soils-only cases. They come into the Department and go through more of a checklist review, because they are low-risk, smaller cases.

The other thing that we're recommending today -- again, this is going to require legislation and is a keystone of moving forward -- is licensing environmental consultants.

The state of Massachusetts has a Licensed Site Professional Program, which I'll talk about briefly. That is one of the programs that we looked at in deciding how we wanted to move forward. There are quite a few other states that also license site professionals.

Our plan is to license site professionals so that they can be held more accountable -- environmental consultants -- for the work that they provide to the Department so that we can, for the first time ever, actually take enforcement action against a consultant for the product or lack of compliance with regulations. And we would still -- the Department -- be

responsible for all the inherently governmental functions, which is not what the Massachusetts program does.

We would issue all no further action letters. We heard from the financial institutions that they would prefer that that be a final agency action and not something handled by licensed professionals. We would review all cases, especially receptor evaluations and off-site contaminant migration impacts. We would audit cases based on the potential risks. And we, more importantly, would expand our current oversight for cases that are the worst cases, cases where there are serious environmental impacts or cases where the responsible parties are recalcitrant.

So we would require legislative reforms to impose strict requirements on licensed consultants. We would develop a tiered approach to review cases, where lower-risk cases would get less of a review than the higher-risk cases. We would adopt a new enforcement program that would enable us to revoke or suspend the license of any consultant that did not adhere to a strict code of ethics. And we would issue a penalty to consultants who did not perform in accordance with our regulations.

The primary goal here is to loosen the reigns between the consultants and those who pay them, and to hold individuals truly accountable for the quality of the remediation that they perform.

One of the things that you're going to hear today -- or two or three of the things you'll hear today is that this is a privatization program. We don't think so. There is enough work for the rest of the folks in the Site Remediation Program in auditing, enforcement, site assessment, inspections, doing the reviews, etc., that there should be no impact to union employees. You'll also hear that the Massachusetts Licensed Site

Professional Program is not very effective. We disagree with that, but we still chose not to adopt it in its entirety.

Some very basic information from the Assistant Commissioner of the Massachusetts DEP-- And let me say that Commissioner Jackson and I flew to Boston about a year ago to meet with them and get information. And we've been talking to them since then. But when Massachusetts first adopted the program -- before they adopted the program, about a hundred to 200 cases went through their system annually. Right now, 2,000 to 2,500 cases go through the system annually. But most importantly, the majority of those cases go from notification to cleanup within one year, which is pretty remarkable.

Last year, Massachusetts screened -- did audit screenings on 2,600 cases, which is primarily all the cases that came into the system. They performed field audits, so they actually went out to the site to investigate sites when they thought there might be a concern for 325 of those cases. And for 160 of the 2,600 cases, they performed more comprehensive audits, which is similar to what we were talking about with an expanded oversight program.

So 5 percent of the overall caseload that came through the system needed to have a comprehensive audit and required additional either sampling or documentation. That's only 5 percent of the overall universe. And most importantly, only 10 of the final decisions that were rendered by the LSPs needed to be reopened for additional work because the environmental decisions were not correct. So that's less than 1 percent of the cases that went through the system annually.

Another key aspect to legislative reform that we are going to be requesting is remedy selection. In the past, when the Industrial Site Recovery Act was amended, the ability for the Department to select a remedy was reduced so that we could only overrule a remedy selection when we found the selection to be unprotective. We don't think that's good enough, especially in the case right now for residential uses, schools, and educational facilities. And with regards to residential -- specifically those residential uses where there are single-family homes on contaminated sites, because often there's not a homeowners association to deal with any institutional and engineering controls; and also residential developments on landfills.

In addition, we think that remedy selection should be afforded to the Department when a remedy is going to be protracted a very, very long time; or somebody's coming in with an innovative remedy for treatment that doesn't work, and they keep recommending more, and more, and more treatment so the cleanup is -- takes a lot longer than need be.

And then lastly, there are situations where remedies have been approved that rendered pieces of property in municipalities just totally unusable. They have been entombed, they're a landfill that's 30-feet high covered with concrete, etc. In instances like that, we think the Department, in consultation with the municipality, should be able to overrule a remedy.

One of the things that was discussed extensively in the stakeholder sessions was the use of permanent remedies. Right now, the statutes reflect a preference for permanent remedies. And a lot of individuals would prefer that -- especially in the situation where there is educational child care uses, residential uses, or overburdened communities

-- that all remedies be to a permanent standard. We don't believe that that is feasible for a variety of reasons, but we understand the request and the need.

What we are offering as an alternative is establishing presumptive or more enhanced protection remedies for certain types of sensitive uses such as new schools and child care facilities, providing financial incentives for permanent remedies -- which I'll talk about in a couple seconds -- strengthening the effectiveness of the institutional and engineering controls by establishing a new permit program. The DEP undertook a huge enforcement initiative this past year, which evaluated the use of the existing engineering and institutional control programs that we have in place. And we found that there was over 80 percent noncompliance. And we're getting people back into compliance, cleaning up the fact that a lot of current property owners do not understand that they bought or are living on property where there were institutional and engineering controls. So we're recommending a permitting program. And the permit would travel with the transaction of the property so that people have a better understanding of what they're purchasing.

We are also talking about integrating this with the one-call system that BPU currently runs. And we would like to establish mandatory time frames for completion of remedial investigations and remedial actions so cases cannot languish in the Department for 15, 20, 30 years.

With regard to finality, one of the major issues discussed in the stakeholder meetings raised by the business community was the fact that the Department does not provide for finality as part of the clean-up process. We believe that we might have the ability to do that using an existing fund,

the Remediation Guarantee Fund, that was set up a couple of years ago but never used. Originally, the fund was set up so that when responsible parties who were required by legislation to establish financial assurances do not clean up their property, this fund could be tapped to clean up the property. Right now, we have the ability to go after those financial assurances. The fund was never truly used, but the \$5 million is still out there in reserve.

Also right now, under current legislation, 1 percent surcharges are capped annually to those financial assurances. And that 1 percent surcharge goes to the HDSRF fund, the fund used for brownfield development. What we're recommending is the 1 percent surcharge be taken off and put into the Remediation Guarantee Fund. We're also recommending that we limit the use, or eliminate the use, of self-guarantees. That's the mechanism that a lot of the larger corporate companies like to use for guaranteeing financial assurances. A lot of smaller folks use credit surety bonds, etc. So if we limit the use of self-guarantees, expand the universe of the individuals that pay that 1 percent surcharge, about \$14 million a year would be generated by the companies again and the individuals that we require to put up financial assurances. That money would go into the self-guarantee fund for two purposes: to incentivize permanent remedies, and to protect against remedy failure and order of magnitude changes in our standards when no RP exists. So if you clean up to a permanent remedy, you can walk away from the site and know that this fund would be there if there's a change in order of magnitude or if there's a change in use of this site. And if you are a homeowners association, or somebody who now owns property where there is no RP

available, this fund would be able to be used for order of magnitude changes and remedy failure when an institutional control is used.

One of the other things that's really important, as the Commissioner talked about economic redevelopment and revitalization for New Jersey, is brownfield redevelopment. One impediment that we have found to developers taking on the responsibility to clean up sites is the fact that they are still, under current legislation, liable for any off-site contamination. So if there's a piece of property that they're interested in, but groundwater contamination has moved to neighboring properties or soil sediment contamination exists in the river adjacent to the property, when they knowingly purchase that property -- knowing that there is contamination, there is still (indiscernible) liability associated with off-site contamination as well as on-site contamination.

We're recommending that we do away with their off-site liability responsibilities. We, the Department, would aggressively pursue the original responsible discharger for that off-site contamination. When there is no responsible party available, we would use public funds to do that additional cleanup so that the developer is not responsible for any contamination that is off the original piece of property that they're trying to purchase.

One of the things that we are recommending with regards to notification to locals -- and we do believe that there is still a gap between what goes on in a municipality, what the Department knows, and what the local officials know -- is expanding the Kiddie Kollege bill so that in addition to dealing with notification to locals for child care and for schools, there is notification to municipal officials and the prohibition for issuing a

construction permit or a certificate of occupancy when a piece of property is being -- has a change of use from industrial/commercial to residential. To this day still -- in the last week or so we heard of a site that was an old ISRA site -- was going through the process. But the developer moved forward and developed the site with residential development prior to getting approvals from the Department. That means that the local officials issued construction permits. And since it was two weeks until the opening, I'm sure the certificates of occupancy were also issued. So we need to close that gap and make sure that the locals get notified any time there is a development that's going to residential that was previously either a contaminated site or was an industrial/commercial use.

Additionally, we are asking that even if a site has an NFA in the past, but the use is changing to school, child care, or residential, that the site undergo a preliminary assessment in site investigation. There is a large number of the general public, development community that don't understand what a conditional NFA is. So a site can have an NFA from the Department that's a conditional NFA. There could be contamination on the site, there could be ongoing commitments to monitor, to notify subsequent property owners. People don't understand that. They don't understand exactly what they're purchasing. So we're saying they should come back in the system any time you're developing a property that's going to residential use.

Underground storage tanks: Currently, the Department processes between 4,000 and 5,000 homeowner heating oil tank cases every year. This is a problem that doesn't seem to be going away. This is a problem that we don't want to pass on to grandchildren and children. So

what we're recommending -- even though there is a strong preference for above-ground tanks in the current UST Grant program for homeowners -- is, we're proposing a ban on all new underground storage tanks for homeowners. If there are local ordinances or technical reasons why there cannot be an above-ground storage tank -- maybe because of shallow bedrock, etc. -- then we would recommend that there be secondary containment mandatory for that. EDA currently gives out grants for non-leaky tanks. We could increase those grants by \$1,000, from \$3,000 to \$4,000, to cover the cost of secondary containment. And the Department currently gives out grants to replace leaking tanks.

There are some other recommendations I'm not going to go into -- because I don't understand them that well (laughter) -- that deal with regulated tanks and making sure that the State regulations are consistent with the Federal Policy Act.

And then lastly, I just wanted to touch on dry cleaners. As Assemblyman Rooney noted, dry cleaners are a huge problem. The perchloroethylene that is used as a solvent is highly mobile. It travels very far. We have a lot of cases in the Department -- but less than we would expect, which means there are a lot of time bombs out there -- where cases have impacted private wells, and there's serious vapor intrusion problems, where the vapors from the dry cleaners, as part of the remediation -- I'm not talking about the air permitting stuff right now -- as part of discharges to groundwater, are impacting residents, commercial developments, etc.

One of the real serious problems is, a lot of dry cleaners -- especially in our urban areas -- are colocated with commercial facilities. They could be restaurants, pizza places, children's Gymborees, etc., as well

as residential developments. There's a lot of places where there are apartments right above dry cleaners. We think that there needs to be a dry cleaner program established -- a lot of other states have already done this -- where there is a fund specifically set up for dry cleaner remediation. The dry cleaners who are the owners of the property, but very rarely the original discharger, can use this money for grants and loans to do actual remediations. They're small businesses for the most part. There's not a lot of money out there. These remediations are complex, especially if there's bedrock involved. So this would be a way to help them do remediations that are protective -- not just the waters of the state, but the individuals that live in and around the dry cleaner facilities.

So in closing, there are a couple other legislative reforms that we are supporting that are smaller. They're cleaning up the statutes, they're strengthening our enforcement program, they're expanding the use of the HDSRF fund -- in particular to day care facilities, because we currently give them about \$1,500 grants. We want to up that money to help them get through the remediation process. As I stated, those reforms will be on the Web site later today.

And with that, any questions?

ASSEMBLYMAN McKEON: Thank you, Senator.

I just have one or two, just first, and then we'll open it up to our colleagues, starting with Senator Smith.

As it relates to the absolute worst case, or the category that we're looking to separate -- without specific details of that, just basically what you might have in your mind -- how many of those 20,000 cases

would fall in the category of those that could be dealt with through the new process?

ASSISTANT COMMISSIONER KROPP: Two things: first is, we would require anyone who works on the remediation of a site in New Jersey to be licensed. So everybody who is doing work would have to be licensed. The cases that we think would fall out -- there's about 4,000 to 5,000 cases right now that are homeowner heating oil tanks, that are currently handled by certified contractors. So they are kind of off the plate but being worked on right now. About a thousand or so cases, we think, should be in the expanded enforcement program. So we would have direct oversight and expanded oversight. So that would leave about 14,000 right in the middle, from the lower-level to some complex cases, where we would vary our degree of review on those cases. Lower-level cases, we would do checklists or checklists-plus. The higher-level cases, we would do more of a review, but not the degree of review that we're doing today. So about 14,000 cases, we're hoping, would get into the system relatively quickly.

ASSEMBLYMAN McKEON: Okay. Thank you very much.

Another thing that I think bears repeating, for some of us who weren't at the initial meeting that we had, are the challenges of DEP -- particularly your unit -- as it relates to OPRA requests. I think we all understand how important it is to have transparency and have materials available to the public. But has your experience been -- I don't want to put words in your mouth -- that it's being somewhat misused as it relates to not public interest groups or citizens, but through attorneys who are using DEP through their due diligence?

ASSISTANT COMMISSIONER KROPP: Right. The Department of Environmental Protection receives approximately 60 to 65 percent of all the OPRA requests that are received annually for the State. The Site Remediation Program receives 85 percent of those OPRA requests. So there are thousands of OPRA requests that come into the Department every year. For the Site Remediation Program, what that means is, very, very often, as a case manager is working on a case, virtually every file that they have, that they're supposed to be working on, has to be sequestered, pulled aside, redacted, held so that somebody can come in and go through those files. So they lose their working materials, on any given day, for weeks at a time.

The problem is that it impacts not just the OPRA Office staff, which currently is housed in Site Remediation; we have to employ a lot of temps to actually run around, go retrieve boxes from warehouses, pull documents, etc. But the case managers actually have to take time from doing site remediation work to do OPRA reviews of cases and cases of documents. We don't have *a* document per case -- per project, we have boxes and boxes that may go back five, 10, 15 years. So the majority of the people who make these requests are attorney offices and consultants, people who are either looking for business or are doing their due diligence through the OPRA process. So the resources that the Department puts into this is to help a lot of private entities.

ASSEMBLYMAN McKEON: Would it be fair to say that it's about 25 percent of staff time that is spent on dealing with OPRA requests?

ASSISTANT COMMISSIONER KROPP: Well, they might say more. (laughter) Yes, I would say there's at least 15 to 20 percent of

the time spent dealing with OPRA requests, depending upon who you are as a case manager. If you have the really big cases, or the really controversial cases, yes. And a lot of the people who deal with some of the smaller cases -- less so.

ASSEMBLYMAN McKEON: I appreciate that. I think that's just outrageous.

Senator Smith.

SENATOR SMITH: Do you have a solution for that?

ASSISTANT COMMISSIONER KROPP: Legislative reform.

(laughter)

SENATOR SMITH: Which would specifically provide for?

ASSISTANT COMMISSIONER KROPP: I don't think that-- I think the intent of OPRA was to help the general public to access information in government documents. I think that's valid. I think that still needs to be there. I don't think that law firms and consultants who submit multiple requests on a weekly or daily basis should be allowed to abuse the system. I'm not sure how to fix it legislatively, but I think that we could carve that out.

SENATOR SMITH: Okay. It's something we obviously need to work on.

Two questions: one -- and a very controversial, I'm sure, portion of your testimony, is the one in which there's the request that the Department would have the ability to select remedies. Right now we have a situation in which they can meet the 10 in a million -- one in a million standard, in terms of health protection. That's considered to be the line beyond which nobody can cross.

I noticed in your testimony you said that the cases where the Department should have that ability is based on the ultimate use of the property. I was a little surprised at that. I thought it might have been based on the toxicity of the materials. Why did you choose the use of the property as the rationale for the Department opening up the remedy?

ASSISTANT COMMISSIONER KROPP: I think that the Department needs to focus on the exposure pathways for the most sensitive individuals. When you are cleaning up a site, and you're leaving some contamination behind -- regardless of the toxicity -- it's an industrial facility, and there's two feet of concrete -- that's very different than when you allow a facility to be used for child care, schools, or residential, and you do not have the controls that you would more than in an industrial setting.

People who have a two-foot cap in their backyard in a residential situation could go out and plant trees, landscape, build decking, and be going below that two feet of clean fill. So although two feet of clean fill may be protective today, it is not protective, necessarily, over time. So what we will be recommending is, in certain scenarios, a more protective or enhanced remediation. So, for instance, single-family homes -- probably that upper four feet or so of soil in somebody's backyard needs to be clean so that there is no way that they can get to any levels of contamination.

SENATOR SMITH: The second question: on the licensed site professionals. In our formal discussions, we have expressed this concern. And I'm not quite sure how Massachusetts does it. But if the local level -- local governments, frequently, in the land-use process have a process where an applicant for an approval will pay into an escrow fund. That escrow fund will then be used to pay the professional that's been hired by the

municipality, the county, whatever, to review the applicant's application and make sure that the governmental and public interests are protected. Do you envision, if the licensed site professional program went forward, that you would use that same escrow system, or do you envision something else?

ASSISTANT COMMISSIONER KROPP: I envision something else. They do not do that in Massachusetts. Right now, we require financial assurances from the responsible parties -- most responsible parties to ensure that a cleanup gets performed. We're talking about expanding that, maybe using an escrow account for the cases that we would expand our oversight on. But I don't think that oversight of escrow accounts is something that would benefit the remedial process at this time, and would probably take more resources from the State to review, and monitor, and oversee the expenditures in those accounts.

SENATOR SMITH: I understand. But let me put the ethical case before you. I don't think it's a good thing for the applicant for a permit, or even for a clearance of an underground storage tank, to ultimately have the power of the check. Because, ultimately, they say to the engineer or to whoever is doing this work -- that we all agree is competent, and has integrity, and whatever-- But they ultimately have the power of the check. If we don't-- If we're not actually paying them -- we, the State of New Jersey, are not actually the employer, I'm a little worried that the ethical firewall has broken down, that the professional may be subject to some influence or pressure from the applicant in order to get paid.

So I'd appreciate it if you'd rethink that a little bit. All right?

That's my last question, Mr. Chairman.

ASSEMBLYMAN McKEON: Mr. Chairman.

Any of our colleagues, in no particular order.

Senator Gordon.

SENATOR GORDON: Thank you, Mr. Chairman.

I'd like to just commend Commissioner Jackson and Assistant Commissioner Kropp for a very comprehensive presentation. Obviously a lot of work went into this -- into these proposals.

I noticed, however, that there really wasn't any discussion about the standards that are in place for contaminants. Some critics of the existing system have argued that there are currently standards in place that are just unattainable for them. They site, for example, that -- I believe for aquifers -- even for aquifers in areas that are not going to be developed, the standard in place is to create drinkable water. Literally, one would be able to put a straw into the aquifer and drink from it. The critics suggest that if the standards were modified, you would see a lot more development without a commensurate increase in risk to public health. Did you think about changing any of the standards?

ASSISTANT COMMISSIONER KROPP: We did not think about changing any of the standards. Right now, under the Water Pollution Control Act and our Brownfield and Contaminated Sites Act, we are required to establish standards to the 10-to-the-minus-six health risk that are protective of human health, but also protective of the aquifers for the State of New Jersey. We assume that the majority of the aquifers in the State of New Jersey can and may be used for a drinking water supply in the future, even though they are not used for a drinking water supply right now.

One of the discussions we did have dealt with corrective-based remedial actions. In Massachusetts, for instance, the decision to clean up groundwater is based on one of three things: Is there somebody actually drinking the water? And in that case, they clean it up to drinking water standards. Is there an impact to a building for vapor intrusion reasons? And if so, they clean it up to vapor intrusion numbers. Is there an impact to an ecological community? And if so, they're cleaned up to ecological-based standards.

But right now, for the State of New Jersey, we look at ecological, we look at vapor intrusion, we look at drinking water numbers, and we go with the more stringent of those three.

SENATOR SMITH: Assemblyman Rooney.

ASSEMBLYMAN ROONEY: Thank you very much.

Thank you, Irene.

And thank you, Commissioner Jackson.

Basically, we've had a long relationship on these. I had many questions at the former meeting. And I believe Chairman Smith covered one of them about the conflict of interest situation on the licensed site professionals. It does matter. I brought that up at the last meeting. It does matter who is paying you, who is paying that check. And if you have an RP, a responsible party, having to pay the engineer, there's a problem there. He could hold that check up. There could be some shenanigans back and forth. So as Senator Smith said, it's much preferable to have the Department or someone else to pay that engineer. Because he really isn't working for the responsible party, he's working for us. He's the regulator. And that's the important thing.

A couple of the other issues is that in the previous meeting you mentioned the Cleanup Star Program. That's pretty much an abject failure. The Cleanup Star Program isn't working. There are many, many professionals that have gone out, gotten qualified for it, and then sat there with no work. And I hope that when we're talking about the licensed site professional program, it's not going to be another Cleanup Star Program.

It has to be better than it was. It has to be something that we're going to use. We need to have those professionals, we need to have them qualified. And that was the other thing -- about the qualifications. That's one of my big issues -- to make sure they're qualified.

One of the things that you mentioned is the local, back and forth information. One of the worst things that I've ever seen was the Hoboken situation. You know I was deeply involved in that one. The people-- There was the Grand Street artists that moved into a building. It was an old loft building. They actually condoed it off into apartments. They were in the building about a year, and all of a sudden people started getting sick. And it should have been a no-brainer as to why people were getting sick. The building was a mercury vapor lamp division of General Electric. It last was in operation in 1946. It closed down and became a machine shop. And then the owner of the machine shop, who had worked for GE at the time, then decided to condo it off.

There were twin buildings in that same area -- within a few blocks of each other. The one building came up, and the DEP, to its credit, turned it down for habitation by people -- for residences. This building comes up three years later and nothing happened. It wound up being condoed. People got sick. They were pulled out of the building. The

mercury was in the building. And because the building was energy efficient -- closed up -- the heat in the building actually vaporized the mercury, and people were breathing it in. The reason I got involved was a good, personal friend of mine lived in the building with his wife and small child.

So that's the kinds of things that could have been prevented very easily. The city of Hoboken, the county of Hudson, and the DEP all knew what the building was previously, and yet nobody put up a red flag. That has to stop.

And then I see-- I thought that-- When I was Chairman of the Solid and Hazardous Waste Committee I thought that we stopped that, that we prevented that from happening again, and then Kiddie Kollege comes up. It's the same damn thing. If we can't learn by our unfortunate experiences, then we're really stupid.

So these are the kinds of things we've got to prevent.

So that's one of the other things.

You mentioned OPRA. I have a problem with, as you know-- And I probably won't go there -- just a little bit-- When a legislator-- Actually, what happened was, the previous engineer left, the new engineer comes in, makes a phone call to the DEP and says, "Oh, we're the new engineer in town," which wasn't true. They weren't the new engineer in town, and they wanted the complete case file.

First thing was, they got it on a phone call. The second thing was that there was information in that that clearly said on it, "This is confidential material from the previous engineer." That was given to this person, so he didn't have to do any work. He took that same information, resubmitted his application, and got approval from DEP for \$300,000

worth of work, which consequently they screwed up. And you have a letter of 13 deficiencies by that engineering firm. These are the kinds of things that have to stop.

And what I want to see is that -- any of that information go to the town -- I would like to see it in my legislative office. I want to see copies of information that you send to my communities on these particular issues. I want to see what's happening in that town. I want to know about it.

Now, maybe I'm a little smarter than the average bear on site remediation and hazardous materials. But I'm going to look at it, and I'm going to try and assist these communities in what they're doing. I want these things cleaned up.

So these are the kinds of things that I'm looking for in the new program. And I will work with you in any way that I possibly can. But please work with us. Let us know what's going on. The communities should be getting lists. And I don't know why anybody would come in--

You know, the Danzig site was listed as potentially contaminated from 1984 until currently. There's certain sites that are potentially contaminated. Why anybody would go in there and do something like a Kiddie Kollege or housing development I have no clue. But it's got to stop. We've got to close that loop. And we've got to work together.

I know some of the environmentalists aren't happy with some of the legislation being proposed. But this-- It's basically some preventive things that we have to do. And I want to, again, commend both of you for the excellent job you've done.

And to come here and say this is broken takes a lot of guts. It's been broken for a long time. And I'm glad you appreciate it, and I'm glad that we're trying to work together.

Thank you.

ASSEMBLYMAN McKEON: Thank you, Assemblyman.

Jeff, did you have a question?

SENATOR VAN DREW: Yes.

ASSEMBLYMAN McKEON: Senator Van Drew, and then Senator Gordon.

SENATOR VAN DREW: We're all so formal today.

Thank you, Chairman Assemblyman McKeon.

Let me thank you, first of all, for your good work with this.

One question in general, and then one in specific. In general, from the Massachusetts experience, and from what you know, and from what you've done here, and from what you recommend -- the entire site remediation process, in most cases, would function much more efficiently, I would hope; much more quickly; and that there would be much less of a backlog?

ASSISTANT COMMISSIONER KROPP: Absolutely. That's the goal.

SENATOR VAN DREW: Right. And from the Massachusetts experience, that very much has been accomplished there?

ASSISTANT COMMISSIONER KROPP: Absolutely.

SENATOR VAN DREW: Where did you digress? Where are we different in what you recommend from what they've done in Massachusetts?

ASSISTANT COMMISSIONER KROPP: In the Massachusetts program, the state agency does not issue the final decision. In our case, we call it a *no further action* letter. They call it a *rendered opinion*. So the actual licensed site professional makes the final call. That's one huge one.

The other thing that we're recommending -- at least up front -- is that Massachusetts has a separate licensing board that develops the tests, gives the tests, and takes the enforcement action. We are saying that in order to establish a board, we're two to three, at least, years away from being able to implement anything. For the economy of New Jersey, it's better, right now, to start with a program where we grandfather in environmental consultants that have been working in this state for the last 10, 15 years and let them be the licensed site professionals. We'll give a test down the road. But we should really start as quickly as we can.

Those are two of the major differences.

SENATOR VAN DREW: Good. And the previous difference was because you still want to have that final check and balance, in other words, just to make sure?

ASSISTANT COMMISSIONER KROPP: We heard from the financial institutions and a lot of the brownfield developers that it was important for the sign-off to be from the State agencies as opposed to third-party.

SENATOR VAN DREW: Because?

ASSISTANT COMMISSIONER KROPP: Whatever sets -- financial institutions I guess. (laughter)

SENATOR VAN DREW: They had more security that the sign-off was appropriate?

ASSISTANT COMMISSIONER KROPP: Right, that there's a governmental--

SENATOR VAN DREW: Okay. Then the specific question I had is: underground storage tanks. You touched on that very briefly. If you could just touch on that. And does that apply to both oil, propane, all forms of underground storage tanks? I didn't quite catch that.

ASSISTANT COMMISSIONER KROPP: For the banning and secondary containment?

SENATOR VAN DREW: Yes.

ASSISTANT COMMISSIONER KROPP: We're talking about homeowners' heating oil tanks.

SENATOR VAN DREW: Okay.

ASSISTANT COMMISSIONER KROPP: And then every type of underground storage tank that is regulated, which includes more than just heating oil. We're talking about secondary containment to make it consistent with the Federal policy act.

SENATOR VAN DREW: Would homeowners include propane as well -- a ban on that?

ASSISTANT COMMISSIONER KROPP: No, we were not doing that. We were not thinking of that.

SENATOR VAN DREW: Thank you very much.

SENATOR SMITH: Senator Gordon.

SENATOR GORDON: Thank you, Mr. Chairman.

A couple of questions. First, on the licensed site professional: I'm concerned about the accountability aspects of this. Are we going to have a board of licensed site professionals in the Division of Consumer Affairs, where we have all of these other agencies that are regulating the professions? Where is it going to be?

And I'm really concerned about whether we are -- and how we're going to -- how you can assure us that we're really going to see some enforcement of the standards we're setting for these professionals. In my limited experience here in the Legislature, I haven't -- I have to say I haven't been impressed with the kind of enforcement we've seen out of some of these other professional boards, whether they're applying to health-care providers or the regulation of cemeteries. A wide range of regulated industries really don't get too regulated. How can we be assured that these licensed site professionals are going to be penalized if they don't do a good job so that we don't have more Ringwoods?

ASSISTANT COMMISSIONER KROPP: Your concerns are one of the reasons that we're not recommending a board at this particular point in time. In discussions with the Massachusetts program, they have concerns with their board in terms of being very slow to act and make decisions, although they have revoked licenses, suspended licenses, and issued penalties. Because the board is made up of a variety of individuals, it doesn't move as quickly in terms of coming to conclusions with enforcement. That's why, right now, we're recommending that all enforcement and licensing of individuals happen within the DEP. And the enforcement program and the site remediation unit would be expanded to handle the enforcement, the revocation, and suspension of licenses.

But we also talked to other groups, other than Massachusetts, that deal with boards -- some of the DEP agencies that deal with boards. And that's why we're not recommending, at this particular point in time, to go with a board.

SENATOR GORDON: Second question: Also, one of the stakeholder groups dealt with the problems of historic pesticide contamination. We're finding remnants of pesticides around schools. Today's *Record* has a front-page story about the dieldrin at the local pool in Paramus. What kind of assistance will you be providing municipalities and school districts in identifying whether they, in fact, have these problems so that they're not uncovered on an ad hoc basis?

ASSISTANT COMMISSIONER KROPP: First of all, thank you for attending the stakeholder sessions. It was very nice.

One of the things that we're doing right now is, we have guidance that is out on our Web site that deals with historic pesticides -- how to identify historic pesticides, how to sample a school or property in order to determine if there's a problem, and what some presumptive remedies are -- primarily removal or soil blending.

We are looking at expanding that. We have a community relations group that goes around and does presentations for municipalities at the request of whomever: local environmental groups, mayors, etc. So we're looking to expand that, especially in the areas where we know there may have been historic pesticide issues.

And some of the work that we're doing right now also involves our personally getting involved in taking samples, especially when there's

private wells in areas where there may have been nurseries, etc., to see if there is any contamination problems.

SENATOR BATEMAN: Thank you, Mr. Chairman.

I'd like to thank you for your testimony.

One of the most frustrating aspects of being a legislator, and I'm sure my colleagues share this from time to time with me, is when the constituents call because they are so frustrated with trying to get anything from the DEP, any permits from the simple ones to the more complex. I mean, sometimes they come see me -- it's not months, it's years. And they think as a legislator you can push magic buttons. And for the most part -- and I've got to commend Assistant Commissioner John Hazen, he's always very cooperative. But it's very frustrating, because the delay factor has such an impact on the businesses and the economy.

If you institute what Massachusetts has done, how much of that 20,000 backlog of cases-- How quickly will it take you to cut into that significantly? And how much will it cost the taxpayers?

ASSISTANT COMMISSIONER KROPP: Two things, just as an example: Right now, if you are a homeowner asking for an NFA for your homeowner tank, and you go through the typical process in the DEP -- which it goes to a field office, you sign a memorandum of agreement -- it takes about 18 months to get through the system. However, we instituted, as I talked about previously, streamlined changes in the Department, where if you use a certified, subsurface evaluator and go through our unregulated heating tank program -- which is run by one person right now -- you can get a turn-around time in days -- two to three days. So you use the certified professional, it comes into the Department, we go through a streamline

checklist review, we audit a certain percentage of cases, and NFAs are literally issued within days. That is the type of program we want to mirror for all the cases but for those really horrific cases with the really bad RPs. So we think there's about 14,000 cases or so -- excluding the 4,000 to 5,000 homeowner cases which will be going through this new process when the rule is adopted this October. Everybody will mandatorily go through the new rule process. It will help the homeowners greatly. But for the rest of the program, when we get the licensed site professional -- putting about 14,000 cases through that system. There should be no additional cost to the taxpayer, because the cost for the licensed site professionals are paid by the responsible parties, responsible entities.

Thank you.

ASSEMBLYMAN ROONEY: Mr. Chairman.

ASSEMBLYMAN McKEON: Assemblywoman Huttle.

ASSEMBLYWOMAN VAINIERI HUTTLE: I just want to get back to the dry cleaners remediation program.

Just for clarification, the PCE -- the chemical, the PERC -- is that being banned? I'm not clear on that -- if your banning that, or-- We're talking about these machines now that will remediate it -- to be able to still continue that. I'm not clear on that. Because I've been meeting with constituents, small business owners that own dry cleaners. And I have a lot of-- I'd like to have some answers to that, please.

Thank you, Commissioner.

COMMISSIONER JACKSON: I'll take that one, Assemblywoman.

There are-- The proposal today is about cleanup of releases from dry cleaners, so past releases of PERC into groundwater. PERC and groundwater mix well, and the PERC tends to contaminate a large area and is very expensive to clean up. So the proposal here today is establishment of a fund that would assist those small business owners who, as the Assistant Commissioner said, often come in. They didn't cause the release, they weren't there when the release happened. And they find themselves financially strapped in trying to deal with it.

Separate from that, there is a proposed rule from the Department that deals with banning of PERC, I think by 2021 -- by some point. I've met with probably some of the same constituents you have, and we've heard their concerns about the impact that's going to have on their businesses. And I think certainly I'm willing, as part of the regulatory process, to think about other ways to address their concerns. I think we simply need to keep our eye on the fact that whether or not there is a reasonable alternative, whether we're being aggressive with those sites that have the most potential to cause any impacts to human health -- those are what we call *colocated* dry cleaners. But I think there's lots of room for us to come to a better place.

ASSEMBLYMAN ROONEY: Chairman.

SENATOR SMITH: Assemblyman Rooney.

ASSEMBLYMAN ROONEY: We discussed this at our previous meeting, as far as the PERC. Right now, there isn't a reasonable alternative. The one petroleum-based material that they're using at some dry cleaners has a very low flash point. The flash point is somewhere

around 145 degrees Fahrenheit, which is very dangerous in a small location, a confined location. It could easily exceed that.

I've seen plans on my planning board, which we rejected, where there was -- the PERC machine was on one side of the room. Eight feet away was a boiler, or whatever it was, with an open flame. Absolutely ridiculous. I said we can't approve that, because it just -- and I asked for the flash point: 145 degrees, which was ridiculous.

So we have-- What I heard you say was that -- when there's a reasonable alternative. And that's the key, if there is a reasonable alternative. There are clean machines. We talked about this at the last meeting also, where the machine will have a lock on it until the vapors are taken through a cleaning system. And it won't open until there are no vapors left. And when it opens, whoever is unloading that machine will not have those vapors hitting them in the face. The other thing is, there's a containment area around the machine. If there's a leak, and there are cartridges -- as far as cleaning out the sludge. So there are machines. And that's where the dry cleaners should be going, to the cleaner machines.

The other issue that I brought up -- and this 10-to-the-whatever power that we're looking at-- One of the things that bothers me -- I brought it up at the last meeting. We're talking about-- And if this-- I don't know if it's site remediation, but we're talking about purity of drinking water, and the cleanliness of drinking water. Recently, we had a situation where they studied the drinking water in the State of New Jersey, and they're finding drugs in the drinking water in very small particles. But if you listen to some of the commercials that are on TV today -- what they're talking about -- one product for men. I don't remember what it was. It began with an *A* or

whatever. But that particular product warns that women shouldn't even touch this particular product, this drug. And they're finding that drug in our water supply.

So I'm just asking that the DEP, at this point, start looking into that. Because even minute amounts, very small amounts, of this particular drug is extremely dangerous for women.

ASSEMBLYWOMAN VAINIERI HUTTLE: Flushing it down the toilet.

ASSEMBLYMAN ROONEY: That's what's happening. It's being flushed down the toilet. But there's got to be some way to start cleaning that up and start saying, "Hey, that particular product--" If we're not going anywhere else, we should be going for those products that, even in minute-- And we've got to start looking at the -- what they're talking about, as far as being a danger to women. And that's the only one I've heard of. So I just throw that out today.

ASSEMBLYMAN McKEON: What I'm going to do -- and Assemblyman Rooney raised a great point. I think we're getting-- There's a million issues that we could all discuss here. I've got a bill sponsored with one of my Republican colleagues to deal with a study commission on that point.

ASSEMBLYMAN ROONEY: Not me.

ASSEMBLYMAN McKEON: No, not you.

But if we could-- If anybody has any more specific questions of the Commissioner and the Assistant Commissioner--

If not, we have a lot to get through and we promised, in deference to everybody's time, to be out of here at 1:30.

SENATOR VAN DREW: Chairman, on the lighter side, Assemblyman Rooney's comments -- there could be a lot of happy men and women out there. But I won't go into that issue at all. (laughter) I just--

I didn't know where you were going to go with that, Assemblyman.

ASSEMBLYMAN ROONEY: No, no, no, this is serious.

ASSEMBLYMAN McKEON: And it is.

Commissioner, thank you so very much for your leadership. I think it was Senator Van Drew who suggested -- or one of my colleagues -- that it took a lot of courage for you and the Department to come forward to tell us that we need a fix. And I think we are all poised, in a bipartisan, intelligent way, to do so.

Thank you both very, very, much.

First witness is Jane Nogaki.

Jane, I know you had said you had one or two people with you. Obviously we just have three chairs here.

So if there's a particular group I'm calling -- if you have one or two individuals with you, please feel free to bring them up, and I'll leave it to you to introduce them.

I also want to now remind everybody, mindful of everybody's ability to have some input, that we're on our 10-minute time limit.

JANE NOGAKI: No, I believe you're going to call on Olga Pomar and Roy Jones separately.

Is that correct?

ASSEMBLYMAN McKEON: Yes, we are. You are right.

MS. NOGAKI: Okay. Thank you.

My name is Jane Nogaki.

ASSEMBLYMAN McKEON: Times up. Next. (laughter)  
That's what happens when you correct the Chairman.

MS. NOGAKI: I don't talk as fast as Dave. But he is down in Washington, D.C. today, testifying at a committee meeting with Senator Lautenberg on the issue of pharmaceuticals in drinking water. So that's why he's not here and I am.

So we join with other environmental groups here today -- New Jersey Environmental Justice Alliance and the Sierra Club -- urging you to move legislation in the strongest possible form to reform the Site Remediation Program. We're a bit concerned that a partial remedy of fixing just a couple aspects of the reform, and not doing total reform of Site Remediation, will actually harm the program, because we think that a total makeover is really in store here. And so the timetable that you've suggested to have this done -- part of it done by the Summer, and the rest of it done by the end of the year -- we just encourage you to look at the total picture, because so much of this program is integral and interrelated.

We want to ensure faster and better cleanups, not partial remedies in every sense of the word. This is as much an environmental justice problem as a public health issue. We know that no town is untouched by contaminated sites. Every town has in the teens or twenties of contaminated sites. But in our urban areas -- particularly where people of color, people in poverty -- they are faced with hundreds of these sites. And therefore we think that the commitment to prioritize sites, to affect people who are worst exposed by multiple sites, needs to be looked at.

Right now, these sites are a piecemeal approach. They're not looked at in conjunction with other risks in the community. And therefore, our urban and poor residents are more grossly exposed to contaminants. This needs to be addressed.

The thing that we are concerned about is that DEP actually has some powers to ramp up their program; they had the ability to enact treble damages. They can increase this (indiscernible) fund tax and other polluter-pay mechanisms. There could be cuts in Christmas tree items in the Legislature, pay to play, and subsidizing sprawl -- would go a long way to improving resources to get the staff that we need at DEP.

We oppose the privatization or use of licensed site professionals as an organization. We don't think that licensed professionals would have the same mission, the same mandate, or the authority to protect public health and the environment, which is the responsibility of DEP. In the end, this is DEP's job. We want people working for the DEP to do the investigations and to sign off on them, not to hand that over to someone else who doesn't really, in the end, have the authority, the mission, or the mandate. We don't think it's in the public interest to have this kind of privatization or licensed site professionals.

Any insurance scheme that is used to pay for failing caps, we think, should be paid for by the polluter, not the public. We think that public funds should only be used when there is no responsible party, or emergency cleanups where the responsible parties can be attached later on.

The thing that DEP lacks -- actually, the crux of this problem is, they lack the authority to bring a polluter to the table. So many of these clean-up situations are voluntary. They're waiting for the party to come to

the table, waiting for them to enter into a consent order. DEP needs more authority to go after a polluter and make him clean up a site on an aggressive basis.

Right now, the DEP lacks the power to compel a polluter to do a feasibility study to look at alternative sites and select a remedy the DEP thinks is protective. They depend on the responsible party to select the remedy.

Right now, DEP lacks the authority to consider health risks of cumulative exposure or multiple contaminants at multiple sites. They look at one chemical at a time and assess that one-in-a-million health risk. But if a site has a hundred contaminants at it, 50 contaminants, they don't look at that multiple, aggregate, cumulative exposure. They need to be able to do that. They're actually now prohibited from looking at that in the Brownfield Act.

They lack the legal power to enforce clean-up standards for ecological impact. They can only compel additional cleanup if it can be proved that the cap or institutional controls have failed, placing a burden on the DEP to show harm.

And also, a major flaw of the program is that public hearings and public notification is not required at contaminated sites. There's no public process. That's why things get built in places where-- If you ask the neighbors, they would know that something bad had gone on there and pinpoint it out. These transactions take place under cover of private offices, not out in the public view. So therefore, any reform that takes place here needs to emphasize permanent cleanups, not temporary cover-ups.

At one of her earlier meetings, Lisa Jackson referred to the pave-and-wave kind of cleanup, where people are just paving over a sight, or putting a couple feet of clean fill over the top, and saying, "It's clean. Goodbye." This kind of remedy has got to stop. Eighty to 90 percent of the cleanups in this state are happening in that way. They're not removals, they're not actually cleaning up a site, they're covering it over. That is not acceptable, especially not acceptable in residential areas where schools are being built, where day cares are being built, where people are going to be recreating.

Therefore, we think there should be an absolute prohibition of these kinds of cleanups and that you should never site residences, schools, recreational facilities on landfills or these paved-over sites.

We think that more public involvement is needed not only in the remedy selection and notification of hazardous sites, but also in the redevelopment plans. The community is going to be living with these sites, and they need to have a say in what the redevelopment looks like.

Ensuring environmental justice is a key component here. We need those stringent, health-based cleanups in environmentally burdened communities that are experiencing multiple exposures from industrial facilities, as well as numerous contaminated sites.

We think that prioritization of these cleanups, not privatization, is important; and that using protective, health-based standards -- as Senator Gordon mentioned -- using precautionary principle-- If we don't know what a chemical does, if we don't really know what the health risks are, we should aim for zero on these chemicals. We don't know what the mixtures, the aggregation of these chemicals are.

And certainly the Department could benefit from increased enforcement. Pulling back on these voluntary cleanups -- which always happen too little and too late -- DEP could increase their field presence, assess treble damages, enforce clean-up standards for ecological impacts. DEP has yet to activate its ecological task force, which was supposed to happen 14 years ago.

In conclusion -- I know my time must be coming near -- we support legislation that will give DEP more authority to compel responsible party and permanent cleanups. We don't think pave and wave capping is an appropriate cleanup. And we think it's certainly inappropriate for day cares, schools, residential, and recreational uses of a site. We don't support privatization or licensed professionals.

We do appreciate the Committees' attention to these comments. I have listed a number of examples, which you're very familiar with: Kiddie Kollege; the building of an early childhood development center in the city of Camden on a known contaminated site, a school that failed once already and had to be knocked down and is being rebuilt on the exact same site; many other instances -- the mercury poisoning in Hoboken -- are examples of the failure of the program.

And so with the reforms in mind, we urge you to look at the whole picture. We've also attached comments from 11 environmental groups that were submitted to the DEP after the stakeholder process and after these white papers were drafted. We have specific recommendations that deal with school site remediation, historic pesticides, remedy selection, institutional controls, and so forth. And they're attached to your comments which I've submitted.

So thank you very much for your attention. And we will, of course, be watching and participating in this process as it moves along.

ASSEMBLYMAN McKEON: Thank you so very much for your learned testimony.

Any of my colleagues have any questions for the witness? (no response)

Seeing none, Senator.

SENATOR SMITH: Tony Russo, Site Remediation Industry Network.

Mr. Russo.

**T O N Y R U S S O:** Good morning.

SENATOR SMITH: Good morning.

MR. RUSSO: I'm here today--

My name is Tony Russo, and I'm here today because, obviously, the Site Remediation process is broken, as was evident in the Commissioner's testimony.

The fact that you have 20,000 cases -- some of which have been open now for more than 20 years -- is evident that the process is broken and it needs to be improved.

The group that I represent today, the Site Remediation Industry Network, or SRIN for short, cares about these sites, and they strive to put these sites back into good use and also strive to clean up these sites as quickly as possible to protect the public and the environment. The professionals within this organization literally manage hundreds of cases on a daily basis, and they're recognized as technical experts in this field. And

we are very excited about this opportunity to bring real reform to the Site Remediation Program.

SRIN -- we did participate in the stakeholder process last year. We attended every single stakeholder meeting; and we actually developed a booklet, that I'd like to hand out today, which really just details and summarizes our positions on the issues. And my colleague will pass that out.

Basically, there were four themes that I want to touch on today. And throughout my testimony-- And, again, I will be brief. I will stay within my 10 minutes. It's important to remember the four themes that I'm going to talk about if we are really, truly going to have real reform in the program.

The first issue, or obstacle, to site remediation in New Jersey is the process. And I think the Commissioner touched upon it, and some of the questions that these two Committees raised touched on it. What is the process? The fact that the DEP needs to approve every report, every letter, every step of the way means that sites can be cleaned up. I mean, that's ultimately what happens. So you have to ask yourself, "What is it about the process that we can improve and streamline?" You might hear some folks say that we're going to want less oversight and that the process should be streamlined and removed. And all we're really asking for is the right kind of oversight at the right time.

The second issue that I want to raise is the one-size-fits-all. And this ties into the process. And this is an interesting point to raise: the fact that a homeowner case is treated the same way that a large industrial plant is treated, in terms of the process and what's required, as far as

reports, just doesn't make a lot of sense. It results in a lot of needless paperwork that's submitted. There has to be an appreciation that every site out there is unique and different. And as far as what's required at each site, there has to be flexibility in the program that would allow for that. So the one-size-fits-all approach just really doesn't work. And again, that ties back into the process.

The third issue -- or the third theme again -- and this is really just -- keep in mind, it's really to improve the whole program, and get away from that backlog of 20,000 cases, and put sites back into good use, and protect the public -- is accountability. So as far as the third issue, it's the fact that the Department does not have an established metric right now to measure success in the program is interesting in the sense that-- What is the goal of the Site Remediation Program? It should be about, again, putting sites back into good use and cleaning up contaminated properties.

The fact that there is no prioritization in their cases, that each case manager has about 300 cases that they have to manage on a daily basis-- What that results in is-- It's almost impossible to react to every report, every document that's submitted. And really what that leads to is a need for, again, streamlining the process and the one-size-fits-all. So if you develop a metric for the program, change the process, we feel strongly that you're going to see an improvement and that backlog will shrink.

And then the last major theme, before I react to the Department's testimony on some of the issues, I want to raise is the leave-no-molecule-behind policy. And I think Senator Gordon touched on this, as to whether or not the standards are achievable. And I'm talking about not only soil standards but groundwater standards.

A lot of times -- or I should say a lot of cases out there are in this endless loop of pumping and treating groundwater, sampling their groundwater, and they just can't attain the standard. And that standard, you have to keep in mind, is based on a lot of factors, not just human health, but also aquatic, and environmental, and ecological factors. So you could have a standard as low as one-part-per-billion. The fact that laboratories have difficulties detecting that one-part-per-billion should raise the concern. And the concern should be: Are those standards achievable? Am I going to have companies-- Again, in this endless loop of sampling and pumping groundwater in areas where the groundwater is not used for drinking purposes, the groundwater doesn't impact surface water -- and yet, because of the way the process is set up, they can't cross that finish line. They can't get that no further action letter. So you have to say to yourself, it's not about lowering standards, it's about are the standards achievable.

So we hope that you take a step back and at least appreciate the fact that there's a lot of sites out of that 20,000 that probably fit that category, where they're minimally above the standard and they could reach a point where they could cross that finish line; and that site gets sold or put back into good use, and, more importantly, frees up the Department's resources.

And one thing I want to stress there -- and I know this is something that has been talked a lot about -- is, you really have to look at the uses of a property and the risks associated with that use. And as long as there's a mechanism in place which protects that use, and the public, then sometimes that risk is minimized, and that case should be closed out.

I just want to react quickly to the DEP's testimony today about the licensed site professional program. The fact that the Massachusetts model, as a whole, is not being adopted here -- and, more importantly, that gets to the risk-based corrective action approach -- concerns us. We support it, conceptually. It makes sense when you want to try to reduce the backlog.

What we fear though, and what we want to guard against, is a lot of the inefficiencies, which I just described with the process, the one-size-fits-all, the standards -- that those inefficiencies aren't then transferred over to the LSP and we're in the endless loop of not crossing that finish line. So we want to guard against a couple things: one is what I just mentioned. But also, if it's truly going to be a licensed site professional program, we want to hold the consultants responsible. The DEP's oversight should be limited to auditing those projects and issuing the no further action letters. If it deviates from that, and we still have Department oversight on a lot of these documents -- if the process doesn't change, we haven't moved the ball down the field. And I'm afraid that we'll be back here a year from now, arguing the same type of situation.

Real quick on remedy selection for sensitive uses: I mean, that makes sense. A lot of the people that I represent go above and beyond with the standards if there are any sensitivities there. So obviously we feel that the Department has the current authority in the various enabling statutes. But we would not be opposed to provide a new additional authority for those sensitive uses of those properties.

One thing I do want to mention about the 1 percent surcharge-- And the way it typically works right now is, when you open up a case within

the DEP, you're obligated to provide that funding source. And a lot of people either do the line of credit, buy insurance, secure a bond. But a lot of the people that I represent -- large companies, corporations -- self guarantee that and, as Assistant Commissioner Kropp mentioned, they're exempt from paying that 1 percent surcharge. If the statutes are now amended to apply that 1 percent to these self-guarantees and do away with self-guarantees, that's a lot of money that's going to be generated that's going into a fund to help the recalcitrant parties out there who walk away from their responsibility to maintain and control that cap. And that's going to be a big impact. And I think you need to appreciate the fact that, again, that's a lot of money. I know the Assistant Commissioner mentioned \$14 million. I'd be curious to see if that number is accurate or not.

And it really is, when you boil that down-- If they're going to go in that direction, that really constitutes a tax, another tax, on the responsible party which -- and I want to briefly mention -- that they already pay the Spill Tax, the Corporate Business Tax, and now this will be a 1 percent tax on their cases.

Engineering and institutional controls: We support the permit process that's going to take place, where the responsibility of who maintains that cap is carried through. So we support the Department's position on that.

But just to conclude, again, it's about the process, improving the process, it's about putting sites back into good use. And if legislation is enacted that doesn't touch upon those four themes that I brought up, I'm afraid that we'll all be back here a year from now talking about the same thing.

So thank you very much.

ASSEMBLYMAN McKEON: Thank you very much.

Any of our colleagues with questions of this witness? (no response)

Seeing none, Jeff Tittel of the Sierra Club.

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

I'm glad we're having this hearing, though I wish we were more advanced in making the reforms that needed to be made.

I just wanted to start out and say that I think one of the biggest problems that we've seen in the last 10 or 12 years is that the whole concept has moved from cleanup to development. And in that process, a lot of things have slipped through the cracks. And for us, when we look at what's happening on these sites, we want to make sure that they're cleaned properly, not only because of the environment, but because of the economic viability of sites. If we have more disasters like an EnCap or a Kiddie Kollege, it undermines the whole concept of trying to build on brownfields because banks, developers, and others who we like to see invest in these locations will not, because they're afraid that some kind of disaster could happen in the future. And I think the reason that we'd fix these programs is, one, to protect the environment; but two, to make sure that these programs could really work. Otherwise, if we have more disasters like an EnCap, we're not going to see development on brownfields, because people are going to be afraid to touch them or live on them.

So I just wanted to start out with that, and just give a couple of comments on some of the things that I've heard today.

We think that this concept of sort of outsourcing responsibility, as in Massachusetts, is another one of Mitt Romney's ideas that doesn't really work quite right. And, in fact, when you go on the Web site and you look at the most recent audit, you'll see that on Level 3 contaminated sites, 21 out of 30 sites where they actually did a fiscal audit -- a real audit -- failed, found some serious problems; and on Level 2 sites, 24 out of 89. So we have real concerns there.

I do agree with Senator Smith that if we're going to allow for any type of consultants, that it has to be through an escrow system. You do not want the responsible parties directly controlling those consultants that are in charge of those sites, because there's the potential for a lot of abuse. And I think that's absolutely true.

One of the things that we believe has to be done is, we need to have a real prioritization system. Currently, there really isn't one. It's a first come, who knows who gets served kind of system. And I think we really need to see a real prioritization put in place going after some of the most contaminated sites first, as well as those sites that have been most ready for redevelopment. I think without that, we spend a lot of time spinning our wheels.

We have real concerns with the concept of caps. We believe for schools, and housing, and other kinds of public facilities we have to have permanent remedies, not just enhanced remedies. And the reason is that caps will fail, institutional controls will fail. And when you see what potentially could happen when you have families living on those sites, I think it raises a real concern.

We've also seen, firsthand, in Newark -- in the Ironbound section -- people digging up their caps, and rototilling, and planting vegetables, because that's part of their culture. And there is no mechanism to make sure that doesn't happen. And I think the safest way is to make sure we're not building houses in the Ironbound section on top of sites unless they're really clean.

We also believe that another problem we see with capping is that many times the caps themselves become a place to get rid of low levels of contamination. And so if you looked at EnCap, when they brought in dioxin-contaminated (indiscernible) soils, school construction debris, and other contaminated soils, the cap itself was adding more toxins to the site. And then you're going to add residents. And that's one of the problems: that if you're going to be capping a site, it should be capped with materials that are going to be protective, not just a place to get rid of some low-level kinds of contamination.

The other concern we have on having these restricted sites is that -- is to have a mechanism to make sure that someone doesn't come in and build warehouses, and 15 or 20 years later someone comes to build condos. We see these things starting to happen now. And there has to be a mechanism to make sure that if you're coming back, that you have to do another kind of cleanup and assessment on that site. Because, again, the concern is, what happens to the people that end up living on those sites?

There's a lot of others areas that I wanted to kind of get into real briefly. And one is vapor intrusion. And one of the reasons you go after groundwater is because of the vapors. And one of the things we should be looking at, again, for residences and schools is to put those

safeguards in place. When you look at certain chemicals, like chromium-- Chromium turns from a very benign form of trivalent to the toxic hexavalent because of groundwater. So, again, getting at groundwater cleanups and making sure we do it is important.

And it's one of the reasons you go after those sites, Senator Gordon. Because even though those areas aren't used for drinking water, the groundwater will move those chemicals into other sites, as well as change them into a more damaging form of the chemical.

We also just wanted to go through a couple things that Lisa Jackson said. Again, when you look at the Department, I think one of the biggest problems that we have is that there is not enough staff to do the job. And when you go back and you look at the number of people who were in as case managers, I believe in 1993-94 you had 270. You're now down to 170. So part of it is to give the Department the resources to do the job, otherwise cleanups will continue to lag, and we will continue to have toxins getting into our community and our environment. And I think that even if you do any kind of outsourcing or whatever, you're not going to get to that kind of backlog. So I think having those resources and going after the polluters is really an important part of that part of what we need to see in DEP.

We also think that the Department needs to have more authority in choosing remedies, and it has to be clear standards and guidance. And part of the reason that it takes so long now is the back and forth between the site managers -- the case managers from DEP, the consultants for the responsible party; and so coming up with a remedy. And I think having a clearer system would work.

One of the ideas that I would put forward is that if you go to an unrestricted cleanup -- meaning going to the highest standard, especially for residential -- that you go through the system quicker, because it's going to take the least amount of engineering and site review work to do that type of cleanup. And I think that we need to make sure that as we're going to change the program, hopefully we make it better and not worse.

Thank you.

ASSEMBLYMAN McKEON: Jeff, thank you very, very much.

Any of my colleagues have questions? (no response)

Seeing none.

SENATOR SMITH: Our next witness is Andy Robins, from the New Jersey Builders Association.

**ANDREW B. ROBINS, ESQ.:** Thank you.

Our prepared remarks were circulated earlier. I ask those be incorporated into the record.

I'm going to, in the interest of time, go to a couple of key issues.

The majority of brownfield redevelopment sites involve residential or mixed uses. The simple fact is: For all intents and purposes, you can't have viable redevelopment of brownfields without residential components as part of them.

Our members continue to bring private capital to the table to transform these sites to usable properties. Our members need predominantly three things: transparency, predictability, and finality so that they can safely develop these sites. The system now works to some degree. There's definitely room for improvement.

The key though is -- for these different issues that have been raised -- is how they will be implemented. I'd like to tick off one or two. The first one I'll start with is remedy selection, the concept that you need to have the department with authority to choose the remedy. That, in concept, can work and in other concepts will not work. It could work if the Department's idea of remedy selection is to let people know up front what remedy is needed for what type of use. If, however, the Department is going to go through the process of sometimes late in the game coming forward and saying, "We recognize there are a variety of safe approaches here. We like this safe approach better," that destroys predictability. And if you can't have some level of predictability in developing a property, you can't move forward, you can't get private capital involved. So if remedy selection is on the table, and it involves a set of standards that you have to meet, and you know what those standards are up front, that's one thing. That could be viable. If, on the other hand, it's leading the party into the process only to change what the remedy might be years into the process, that won't work.

The second concept I want to hit upon is the concept of what's been described as *pave and wave*, the use of engineering and institutional controls, what we commonly refer to as *caps*. And there are a couple of myths out there. One myth is that caps fail. The second is that *pave and wave* is the approach, and that is an extraordinary disservice. It's a disservice to the Legislature that established the means to have flexibility for certain sites. It's a disservice to the Department that reviews these sites to make sure that they're protective of human health and the environment. And it's a disservice to the people who go through the process to determine

that the economic viability of doing the cleanup requires that some material remain behind. It's also a disservice, because you have to look at the alternative to what capping is, and that is to dig up the material and to dump it in someone else's backyard. The alternative of digging and dumping is environmentally imprudent. Digging the material up, when it can remain behind in a way that is protective of human health and the environment, means that you're running risks in digging it up, you're increasing risks in transporting the material, and you're increasing risks in putting the material in someone else's backyard where it has to be dealt with. The basic principle of science is that you can't destroy mass and you can't destroy the material -- it has to go somewhere. And filling up our landfills with material that can remain behind safely doesn't make any sense. It has to be rejected if we're serious about redeveloping brownfield sites.

We are in favor of making the concepts more transparent and easier to follow for greater clarity. The type of permit process that could be developed can be viable. And, again, the devil will be in the details for that type of program.

I also want to touch upon -- briefly on the process. Our members both remediate sites and buy sites that have been remediated. The predominant need they have is to know that they're building a product that is both economically viable, more importantly safe for their residents. They're not in the business of building properties only to have the property become a problem later. Beyond the moral issues, there's the economic aspect of those as well. Once you build a project, the last thing you want to

do is to have to be involved in years and years of lawsuits for what would have been a successful development.

But right now, the process that we have doesn't give that level of finality. There's a need to reassess. And some of the ideas the Department threw out today need to be analyzed more fully -- but to allow for finality. Our members aren't the people who put the material there in the first place. They're coming there to redevelop the property, to add private capital, to address what had been our state's legacy. We're trying to move the properties forward. But right now the process is so cumbersome, so overwrought with duplicative standards and duplicative reviews, that it makes the process so hard to follow that it dissuades private capital from getting involved.

What we don't need to do, though, is to add to the complexity. So requiring for a review in certain circumstances that might add to the delay -- and I don't know the details, because we haven't had the details from the Department yet as to how additional notifications or limitations on certificates of occupancy would be worked. But adding to that process to make it more cumbersome and more complicated is a step in the wrong direction.

I could sum up, unless you have questions, that the amount of land for development has continued to be constrained. And as that has happened, redevelopment of brownfield sites has been held out as one of the primary opportunities for growth in this state.

The issue before us is whether we move forward with the Site Remediation Program making improvements, or whether we take steps backwards to slow the process down or make it more complicated.

We look forward to the opportunity to work with you and with the Department to try to move forward.

SENATOR SMITH: Any questions? (no response)

Thank you so much for your testimony.

Our next witness is a tag team: Olga Pomar and Roy Jones, from S.J. Legal Services, and S.J. Environmental Justice Alliance.

**O L G A P O M A R, ESQ.:** Thank you very much for giving us the opportunity to speak.

I'm Olga Pomar. I'm an attorney at South Jersey Legal Services. We provide free legal services to low-income communities throughout the southern counties of New Jersey. With me here is Mr. Roy Jones, who is the Executive Director and Co-Chair of the South Jersey Environmental Justice Alliance, one of the client groups I represent.

We're sharing our time, so I will try to be very brief.

I do have written comments that are more detailed than, if I may, I would like to leave for the Joint Committee members.

I want to touch very briefly on the following five topics: to remind this Committee why site remediation is a particularly important environmental justice issue; to talk about remedy selection, public participation, prioritizing sites, and cumulative impacts.

I know this Committee's aware that low-income communities of color are the ones that are hardest hit by the problems of contaminated sites. Just to give you a few examples: In Camden City, we have 114 known sites that are on the DEP's list. Two of those are superfund sites. We have an additional 94 suspected sites on the DEP's list. And we have God knows how many sites that no one has ever checked out and

investigated. So these sites are next to schools, they're next to residences, they're near playgrounds. Children are constantly at risk. They're unmarked, no one knows they're there, kids can play on them not even aware that they're touching contaminated soil. We have very poor enforcement. Some of these sites have been created, under DEP's watch -- if junkyards, scrap yards, recycling facilities are contaminating the ground -- through the polluting uses right now that are going on.

We know there is a real health toll for this. Camden City has elevated cancer rates, especially for lung, stomach, esophageal cancer. It's important to notice that while in the nation and the state cancer is the second-leading cause of death, in Camden City it's the first leading cause of death. And while we have no testing done to know whether any of the residents are being exposed to contaminants, we know there is a correlation between living with contamination and real health harm.

Of all the topics that were discussed and that were emphasized by Commissioner Jackson and Assistant Commissioner Kropp, one of the most critical ones is to restore the DEP's authority to mandate proper cleanup, not to leave that decision exclusively, or almost exclusively, with the responsible party -- the developers who naturally are seeking to contain their costs. Our current system, where the developers have the ability to pick sites, has resulted in using capping in over 90 percent of all sites. This is a short-sighted remedy. Caps are, by definition, temporary. They require constant maintaining and monitoring. It's a short-term solution where, ultimately, these caps are going to fail, and we're going to be living on a toxic soup of chemicals under the ground.

In Camden, even sites like an early childhood development center and a recreation area being built by the Salvation Army are being built on landfills using minimal caps.

The Senator questioned the DEP representatives as to not only regulating sites, in terms of end use, but also toxicity. Well, if the DEP was given authority to require certain remedies, then part of that remedy could be removing the most toxic hotspots of contamination. There should be a level at which contaminants can't remain in the ground that's going to be used in an urban area where people live, and work, and recreate. Right now, capping can cover even the most contaminated and most toxic sites.

Related to remedy selection, it's critical that there be some public input into that remedy selection. We've talked about giving notice to municipal officials. But it's really the residents of these communities that have to live with the health harms of these sites. And they're the ones who are going to be most affected by the reuse of this site. Right now, there is no system for public notification. All the decisions are negotiated behind closed doors. The DEP has proposed regulations to improve notification to the public. But unless the public is brought into the remedy selection process, unless they're allowed to have input as to how the site is cleaned up, that public participation is window dressing. It's not real.

And just to sum up, two other points. As other speakers have stressed, the key is prioritizing sites. Right now, market economics drives what sites are cleaned up. And some of the most dangerous toxic sites that are contaminating drinking water, that are leaking into people's backyards, that are under schools that children are currently attending -- they're not being cleaned up, because the market economics aren't dictating it. DEP

has to prioritize what sites pose the most dangerous health risks and do the most stringent enforcement against the responsible parties.

And cumulative impacts are a huge issue for environmental justice communities. In other communities, you might have one contaminate of concern or one dangerous, nasty site. In a place like Camden, or Newark, or Penns Grove, or Salem, or Trenton, you're bombarded by chemicals from the air, the soil, the lead paint, everywhere. Right now, ISRA does not allow cumulative impacts to be considered. That's major legislative reform. If the DEP moves forward toward developing a system for evaluating cumulative impacts, right now the law wouldn't allow them to implement that system.

So I will stop here and turn it over to Mr. Jones, who I know wants to speak about the particular issue of schools on contaminated sites.

**ROY L. JONES:** Good afternoon.

**ASSEMBLYMAN McKEON:** Mr. Jones, as important as it is, I'd ask you to try to keep it to five minutes, because I didn't -- I was counting your 10 together.

**MR. JONES:** All right. I want to put a human--

**ASSEMBLYMAN McKEON:** You need to hit your button on your mike, sir.

**MR. JONES:** I want to put a human context on this issue of site remediation reform.

And one of the things I want to really make a point about -- and that is, in this state, thousands of sites are built near schools, and many of these sites are contaminated. And one of the things that struck me over the last year was when 32 children were affected by mercury contamination

in Franklin Township -- Franklinville, New Jersey. The legislators from that town rushed to hold hearings and to push past legislation on the issue of day care centers. And on the one side, that's a very good thing, and we applauded that. And we were there at those hearings in support of the people in Franklin Township. But at that same hearing, we were relegated to the end of the day, after nearly 10 hours of testimony, when we wanted to talk about the issue of schools generally throughout the State of New Jersey, and that day care centers were not just one of those issues that we needed to deal with.

So many people in my community and many environmental advocates are very concerned that there was legislation passed dealing with day care centers. But the issues, as it relates to schools, and schools that are near contaminated sites, or schools that are built on contaminated sites -- we have yet had legislation pass on this particular issue.

And the other thing that struck me was that when this issue came up about the Kiddie Kollege Day Care Center -- within nine months, legislation was passed on the issue of day care centers. And in our community -- in a community like Camden -- in our school district, there are 20,000 kids, and there are literally 50 day care centers. And we're talking about almost 25,000 kids that are being affected environmentally in the city of Camden. And this is just one community that we're talking about. And to this day, there is no legislation dealing with the issue of these schools and day care centers in cities like Camden.

The other thing that I want to just bring to your attention: This issue is not limited to just the city of Camden. And in my examples, I tried to bring to you 44 examples of schools in this state that are affected by

contaminated sites or are built on contaminated sites. And these schools run from a place like Camden, all the way into Princeton, Perth Amboy, and even recently, today, Paramus. In North Brunswick, a high school was affected, in Neptune oil was found on the land where a school was built, at the Ramapo Middle School there were also issues with contamination.

And so the point I'm trying to make is that we need legislation to deal with this issue. And one of the flaws in the legislation that we all -- many people -- advocates agree-- I want to read at least three things we think are some of the flaws. In the current legislation, it doesn't cover existing day care centers and schools. Also, the remedy of capping sites doesn't protect human health, nor is it the highest standard. And the last point, in terms of these flaws, is that school site clean-up standards, and the training that school board members are given, is absolutely inadequate. Many of the school board members are asked to make decisions about where schools are going to be built, and they are not adequately trained to make those kinds of decisions.

The other thing that I want to read is a comment from Commissioner Lisa Jackson. She says, "Contaminants in a facility where our children attend school is frightening. And when these contaminants are above levels that can cause harm, it is absolutely unacceptable." This is Commissioner Lisa Jackson making a statement about two years ago about the issue affecting schools.

The other point that I want to make is that, at this point-- I want to talk about reforms, and I want to read off a couple of recommendations. And one recommendation is that we simply need to reform or create new laws around where we site schools and where schools

are selected to be built as it relates to contaminated sites. The other point that I want to make is that the New Jersey Attorney General should be charged with recouping funds from polluters to pay for site remediation cleanup.

And throughout today's testimony we've heard from Commissioner Lisa Jackson about some of the reforms that they are going to make. But my point today and my testimony today has to deal with schools in cities like Camden, schools in communities like Franklin Township, schools and day care centers in communities like the city of Newark, and schools in communities like -- and day care centers in communities like Princeton or Perth Amboy.

I have not seen much of a discussion on this issue, in terms of reforming site remediation laws in the State of New Jersey. And I'm here to appeal to this board -- to this Committee, to both Committees to come up with some type of response to the issue of cleaning up sites properly in the State of New Jersey to the highest standard.

At this point, when-- In Camden -- I want to just talk about it briefly, and I'm going to close on this. One example was a particular school called the ECDC School, the Early Childhood Learning (*sic*) Center. And this school was built on a landfill. And later, the school started to sink. After the school sank, and the walls cracked, the school had to be demolished. Well, the School Development Authority and the New Jersey Department of Environmental Protection decided that the best remedy, in terms of cleanup for this particular site, was to use capping to remediate the site. And today, the school is now being built in the city of Camden. And we are in the process of trying to alert the school board and to alert parents

that capping of this site, which was a former landfill, and which had arsenic in the ground at a thousand times the national standard, is not sufficient and ultimately compromises the integrity of the school, and the children, and the employees that go to that school.

So I would appreciate it if this board -- these Committees would look into this issue of the ECDC School in Camden and address this issue in your site remediation reform efforts.

Thank you very much.

ASSEMBLYMAN McKEON: Thank you, sir.

Any questions?

Assemblyman Rooney, we want everybody to keep in mind that a lot of people want to testify.

ASSEMBLYMAN ROONEY: Just one comment.

As far as some of the sites I've been involved with, what could happen -- what could help is if you, Mr. Jones, look in your municipality in Camden, find out what was there previously. You could always help the DEP. Because one of the things we did was, we tracked it down in my community. The DEP never found the PRP, but we did. The Borough of Northvale actually found the party. We got them. In fact, the DEP collected, I believe, around \$3 million in cleanup from them. But it's a partnership. The DEP can't do everything. And I'm seldom accused of defending the DEP. But in this particular case, I will absolutely defend them. They can't do everything, as evidenced by this hearing. They've got 20,000 sites. You in the community have to help. You have to track down who was there previously. You have to give that information. And if we

work as partners, we can do some of the things that are necessary to get the cleanups.

That's all I have to say.

MS. POMAR: That's one of the reasons I think it's really important that we enhance the public participation piece in site remediation, because that's really missing.

MR. JONES: And, Assemblyman Rooney, can I just say this: In terms of the Kiddie Kollege situation, and the issues that were brought to you about Camden schools-- There's a big gap between what happened at Kiddie Kollege, with 32 kids, and legislation was passed; and 500,000 kids in the State of New Jersey with no legislation addressing those issues for schools in urban areas. There's a big gap. And I would appreciate it if this Committee were to deal with those issues.

ASSEMBLYMAN McKEON: Thank you, sir. We appreciate your passion and professionalism.

Mike Egenton, of course from the New Jersey State Chamber; Jorge Berkowitz, of Langan Engineering; and Dave Brogan, of NJBIA.

Mike, if you want to lead us off, that's good.

**MICHAEL EGENTON:** Yes. Thank you, Chairman.

We appreciate the opportunity for us to provide comments today.

As you know, I'm Michael Egenton, Vice President of Environment and Transportation with the State Chamber of Commerce. And joining us up here today is Dave Brogan, from NJBIA; and Jorge Berkowitz, with Langan Engineering.

I just wanted to also say for the record that we support the previous testimony that was submitted today by SRIN, by Tony Russo. And it's the Site Remediation Industry Network. And then you'll hear comments later on from another group called TRAC, which is the Technical Regulations Advisory Coalition. And that will be provided by Steve Senior.

Chairmen McKeon and Smith, and members of the Committee, the State Chamber embarked, several months ago, on a site remediation benchmarking study. I won't go into it, but I will provide electronic copies to the legislative staff and make sure that you get copies of it. But in a nutshell, as you heard here today, we found out that the process is broken. It takes too long to turn properties around and to get decisions made.

Obviously, in doing the benchmarking study, we did look at other states and how they're doing things, such as the LSP program in Massachusetts. We conceptually support what was being offered here today, but obviously the devil is in the details. We will provide further comments once the legislation is available.

The bottom line for you to keep in mind is, if we improve the process it will essentially be a win-win for all. If we clean up old brownfield sites that can be turned over to viable properties, and put those sites back into productive use, and obviously give local municipalities an opportunity to collect more ratables in these tough economic times; or like was done in my municipality, we can turn the property over to an open space or park -- obviously left to the decision of the locals.

With that in mind, because of the diversity of our membership within the State Chamber and NBIA, we have asked Jorge Berkowitz, of Langan Engineering, to provide specific testimony on our behalf. Jorge is

also providing the testimony for NAIOP. Jorge is essentially an individual that's in the trenches and has extensive experience and knowledge of the system and the challenges he faces with the process at DEP.

I'm going to ask Dave Brogan to say a few brief comments, and then Jorge will take the bulk of the testimony.

Thank you, Chairmen.

ASSEMBLYMAN McKEON: Michael, thank you.

**DAVID BROGAN:** Thank you.

Dave Brogan, from New Jersey Business and Industry Association.

As Mike said, we asked Jorge to go into detail.

But just briefly on the licensed site professional program, we feel that if it's done the right way it can be a critical component of an implementible economic growth strategy.

As many of the members of the Committee mentioned earlier, it does create ratables, it does take development pressure off of greenfields, and cleaning up these sites does enhance the environment.

I just want to touch upon a couple of things that were said earlier. With regard to accountability: We would just ask that accountability goes both ways. The licensed site professionals are going to be held to a very high standard. And we would just ask that the Department be held to a standard, in terms of turning around -- in turn-around times for the various paperwork that needs to be submitted.

With regard to the escrow fund: We do have concerns with the Department acting as the middle man for the funds. We feel as though it would slow down the process and increase costs. We've seen some

examples with the BPU and the solar program, where companies just were not getting paid. And we fear that that could go down that path.

SENATOR SMITH: Yes, but stop for a second.

MR. BROGAN: Yes, sir.

SENATOR SMITH: What happens when the applicants for the permit don't pay the engineer?

MR. BROGAN: I can't hear you, sir.

SENATOR SMITH: Don't you see an ethical issue in the situation where-- You say you're worried that the DEP wouldn't be paying the licensed site professional.

MR. BROGAN: Right.

SENATOR SMITH: What happens when the applicant doesn't pay the licensed site professional? It says you either write the right report or we don't pay you. Isn't that an ethical problem?

MR. BROGAN: Well that can happen in any-- An ethical problem?

SENATOR SMITH: Yes.

MR. BROGAN: It's a litigation issue. I don't think it's an "ethical" problem.

SENATOR SMITH: Well, remember the point on this was to try and speed up the process. We don't want litigation.

You've seen the process at the local level, where there's an escrow collected and the town then hires its own professionals to review an application. The towns, once they get billed, pay it promptly. The State of New Jersey can do that. Don't you see the bigger problem where the licensed site professional is paid directly by the applicant? Don't you think

there's a possibility that perhaps the report may be pressured in one direction or the other?

MR. BROGAN: Well, the licensed site professionals are going to be held accountable. And I know that you're going to increase the penalties -- the criminal penalties, the fines. I think that can act as a disincentive -- enough of a disincentive to counter the "influence" that might be had.

We just feel as though if you have money going into a fund that DEP is overseeing, and that fund's then dolling out money--

SENATOR SMITH: Dolling?

MR. BROGAN: --I'm sorry, paying the licensed site professional in a not-so-expedited manner, it's a problem.

SENATOR SMITH: Respectfully, I don't think you can have your cake and eat it.

MR. BROGAN: What's that?

SENATOR SMITH: I don't think you can have your cake and eat it. If you're looking for additional persons or expert power to move these applications along, and you're constituents are willing to pay for it, it has to be done in a manner where they're not ethically pressured. And ultimately the checkbook is the pressure. Once that first licensed site professional is not paid by one of the applicants, they all walk away from the program, saying, "What, are we nuts? We're working and we're not getting paid." You really need that honest program to make sure that they get paid.

MR. BROGAN: I understand your position, Senator.

One last thing with regard to permanent cleanups. I know that a lot of environmental groups really want to have every cleanup done to unrestricted standards. The market forces that are out there -- many of the sites just don't have responsible parties that the DEP can go after now. So the market is going to dictate whether private-sector investment goes into those sites. So if you mandate that permanent remedies be the solution, even in cases where it's not residential, you're just going to drive that private-sector investment away, and then the sites are just going to simply lay fallow. So we would just ask that you don't go down that route.

With that, I'd like to turn it over to Jorge.

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

Again, I'd like to reiterate that I'm here representing the Chamber, NJBIA, and NAIOP. And as such, I presume that I have 10 minutes for each, so I will take 30 minutes. (laughter)

No? Okay, I tried.

And I do want to come back to your question, Senator. And if I don't, please, let's get into that discussion afterward.

First of all, thanks for the opportunity to be heard on the importance of site remediation reform within New Jersey and DEP. Some of you know that at one time, I headed the NJDEP Site Remediation Program, for a period of time, at its inception. This goes back to the -- I hate to say it -- 1980s.

Prior to leaving the Department, I was acting as Assistant Commissioner for Environmental Control and Management. And from time to time I've been called upon to discuss with the regulated community the importance of having a strong, respected, technically astute, and

dispassionate Department. Such a department provides, to the public which it serves, that actions taken by others are neither harmful to the public's health nor the environment. In all the years since I have left the Department, I have not wavered from that position one iota.

I offer this as a preamble to my discussion so as to suggest that my recommendations would do nothing to erode the Department's authority or responsibilities. On the contrary, in my view, it would allow the Department to remediate sites quicker, more economically, and enhance environmental quality.

I'd like to talk about two major issues: lack of resources at NJDEP and programmatic reform.

Lack of resources: Given the current budgetary situation, it is unlikely that government will be able to bring in new people to staff even important programs as this. However, prior to assuming that more people are the only answer to a burgeoning caseload and an increasing backlog, one must seriously ask whether the existing program is one which is efficient and maximizes the utility of its staff. Having Department personnel do everything is no longer feasible or desirable.

I have two recommendations: create a licensed site professional program. Clearly, the Department can craft a program which relies on the considerable site remediation experience in the State to assist in site cleanups. Such a program must vet carefully those who are allowed to participate and hold those accountable for their representations to the Department. However, the Department must commit to having this program work at all levels, for it will not work in the context of command and control relationship. There needs to be a flexible partnership that

evolves. The relationship must engender flexibility and consistent communication between the parties. The effectiveness of this new effort will be in the specifics as to how it's going to be implemented. We can sit here in concept and agree, but there are programs that involve licensed site professionals that work, and there are programs that involve licensed site professionals that do not work. Nevertheless, we strongly support the concept of the licensed professional program and encourage it's undertaking with careful crafting.

Hire external professionals to assist the Department: The Department needs help. One effective way, a way that another program in the Department has been using for nearly 20 years now, is to hire consultants to assist the various case managers to review the voluminous submissions required by the site remediation process. The cost of these professionals would be paid by the remediating party such as it is currently when the Department assesses its oversight cost. Therefore, this program would cost the taxpayers nothing. Specialized expertise can be brought in on an as-needed basis, while not incurring the cost of maintaining this individual on the payroll plus benefits when they simply are not needed. The cost of having the services of this individual comes without the encumbrances of having to provide benefits when this individual leaves the Department.

Programmatic reform: The state is being cleaned up by private parties, not the government. In a large measure, this was done because the land being cleaned up was extremely valuable. The economy has changed that calculus. Land values have changed precipitously. Remediating contaminated sites is a risky business. However, even with the

uncertainties in the regulatory process, brownfield redevelopers were willing to take on the task. That decision is harder today than it was six months ago. The Department and the Legislature must incentivize, not disincentivize, cleanups, because if the private remediating parties do not clean up the sites, quite simply, the job may not get done. Even if government wanted to clean up the sites, it is not efficient or equipped to do so on a wholesale basis. I know this, I've done it both ways. None of this is intended to suggest the relaxing of technically justifiable remediation standards or being less vigilant. It can mean, on balance, that more sites get cleaned up quicker with positive environmental consequences and result in sites which can safely be reused for a multitude of purposes.

I have three recommendations: introduce flexibility into the technical requirements. The technical requirements have enmeshed both the Department and the private sector in a command and control relationship. This results in protracted studies with iterative involvement with the Department and little predictability. Sites are studied, studied again, and studied even more, and then we may get around to cleaning them up.

The technical requirements are too prescriptive, period. They utilize the one-size-fits-all concept in a world where no two sites are the same. The technical requirements must be made flexible to allow for professional judgement by the case managers in their approval process. A checklist approach, rather than a literal accounting for every item within the technical regulations, would allow moving sites into remediation quicker without compromising science, public health, or the environment.

Allow the use of presumptive remedies: In specific circumstances, the Department should allow the use of presumptive remedies for a site remediation in order to move into remediation quicker. In most cases, if not all, you need not know where every molecule of contaminant is prior to selecting a remedy. Once the remedy is implemented, an assessment may be made and any remaining contamination can be dealt with.

Establish time frames for NJDEP review: When a submittal -- and we've heard how time frames are going to be imposed on the remediating party. Maybe we ought to look in the mirror. When a submittal is made to the NJDEP, it is nearly impossible to predict when a decision will be forthcoming. It is not unusual to have submissions sit for six months or more before they're even reviewed for the first time. By utilizing LSPs and external professionals, the Department should be legislatively mandated to meet specified review times for the various required submissions. Delays are significant disincentives to anyone who wishes to remediate a site voluntarily.

There are many other issues that I could discuss, but time does not permit. I do want to make sure that we do not denigrate the use of engineering controls. Capping is a legitimate remedy for certain sites under certain circumstances. To call them -- to say *pave and wave*, to me, is an epitaph and does a disservice to people who have to deal with those sites on a daily basis.

However, one thing is certain--

ASSEMBLYMAN McKEON: You've got to wrap it up, please.

DR. BERKOWITZ: And I will.

The Commissioner and the Legislature has made significant efforts to improve upon the process. We appreciate that and we applaud them. We appreciate the presence of Irene Kropp as being a stakeholder in the process. I very much appreciate the opportunity to have provided input, not just now but throughout the course of the year.

Thank you.

And I would like to answer Senator Smith, if I could.

ASSEMBLYMAN McKEON: Just please, if you could take a moment.

DR. BERKOWITZ: Senator Smith, I don't see the rampant dishonesty of consultants that you may perceive.

SENATOR SMITH: No, no, no, the reverse.

DR. BERKOWITZ: Just hear me out.

SENATOR SMITH: I did not say there was any dishonesty on the part of consultants. I said you have an economic pressure when the applicant doesn't pay their costs.

DR. BERKOWITZ: Right.

SENATOR SMITH: And if you allow the relationship to be direct, the employee-employer relationship is the wrong one. The licensed site professionals, if we go that way, should be an employee of the State government, not the employee of the applicant.

DR. BERKOWITZ: I'd like to make two comments. First of all, 100 percent of my practice is in the State of New Jersey. It involves my ability to work with government, and it involves my honesty and professionalism. Because every time I come in the door it's a new day for me.

There is a significant disincentive for me to do anything but what's required. And that's all I would like to say.

ASSEMBLYMAN McKEON: Okay. Thank you, all.

Seeing no further questions, and in consulting with Senator Smith, I just want to remind everybody we've now been at this close to three hours. We had our colleagues plan their busy days knowing that we would be concluded at about 1:00.

Now, Senator Smith and I are committed to continue this at least for the next 45 minutes or so. But in order to get everybody heard, we're going to limit you to five minutes. I'm going to reiterate this request: If you have written testimony, please submit it. We're all very capable and will, indeed, during this long process in front of us, consider it. I know it can sometimes be intimidating to be before this group, although I can tell you we don't take ourselves all that seriously. (laughter) If you have to read, you shouldn't be up here at all. Just submit it. Please summarize, with all the incredible expertise you have coming up here, what it is you'd like to say. We can move more efficiently.

And with that pressure--

SENATOR SMITH: John Maxwell, New Jersey Petroleum Council.

JOHN MAXWELL: Thank you, Chairmen, for the opportunity to be here.

I have a couple comments to make right off the top. First of all, the Massachusetts Licensed Site Professional Program was signed into law by Theodore (*sic*) Weld, back in 1993, 1994. If Jeff is in the room, I just wanted to -- couldn't miss that opportunity.

And the Site Remediation Program has been addressed over a number of years by the Site Remediation Industry Network. That was founded back in 1993 by two prominent members of, one, the Petroleum Council, and another from the Chemistry Council.

We were involved in trying to reform the Site Remediation Program since way back then. And we've been in constant contact, or periodic contact, at least, with the agency. And we've been making some progress, and we see before us today an opportunity to go a little farther.

In spite of Chairman McKeon's remarks just a little bit ago, I just have a couple things I want to read, and I will be real quick.

ASSEMBLYMAN McKEON: I'll just have lunch. Don't worry. (laughter)

MR. MAXWELL: Okay.

We recognize the hard work and struggles the Department has had in implementing the Site Remediation Program. And the difficulties in the Program's performance are not for lack of talented or devoted staff. It's a result of an approach to site remediation that is prescriptive, inflexible, and assumes the worst case in all sites. If we want to have an effective program, we need to make changes to this approach.

The poor performance is not due to low staff levels, as most well-performing states have higher case loads per staff than New Jersey. In the Site Remediation Industry Network, which is comprised of people who do site remediations not only in New Jersey but throughout the United States, and in cases throughout the world, we brought a lot of expertise into the program.

There's one individual in SRIN that has responsibilities outside of the United States, throughout the world. And they meet the one-in-a-million criteria when they're doing cleanups in Southeast Asia, and in Africa, and so on, and so forth. He's assigned to the world. And he has one other assignment, and that's New Jersey. And that's because the Program is so convoluted and so difficult to get through. That sends a message.

Anyhow, the poor performance is due to a worst-case scenario that I have just mentioned. High-priority sites are not given more attention, allowing them to become issues, as we have seen in the press. Low-risk sites are even given the same level of effort, drawing resources away from higher priorities. Low-priority sites cannot be closed, as the requirements to reach closure are impossible to meet, as we heard before. Chasing the last molecule out of the aquifer is virtually impossible.

Without an ability to realistically prioritize sites and close low-level sites, the system has become jammed and ineffective. The Department does not need more resources to do a better job, it needs a system that allows it to prioritize sites and close low-risk sites in a timely manner. The current tech regs could work if available tools were used more effectively. For example, variances could be used to close low-risk sites.

And in conclusion, guidance should be issued in a manner similar to the previously released site remediation news. Guidance could be developed working together with stakeholders in a UST remediation task force.

In closing then, I say that the New Jersey Petroleum Council fully supports the statements that Tony Russo made. We fully support the

comments that our friend Jorge Berkowitz made on behalf of the Chamber and the BIA.

And finally, I couldn't help but use some kind of alliteration here. And I was thinking, this is one small step for the DEP, yet it could be one giant leap for the perception that New Jersey is a clean state open for business.

Thank you very much.

ASSEMBLYMAN McKEON: And that's your sound bite, Amos.

MR. MAXWELL: I was thinking Neil Armstrong, first golf swing on the moon.

SENATOR SMITH: Next is Bill Wolfe, from New Jersey PEER.

**B I L L W O L F E:** I want to bring up a chart we didn't see today. We didn't hear any discussion around this issue. It's very important -- underlying source of the problem.

My name is Bill Wolfe. I'm Director of New Jersey Public Employees for Environmental Responsibility. We're a national support group for the professionals that work in the Federal and State agencies. I'm a former DEP employee. I joined DEP in 1985, when Jorge Berkowitz was directing the Site Remediation Program, and I was a planner by training at the time, and got in his staff's hair quite a bit in terms of trying to rationalize his program. And I agree with his remarks with respect to the need for a strong, technically astute, and competent staff at the Department, and remedial program. And that's what I'm trying to promote.

I had prepared three-- My written testimony focuses on three issues. I was asked to focus on the licensed site professional program and remedy selection, being the two most important. But I'd like to, instead, make a few clarifications, in terms of some remarks I heard.

DEP said some things that were very important, but it didn't get any attention. There are thousands of no further action letters out there that are partial -- either portions of a site, or soil and not groundwater -- that are being used to manipulate and mislead investors, local government officials, construction code officials with respect to the actual conditions at a site. And it's highly significant that those prior, no further action approvals be reexamined in light of the current conditions. So that's a very important sleeper thing that was mentioned that you might want to look at.

With respect to Senator Gordon's question -- too bad he's not here. I'd like to clarify that the current law already provides a mechanism to "chase the last molecule" out of an aquifer, the way it's been characterized here. There are site-specific means in the current law to reclassify groundwater that's not potable. And that mechanism has not been used because the regulated community cannot make a scientifically valid demonstration that, in fact, the aquifer should be reclassified.

Getting to my testimony, the Department's perception of the Massachusetts program-- I have written testimony, actual audits of that program. I'd like to see their written data with respect to the number of sites that have passed an audit. Because the data I have here are completely inconsistent. And the sites that actually pass an audit -- whether it's a random or what they call a *Class 3 focused audit* -- are in the range of 9 to 36 percent of sites that are actually -- that are audited that are okay.

Obviously, we oppose the licensed site professional program. But if, in fact, you're going to go down that road, we agree with Senator Smith's concern that those folks have to be paid for by the State. They're basically serving the public interest, not a responsible party's interest.

With respect to remedy selection: The law, prior to 1993, vested the DEP with remedy selection power. And that law was amended in '93, so it's not something that we don't know how to do. The law was changed with a specific public policy purpose in mind, and it was to, at that time, reduce the DEP's oversight and track private investment. So what I would argue is, the move for flexibility that the regulated community seems to be pushing is actually the barrier to investment, because lack of flexibility obviously reduces predictability and certainty.

And this goes to the question in the chart here. The give and take, and tug of war that happens between the consultant community and the DEP staff is a function of the lack of the DEP's effective authority to compel a bottom line. So a protracted and endless debate occurs because the DEP doesn't see the program-- They see the program as a partnership, as cooperative, as flexible. They don't drop the hammer. And that keeps the clock running, and the consultants get paid, and decisions are not reached.

So what got implemented in a very curious way that you guys may not have been briefed on fully is: The last Commissioner took what was known as the voluntary clean-up program, that had been developed over time, and he took the grace period law and he put two, what I perceive as, negatives-- Because the voluntary clean-up program was to allow a responsible party to proceed at their own pace, as they saw appropriate, not

based on risk or environmental threat, but based on market criteria. And the grace period law was a statute enabled -- developed under the Whitman administration to give flexibility for minor violations, which were paperwork in nature, that presented no environmental risk.

Well, the grace period law and the voluntary clean-up program came together, and they've now been the source of a program to issue automatic -- or notices of violation for technically deficient work plans and remedial work activities. And there you see some of the data. And that will give you some indication of the quality of the work that's coming into DEP. And that is one of the underlying problems -- that you're getting technically inferior work products submitted to the Department. It's not necessarily that the Department is being harsh, or restrictive, or inflexible. It's that the work product coming in the door is deficient. And the fact that the cleanups get delayed is because the Department can never cause a finality to a deficient application.

So that is a big part of the problem. And I've got data in my exhibits that will use DEP data that showed zero enforcement. So this is an improvement on the status quo. So I want to make the case for command and control -- improves the pace, reduces the cost, and stimulates investment, and allays public concern that the public interest is not being protected because the watchdog is sleeping.

So I'm going to turn the reality -- the regulated community's reality on its head and argue very strenuously. When you have a process that shuts the public out, that puts the consultants for the responsible party community in charge, that weakens the DEP's hand and they have weak enforcement. All of those things undermine the technical integrity and

credibility of the program. Plus, you have over-the-transom political intervention through Assemblyman Rooney's concerns about the consultant that gets hired; or a case I'm dealing with in Clifton right now, where legislators directly intervene and pressure the Department to jump when a site isn't prioritized for a low-priority site -- for what the DEP described as a transactional case. All those factors come together and the public has no trust and confidence.

Investors lack -- have -- are smart. They realize the same thing. They're like, "If the program is running down hill, and there's all these kinds of deals being cut, and we're capping things that need to be remediated, there are skeletons in the closet. I better be careful." So risk and certainty are reduced. And certainty is enhanced, and the investment climate actually gets better if you have a stronger program with greater technical integrity, and more command and control authority by the DEP.

And I have written documents you might want to look at. They're all-- I strongly encourage you to look at the documents. They're all DEP documents. There are things you haven't heard from the DEP, including their approach to prioritizing sites. You know, they just said there are 14,000 sites they're willing to put into this program. I don't buy it. They're throwing up a smoke screen that they've got too many cases. The private sector, in Management 101, says if you have scarce resources and a large problem, set some priorities. The statute mandates that priorities be established.

The Commissioner was here in October saying that was her first priority -- to develop priorities. And now that initiative has fallen off the table completely. Why is that? Until we get some data from DEP that lays

out priorities and diagnoses the cause of the underlying problems with respect to delay and lack of cleanup, you shouldn't move on any legislative front, frankly, until you have a more honest briefing from the Department.

Thank you.

SENATOR SMITH: Question for you before you leave.

MR. WOLFE: Sure.

SENATOR SMITH: It's a two-part question. Number one, do you agree with the Department's suggestion that the areas where they would be able to open up the remediation, go beyond the one-in-a-million standards, would be based on the ultimate use, schools, day care, and one other use -- or do you think that the opening up of the remediation choice should go beyond the ultimate use? And if you do believe that, what's the criteria that you use if you go beyond the use?

MR. WOLFE: I disagree with the Department. If the Department meant to say that that's the sole criteria -- that the land use is the sole criteria under which they would have authority to mandate a permanent remedy, that is, I think, the wrongheaded approach. I disagree with that. I don't think that's what they meant to say. I think the statute provides the adequate criteria right now, which are risk-based. And they should be ecological risk, as well.

So I think some of the testimony we heard earlier is saying that some sites that need to be cleaned up, that are high-risk to the environment or adjacent communities, aren't being cleaned up because there isn't a developer ready to come in and make the commitment -- the financial commitment -- to make it happen.

So I think the criteria need to be based on both the -- what Lisa Jackson called *sensitive receptors*, meaning children, schools, housing, and an environmental risk criteria. And I think that those criteria, frankly, should be very narrow, and they should -- and I believe-- Again, I think you're getting a mischaracterization. Because no environmental person that I'm aware of is advocating that 100 percent of the sites be permanent remedies. That's totally a mischaracterization of our position. Our position is that there should be presumptive bans on, say, putting housing on a landfill, unless you can demonstrate that it's okay. Do you see what I mean? So that demonstration -- that hurdle should be much higher, and it should be, presumptively, you can't do it. And then there need to be additional environmental criteria to say, if your site is impacting sensitive wetlands, or river systems, or environmental features, in addition to drinking water and vapor intrusion, then you have to go that extra hurdle to demonstrate to the Department, or the Department would have the authority to say, "Permanent remedy, dig it up, take it out."

And with respect to the last molecule, I think you're getting very misleading testimony on that -- this notion that we're cleaning up groundwater. The data I submitted to you shows that more than 90 percent of the known groundwater contamination cases are not active pump-and-treat systems where they're actually treating the groundwater and cleaning it up. There are what are called *passive remedies* that allow the pollutants to dilute, dissipate over time, or naturally attenuate. So we're not cleaning up groundwater in New Jersey, and we're not spending a lot of money on it. And I think the regulated community is giving us some-- And again, go back to the Department and ask them very pointed fact questions

on -- of the more than 6,000 known contaminated groundwater sites, how many are actually doing active pump-and-treat systems? And the data I gave you shows that about 10 percent are.

ASSEMBLYMAN McKEON: Thank you very much.

Ted Schwartz, from Scarinci & Hollenbeck.

**T H E O D O R E A. S C H W A R T Z, E S Q.:** Good afternoon, respective Chairmen and members of the Committee.

As you indicated, I'm a member of the law firm of Scarinci & Hollenbeck, and I've been practicing environmental law for 42 years in New Jersey. And I have been devoting much of my efforts to brownfield redevelopment for industrial and commercial purposes.

I'll be as fast as I can, John. I've tried to cut this down as much as I could.

The most significant economic engine in our state exists at Port Newark-Elizabeth, and soon Jersey City. The port is the second largest one in the United States, Los Angeles being the largest. If you've been watching National Geographic the last few weeks, you could see a good program on America's ports, which describes how important the ports are to our economy.

The Port of Newark-Elizabeth serves a region of 27 million consumers from New Jersey, New York, Connecticut, Pennsylvania, Maryland, and Delaware. It's the leading economic gateway in this part of the country, due to the confluence of rail, road, airports, and population.

Recently, as you're probably aware, the State of New Jersey and the Federal government have spent hundreds of millions of dollars for dredging projects in the New York Harbor area. The purpose of these

projects is to deepen the channels so that new, larger ships can come in and bring additional cargo. I attended a recent press conference with Governor Corzine and Chairman Coscia on March 20 which dealt with the vitality of the port.

The Governor had the following to say: “Even during times of economic uncertainty, the Port has been a lifeline for this region, providing a continuous source of jobs and economic activity. For that reason, we must protect this critical asset and move forward with a clear vision for the future, one that will allow the Port to maintain its world-class reputation. Our vision includes targeted investments at existing port terminals that will allow it to handle projected future growth in expanding our port facilities beyond their existing boundaries to allow us to officially handle more cargo.”

Chairman Coscia echoed similar comments.

The Port has competition from the ports in Norfolk, Charleston, and Savannah, which ports are now growing due to the inability of Port Newark-Elizabeth to handle the cargo that’s presently coming in and the additional cargo to come in. To serve these needs and continue to grow the Port, distribution centers are needed in proximity to the Port: urban centers, such as Newark, Elizabeth, Jersey City, Carteret, Woodbridge, etc.

The predominant land available in these areas are brownfield. To identify candidate sites, the EDA and the Port Authority launched it’s Portfields Initiative project, which identified 16 or so sites for consideration as warehouses and distribution centers in a defined area within the port

districts. All of these sites require extensive environmental remediation as part of their development.

With this economic backdrop, the development of brownfield sites are critical to this economic engine -- employment opportunities at urban centers, new ratables in place of abandoned relics of the past, opportunity to improve the environment, and consistent with the State Smart Growth plan.

Without the ability to meet the needs of managing the increase in cargo, we are beginning to lose commerce to other ports and not capitalizing on our investments and infrastructure improvements, such as dredging, improved rail service, and the Liberty Corridor transportation projects.

What is the problem? The lack of shovel-ready sites for warehouse distribution centers; the inability to establish occupancy dates for perspective tenants. And presently, in the I-78/81 corridor and in other ports, they are better positioned to deliver distribution warehouse facilities than we are in New Jersey. The cost of remediation, combined with other site development requirements, drive costs above market acceptability.

Remediation comments: Brownfield remediation should be treated as a separate regulatory entity. The DEP brownfield program was a step in the right direction. Technical regulations are not suited or conducive to brownfield redevelopment and cause time-consuming review of projects. As such, projects become bogged down in unnecessary delineation requirements. With a limited staff at DEP, this causes inevitable backlogs with an overworked staff. Tech regs should be tailored to be more reasonable in brownfield applications and provide flexibility

based on site-specific conditions -- assign most capable DEP staff to complex brownfield sites. Each project should be identified early on as to its environmental components to provide a coordinated approach to complete project review and approval. This is mostly directed at the land-use program in DEP, which we have to merge together with the site remediation folks. A mechanism has to be established to assist in DEP project reviews, especially with the budget cuts that are now being proposed.

In short, the brownfield program is overloaded with burdensome regulations and requirements which have added countless additional time and costs, both at the development stage and the review stage. Without developing mechanisms to streamline the brownfield program and make adjustments to regulatory requirements to considerably reduce the time and expense for project review and development, unfortunately New Jersey will not be in a position to compete effectively in the marketplace.

As noted before, a massive investment in infrastructure improvements will not produce the anticipated economic results, and we may not be able to even sustain our present position. The economic incentives available for brownfield remediation projects for the development of warehouses and distribution centers are almost nonexistent. The only program that affords reasonable incentives is that which is carried out under the brownfield reimbursement program, which is strictly for businesses that are engaged in collecting sales tax, such as retail establishments.

Some may argue that treating Brownfield differently as to remediation requirements is not a good idea, for it penalizes urban centers

from environmental justice perspectives, as commented by the people from Camden. However--

Excuse me. I'm really cutting this down.

ASSEMBLYMAN McKEON: I appreciate that.

MR. SCHWARTZ: Unfortunately, if incentives are not provided to develop brownfield sites with reasonable remediation requirements, they will only remain as relics with continued contamination existing on property with little or no hope of productive development. This is not a good course either, and there must be a happy medium. The creation of distribution centers would produce thousands of jobs, as noted by the Governor and Port Authority Chairman. These jobs will help the economic vitality of urban centers, which would create self-esteem and a better quality of life for the residents.

I want to leave you with one last point. I'm a firm believer in contract remediation, which nobody has talked about, and was not even discussed in any of the white papers from the stakeholders' committees. I would suggest that, in legislation, there be authority given for formal agreements to be entered into between the developer and the DEP. It's really an expansion of the existing memorandums of agreement which contain NJDEP performance requirements, as stated by Mr. Berkowitz, which I think are very important. The DEP would have to agree on the scope of the project and permits necessary, establish timelines for deliverables for each party, establish timelines for project review and completion. Frankly, it's decision time, and we cannot be left at the station, so they say. The stakes are very high.

Thank you very much.

ASSEMBLYMAN McKEON: Thank you very much. We appreciate you being here today, as well as the depth of your experience.

Mike Pisauero, NJEL.

**MICHAEL L. PISAURO JR., ESQ.:** Thank you very much.

My name is Mike Pisauero. I represent the New Jersey Environmental Lobby.

I'd like to thank the Committees for holding this hearing.

I've submitted testimony, so I'm going to try not to repeat it.

There are a couple of things I--

ASSEMBLYMAN McKEON: Thank you for that, Mike.

MR. PISAURO: I said I would try. (laughter)

And just as a lawyer says, "Just one last word," it's never one last word.

A couple things: We need to amend our statutes. You've heard some of it. N.J.S.A. 58:10B-12(d)(2) indicates you cannot take a look at cumulative impacts. We have to. What we know of chemicals is miniscule to what their impacts are. The more we learn, the more we learn we don't know what we know.

The 2006 GAO reports indicates that even though EPA has the authority to review and test for human health and the environment chemicals, they're not doing that. They don't have the resources or the authority to do it. And the report further said, "EPA does not routinely assess the human health and environmental risks of existing chemicals." So we know there are chemicals out there that we don't know what they're doing. We know these chemicals are getting into our water, getting into our grounds, and they're interacting. So handcuffing DEP from looking at the

cumulative impacts is not being protective of the human health and the environment, which is a requirement of the statute.

Also, the standards that are in place are set for a healthy adult male, not for our most at-risk children. So when you're remediating and doing a cap -- cap and wave as some have said and some have objected to -- you're not protecting those most at risk, and we must do that.

You've heard, from Jeff, recent data from the Massachusetts DEP program. On Level 3 audits, 21 out of 30 have failed. That's not a success. That's not a program we should model. You've heard from DEP today that 80 percent of institutional controls have failed. Again, something is terribly broken. And before we continue to use institutional controls, we must look at it and decide, really, should we do a permanent remedy or go forward? The statute prefers permanent remedies. Land uses change. As you've heard from DEP, and as the EPA, the Governmental Accounting Office, and the Environmental Law Institute have all studied, people do not read, understand, or comprehend institutional controls, and they forget about them. So what might work today is not going to work 15 years from now or 20 years from now.

Capping and putting institutional controls -- those are temporary. They fail. And the reports indicate that some of these -- they're never put in place, they're not put in place properly, they're not maintained, and they're not repaired and replaced. Take a look at the Honeywell case that came out of the district court in 2003 and 2005. There was a repeat of 20 years of instances where the solution that was put in place wasn't really a solution, because it wasn't going to work in the first place. It failed, it cracked, it broke, it leaked. The responsible party did not

fix this in a timely manner. It had to wait until DEP discovered the issue. God knows how long it took before it was learned. And then the DEP had to force Honeywell to do the fixes. Well, if that is what business as usual is, we're not protecting human health and environments, and we must do that.

Also, licensed professionals do not seem to be working. If we're going to go down that route, I cannot echo strongly enough, Senator, your comments, as well as others. The responsible parties cannot have the strength of the pocketbook over these licensed professionals.

I've submitted testimony, as I've indicated. And we're relying on that. I look forward to working with the Committee as this goes forward, putting in place a program that we can come back to being the jewel that we were of the country, where we had a program that was admired and copied. And I think we can do that if we go forward.

Thank you very much.

ASSEMBLYMAN McKEON: Thank you, Mike. Excellent work.

SENATOR SMITH: Our next witness is Steven T. Senior, from TRAC, Technical Regulations Advisory Coalition.

Mr. Senior.

**S T E V E N T. S E N I O R, ESQ.:** Good afternoon.

I'm an environmental attorney with the law firm Riker, Danzig; and also a Co-Chairperson of an organization called the Technical Regulations Advisory Coalition, TRAC.

I have written testimony, and I will primarily rely upon that. But I want to make one point that echoes something Jorge Berkowitz said about what we call the *tech regs*. The tech regs are hundreds of pages of

technical requirements and regulations that govern the process by which we investigate and remediate sites in New Jersey.

This process is highly prescriptive. It does not include sufficient flexibility to take into account the different site-specific factors and circumstances you see at contaminated sites and brownfields. And I think that any process by which we try to reform site remediation, whether you use LSPs or consultants to the DEP, or other methods, will not achieve the goals that you're looking to achieve -- timelier cleanups, better cleanups -- unless we also address this process. It's too prescriptive. It doesn't allow DEP case managers or outside consultants to exercise best professional judgement and make decisions about how to investigate and remediate sites based on best professional judgement. I think we need to allow these professionals to do what they're trained to do and make good decisions about investigating and remediating sites, rather than following a cookbook that would apply to every site.

SENATOR SMITH: Mr. Senior, I have a question for you.

We live in a state that is rightfully paranoid about its government. How do you say to the DEP, "You have the flexibility to do whatever you think is fine," without there being charges at some point that the lower standard for Site A is the result of some political pressure? How do you deal with that paranoia? How do you-- I don't think you could just put in a statute, "Be flexible."

Can your organization provide criteria -- specific objective criteria that say, "In the event a site has *XYZ, ABC* characteristics, then the following can occur or cannot occur"? But to just simply say we're going to

throw the word *flexibility* in here doesn't do the trick. We're all going to be criticized for that, and the DEP is ultimately going to be criticized for that.

What specific objective criteria can you use that would allow "flexibility"?

MR. SENIOR: Well, I'm not sure that you can develop specific objective criteria that, in the first instance, you're going to apply to every site, and I think that's part of the problem. Site remediation is complex. These sites are all different.

SENATOR SMITH: Yes, but you're allowing the site -- the managers of these cases to be subject to enormous criticism because they treated two sites, that appear maybe on the surface to be the same, to be treated differently.

See, that's the problem with your concept. You've got to give us some specifics so the world knows when "there's the ability to use tech regs bulletin number two instead of tech regs bulletin number one."

MR. SENIOR: There are some specifics in the statute right now, for example, the 10-to-the-minus-6 risk -- health-based risk standard. Other states, for example use a different risk: 10-to-the-minus-4, 210-to-the-minus-6, and this is a range that the EPA uses as well. It's an objective criteria.

SENATOR SMITH: What does California use?

MR. SENIOR: I don't know what California uses.

SENATOR SMITH: They're always ahead of us.

MR. WOLFE: (speaking from audience) Ten to the negative five.

MR. SENIOR: Ten-to-the-minus-five.

SENATOR SMITH: So you're saying New Jersey has the most restrictive standard in America?

MR. SENIOR: It's the most restrictive that I'm aware of.

MR. WOLFE: (speaking from audience) EPA risk range goes 10-to-the-minus-4 to 10-to-the-minus-7.

SENATOR SMITH: I'm sorry, that was Mr. Wolfe. For the record, that was Mr. Wolfe in the background saying that the EPA standard is 10-to-the-minus-4 to 10-to-the-minus-7. Ten-to-the-minus-7 would be one-tenth more restrictive than NJDEP if we have that across-the-board standard of 10-to-the-minus-6.

But it gets back to the same problem. You're going to set people up for a terrific criticism that they're treating people unfairly. You'll have one company saying, "But you did this for the XYZ corporation, and you didn't do it for me."

So if you can't come in with some specifics, you can't ask us to just throw the word *flexibility* in there. It's not going to work.

MR. SENIOR: I don't think that's what we're asking. Other states are doing this differently. They're not including very prescriptive regulations, but they're using this information as guidance that doesn't have to be applied at every site.

SENATOR SMITH: Send us your suggestions in writing. I'd like to see some language of what you're trying to propose. I'm sure the DEP case managers-- If, in fact, you're saying everybody gets treated with the same cookie cutter, and there's a need on "simple" sites, or not very contaminated sites, to use a different set of checklists -- give us a criteria that we could at least look at. Because right now, you're not doing that.

You're just simply saying, "Give the case manager flexibility." And that is just going to lead everybody to a scandal, or to criticism, or whatever.

MR. SENIOR: We'll provide some proposals.

Thank you.

SENATOR SMITH: Okay.

I'm sorry. I didn't mean to chase you out of the chair.

(laughter)

Our next witness is Adam Liebttag, from CWA.

Mr. Liebttag.

**A D A M L I E B T A G:** I'm here representing CWA Local 1034, which is the labor union that actually represents the rank and file scientists, geologists, case managers, and supervisors in the Site Remediation Program.

I want to thank the Committee Chairs and the members of both Committees for getting together today and affording us this extra time to weigh in on the subject.

The Union stands fully ready to participate in a deliberative dialogue. We are concerned about partial remedies taking place possibly over the Summer, and then a second round of remedies or a second round of reforms taking place later in the year.

I will restrict my comments today, though, to the issues of staffing shortage at the Department and on the licensed site professional program, which we do consider to be a form of privatization.

On the staffing shortages: You have the information, you have the charts and the graphs, you have the DEP white papers. I will not go through those numbers again in detail. However, I also do not want to give them short shrift. It's easy to say, "There's a staffing shortage, the problem

is too large, there's too much work. We can't possibly give the staff -- or give the Site Remediation Program enough resources to catch up."

I think it's important to look back, just very briefly. The DEP white papers go back over five and over nine years. If we went back further than that -- and I think that Jeff Tittel referenced this in his testimony -- you would actually see a very sharp reduction in the number of staff due to multiple reductions enforced during the Whitman administration in the mid- and late '90s. So we really have not fully recovered from that, not only in Site Remediation, but in other programs within DEP as well.

The staffing numbers clearly have been on the decline. They've been held almost flat over nine years. There's been no commensurate growth in staff and resources to match the growth in the number of sites, the complexity of the sites, and the increasing frustration -- legitimately so -- from the residents and from businesses in New Jersey that want a faster response. But quite simply, the staff at SRP are taking on more water faster than they can bail it out. And I think that we all appreciate that point.

There's a simple, but perhaps politically unpopular solution, which is provide more resources and more staff to the Department. During the stakeholder process over the Summer, I believe that it was nearly unanimous around the table -- including the contracting community, the engineering community, and the responsible party community -- to provide more resources and more staff to the Site Remediation Program, because it ultimately will make the Program function much better.

The DEP has provided an estimate of a thousand positions to clear every -- to respond to every submission within 60 days. We do not necessarily agree with that analysis. We also don't agree that 60 days is a

one-size-fits-all response time frame. There are different types of sites and different types of submissions, and they should have their own sorts of criteria and deadlines.

My Local, Local 1034, and the CWA in general has encountered this during this administration in another agency -- this kind of problem. And it occurred with DYFS, it occurred with the Department of Children and Families, where there were crisis points that were reached. There was a lot of public scrutiny, a lot of criticism. And there was an investment. There was a recognition that when the system is broken, you have to dig in and try to fix it. And with the Department of Children and Families -- which was also a public health issue -- we worked with the administration to increase staff, to reprioritize how the work was done, put institutional controls in place, and cap caseloads. And we are looking to try to have that kind of a dialogue take place here when it comes to site remediation reform, merely than saying -- simply saying, "We don't have enough staff. We can't fix the problem."

In my testimony, which was submitted in written form for your review as well, there are a list of solutions that we are providing. I want to go through them just very briefly, mostly as bullet points.

The first is that there's currently a hiring freeze, statewide, which is affecting the Site Remediation Program and every program in DEP. That statewide hiring freeze prevents the Site Remediation Program from staffing up to what it should or could do. And that statewide hiring freeze also limits the ability to hire new positions that are on dedicated funding lines. So if there is dedicated funding -- if there's entirely a fee or a self-

funded position, they still cannot hire. And that doesn't seem to make a lot of sense to us.

The second issue is with respect to overtime. The overtime rules are complicated from the Department of Personnel. So when we have geologists with a backlog that would be very glad and very happy to attack that backlog, the Department's hands are somewhat tied in how they can structure that overtime work.

Speaking of geologists, with targeted hiring of new positions, a lot of the backlog -- at least internally within the Site Remediation Program and what they've articulated as a problem -- comes from the technical support staff, the geologists and the scientists that provide technical support and site reviews to the case manager. There are far too few of those technical support staff people. So when we're talking about staffing up with some very targeted hiring -- we're not talking about hundreds, we're talking about targeted hiring -- of geologists and technical support scientists, we feel that we could help reduce that backlog and give faster response times to the case managers.

We also want to see increased revenue, increased fees. If the cost of working on a site doesn't match what the Department is collecting, then that's a problem. And so we need to have fees that are responsible and commensurate with the complexity and the submission of the site.

We were very disturbed today -- I was very disturbed to hear the testimony from the Department that the universe of cases that could go into the licensed site professional program is around 14,000. That number is higher than what has been discussed in the past. And essentially, we would see that as giving up. My members in the Department are not giving

up. They do not want to see 14,000 sites handed off to contractors who are on the payroll of responsible parties. We have a very deep, deep concern, and we oppose the licensed site professional program as it's been conceptually proposed today.

The bottom line is: If it sounds too good to be true, it probably is. And the licensed site professional program being a zero taxpayer impact means that someone has to pay those contractors. They would be on the payroll of the responsible party. And we are deeply concerned about pay to play concerns, we are deeply concerned about the quality of submissions that are already coming into the Department. And as others have testified, if you get bad product in, that will delay things. And that has caused my members to do duplicative work. They have to essentially rewrite the submission that the contractor provided, which is like doing the work twice.

I'm not saying that every engineer or every contractor is a bad actor, but if you're only auditing 20 percent of the sites, that means 80 percent of the sites you don't clearly -- and have a guarantee as to what happened there.

So we should not be privatizing. Licensed site professionals -- the program is privatization. You're taking the regulatory -- and in some cases the statutory -- authority of the DEP and giving it to a private-sector entity. That is outsourcing regulatory authority. And we believe that it's bad public policy. We also believe it's outsourcing, and it's privatization, which is clearly a labor issue for my folks that work in the Department every day and don't want to see that happen.

The rest of it is in my testimony. I thank you for your time. And we stand ready to work with you going forward.

SENATOR SMITH: Adam, one question for you.

MR. LIEBTAG: Yes, sir.

SENATOR SMITH: Do you agree with the comment that was made before that OPRA is crippling the Department?

MR. LIEBTAG: Absolutely.

SENATOR SMITH: How would you feel about outsourcing that? (laughter)

MR. LIEBTAG: I don't--

SENATOR SMITH: And here is what I'm talking about. We would get an immediate increase of 25 percent of the professionals' time in DEP if you said, "Listen, we want to -- we'll even provide you with space in the DEP building. Put your copiers in here." Somebody -- a lawyer or engineer needs the file, the background on a case. There's somebody there who is not a State employee, an employee of the XYZ -- whoever got the bid -- corporation. And maybe you have to have a DEP person supervising to make sure that things are done properly. They get guidelines on what has to be redacted. And then you have that particular function outsourced from State government, and we now free up people 25 percent that are not freed up now because we're getting killed with these OPRA requests.

You know, I don't want to put you on the spot. That's a tough thing.

MR. LIEBTAG: No, I actually-- Let me answer that.

The Department has clearly suffered the brunt of OPRA requests.

SENATOR SMITH: We're doing other people's work, quite frankly.

MR. LIEBTAG: And what they've done, I think-- We don't need to have privatization of the OPRA function. The Department has responded, over the last couple of years, by creating -- what I give them credit for -- a streamlined OPRA office, a streamlined approach within the Site Remediation Program. And they've dedicated entire staff lines, entire FTEs to dealing with OPRA.

SENATOR SMITH: Do you have any idea how many?

MR. LIEBTAG: I don't have that information.

SENATOR SMITH: Is the Department here? (affirmative response)

How many people are dedicated to OPRA requests for the Site Remediation Program?

ASSISTANT COMMISSIONER KROPP: For the Site Remediation--

SENATOR SMITH: This is Irene-- For the record, this is our DEP Assistant Commissioner Irene Kropp.

ASSISTANT COMMISSIONER KROPP: Thanks.

For the Site Remediation Program, there's a split between the number of staff that are permanent staff and the number of temps that we have in the Department. I'd say we probably have around eight or so staff.

SENATOR SMITH: Eight people full-time -- pardon me, full- and part-time.

ASSISTANT COMMISSIONER KROPP: And then there are temps. We probably have around five or six temps.

SENATOR SMITH: On top of the eight?

ASSISTANT COMMISSIONER KROPP: Right.

SENATOR SMITH: And this is just for the Site Remediation Program?

ASSISTANT COMMISSIONER KROPP: Right. Although, just--

Yes, it is. But let me just also clarify that OPRA was folded into the Site Remediation Program. So that entire function for the Department is under my purview at this particular point in time. But I'm speaking strictly for Site Remediation.

SENATOR SMITH: Right.

ASSISTANT COMMISSIONER KROPP: And then there's probably another five or six in the OPRA office that was the original Department OPRA office. And then in every single field office and in every single program there are people that receive their requests, review to see if there are actual documents related to the request, gather the files, make appointments with people. So there are staff who spend anywhere from 20, to 40, to 60 percent of their time on a daily basis dealing with OPRA requests scattered throughout the entire agency.

SENATOR SMITH: Do we collect for that?

ASSISTANT COMMISSIONER KROPP: No, we do not collect. We were able, at one point in time, to get copy costs reimbursed to a certain degree, but that's was just lowered also, recently, statutorily.

SENATOR SMITH: Not staff costs?

ASSISTANT COMMISSIONER KROPP: No, no staff costs or copy costs.

SENATOR SMITH: How would you feel about outsourcing the OPRA function?

ASSISTANT COMMISSIONER KROPP: I feel uncomfortable without doing more of an evaluation in answering the question.

SENATOR SMITH: All right. Well, we're just throwing it out for people to think about.

Thank you, both.

Adam, thank you.

MR. LIEBTAG: And we represent those folks who are working on the OPRA function. So I think we'd be concerned about outsourcing those as well. But I appreciate the point.

SENATOR SMITH: Okay. Thank you very much.

MR. LIEBTAG: Thank you.

SENATOR SMITH: Eric DeGesero, from the Fuel Merchants Association.

**ERIC DeGESERO:** Thank you, Chairmen.

Eric DeGesero, Fuel Merchants Association of New Jersey.

I'd like to thank both of these Committees and Assistant Commissioner Kropp for going through this process.

I think the one thing that the Assistant Commissioner has worked on doing -- we've spent a lot of time talking about standards today. But as much of this is pertinent to culture and to management-related issues -- in looking to get caseworkers to talk to responsible parties instead of everything simply being done by letters back and forth, and letters of deficiency -- and actually trying to make the responsible party work with the Department is an essential ingredient to making this program work. And I think she is very correctly working on engaging dialogue between both sides.

The one thing Senator Gordon raised before -- for all of the effort and all of the work that has been done and will be done, the issue of groundwater is not on the table as part of this process; and that there are still significant remedial issues that the State will confront, in terms of delays and getting sites ultimately back to productive use. The Senator mentioned groundwater classification, not an issue that's been discussed -- I don't think one that is going to be discussed, but certainly an issue.

Relative to licensed site professionals, we certainly support the concept. But I'd like to offer a contrary position to the concerns that have been raised here today, relative to LSPs, that most of the concerns -- or all of the concerns that have been raised are that the RP holds the purse strings and therefore the potential is there for abuse. I would like to, from the perspective of the RP, just offer the perspective that the LSP might also be overzealous in the work, might be feared -- especially if you're going to be taking someone's livelihood potentially away from them -- that they might drag out the process longer. So while we're certainly supportive of it conceptually, we'd be interested in seeing the details of the program.

SENATOR SMITH: Eric, have you heard of the golden rule?

MR. DeGESERO: Pardon me?

SENATOR SMITH: Have you heard of the golden rule?

(laughter)

MR. DeGESERO: Yes, sir.

SENATOR SMITH: All right. Well, it applies here. He who has the gold makes the rules. (laughter)

MR. DeGESERO: If the only way-- If your path to your NFA, which is the end game, is through the LSP -- and I understand that you

would look to safeguard it by having it kind of a blind third party, in terms of the Department appointing it, paying into a fund, and things of that sort -- so you're removing that. So if the RP doesn't have tetrahooks -- and I certainly understand your concern -- that makes the point of the LSP potentially losing their license, or certification, or however the program is going to be established, all the more likely-- So just to -- again, that concern.

Relative to homeowner USTs: I'd be interested in talking to the Department. It's something that we have discussed here previously, relative to what their thinking is -- have they seen issues pertinent to that? Maybe they're not-- We, as an industry are -- have developed new methodologies. There are new tanks. This is a process where market forces are really taking care of this. Most tanks getting replaced are being replaced with above-ground tanks as part of a transaction.

Regulated USTs -- I'm not exactly sure where the Department feels there is a breakdown, or where State law is deficient in addressing the Energy Policy Act of 2005 changes, but look forward to discussing that with the Department.

And lastly, relative to the dry cleaners-- FMAs concern is that the funding source for this is going to be the dedicated moneys that have been set aside, relative to UST remediations. These moneys have been diverted once already. There are no new moneys going into this fund. As we've testified at the last hearing, or the hearing before last, a lot more money could be put out on the street if there were some procedural changes relative to how EDA handles the program. The program is an unqualified success. In 11 years, the leaking tank program has processed 2,050

applications. In 18 months, the non-leaking program has processed 2,050 applications and could be putting a lot more out the door if there were some assurances from the residents. As you mentioned, Mr. Chairman, many of your constituents, many of the citizens of the state are distrustful of government, and fear entering into a contract for performing a service on the promise of government funding and then having that rug pulled from under them.

We look forward to working with this Committee, and I thank you, sir.

SENATOR SMITH: Thank you, Eric.

Our next speaker is Dennis Toft, from NAIOP.

Dennis.

**DENNIS M. TOFT, ESQ.:** Thank you, Senator, members of the Committee.

My name is Dennis Toft, I'm a Partner with the law firm of Wolff & Samson, where I head the environmental practice. I'm here today on behalf of the New Jersey Chapter of the National Association of Industrial and Office Properties.

Having the benefit of being near the end, rather than just read some remarks I'd like to address some of the questions that the Committee has come up with during the course of the process we've observed for the last several hours. And I will try to be brief and to the point.

One thing that's clear about any licensed site professional program is that it needs to have credibility with the regulated community and with the public at large. That gets into how it's funded, who pays for what. But also, importantly, at the end of the day, the financial community

and the developers, who NAIOP represents, need to be able to rely on their licensed site professional to deliver an end product that's a finance -- creates a financible deal. It doesn't do anybody any good just to shift a job to folks if the end product you get doesn't allow one to rely on it.

I think everybody is in favor of speeding up the process and making it more efficient. But any licensed site professional program needs to take into account that mechanism to make sure it's as sellable to the public at large as it is on Wall Street. And so I urge consideration of a mechanism, such as Senator Smith suggested, either to escrow the funds so that it can be paid, so that there is no economic pressure on the licensed site professional. By the same token, it needs to be one that moves efficiently to a defensible end result.

With respect to the issue of remedy selection: I know you asked Mr. Senior about his view of adding flexibility to the program. We've also heard commentary from folks who are worried about cumulative impacts and provisions in the statute that prevent consideration of cumulative impacts at sites. I suggest to you that one way of considering both issues is to look at risk-based corrective action programs that are implemented in other states. There's been some resistance over the course of history, through the legislation, of looking at those programs. But if you look, for instance, at the Illinois program, where sites are tiered, it's tied to end use, it's tied to the surrounding area -- and clean-up objectives are driven based upon those objective risk factors rather than having set numbers. It adds both flexibility and the ability to look at what surrounds a site and what an end use may be. So I would commend to the Committee

that some consideration be given to looking at a full risk-based corrective action approach as these reforms are considered.

With respect to long-term stewardship, there are a number of insurance companies and others who have proposals that they've made in the past to create mechanisms where the funding comes as a result of the process. So a sufficient amount of money is charged during the course of the remediation process to fund the program, in return for which the performing party gets absolute certainty and avoids reopeners. So there are ways to fund that that don't necessarily use public money to fund it up front and miss those funds to make sure that it is a sustaining process.

Enforcement: Mr. Wolfe mentioned the grace period rules. Unfortunately, the grace period rules have created a mechanism where the Department is focusing efforts on taking enforcement measures against innocent parties who are doing their best to perform cleanups, rather than going after folks who cause the contamination in the first place. If enforcement is to be meaningful -- our enforcement reform is to be meaningful, the grace period rules need to be revisited.

SENATOR SMITH: How would you modify them?

MR. TOFT: Well, I think other than absolutely doing away with them, I think they should apply to RP sites, rather than to people who sign memorandums of agreement as a first cut. I think that you need to do away with this process where the only letter a case manager can send out to you is either a notice of deficiency or an approval, rather than just a checklist form. There needs to be a better dialogue. The good case managers now ignore the rules and use other forms of communication so they don't have to send out notices of deficiency. There's not much point

in having a rule that has to get ignored in order to make the process move forward.

In terms of the concept of having overtime -- staff overtime by the Department, it's something that NAIOP has supported for many years. Our developer members, in order to move the process, are willing, ready, and able to pay enhanced fees. If it means paying for people's overtime rates, we're all in favor of it. It seems like something that could be done relatively quickly and should be done as soon as possible.

SENATOR SMITH: Stop for a second. Okay?

MR. TOFT: Yes.

SENATOR SMITH: Irene, can you come back up?

Dennis's comment about the notice of deficiency and the grace period counterintuitively seeming to get the process bogged down-- What do you think about that?

ASSISTANT COMMISSIONER KROPP: No, and that's what this chart was about.

Let me just take a second to say, notice of deficiencies are not enforcement actions. What they are, are comment -- they used to call them *comment letters*. They're the case team's comments back to whoever is conducting the remediation to let them know where their submittals are not consistent with the tech regs and other regulations. So there's no enforcement authority behind the notice of deficiency. They are cumbersome, but not because of the grace period rule, but because we've been using compliance and enforcement screens within the NJEMS database to develop these documents.

We just, last week -- you missed it -- changed the process and went back to allowing staff to use strictly word documents to create these notices of deficiencies so that there's a streamlined process to get them out the door. And that was after a year of moving forward.

But just let me say very, very quickly, notices of deficiencies -- that's what this chart is about. We've issued 2,000 or so since we started doing grace period. You can see almost all of them come into compliance. We (indiscernible) 144 notice of violations. None of those ever go to innocent parties. Those go to responsible parties. Anybody with an MOA in the voluntary clean-up program does not get an NOV or do not get penalties. And we've issued 72 penalty assessments since grace period came on board.

The point of the chart is: started sending out notices of deficiencies. They absolutely got the consultants and the regulated parties' attention. We've stopped the back and forth between the staff and the consultants. And people are coming into compliance a lot quicker.

SENATOR SMITH: So you see them as an effective tool?

ASSISTANT COMMISSIONER KROPP: Extremely effective.

SENATOR SMITH: Okay. Thank you.

Dennis, back to you.

MR. TOFT: Okay. Thank you, Senator.

I respectfully disagree.

SENATOR SMITH: The great thing about this country is, it's okay.

MR. TOFT: It's a wonderful thing. (laughter)

First of all, there are innocent parties who have gotten NOV's. I represent one of them. Unfortunately, it's an innocent party who, because of our archaic ISRA statute, had to sign a remediation agreement rather than an MOA. It's an unfortunate consequence of the grace period rules. And there are other circumstances where that happens.

Secondly, calling something a notice of deficiency has an effect far beyond the consultant or the party performing the remediation. If Irene or people from the Department would like to explain to some lenders and other investors in projects that a notice of deficiency is really just a comment letter, even though it's called a *notice of deficiency* -- that's where a lot of the problem gets created in the process. So I think--

SENATOR SMITH: Let's tell the truth amongst everybody in the room, which is, the people who really are responsible for the cleanup of New Jersey and for the United States of America are the banks.

MR. TOFT: That's exactly the case.

SENATOR SMITH: You have to dance to the lenders too. So I don't know that it's such a bad thing that you get the attention of the lender that this has to be done quick.

MR. TOFT: In any event, I'd also like to address, briefly, the OPRA issue, and defend my profession and the engineers.

SENATOR SMITH: Okay.

MR. TOFT: The reason we make OPRA requests and look through the Department's files is that the innocent purchaser laws require us to do due diligence on projects and go to the Department to get that information.

SENATOR SMITH: Right. But did you hear the comment from the Commissioner that all you're paying for is the copying charges? You're not paying for the 25 percent of the professional staff time that is consumed to do those searches. Do you think it would be fair for you or your client to be paying those costs?

MR. TOFT: I think it would be fair for there to be appropriate charges.

SENATOR SMITH: Okay.

MR. TOFT: I think it would be-- The other problem created by OPRA is, it slows down the process in other ways. On numerous occasions, I've had to call case managers to ask where something was in the review process and was told that I can't review the file because it's been OPRA'd.

I think outsourcing is a great idea. I think having a process where parties, when they submit documents -- if you have to submit them electronically at the same time, so an OPRA database of those documents can be created to be easily accessible and publicly accessible, makes a lot of sense. We do it in the Federal courts now. There's no reason why electronic filing can't become more of the norm in the Department. I know the Department requires most things be submitted on CD now. And there's got to be a way to create a funded program to allow that to happen to make it easier for everybody.

SENATOR SMITH: Okay.

Irene, if I could ask you, what do you think about that idea, at least prospectively?

ASSISTANT COMMISSIONER KROPP: I will put on my hat as previous Chief Information Officer for DEP a couple of years ago. It's a great idea. I'm all about electronic submittals. Major infrastructure and IT costs are necessary to pull it off. We don't have the servers, we don't have the Internet capacities, we don't have the computers on people's desks. One of the things that happens in our budget process is we lose, and lose, and lose operating funds; we lose, and lose, and lose money for IT initiatives. It would take a major influx of funding for IT to bring us into this century and be able to get everything electronically.

SENATOR SMITH: You know, not that you don't have enough to do, but maybe you can give us an idea of what the cost would be for that infrastructure.

ASSISTANT COMMISSIONER KROPP: Sure.

SENATOR SMITH: Thank you.

ASSISTANT COMMISSIONER KROPP: I can do that.

SENATOR SMITH: Dennis, back to you.

MR. TOFT: Thank you, Senator.

I think that I just would commend to you a couple of other things to think about as you go through this process. There are other things out there that impede brownfield redevelopment and other agencies beyond the Department involved. The Department of Community Affairs, through the condo registration process, creates obstacles that can be addressed through some of the reforms suggested here, such as the permitting process for long-term remedies, creating funds for long-term stewardship.

There is still a great deal of uncertainty with respect to NRD liability. It doesn't seem to be getting any better. People who want to

redevelop sites, who are responsible parties involved, need to find a way to solve that process in a more efficient manner than is the case now.

I think that really concludes the comments that I have this morning.

I thank the Committee for this opportunity.

And just as a commercial, one of my other hats is Chairman of the Brownfield Task Force in New Jersey. The Task Force is available to assist the Committee in the process in any way you deem appropriate.

Thank you.

SENATOR SMITH: Well, the one that we did not talk about at all today are the last two or three things that you mentioned with regard to DCA, and condo associations, etc. If your group wouldn't mind sending in some suggestions on that, we'd like to see what they are.

MR. TOFT: Absolutely.

SENATOR SMITH: All right.

Any other questions for Dennis Toft? (no response)

Then our last witness for the day is Stewart Adams.

UNIDENTIFIED SPEAKER FROM AUDIENCE:  
(indiscernible)

SENATOR SMITH: What's that?

MS. HOROWITZ (Committee Aide): Abrams.

SENATOR SMITH: Stewart Abrams.

**S T E W A R T H. A B R A M S:** Abrams.

SENATOR SMITH: I'm sorry.

MR. ABRAMS: That's all right.

Thank you very much.

Last but not least, hopefully.

All right, my name is Stewart Abrams. I'm a Senior Remediation Specialist at Langan Engineering and Environmental Services. Until recently, I was national director of remediation at a well-known national consulting firm. I've probably worked in about 20 different states, most notably Massachusetts, and have worked very closely under the LSP system. So I want to give you my personal observations on the LSP system. And one other thing, I also serve on the DEP's Environmental Justice Advisory Council, so I see that side of the story a lot too.

One thing also I'd just like to repeat -- that people know pretty obviously is, Massachusetts, in some ways, is very similar to New Jersey: similar industry base, similar population, similar sites, similar things driving the cleanup. But I've got to tell you in summary, they're getting more cleanup for less money done quicker than we are here -- more cleanup for less money than we are here.

And let me tell you why. In terms of remedy selection, they have risk-based standards, and they're very clearly laid out, and there's a lot of flexibility there. They also have -- high-priority sites are now moving into the system. They started out, in 1994, as a more modest system where the lower priority sites were put into place. This system in Massachusetts has been in place since 1993. The first LSP licenses were granted in September '93. So one of the things that's notable about the LSP system in Massachusetts is, it's part of the culture, it's part of the way they do business. And everybody is committed to making it work.

Let me tell you a little bit about what being an LSP in Massachusetts actually means. First of all, it's considered prestigious. It's

probably equal to or more prestigious in the environmental world than being a professional engineer or a professional geologist. People--

The whole issue of the gold, Senator-- One of the things -- the strong incentive in the system in Massachusetts is, every LSP can be expected to be audited at least once every three years, sometimes once every two years. And that audit will be a serious audit of his -- of all his decisions. And if he gets a black mark on his record, you can go to their Web site and just type in an LSP's name and see his record. If he gets any black mark on his record, his career is severely impacted. If he renders an opinion that's overturned, he's basically ruined his career. So there is a strong incentive on the gold side that, if he wants to maintain himself as an environmental professional, he has to render opinions that don't get overturned or doubted by the DEP in Massachusetts.

SENATOR SMITH: What's the payment system? Is it an escrow or direct payment between the client--

MR. ABRAMS: Direct payment. A lot of times, the LSP is the consulting firm project manager. Sometimes he's somebody who consults. But he's part of the project team. It's a direct payment. He works for a consulting firm.

Personal experience-- You know, I work on very complex sites all across the country. In personal experiences, you sit there and you go through the strategy. The LSP sits there, and steps back, and listens to what is being said -- the responsible party might be in the room, the attorney -- and says, "I don't know. I think you can't do that." And we go, "Great." And we respect that opinion, and we develop a different strategy.

I also want to emphasize, it does not put the DEP out of business in Massachusetts. There is a strong collaborative culture. So, for example, when we would come up with a strategy on a Massachusetts site, what we would do is, the LSP would say, "Sounds good, but before I render my opinion, I'm going to go down to DEP and run it by them." And there's somebody assigned to the case. It's not the LSP out on his own. And he can usually get that meeting within a week. And because it's the LSP's responsibility in the end, the DEP guy doesn't feel like he has to know the file by heart. He knows he'll get a good briefing. And what will happen is, the LSP, sometimes by himself, will go down to the DEP and say, "This is what we're thinking about." And the DEP guy might say -- or gal -- might say, "I think you need another well here," or, "I think you need to monitor differently over there." And the LSP will say, "I'll bring that back to my team, my client, and we'll decide." And so when these opinions are rendered, they're not rendered in a vacuum. The DEP knows, to some extent, what's being done. And the collaborative aspect is very, very strong.

Also, just touching on the prestige of the profession, number of opinions is very important; so the ones that are the most experienced -- again, the gold. The more experience you get rendering opinions, the more your opinions are not overturned, the more prestigious your career.

From the responsible parties' side, a lot of responsible parties honestly-- You know, there's been some discussion today about breaking that consultant-responsible party kind of attached-at-the-hip-- Quite honestly, some responsible parties are not especially thrilled with this system, because they know that the LSP serves two clients, not just him who has the gold, but he knows that the gold also runs from the DEP and

from the licensing board of the LSP. So he is literally someone who has a foot in both camps.

I wanted also-- There was some discussion today about the audits. You heard, I think, 20, 25 percent of all sites have some deficiency. The vast majority of those deficiencies are usually minor administrative. That is, an extra sample has to be taken and gone back. In a number of occasions, an additional monitor well or something like that has to be done. It's only -- in less than 1 percent of the cases is the remedy itself overturned. If you have a remedy overturned, and you're an LSP, your career is over.

There is a strong public notification aspect to the LSP system so that that LSP almost always -- especially on significant cases -- has to stand before the public and tell them what his opinion is. So that's another constraint.

SENATOR SMITH: How does that happen?

MR. ABRAMS: Typically, there's an outreach. A lot of times on higher-profile cases there's a requirement for a public hearing. My most-- I'm not an LSP, but I've worked a lot, as I said-- I'm a New Jerseyan. But one of my notable cases-- We had a citizens advisory committee, and we had to meet with them every six months. And the LSP would talk through the regulations, and I would talk through the technology with the citizens. But one of the amazing things about it is, because the LSP is making these decisions, the cleanups move quickly. So, for example, this citizens advisory committee that we worked with was thrilled with us. Why? Every six months we came to them, and we had made progress. There was no waiting for DEP approvals. We were making

progress. So every six months something else was cleaned up, some other accomplishment was made.

SENATOR SMITH: All right. To your knowledge, in the Massachusetts program, has the public or the state ever been burned by this program?

MR. ABRAMS: Yes, absolutely. There's been situations where they have been burned. But the state reserves the right, under whatever-- The state reserves the right to take back its authority. And so--

SENATOR SMITH: How does that work, for example, with the equivalent of our no further action? Banks want NFAs before they're going to lend to those properties. If the state of Massachusetts has the ability to say, "You made a mistake. We're taking it back," does that create a problem financially?

MR. ABRAMS: Well, you see-- And there is-- It's a little bit cultural up there. But what happens is, if you really think that that's really, really important to you, you go hire an LSP that's rendered a hundred opinions, you hire an LSP that maybe has dealt with that same case manager before, you hire an LSP whose dealt with those contaminants before. So it becomes like anything else in our engineering profession. You're starting to focus not just on any old LSP, but the one with the appropriate qualifications so that you have strong confidence that when they render that opinion. There is a lot of respect down in the state capital for that gentleman's or woman's opinion. And that person has the requisite experience to render an opinion that will stand up. Because, honestly, there are no guarantees in any of this. An NFA in New Jersey can still be an imperfect document. But a lot of the banks have confidence in it.

Occasionally there are redevelopers who want to see better. But you still always, in Massachusetts, have the right to go back to the state and ask the DEP to render the opinion, but then you have to wait for your turn. And it can be months, just like here, or longer. Actually, it takes about six months in Massachusetts. I was comparing notes with a colleague. And I said, "Well, we would wish we had six months."

I don't know if you have any other questions. I mean, I'm personally not an LSP. I can reach out to-- I have friends who are officers in the Massachusetts LSP society. I could suggest to them that at the appropriate time, they could come down and visit with these Committees. We could find a way for you to learn more about the system. It's worked for them.

SENATOR SMITH: Assemblywoman.

ASSEMBLYWOMAN VAINIERI HUTTLE: You were last, but certainly not least. You certainly provided an insight for me, anyway, on the LSPs. But just a quick question: How much are the LSPs? Just give me a range for the developer to have that in lieu of a caseworker.

MR. ABRAMS: It's part of the package. Typically the LSP might be the project manager at the consulting firm. They actually-- It's just an additional qualification when you're hiring the consulting firm. So there's no separate fee, per se.

ASSEMBLYWOMAN VAINIERI HUTTLE: But there has to be additional costs to hire this highly regarded professional, correct?

MR. ABRAMS: Yes, to some extent. The more experienced--

ASSEMBLYWOMAN VAINIERI HUTTLE: In Massachusetts -- your experience about?

MR. ABRAMS: They might be billing at \$150, \$200 an hour. I'm an expert on remediation technology. If it was a technically complex -- technologically complex site in Massachusetts, I might get hired. And then the client would say, "Ooh, you're an LSP too. That's great, because I will need you to render the opinions as well as making sure the driller gets to the site on time."

SENATOR SMITH: Just a couple -- two quick comments.

You're our last witness, as far as I know.

Number one, you really have peaked, I think, the Committee's interest with regard to the Massachusetts program. I've asked Kevil and Judy to see if we can get the Massachusetts people on by video conference. We did it with-- When we were talking about electronic waste, we talked to the California people.

MR. ABRAMS: Right.

SENATOR SMITH: We're shooting for the May 19 meeting, just as a little heads-up to Irene and DEP.

And I think what we want to do is get our questions ready for the meeting. It sounds like something is going on in Massachusetts that -- there are some things we may want to take and use in New Jersey.

I do appreciate you bringing this to our attention in the way that you did.

MR. ABRAMS: Sure.

SENATOR SMITH: And then my last comment is, we've got a long year ahead of us to get this done right. As you can see, there is nothing easy about this issue.

But in the category of a little rest and relaxation, all the members of the Environment Committees, Assembly and Senate, have been invited to the World Series of Birding on Mother's Day weekend. And this is a tremendous tourist event for the State of New Jersey. I've gotten my wife, even though it's Mother's Day, to commit to it. So we're going to be down Friday night. I hope the members of both Committees will consider it. I think it will be a real hoot. (laughter) I understand from the Audubon people that Saturday morning we're going to do a half-day of birding. They've assigned us to a team called the Wandering Tattlers. So hopefully members of the Committee will attend.

Assemblyman McKeon.

ASSEMBLYMAN McKEON: Just to give them the correct prompts, somebody who is a close friend of mine is the captain of the Wandering Tattlers. So I'm coming clean to everyone. Mark Levi (phonetic spelling) -- he's a great birder. And that will be a good event if we could get down there.

As it relates to today, I just wanted to say thank you -- and I know Senator Smith would share the same sentiments -- not only to all of the witnesses, as well as the great people of DEP, but most certainly to my colleagues in the Legislature.

Assemblywoman, thank you for hanging in to the very end.

And, as always, nonpartisan and partisan staff are no less than heroic, and you have to be to help through these efforts over the next year, as we get to the finish line on bringing some great change in further protecting the environment, as well as creating the correct business climate here in New Jersey.

Thank you.

SENATOR SMITH: Thank you, all.

**(HEARING CONCLUDED)**