NEW JERSEY STATE LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE

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COMMITTEE MEETING

TRANSCRIPT OF PROCEEDINGS

AT: State House Annex
Committee Room 12, 4th Floor
Trenton, New Jersey

DATE: Thursday, June 15, 2006
TIME: 10:00 a.m. to 11:45 a.m.

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ASSEMBLYWOMAN LINDA R. GREENSTEIN, Chairwoman
ASSEMBLYMAN REED GUSCIORA, Vice Chair
ASSEMBLYMAN CHRISTOPHER J. CONNORS
ASSEMBLYWOMAN NELLIE POU
ASSEMBLYMAN DAVID WOLFE
ASSEMBLYMAN LOUIS M. MANZO

ALSO PRESENT:

RAFAELA GARCIA, OLS Aide
KAY HENDERSON, Assembly Majority Aide
MARY BEAUMONT, Assembly Republican Aide
VINCE BEKIER  
Director  
Government Affairs  
New Jersey Food Council  

PEDRO RAMOS  
Director  
Loss Prevention  
Pathmark Supermarket  

BILL WOLFE  
New Jersey Field Director  
Public Employees for Environmental Responsibility  

JEFF TITTEL  
Executive Director  
Sierra Club  
New Jersey Chapter  

TOM DiGANGI  
Government Affairs Director  
Building Contractors Association of New Jersey  

JOHN HAZEN  
Director  
Legislative Affairs  
Division of Policy and Legislative Affairs  
New Jersey Department of Environmental Protection  

TARA ST. ANGELO  
Legal Intern  
Edison Wetlands Association
ASSEMBLYWOMAN GREENSTEIN: Good morning, everybody. I'll call this meeting of the Assembly Judiciary Committee to order.

Would you please take a roll call?

MS. GARCIA: Assemblyman Wolfe?

ASSEMBLYMAN WOLFE: Present.

MS. GARCIA: Assemblyman Connors?

ASSEMBLYMAN CONNORS: Present.

MS. GARCIA: Assemblyman Gusciora?

ASSEMBLYMAN GUSCIORA: Here.

MS. GARCIA: And Assemblywoman Greenstein?

ASSEMBLYWOMAN GREENSTEIN: Here.

MS. GARCIA: You have a quorum, ma'am.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

The first bill that we will do today is A-1675, Assemblyman Barnes, Cohen, Bramnick and Rumpf; and Senate S-273, Senator Sarlo and Girgenti.

Can you tell us about the bill?

MS. GARCIA: This bill would expand the State's shoplifting law to make it a crime of the second degree if shoplifting is committed in
conjunction with an organized retail theft enterprise. It would also establish the second degree crime of leader of organized retail theft enterprise.

ASSEMBLYWOMAN GREENSTEIN: The first witnesses -- actually, we have a no need to testify, but in favor of from the New Jersey Retail Merchants Association. And to testify we have Vince Bekier and Pedro Ramos, New Jersey Food Council and Pathmark. Thank you.

Make sure that it shows red on your light. Red is go in the strange world of --

MR. BEKIER: Good morning. Thank you, Chairwoman. Good morning, Chairwoman and the members of the Committee. My name Vince Bekier, and on behalf of the members of the New Jersey Food Council, representing the grocery and convenient stores in New Jersey, we would like to express our strong support for this legislation. Today, I have with me Pedro Ramos, Director of the Loss Prevention for Pathmark Supermarket. In a moment he will talk to you about how organized retail theft affects his business.

Organized retail theft is a growing problem throughout the United States, affecting a
wide range of retail establishments, including supermarkets, drug stores, mass merchandizers and convenient stores. It has become the most the most pressing security problems confronting retailers today and it accounts for over $33 million in losses annually nationwide, according to the FBI Interstate Task Force.

ORT typically targets everyday household commodities and consumer items that can easily be sold through fencing operations, flea markets, illegal store fronts, and on the Internet. Items in high demand by these professional theft rings, including over-the-counter drug products, razor blades, batteries, and videos, and as well as infant formula.

ORT crime is separate and distinct from petty shoplifting, in that it involves professional theft rings that move quickly from community to community and across state lines to steal large amounts of merchandise that is re-packaged and sold back into the marketplace.

Consumers are at risk when ORT gangs steal consumable products, especially over-the-counter drugs and infant formula. In
many cases, after the merchandise has been stolen, the products are not kept under ideal storage conditions, which can threaten the integrity of the product. For example, extreme heat or cold can adversely affect the nutrient content of infant formulas. In addition, ORT middleman may change the expiration dates, lot numbers, and labels to falsely extend the shelf life of a product and disguise the fact that the merchandise has been stolen.

Retail theft results in consumers paying higher prices for the products they purchase. In addition, consumers are often inconvenienced by this type of crime because major retailers are taking certain products off the shelves and placing them behind the counter or under lock and key. I am sure many of you have experienced this when you've attempted to purchase either a razor blades, batteries, or baby formula.

The New Jersey Food Council is calling for the Assembly and the Senate for introducing the this consumer friendly legislation and we urge you to please vote yes today.

Pedro will now give you a retailer's perspective.
MR. RAMOS: Good morning, Madam Chairwoman. I thank you for hosting the bill. I just want to reiterate the position of the New Jersey Food Council. Retail crime accounts for about 12 to 14 million dollars a year in losses. And one of the other major concerns we have as an organization and as an industry is the consumer safety concern that some of these consumables, whether it be baby formula, health and beauty products such as over-the-counter medications, leave the legitimate supply chain and the integrity of these products cannot be ensured to the consumer.

Outside of reiterating Vince's testimony, I'll just leave myself open to any questions you may have.

ASSEMBLYWOMAN GREENSTEIN: Thank you very much.

Can you just expand a little bit about how -- right now, obviously, we have state shoplifting laws. Do you consider those strong, and how does including these sort of organized, I guess, these state RICO law, the organized enterprises, how does making it an organized enterprise -- does it increase penalties? Does it
make the crime more serious in some way?

MR. RAMOS: It makes the crime more serious. Today, for example, in one of our counties we've currently identified 15 small establishments that are really funneling operations for basically fences. When we move with law enforcement on these establishments, they're going to be faced with basic -- some of the petty shoplifting charges. If we follow the product and money up towards these organized rings and just kind of -- I think we need to make a distinction. These are professional boosters. These folks make a living out of this. They can make thousands of dollars a day boosting out of all retailers. And these are organized rings that have corporate structures, training grounds, management, what-have-you. They are parallel organizations to ours. When we face these type of criminals, they're basically going into -- their being covered in the regular shoplifting laws which really have minimal impact.

ASSEMBLYWOMAN GREENSTEIN: These are stricter penalties?

MR. RAMOS: Right

ASSEMBLYWOMAN GREENSTEIN: I sort of
have a legal question, for somebody up here perhaps. I believe RICO, both federal and the state -- I believe we have state RICO laws. Are we fitting this into our state RICO laws? Or is that not appropriate in this case? Anyone who can answer that. Or do you folks know, perhaps? MS. GARCIA: I can check to see. ASSEMBLYMAN GUSCIORA: We have a state RICO statute. ASSEMBLYWOMAN GREENSTEIN: This is going to theft statute. I was just wondering if we had a RICO statute, would there be a waiver of it. It's more a question with respect to the law. Conceptionally, I think it's certainly an important idea. Does anybody have any comments or questions? Anybody? ASSEMBLYMAN MANZO: The only comment I have is this could be a great deterrent if the industry were to take use of the fact that this law has changed and actually putting a warning out there for those who would think about shoplifting like they normally do in the store about shoplifting that the law has been greatly changed and people ought to think twice before doing this.
MR. BEKIER: The federal government is in the process of passing a federal organized retail crime bill, which is a little bit different but incorporates the same concepts that they are here. And as I said, the industry fully supports this. And I can show you that the idea is to get the word out to those who are doing it to make sure at least when they come in New Jersey they realize they're going to face stiffer penalties than your standard shoplifting penalties.

ASSEMBLYWOMAN GREENSTEIN: Any other questions or questions, comments on shoplifting?

ASSEMBLYMAN GUSCIORA: I just want to find out the litany of items that you mentioned, do they include over-the-counter drugs such as Sudafed which make those bathtub drugs.

MR. RAMOS: That's correct. It's one of the favorites of professional shoplifters. The another item that is a favorite, it ranks one of the top most shoplift items in our company is frozen shrimp. It actually has a huge over-the-counter instant retail out on the street. Organized retail crime rings target that particular product. It's easily removed, small packages with high value. What leave somewhere
down the road a consumer goes into a local, small
establishment and buys something they believe to
have been constantly frozen, for example, in this
case shrimp, that product, that may have been
temperature abused throughout the process.

ASSEMBLYMAN GUSCIORA: Do you ever
compile information on the over-the-counter drugs
that are shoplifted? Are they ever conveyed in
some global report and passed on to the State
Police or anything just so that that would assist
us in our war on drugs.

MR. RAMOS: We deal with it on a
case-by-case basis with either local law
enforcement, state, or federal. We have worked
with all three branches of law enforcement.

ASSEMBLYMAN GUSCIORA: Do you
specifically have a report that X amount of
over-the-counter drugs have been stolen statewide?

MR. RAMOS: In our particular
company we can actually do that because of our
case management database. Other companies, larger
retailers also use case management data basis that
produce reports geographic actually show the
trends. But we can provide that to State Police
should they be interested, yes.
ASSEMBLYMAN GUSCIORA: Is it possible just for our education we can get a copy of that report or you can compile that statistics?

MR. RAMOS: I can speak for my company. I could give you some breakdown of all the products.

ASSEMBLYMAN GUSCIORA: I would be interested in how many over-the-counter drugs such as Sudafed are shoplifted each year in the state.

MR. RAMOS: From our company's perspective, CK just do.

ASSEMBLYWOMAN GREENSTEIN: I did want to mention, we just got some information answering my question that all theft are already in the racketeering statutes. So apparently it is part of it already.

Any other questions or comments from anybody?

I'll take a motion.

ASSEMBLYMAN MANZO: Moved.

ASSEMBLYMAN GUSCIORA: Second.

MS. GARCIA: On the Assembly bill, Assemblyman Wolfe?

ASSEMBLYMAN WOLFE: Yes.

MS. GARCIA: Assemblyman Connors?
ASSEMBLYMAN CONNORS: Yes.

MS. GARCIA: Assemblyman Manzo?

ASSEMBLYMAN MANZO: Yes.

MS. GARCIA: Assemblywoman Pou?

ASSEMBLYWOMAN POU: Yes.

MS. GARCIA: Assemblyman Gusciora?

ASSEMBLYMAN GUSCIORA: Yes.

MS. GARCIA: Assemblywoman Greenstein?

ASSEMBLYWOMAN GREENSTEIN: Yes.

MS. GARCIA: Now on the Senate bill, please.

ASSEMBLYWOMAN GREENSTEIN: A motion and second, please?

ASSEMBLYMAN CONNORS: So moved.

ASSEMBLYWOMAN POU: Second.

MS. GARCIA: Assemblyman Wolfe.

ASSEMBLYMAN WOLFE: Yes.

MS. GARCIA: Assemblyman Connors?

ASSEMBLYMAN CONNORS: Yes.

MS. GARCIA: Assemblyman Manzo?

ASSEMBLYMAN MANZO: Yes.

MS. GARCIA: Assemblywoman Pou?

ASSEMBLYWOMAN POU: Yes.

MS. GARCIA: Assemblyman Gusciora?
ASSEMBLYMAN GUSCIORA: Yes.

MS. GARCIA: Assemblywoman Greenstein?

ASSEMBLYWOMAN GREENSTEIN: Yes.

MS. GARCIA: The bill is released.

ASSEMBLYWOMAN GREENSTEIN: Thank you very much.

Next, we're going to do A-1839 and A-1841, which are my bills and Assemblyman McKeon. We've put together into a substitute bill, and the bills provide for criminal penalties and civil penalties for giving false statements pertaining to violations of the environmental laws.

And, Rafie, could you describe the changes that we've made?

MS. GARCIA: Yes. The bill combined both bills to make it consistent with out the environmental law, that civil penalties would be provided regardless of the person's culpability. It also provides consistency with regard to the criminal penalties. It allows for a person who knowingly gives or causes to be given any false or misleading information or makes any false or misleading information, to make that a crime of the third degree. It would be the crime of the
fourth degree if that person does so recklessly.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

What we did here, because the two bills really were quite inconsistent, just to reiterate some of what Rafie said. The civil penalties, the civil part of it stays very similar to current law. We did up some of the penalties from 25,000 to 50,000. Some of them stayed the same. There already was a penalty under one of the water protection laws that was a second degree. Actually, that was on the criminal side, and that stayed the same. The criminal was more expanded. We made the standard more consistent to knowingly and recklessly. I think we took out negligently and just made it knowing and reckless, was really what the criminal standard should be. Knowingly, it was a fourth degree crime. Recklessly, a third degree crime, except for that one water act crime which was before a second degree crime and remains second degree. So we put them together and made the standards better, and we made everything consistent. So that was the purpose of putting the two bills together.

Does anyone have any questions about
them?

Our goal here, of course, we were prompted by the WR Grace hearings, somewhat less so by the recent PCB hearings, in the idea that we wanted to make sure that we have strong criminal laws to make sure that people didn't commit these kinds of crimes. We wanted to emphasize that environmental infractions can be a crime, certainly, and that people would be prosecuted. So that was the reason.

Any questions or comments?

We do have -- to comment on these, we do have Bill Wolf today. Is Bill here?

We will be doing a hearing. If you could restrict your comments just to these bills?

MR. WOLFE: Bill Wolfe, director of PEER, Public Employees for Environmental Responsibility. Obviously, we support anything that strengthens criminal and administrative penalties for violation of environment laws and requirements. In order to provide effective deterrent, you have to look at the underlying program as to whether or not you have an effective deterrent and is increase of penalties going to solve the problem. And if you look at the
underlying can program, No. 1 it's a voluntary
program for the most part and the lion share of
the cases in the cleanup program are voluntarily
programs, meaning there can be no enforcement
section.

Number 2, the data -- I can give you
data from DEP with respect to the enforcement
practices of the department, meaning whether they
have a field presence out of site, whether they're
auditing papers, specific engineering
certifications or whether they actually have a
credible enforcement program to coincide with that
to increase section. I think you'd find some
shocking numbers when you look at that.

The last thing I would just ask
would be in combining the bills, did you retain a
negligence standard for administrative penalties?

MS. GARCIA: We eliminated the
culpability all throughout and just say any person
who makes false or misleading statements.

MR. WOLFE: That is a yes no
arbitrary binary type of logic there. Their
judgment, they're discretionary, they deal with
data, data interpretation, a professional
judgment. There can be a negligence standard
applied to professional judgment.

MS. GARCIA: I think some of them were knowingly, if they made knowingly false statements. They're very little negligent. The bill itself put in the negligent standard.

MR. WOLFE: I'm not an attorney so I just know how the program operates, and I don't want anybody leaving the room with an expectation that this is going to in any way effect an effective deterrent. What we saw in WR Grace and the underlying legal structure of the program and how it is implemented DEP need to change. WR Grace happened because WR Grace was cleaning up the site under certain environmental laws that gave them powers to make the cleanup decisions, to shut the public out of the process, to have no oversight effectively by the public or locally and to make the ultimate choices and decisions, not DEP. So, again, we're not going to get to --

ASSEMBLYWOMAN GREENSTEIN: I think what had happened here was we worked with the Attorney General's Office to make sure, because of all the different sections of environmental, we wanted to make sure it was no inconsistency which is why we took that out. However, we can look at
it again. Why don't you look it over today and if
any changes need to be made, we can still do it
later or as it goes through the Senate. There is
still opportunity to make the changes.

MR. WOLFE: You just need a
compelling DEP into that audit program.

ASSEMBLYWOMAN GREENSTEIN: We'll
talk more about that in hearing. Thank you.

Does anybody want to testify on
those bills or that bill?

Jeff? Jeff Tittel from the Sierra
Club.

MR. TITTEL: I think that you need
to have some type of negligence standard for at
least the civil side. And I support the bills. I
think we've watched too many times where
consultants and responsible parties have played
games and lied. The reason I think we need to
keep some type of negligent standard, not on the
criminal side, at least on the civil side, the
reason is that when dealing with the regular
Superfund site -- I'll use this as an example.
There's a DEP report, going back years ago, that
the consultant for Ford was collecting water
samples for volatile organics in a bucket. Now,
the reason that's negligence and goes beyond
that -- because they can say it's negligence, it's
just a mistake. Anybody who knows anything, you
take samples from a bucket volatile organics are
going to evaporate out and you're going to get a
much lower reading. Those are some of the kinds
of games that get played by consultants, by
others, when it comes to dealing with the site.
So I don't know if that falls into being a
deliberate and reckless or is that -- or they can
hide behind negligence. That's why I think at
least the civil side --

ASSEMBLYWOMAN GREENSTEIN: We're
going to put the negligence back in, the word
negligence back in today, to the civil sections of
the bill.

MR. TITTEL: I think that would
help.

ASSEMBLYWOMAN GREENSTEIN: We will
do that.

MR. TITTEL: I appreciate it. Good
bill.

ASSEMBLYWOMAN GREENSTEIN: Yes?

ASSEMBLYMAN GUSCIORA: I'd just like
to follow up on Jeff's point. If we bring up the
Martin Luther King Jefferson School in Trenton where contaminants were actually trucked in as fill, I can see on the one hand the contractor saying, "Well, we're just bringing in fill and there's no -- I didn't knowingly bring it in." And then turns out they were very negligent in not looking over the paperwork or discovering whether there were contaminants.

ASSEMBLYWOMAN GREENSTEIN: I actually think you'd probably catch more people under the negligence standard. The issue is whether reckless is the standard. It has a high level. I think we want to make it very clear that we don't see anybody even remotely negligent when it comes to moving fill around. So I think putting the negligence standard in is a good thing.

ASSEMBLYMAN WOLFE: I'm only a substitute day. I have to certainly support this legislation. The township where I live most recently had a problem where a developer brought in tainted soil from a Ford plant and this fill was placed at a new construction site that was going to be home of a Home Depot and also in a mobile home park on the roads to take care of
holes in roads. So I think something like this is certainly warranted.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Any other questions or comments.

ASSEMBLYMAN MANZO: I would just comment that this legislation was around many years ago. The problem in Hudson with chromium wouldn't have arose where contractors were moving more than 40 to 60 tons of chromium into building sites for building foundations.

ASSEMBLYWOMAN GREENSTEIN: Anything else from anybody?

I'll take a motion.

ASSEMBLYMAN CONNORS: Moved.

ASSEMBLYMAN WOLFE: Second.

MS. GARCIA: Assemblyman Wolfe.

ASSEMBLYMAN WOLFE: Yes.

MS. GARCIA: Assemblyman Connors?

ASSEMBLYMAN CONNORS: Yes.

MS. GARCIA: Assemblyman Manzo?

ASSEMBLYMAN MANZO: Yes.

MS. GARCIA: Assemblywoman Pou?

ASSEMBLYWOMAN POU: Yes.

MS. GARCIA: Assemblyman Gusciora?
ASSEMBLYMAN GUSCIORA: Yes.

MS. GARCIA: Assemblywoman Greenstein?

ASSEMBLYWOMAN GREENSTEIN: Yes.

MS. GARCIA: The bill is released.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Now we're going to do A-1893 and 1894. That's Assemblyman McKeon, myself and Assemblyman Voss.

What we've done here is to created a committee substitute for these two bills. These bills deal with the topic of notice, two kinds of notice: One to the town itself, to the town clerk; the other, public notice.

Now, the changes that we've made from the original bills, first of all, the bills have several parts to them. There is a public notice aspect in the bill, which we shortened a little bit because the DEP is about to come out with regulations, we believe, this summer and we wanted to leave the actual details of exactly what has to go into the public notice to the regulatory process. We do have a few aspects of it in the committee substitute. But we wanted to leave --
you know, we had a list in the original bill about 10 things, and we wanted to leave all of that to the rulemaking process, which is going to happen very shortly. In fact, in the bill we ask that it happens in six months. And at that point, we can revisit it. But for now, we're just requiring a much more extensive public participation process when there is site remediation. We even require that both property owners and tenants within 200 feet of a contaminated site be informed, very specific kinds of notice, all of that is in the bill.

In addition, we wanted to clarify it is the responsible party who files the remediation plan who has to do this and not somebody who's just hired by that party to move soil around or whatever. The responsible party has to take care of the notice and the entire public participation requirement. This, I think, would also make a change in the technical regulations that DEP works under. So it makes that change. Respond party must be one to do it. We have to clarify that.

And those are the major changes in the bills, and we put them together. There is a section there that talks about a website that
list the sites that need remediation in all the
districts. That already exists right now. People
can go on and find that on the web. What we are
doing here is just codifying that.

And finally, we talked about two
kinds of notice in a way. Kind of a short notice
where the clerk is being told by the DEP or the
responsibility party about what site is being
remediated. That could be like a one-page type
notice. What's being remediated, what's the
nature of the remediation, something very simple.
And then we also ask that upon request of the
town, the work plan itself, which could be
voluminous, would be available either for the
clerk's office or the public library. That would
be upon request of the town. The town would know
it could request that and the town could request
that that be given and placed in the library at
the same time as it's made available to DEP.

So we're trying to really make the
notice requirements much more extensive and to
move forward this process so citizens who live in
areas where remediation is taking place will not
be in the dark about it. And, again, that was
prompted by what we learned in the WR Grace
hearings where citizens did not know what was happening, and the Mayor and clerk, nobody knew what was going on in the town. We hope that that won't happen in the future. We want to make this process much more transparent. So that's the purpose.

I'll take any questions.

MS. GARCIA: Madam, could I bring up a bookkeeping measure? The last bill that we voted on, Assembly Bill 1839 and 1941, it was a sub, including the negligent changes that we discussed in the committee. We wanted to make that clear.

ASSEMBLYWOMAN GREENSTEIN: Any questions or comments on this bill?

ASSEMBLYWOMAN POU: Madam Chair, I don't have a question, I just want to make a statement. My statement would be, I really want to commend the sponsors on this bill. I think it's a really good bill. It's taking the appropriate action. I think we all can share our own individual stories of the various towns that we represent within our districts. Certainly, I can share a number of them from Patterson. I won't do that today, but clearly this bill will
help to provide the necessary kind of notice that
indeed will aver any type of degree of major
problems or concerns that certainly arise from
these various contaminated sites. So I just want
to really express my sincere support for this
bill.

ASSEMBLYWOMAN GREENSTEIN: Thank you
so much.

Anybody else? Questions, comments?
I'll take a motion.

ASSEMBLYMAN WOLFE: Moved.
ASSEMBLYMAN CONNORS: Second.

ASSEMBLYWOMAN GREENSTEIN: This is
on the Assembly bill. We also have a Senate --
I'm sorry. Bill Wolfe also wanted to comment on
this. Sorry about that.

MR. WOLFE: It's a very good idea to
provide notice to people what's going on, but
notice without an effective remedy is unworkable.
And under the land use or any other public notice,
there's always a governmental process that the
citizen or the town is provided notice pursuant
to. And under this -- in this case the
governmental process is the DEP's decision on the
remedial action work plan approval. So a property
owner or a town gets notice, there is no way to effectively discharge the notice, meaning once you have the information and you reviewed the remedial action work plan, under current law you cannot influence the selection of the remedy, meaning you can't say, "I want soil excavated. I want the site cleaned up. I want it cleaned up to residential standards so people can live there and kids can play there." You have no ability as a citizen, regardless of your ability to know and get notice, you have no effective remedy because under current law, selection of the remedy is solely with the responsible party, and DEP rubber stamps that. So if I were given notice, there, number one, would be no public hearing that I could go and raise the issue. And the governing entity in this case, DEP, could not take my comments under consideration and force change to the remedial action at the site. So it's a very empty gesture and it's unworkable. It may actually backfire once towns and citizens start getting notice but then start trying to do something about it and they're going to find out they can't change the decision because the decision has been made by a private party. It's
not even a governmental decision here. I don't think people recognize. In other words,
everywhere else, you submit an application to a planning board, you submit a permit to the DEP.
The DEP makes the decision, the planning board makes the decision. The citizen is provided an opportunity to participate in the decision. It doesn't work that way under this law. Those decisions are made by private entities for their own corporate either financial or developmental needs. And that, to me, is the real enchilada you have to manage. And I'm reminded of the scene in one of my favorite movies, "Cool Hand Luke." What we have here is not a failure to communicate because with a hundred percent perfect communication there still can't be an effective remedy.

ASSEMBLYWOMAN GREENSTEIN: I hear what you're saying, because you've been very good at educating me on some of the things that go on in the process. I personally think, though, that adding this -- and it is one small piece of a pie -- is still a step in the right direction. I think we need to look further at the entire process and our resources and what we can do, but
I agree with you that public participation needs to be tied into something further. It needs to be tied into an entire process with hearings and with recourse. And you're saying that because this is really in the hands of the private party that there is no recourse.

THE WITNESS: In the Ford decision that brought us here and Martin Luther King School and WR Grace and American Standard and all the Jersey City sites and that site still festering in Brick, if there were a public hearing under on this notice, I could raise my hand and say "where is the contaminated soil going and I don't want it to go there," and the DEP couldn't stop it. It would happen. It's unregulated activity. So this really is not going to solve the underlying problem that brought us here.

ASSEMBLYWOMAN GREENSTEIN: It won't completely solve it, and no one is saying that it will, but I do think it's a step in the right direction. But I do think that we need to go further. In other words, I'd rather have this than not. I'd rather have people in the community have a sense of what's going on than not. And then it will be up to -- for example, in the PCB
situation, Ford was required, because DEP ordered for that specific situation, to hold public hearings. Not many people showed up, I think, but they did hold them and there was an opportunity for people to take it a step further. And I think we need to start this, and I think public participation and notice is a start and then we need to look further at the many other issues and problems about fixing up our environment. I think you're right.

Let me ask you this, Bill. Does it make it worse or better? I don't think it makes it worse.

MR. WOLFE: Unfortunately, when you open up government, which is always a good thing in my book, but when you open up government and you do it in essentially a way that is really frustrating, particularly to people like me WHO care about who look closely at the details and want to change the outcome and then we have no effective ability to do that, that's just going backfire. That's going to make people angry.

There were people that showed up at the Hamilton hearings that had great ideas. There's a lot of intelligence out there, and they
had very concrete suggestions. There were professionals out there, there were professionals in the audience, there were contractors in the audience who knew the chain of custody of soils and shipments and transportation, very pragmatic real world people that could tribute to the people at DEP who don't this those skills and knowledge. And this is not going enable that to happen.

ASSEMBLYWOMAN GREENSTEIN: I think making a process, any government process, transparent, while it's not enough, it's a very good start. That's why we're having a hearing today and a last week to try to look further at what might be done and what we can do. But I think putting out -- you're right, it will get some people upset. But I can tell that in Hamilton people were more upset not knowing. I think they would have just wanted to have a sense of what was going on in their neighborhood, and that's what we're trying to accomplish here. It's one small step, but I think it's a positive step.

MR. WOLFE: Agreed.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Any questions for Bill?
Jeff Tittel.

MR. TITTEL: I just wanted to follow-up and what you just said. We do support the legislation, knowing that there's further reforms needed. But we also believe when the public knows how bad the program is, like going to these meetings and finding out that the cleanups are voluntarily, that they don't really have a say, I think that public outcry will help to force the changes that are necessary. Thank you.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Any other questions or comments?

Tom DiGangi, Building Contractors Association.

MR. DiGANGI: Just quickly. Thank you, Chairwoman, for working with all parties to address -- helping a personal language a bills which was a bit confusing. I think the solution that you've presented brings clarity and precision to the important public notification that's called for in the substitute. And on behalf of the Building Contractors Association, we appreciate your hard work on the issue. Thank you very much.

ASSEMBLYWOMAN GREENSTEIN: Thank
Is there anyone here from the Edison Wetlands Association?

THE WITNESS: I think we would like to reserve our testimony for the hearing.

ASSEMBLYWOMAN GREENSTEIN: Okay, thank you.

And finally, John Hazen, did you want to comment on this, any of the bills we just did? Thanks.

John Hazen haste from the DEP.

MR. HAZEN: Thank you. First of all, I wanted to thank you, Madam Chair, for your leadership on this and on the hard work you've put in on getting these bills to where they are.

I think, as everyone has testified, the need for open government and the need for information to the local governing bodies and to the residents, I think it's clear that can only help us. And I think the comments of Mr. Wolfe and Mr. Tittel are well taken in terms of the underlying process where I think it's Assistant Commissioner Crock testified before you, we are looking at the remedy selection.

One thing, I don't think this is as
useless as Mr. Wolfe said before because I think in some cases additional information can come to us from the locals. I think in terms of both WR Grace and in terms of Ringwood, if there was a process that gave the information upfront to the locals, you had people in neighborhoods who just said pointed at our backyard. While the statute is set up really kind of in favor of the responsible parties determining the direction, it does say that we can disapprove of what they select but it has to be protected both in health and environment. If there's additional information that is not provided to us that's contained in the remedial action work plan, that does give us the ability to say, "Let's step back and we've got to look at this more comprehensively."

I do think additional -- like the Assistant Commissioner testified, we are evaluating to try and bring the pendulum back here, give the DEP more, but I think this is a definite a step in the right direction. And the department is very supportive of your efforts here.

ASSEMBLYWOMAN GREENSTEIN: Thank
you.

Any questions, comments?

Thanks.

Anybody else who'd like to testify on this bill?

I'll take a motion.

ASSEMBLYWOMAN POU: So moved.

ASSEMBLYMAN CONNORS: Second.

MS. GARCIA: On Assembly Bill 1893 and 1894, Assemblyman Wolfe?

ASSEMBLYMAN WOLFE: Yes.

MS. GARCIA: Assemblyman Connors?

ASSEMBLYMAN CONNORS: Yes.

MS. GARCIA: Assemblyman Manzo indicated yes.

Assemblywoman Pou?

ASSEMBLYWOMAN POU: Yes.

MS. GARCIA: Assemblyman Gusciora?

ASSEMBLYMAN GUSCIORA: Yes.

MS. GARCIA: Assemblywoman Greenstein?

ASSEMBLYWOMAN GREENSTEIN: Yes.

MS. GARCIA: Now, on the Senate amendment to Senate Committee substitute --

ASSEMBLYWOMAN GREENSTEIN: It was
released by the Senate, making it look like 1893.
Now we're conforming it to make it look like our sub. We need a motion.

ASSEMBLYWOMAN POU: Motion.
ASSEMBLYWOMAN GREENSTEIN: Second on that, please?

ASSEMBLYMAN GUSCIORA: Second.

MS. GARCIA: Assemblyman Wolfe.

ASSEMBLYMAN WOLFE: Yes.

MS. GARCIA: Assemblyman Connors?

ASSEMBLYMAN CONNORS: Yes.

MS. GARCIA: Assemblyman Manzo indicated yes.

Assemblywoman Pou?

ASSEMBLYWOMAN POU: Yes.

MS. GARCIA: Assemblyman Gusciora?

ASSEMBLYMAN GUSCIORA: Yes.

MS. GARCIA: Assemblywoman Greenstein?

ASSEMBLYWOMAN GREENSTEIN: Yes.

MS. GARCIA: Now on the bill, as amended.

Assemblyman Wolfe?

ASSEMBLYMAN WOLFE: Yes.

MS. GARCIA: Assemblyman Connors?
ASSEMBLYMAN CONNORS: Yes.

MS. GARCIA: Assemblyman Manzo indicated yes.

Assemblywoman Pou?

ASSEMBLYWOMAN POU: Yes.

MS. GARCIA: Assemblyman Gusciora?

ASSEMBLYMAN GUSCIORA: Yes.

MS. GARCIA: Assemblywoman Greenstein?

ASSEMBLYWOMAN GREENSTEIN: Yes.

MS. GARCIA: The bill is released.

ASSEMBLYWOMAN GREENSTEIN: Thank you all very much on that. We appreciate it.

That's it for the voting. Now we'll start our hearing.

It's just going to be a continuation of the hearing that we had two weeks ago. And we don't have too many people to speak, but we have some interesting testimony, I'm sure. The main people who I invited here today -- I did send a letter to Mr. Morris from Edgewood Properties. Is anybody here from Edgewood Properties today?

It's nobody here from Edgewood Properties. We also asked Bill Wolfe and Jeff Tittel because they were both rushed in the last
hearing and they have a lot suggestions. I will
let them testify, but I think I'll start with the
lady Tara St. Angelo from the Edison Wetlands
Association who wanted to come and speak.

Tara, do you want to come up?

You do not have to go through the
entire thing. You can summarize. You don't have
to read the entire thing because everybody here
will have copies, okay? Just do the best you can
to summarize. Talk to us, in other words.

MS. ST. ANGELO: Thank you for this
opportunity to present this testimony. My name is
Tara St. Angelo. I'm a legal intern at Edison
Wetlands Association. And I will reading this
testimony into the record but, unfortunately, I
can't answer any questions you may have. The rest
of the staff is in Washington, D.C.

ASSEMBLYWOMAN GREENSTEIN: I just
got word that you were sort of given this
assignment last night, so you're going to do your
best. If you have to read, just do your best with
it.

MS. ST. ANGELO: Edison Wetlands
Association, as you know, is a grass roots
non-profit organization. We have a
Brownfields-to-Greenfields Program as well as they are very involved in cleaning up any Superfund sites around the state. If you reference the testimony or even the website, you can find out more information about our organization.

As you also know EWA was the sole catalyst who uncovered the illegal transportation of the PCB contaminated fill from the former Ford Motor Company plant to several Edgewood properties across the state. And it was EWA's diligent investigation advocacy that informed the general public and local officials of the deposition of PCB-contaminated fill.

If you would like a summary of what went on in this investigation and how it was revealed, you can also reference the testimony. Unfortunately, it took this public health debacle to demonstrate the importance of the community involvement in the site remediation process. However, with the right regulatory and legislative changes, we can avoid another case like this.

EWA strongly believes that there should be community notification as referenced in the bills today.
We also believe that strong public participation regulations must be adopted. The state should also provide technical assistance grants to community organizations so they can hire independent technical advisors to help residents understand whether the remediation is protective of their health.

Another NJDEP site remediation issue is their lack of response to public concerns. Although the hotline number can work, we have received several complaints from people in the community that have not received feedback from the DEP after leaving messages from the hotline. For example, there was an issue last March, our consultant who conducted sampling of the Mill Brook tributary across the former Ford Edison plant and we compiled a report with preliminary results that indicated very high arsenic levels and a concentration of metals in paint sludge. And immediately we reported to the NJDEP hotline. We were initially contacted by a representative, but we were informed that no further action would be taken. And the Ford Edgewood case is not an
anomaly but rather indicative of current systematic problems within the site remediation program. EWA believes that this present situation affect the dramatic change in the state's cleanup program.

And one of the causes of the situation we're in today is the big push to redevelop approximately 10,000 brownfield sites estimated to be in New Jersey. Although EWA believes strongly in brownfield site remediation, there is a concern there has been a systematic weakening of cleanup requirements, and EWA encourages us to strengthen the system.

Previously, the NJDEP had the authority for strong oversight, but right now the problem is that responsible parties are not addressing site cleanup in a timely fashion and NJDEP is not enforcing the regulations. So instead of requiring protective cleanups, the Whitman administration overhauled the regulations by gutting agency oversight and enforcement authority and putting the polluters in charge of their own cleanups. The NJDEP was given a mere advisory role.

As long as the responsible party
comply on paper with the technical requirements and perform due diligence, they're allowed to choose their own remedy. Therefore, EWA makes the following suggestions to return the control to the NJDEP.

We recommend the elimination of Memorandum of Agreements and other types of voluntary agreements which carry no legal weight. Instead, we advise for Administrative Consent Orders to be reinstituted at all major sites.

In addition, we need to put enforcement back into the regulatory process so that a responsible party does not delay cleanups for eternity. Right now, the only thing a noncompliant responsible party has to fear is a letter from the DEP.

DEP should have its own independent data analyzed at independent labs of their own choosing rather than simply review the responsible party's consultant reports for paperwork compliance. Edison Wetlands is unique in that it collects its own data and often conflicts with the data collected by the responsible party. We need to remind ourselves that when it comes to sampling, you can't find a problem if you're
looking in the wrong place.

DEP Site Remediation Advisory Group should be dissolved and replaced with a public advisory committee made up of citizen activists, environmental groups, and municipal leaders. DEP initially created the advisory group to encourage open dialogue between the agencies and the community. While a few members of the environmental community attended the meeting, the vast majority of the attendees are industry representatives and developers, including their attorneys and consultants. What once was a laudable goal for open dialogue has turned into a lobbying tool for the regulated community directly influence policies crafted and implemented by DEP personnel.

An example of the unacceptable influence of industry developers over DEP policy occurred when DEP drafted its Vapor Intrusion Guidance Document. And this is further outlined in the printed testimony.

It is completely inappropriate for the regulated community to have such influence over DEP policy and regulations. DEP scientists should be the ones who establish regulatory
standards and guidance documents, not the lawyers and consultants of the regulated community. Put simply, polluters' profits are being placed before the public health. EWA believes one of the first steps to putting an end to this is the dissolution of the Advisory Group.

The pendulum has swung too far away from responsible regulation and enforcement to the current position of reckless disregard for public safety and the environment in the rush to redevelop. The Ford Edgewood PCB contaminated fill problem is just one of the many that indicates a reckless system without proper oversight and enforcement mechanisms in place. EWA believes that thorough site cleanups can be completed without risk to human health and the environment, while still promoting economic growth.

In fact, EW's Brownfields-to-Greenfields initiative encourages balanced redevelopment with both economic components and open space. The problem is that industry and developers have been running amuck in New Jersey and now you're experiencing the cost that have privilege. In the interests of the
public and our future, we urge that you enact
reforms sooner rather than later on this very
important issue. Thank you.

ASSEMBLYWOMAN GREENSTEIN: Thank you
so much for your testimony. You know, the
interesting thing is that I think as we're
listening on this committee on the environment,
we're hearing the same things from everybody.
It's almost verbatim what Mr. Wolfe and Mr. Tittel
has been saying and will probably say shortly. So
clearly this is something that we need to look at.
We need to swing the pendulum, I think, in the
other direction, giving the DEP more involvement
in its own process and making sure that there is
good oversight in anything that the regulated
community does. And I think, hopefully, the bills
today -- do you feel good about the direction
we're taking on the bills today?

MS. ST. ANGELO: I can't speak for
the EWA. I'm sure the staff would join me saying
that these are a step in the right direction.

ASSEMBLYWOMAN GREENSTEIN: Good.

Any comments or questions?

ASSEMBLYMAN WOLFE: I have two
questions. Who initially discovered contaminants?
ASSEMBLYWOMAN GREENSTEIN: She may not be able to answer.

MS. ST. ANGELO: This happened before I actually started working at EWA. This is my second week of work.

ASSEMBLYWOMAN GREENSTEIN: She was put on the job last night.

MS. ST. ANGELO: I can give you the card of our staff attorney and you can call her. She'd be happy to answer any questions you have at a later date.

ASSEMBLYWOMAN GREENSTEIN: Why don't you put the question on the record, and then we can --

ASSEMBLYMAN WOLFE: My second question is, Edgewood purchased the property, was hired to remediate the site, was it to truck this material away?

MS. ST. ANGELO: To my understanding, they are a developer and they purchased fill from the Ford site and brought to other sites, but I'm not entirely sure. You can ask the rest of the staff at Edison Wetlands.

ASSEMBLYWOMAN GREENSTEIN: The litigation that's going on right now is trying to
determine who did what when. I think that what is not determined yet. There's finger-pointing going on right now.

ASSEMBLYMAN WOLFE: You did a very good job.

MS. ST. ANGELO: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Did you have any questions you want to put on the record?

ASSEMBLYMAN WOLFE: No.

ASSEMBLYWOMAN GREENSTEIN: Anybody else?

Now I'll call -- is there an order that's best for the two of you?

Jeff Titel, Sierra Club.

MR. TITTEL: Unfortunately, I left my packet in the office.

ASSEMBLYWOMAN GREENSTEIN: You two can actually come up together.

Do you have anybody else testifying, or just these two gentleman?

MR. TITTEL: Anyway, I'll follow-up.

I apologize I have a packet of all KINDS of materials with lots of changes. Now I've got to rely on my brain, which is not always --

Since I did talk at the last time, I
want to reiterate and go over what I said until I
get the three minute drill, which was pretty good
in basketball but I'm not so sure for a hearing.

ASSEMBLYWOMAN GREENSTEIN: You can
repeat. You were really quick time last time. We
rushed you.

MR. TITTEL: The main point is that
when we changed the statutes in the '90s, when we
moved to the statutes, we he removed the public
participation from it, from the cleanup system.
We basically became a voluntarily driven system by
the responsible parties who polluted the sites.
And because it's a voluntary system, there is
virtually no accountability by the DEP and there
is really no ability to force what I would say
permanent remedy because they can use an economic
balancing test and pick the remedy themselves,
which means they're always going to pick the
cheapest remedy and in most cases the least
effective remedy.

And the problem isn't when you're
capping a site and you're building a warehouse and
there's only a few people there, maybe a guard at
night or something, but the problem is many of
these sites are now becoming communities and homes
and families are there and yet they're not getting
cleanup to the standard they would get because of
the voluntarily cleanup that will cap the site and
walk away.

The problem with DEP programs right
now is that there really isn't a permanent remedy.
We can show you with -- I wish Assemblyman Manzo
was still here, because we were up in Weehawken
and we took soil samples where there's a new
development going in, a chromium site, and there's
chromium on sidewalks. It's not above the
standard, but it's not far from the standard. The
question is why on a new development should there
be chromium on sidewalks.

Part of the problem is that even
after we reported to DEP, it's the responsibility
party's consultants that went out there and
tested. Now, we asked for a very broad plan to
see if it's coming from this pile of chromium in
the corner or is it coming up from this side or
that side. They get to pick where they do the
sampling.

ASSEMBLYWOMAN GREENSTEIN: Jeff, did
you say that the chromium on the sidewalks there
met the existing standards?
MR. TITTEL: It was slightly below the standard. The standard for cleanup is 20 parts per bill. It's at 15.

ASSEMBLYWOMAN GREENSTEIN: So in that case, part of the issue is standard is bad.

MR. TITTEL: The standard is bad, but the State can't enforce anything because --

ASSEMBLYWOMAN GREENSTEIN: Put your mic on.

MR. TITTEL: So the point that I'm trying to make, DEP standards are high because their responsible parties' consultants went in there and said, "Well, we sampled and we didn't find any other spots. We don't think it's coming from anywhere. It could be background." Well, background for chromium should be zero, the standard should be 4, but that's the California standard, not 20 which is New Jersey standard. The only positive in this is that for years we've been putting poor people on top of these contaminated sites. Now we have $3 million condos. So hopefully people there who live in that development will be of upset and who have more political clout and money to go fight for cleanup.
But the point that I was getting at, which is, I think, the change that we really think needs to happen is that there needs to be an independent system for doing testing on contaminated sites. And I think the best way to do it is to have the responsible party put up an escrow account that's bonded and insured so that the monitoring is being done by consultants that are working for the escrow account monitored by the State, not by the responsibility party. So that they're out there taking the samples and doing the right job, not the job that the responsibility party tells them, you know, "Don't go over there with a pile of dirt, go over there by the other side of the parking lot." Because they have this no test no tell methodology. And then when there are caps in place or where you don't have a permanent planned remedy. And even when you do, there needs to be an ongoing monitor system. And that's I think having an insurance system set up that goes out -- AIG have written out for contaminated sites without insurance for 50 years, a 50-year policy. And the idea is so that you would be ongoing monitoring of these sites. Because right now they're supposed to be
yearly monitoring. But again, it's the RP's consultant, because DEP has no field staff to go up there.

They talked about -- some of the discussions we're having the DEP is having the towns doing the monitoring. The problem is the towns aren't even monitoring the retention basins that are filling up with, you know, various caps and making sure that they're not --

ASSEMBLYWOMAN GREENSTEIN: Who are you suggesting would do the monitoring if you had this insurance policy?

MR. TITTEL: Well, I think that you can do it two ways. I think that two ways. One, by having this insurance policy that the consultants would be hired either by the DEP, which may not be the greatest but it's still better than the RP, and be reviewed by the Department versus being put out there by the RP -- you know, I've been at sites where I've watched these consultants come in -- and Ford, they were more concerned about taking the EPA staffer to lunch and the EPA staffer was more concerned about where he was eating than what was actually happening on site. I think that problem is part
of the problems that we see.

So I think the first thing that we would like to see is better monitoring in the first place, better main clean up plan, and the ability of the public to participate in that cleanup plan, but also where the testing is done on site to make sure that the site is clean and they're not playing games. You can play all kinds of games with tests and I've watched consultants do it. And then have a long-term monitor.

The other issue that I think that is important is to be looking, especially in areas where there is going to be redevelopment, and who is going to pay for the difference between an industrial standard and a more unrestricted standard so that that site can be developed. Now if the responsible party -- when they play this game, and I'll try to explain it sort of briefly, but there are companies -- one company I mention in particular that does this Cherokee, they will go to the responsible party and say, "We will take over your site and your liability, give us $10 million."

Now under the law, when you have a contaminated site, you have to go to unrestricted
use, it could cost the responsible party 50 or $60 million. If all of a sudden it becomes a brownfield and they're going to redevelop it, that site for cleanup goes from, under the voluntary cleanup program, goes from $60 million restricted to maybe a $3 million cap. So the game they have played is that companies come in to make money. They'll say "Give us $10 million, and we'll take care of your problem. We'll taking over your liability," and will come in there and put a golf course or a parking lot or something else like that so that they can come in under the voluntary cleanup program, put that in, and then five or ten years later, turn around and build housing on it or something else. There is no DEP monitoring to say, "Well, it's now residential so therefore they've got to go back and do the cleanup." That doesn't happen. So this is a game that's being played throughout the State of New Jersey and actually throughout the country. And there are companies that actually profit on it.

The other thing that they do, the cap itself -- and I'll use the site up in the Meadowlands as an example. A cap itself is a cash cow for the developer. Where they end up not
making the cap out of clean material like you think. What happened with ford, that's the tip of the iceberg, because they go out and make money off of capping a contaminated site and building on top of it.

If you look at the end cap site in Lyndhurst, it's a garbage dumb to begin with on top of the wetlands. So the cap itself is being made out of dredged sludge from has dioxin in them. They've got a waiver for that. Construction debris from the school construction corporation, which means lead paint and asbestos, what's called dirty dirt which is a term which means soils from underground tanks which you could have hydrocarbon in them. And, as I call it, the icing of the property is sewer sludge with PCBs, heavy metals and so on. And they're actually going to make $75 million for their cap. But basically making it into a dump. It's the only way I can really describe it. And that's one of the problems. Then you'll be putting housing there. So not only are you going to get contamination from the landfill, you're going to have contamination of the cap. That's why caps are so bad because the caps themselves do not have
to be made out of clean material. And again, without the proper monitoring, who knows if they're actually going to use the standards for what's conceived for clean dirty fill. It's dirty, but it's supposed to be to a certain standard. But there's no real monitoring. In fact, one of the companies involved has got some fuzzy past to New York State.

So those are the kinds of problems that we see. And why especially put where you're going to put 2,000 units of housing, 5,000 people are going to live there. People playing golf, that's one thing. But 5,000 people may be living on that site. It's going to be unstable because of the fill. And that's why I think we need to have a better process. If we're going to be building housing and communities, it should be a permanent remedy, not a temporary remedy that itself is a problem. So the point that I'm trying to get at is that we need better monitoring. We need better testing. We need to do better science. And we need to have permanent remedies. We cannot allow this game for capping the site for now and then turn around and put housing on it. We have to reopen the whole process. If they're
going to change what's going to be built on that site, there has to be a trigger to say reopen the NFA or the NFA goes away they have to come back and clean it up to an unrestricted standard. Because otherwise we're going to be putting people in harm's way.

Another point that I wanted to make is that we need look at our groundwater standards and what goes into them. Another problem that we're seeing in the state is that because we believe we're allowing more and more natural attenuation. Natural attenuation is a very fancy term that basically means that you got crap in the groundwater and instead of cleaning it up, we're just going to let it keep diluting through the aquifer and contaminating it until it gets to a safe level. In some cases we allow for natural attenuation to last for over 30 years. Based on the model, not on reality, you can come DEP and say, "Well, in 30 years this will dissipate into the aquifer. Yeah, it's going to hit every well field no four counties. And it could be picked up with other contaminations from other sites. Once they do this, it's the potato chip syndrome, so they do it for this one and that one. The next
thing you know, you've got this toxic soup in your groundwater because you've got 30 sites in the community that are leeching we're not cleaning them up, we're going to allow them to naturally attenuate. What's the effect of the benzine from this site and the from this site and, you know, coming all together. That's the real problem. There really needs a tight groundwater standard. We can't allow for natural attenuation, and we can't allow for the other thing that they do is called a CEA, Categoric Exception Area where they write this groundwater off because it's too contaminated and they're not going to require to clean up it. Do you know that there's a well in the City of Camden that could not be -- actually, not a well. There's a well field in Camden that's in the middle of CEA, which is an exemption area, off limits for water that you could put a new well into the system that already exists. We're going to allow you to be pumping contaminated water. There's class action by the people in the City of Camden because their water supply is impacted and, you know, quite frankly, we want to see Camden redevelopment redevelop, but where are they going to get the water from if you allow CEAs on top of
well fields.

    And the same problem that we have in

Dover Township. And so because there are 3500
state, in according EPA, that are leaking into
groundwater aren't getting cleaned up, it's
creating a water supply problem for the state
because we have no other place to get water,
especially in the southern part of New Jersey, but
from the ground. So we should not be allowing
that. You should be forcing cleanups as part of
this.

The other point I wanted to make
which is -- and I want to thank those on the
Environment Committee, particularly on the
corporate business tax and running on for parks.
One of the things that we know from that is under
the Site Remediation Program there's $150 million
sitting there. That money was put there because
of the environmental community fought to have the
constitutional dedication to CBT and is going to
different programs. The site remediation was
there because the state has the power to go in, do
a cleanup on a site that's delinquent and then sue
the responsible party to get the money back. And
that money is supposed to be there to you pay for
the cleanup costs. The problem is that we're not doing it anywhere. One of the changes that you should look at for major contaminated sites, especially those that are in protection areas or close to well fields and reservoirs, there has to be a mechanism because the public health and safety to trigger those cleanups.

We've had sites, and e raise it as an example, next to reservoirs. Yet the State of New Jersey does not trigger any mechanism to force the cleanup even though you've not a billion gallons of contaminated water right next to a reservoir. And I think there has to be a loss and trigger mechanism that when a site sits so long affecting groundwater and water supply that you have to automatically go in there and force the cleanup. You can't just sit there and let it go on for years and years.

And I just wanted to end there because there's a lot of information in the bill has a lot to talk about. Those are just a couple of thoughts that I wanted to put out. And I will bring my packet of other issues as well.

ASSEMBLYWOMAN GREENSTEIN: That point you made about 150 million, that was money
from the CBC?

MR. TITTEL: Yes. That money very specifically is a fund for site remediation. The purpose of that fund is so that the State can go after sites that are not being cleaned up, do to cleanup themselves and then sue them. They need that upfront money so that can start the cleanups themselves. Unfortunately, I think, there's maybe three of them in the last 15 years that we've actually done something.

ASSEMBLYWOMAN GREENSTEIN: So that money is sitting there, it really hasn't been used?

MR. TITTEL: It hasn't been used. And we don't want to take it for something else like parks or something. We want it to be used to go after these sites, especially terrible sites that are out there that are affecting drinking water and people's properties.

ASSEMBLYWOMAN GREENSTEIN: Do you have any sense of why it hasn't been used.

MR. TITTEL: Yeah. Basically, because they had a Commissioner for eight years who didn't want to take on any industry and he decided not to do anything. And since then, it's
been sort of we haven't done it so therefore we're not going to do it.

Commissioner Gambol did announce a year ago they were going to use of that, but they've done very little. And I think that there needs to be some mechanism to enforce it so that much sites get cleaned up especially those that are impacting people's drinking water. So I would focus on being directly at drinking water to force the DEP to take action.

ASSEMBLYWOMAN GREENSTEIN: Any questions or comments?

Thank you. You certainly give us a lot to think about. As I say, today is just one tiny step, but I know this is area I've developed an interest in, and I'm hoping to try to pursue it in some way. Thank you for all the great input.

ASSEMBLYMAN WOLFE: Bill Wolfe. I don't appear very often here. I'm not a lobbyist. I spent 13 years at DEP. I spent seven years at the Sierra Club with Jeff for the most part.

Today, I just like to focus -- I'm really pleased that we're allowed to talk about the underlying issues as opposed to the last hearing which was really a very -- I felt from DEP
focussing -- and Ford, for that matter, focussing
on recycling and the minutia for the recycling
program -- so I'm very pleased that we can orient
the focus on site remediation program. And I want
to focus on --

ASSEMBLYWOMAN GREENSTEIN: Is your
mic on?

MR. WOLFE: I want to focus on the
statutory framework and underlying statutory
provisions that have created the problem. So when
you look towards reform, you know where to look,
you know what to look at. And I'll make some
recommendations as to specific changes that need
to be made.

Last, I'd just supplement that with
some actual DEP data. That's a little stale now.
I haven't been there for a while, but I took some
thing with me when I left.

ASSEMBLYMAN WOLFE: How did you do
that?

MR. WOLFE: Public records. I was a
civil servant and I'm paid by the taxpayers of New
Jersey. I think it was public information and I
left with it, frankly. If that's an ethics issue,
I'll be glad to talk about it.
Is that satisfactory?

ASSEMBLYMAN WOLFE: We'll see.

Continue.

MR. WOLFE: First, I'd like to share a couple of quotes from fairly independent and credible sources just to put a face on this thing. This is not environmental advocacy type of situation. I'm sorry Assemblyman Manzo is not here. A case that went through the Federal District Court and upheld in the U.S. Circuit Court of Appeals for third in circuit in Jersey City dealing chromium. And in that case the federal judge after exhaustive review of the record and DEP's actual implementation and the state law at play found -- and this is his words, quote, "The court finds the evidence demonstrates a substantial break down in the agency process that has resulted in 20 years of permanent cleanup in action," end quote.

That really is a scathing indictment, frankly for both the state program and the state law that New Jersey citizens had to initiated a citizens suit under federal law and go to federal court to get an effective remedy to protect their health. That's a shame, frankly,
that the State of New Jersey on its failure both administratively and legislatively to place the framework to protect its people.

In recognition of that deficiency at that level, which is now a national precedent, that nobody seems to want to talk about. That's a $400 million cleanup up there. That has regional significance.

Former Commissioner Campbell in a letter to Jersey City Mayor Healy stated, quote -- and I provided that letter to the Committee in my June 1 testimony. Quote, "Recognizing the public concern (and my own) about excessive capping of sites we are preparing a legislative proposal for Assemblyman Manzo's consideration, that will strengthen the Department's authority to order permanent remedies, in lieu of capping or engineering controls, where appropriate to ensure public health or environmental protection. That's December 2, 2005 letter from Commissioner Campbell to Mayor Healy.

I haven't seen that legislative initiative. DEP is here today. I think some Q and A back in the department what the status of that was. That's the material you will be dealing
Third. In reiterating that policy direction and legal concern Commissioner Jackson, quote, "We need to go back to having the authority to demand a more rigorous cleanup. We need to assure ourselves and, more importantly, the public that in our rush to redevelop we're not too quick to leave material in place." That's a quote from a Commissioner Jackson in the Bergen Record of April 21, 2006.

And lastly and most importantly, I think, at this point, Governor Corzine's Transition Team recommendation is very specific and very focussed on this issue and I quote from that transition report, dated -- I think it's January 10th. "The Policy Group recommends that the Governor supports measures to restore DEP's pre-1993 authority to select remedial actions at specific sites, similar to the power the Department had before 1993. This restoration of authority should also give DEP the authority to compel a Responsible Party to implement a permanent remedy, to mandate that the polluter conduct a feasibility study similar to the Superfund model, and to require additional cleanup
without having to expend taxpayers' money to prove

that the remedies have failed."

The statutory changes that were in

my June 1 testimony --

ASSEMBLYWOMAN GREENSTEIN: Bill, did

you give us -- do we have a copy of your June 1

testimony?

MR. WOLFE: I gave six copies. I
can part with some copies today.

ASSEMBLYWOMAN GREENSTEIN: If you
give us one to make sure we have copies.

MR. WOLFE: Sure. And in the June 1

testimony I have written recommendations as to

what should change legislatively, which I can

repeat a little bit today. And I also ended for

you 12 specific legislative provisions in

boldface, specific language, that creates an

underlying legal problem that we're dealing with

here.

ASSEMBLYWOMAN GREENSTEIN: Bill, can

you give us a copy of that now, the June 1

testimony? And they'll make copies of it.

Thanks.

MR. WOLFE: So with that backdrop in

mind, here's the general areas of some legislative
change. I think we talked about some of this earlier about notice the shift in public participation. I was saying that providing public participation, that's a supplement to the notice that we talked about earlier.

The restoration of authority stripped in 1993 and '97, there were legislative policy directions to privatize cleanup decisions to reduce cleanup costs to reduce oversight and weaken DEP enforcement. These are not -- what we're dealing with is we're reaping the fruit of what we created in the '90s and we went too far. And I think we need to have that recognition going in and we need to from a consensus around that in order to get some change. Once you get to fundamental understanding, I think the rest isn't as difficult. But, again, is it the legislature's preference in, quote, expediting or promoting or incentivizing redevelopment, given the real estate market in urban New Jersey is now. It's a hot market. It's not the depression of the late '80s. We're now taking about major turnaround in redevelopment in New Jersey. Do you want to stay with policies of the past that were developed under completely different economic conditions for
completely different economic purposes and
completely different environmental purposes that
are now hurting us? So I think you need to think
very seriously about go look at the legislative
intent of the '93 law and see if it's fresh. And,
frankly, it's to the right of Christy Whitman in
the policy accepts. In terms of balance between
environmental and public health protection and
promoting economic development.

I don't think the Governor who
strongly promote economic development would want
to put his name on those legislative findings.
And they were further enhanced in '97 when we did
the Brownfields Act. I was on it, Senator
McNamara, so I know the bodies were buried in that
bill. Some serious change came back with remedy
selection to the responsible party came in in '97.

So at any rate, the third piece is
restoring the DEP's authority to compel permanent
remedies which they are now prohibited from doing.

Restoring DEP's authority to compel the conduct of
the feasibility study, which identify the plan
alternative. Restoring the DEP will provide the
public with those alternatives and let the public
express their point of view as to what their
preference they have for which particular remedy
so the public can weigh in on the decision on how
to trade off and balance environmental protection
and economic defiant cost of, let's say, Dupont.
We're talking about trading off private
responsible parties compliance cost with the
protection of public health. I think if we have
that debate publicly, we win that debate hands
down every single time if it's framed that way.
Unfortunately, the way law is structured right
now, I can't in any forum anywhere in this state
have that debate, because it's been preempted by
the legislation intentionally. Let's not fool
ourselves.

The fifth point I have here is I
think the Department implemented in the beginning
of the mid '90s what is now known as the Voluntary
Cleanup Program. According to the DEP data -- and
this data is old, this is three years old. There
were 4,921 cases in the Voluntary Cleanup Program.
Last Earth Day, Governor Codey announced an
initiative called Times Up For Cleanup where the
Department went back and selectively revoked those
voluntary cleanup agreements.

You've got to understand what a
A voluntary cleanup agreement is. A company comes in and says, "I'll clean this up. I'll clean it up at my own pace. I'll clean it up as much as I feel like cleaning it up when I want to. And if I find out I'm in over my head and economically it's going to cost me too much, I walk away, hands free, no enforcement, no liability, nothing."

That's the way the law is structured. And there's only 5,000 of those deals. And what happens is the program is expanded so much that companies have come in and using voluntarily agreements as a shield against enforcement and an excuse to present an appearance that they're under some agreement with the State of New Jersey to clean up a site, and that gives them a license to sit there and let that site fester for years without any active cleanup. The irony is that whole mechanism was created to accelerate cleanup and accelerate redevelopment, and it's turned into a mechanism to frustrate cleanup and frustrate redevelopment.

And those are the facts. And you can ask DEP to respond. I have facts that come directly from them and I would be glad to hand you factual inquiry if you guys, again, want to do the appropriate degree of legislative oversight here,
which another thing, because I got to tell you

last time around on June 1st to sit here and

listen to Assistant Commissioner Crop both divert

the Committee's attention from the real issues and

secondarily mislead the Committee on what she

chose to say and what she chose not to say -- and

I'll talk about a couple of those things in a

moment -- is not an effective way to conduct this

type of important oversight you're talking about.

You're going to have to hold the

Department to the fire and you're going to have

require submission of written documents with facts

and legal interpretations, because it's been --

the Department, frankly, in my view -- I think

they're losing credibility here. And that should

be unacceptable.

ASSEMBLYWOMAN GREENSTEIN: The one

thing I can say what we've learned from these

hearings both the last time and this time is it's

a difficult situation, because DEP is where it is

as a result of much legislation that has happened

over a long period of time. I don't think it's

any individual's fault or anything like that. I

think this where we've gotten and I think there's

some sentiment to try to make some change in that.
But as you know, it's a long process. I think we've taken some baby steps today and over the last few months, but we still -- you know, it's interesting to hear where we might go.

MR. WOLFE: I want to shift gears to flush that point out because it's an important point.

Had the Department been engaging in good faith at the time, they would have told you that they had a proposal that was drafted by the program that was reported in the Bergen Record. We had to weaken DEP policy memos where they proposed to weaken the groundwater standards for a host of toxic chemical plants by a factor of at least a 10 and allow groundwater models to dilute groundwater for up to 98 years.

ASSEMBLYWOMAN GREENSTEIN: When did that take place?

MR. WOLFE: That memo was circulated in the wake of a Supreme Court decision this spring which upheld the Department's authority under the groundwater standard to apply the ground standard. So just at the point after years of a legal loophole, which technically the groundwater standards existed but they weren't incorporated as
remedial standards, so in 2003 the Department
finally got its act together and legally closed
the loophole and applied the groundwater standards
as remedial standards in the program. The
regulated community sued the Department on that.
The New Jersey Supreme Court decided this spring
and upheld those standards. And literally weeks
later, because of the pressure of applying those
standards, to reduce the cost to industry, the
Department floated a proposal to weaken the
standard by a factor of 10. And not only was it
in bad faith, but it was, again, brought -- I'm
going to give you an insider's view. And an end
run around the Department's own regulations which
give them the authority to reclassify aquifers
where there is no drinking water or ecological
attack and where it would be cost prohibitive to
clean up.

The industry has petitioned DEP four
times in the last 10 years to classify aquifers to
Class 2B. All four petitions have been denied by
the DEP because it hasn't scientifically justified
it.

And here, instead of going through
THE existing regulatory process, which is science
based and open to the public, they floated an internal proposal saying, "We won't even do this through rulemaking, we will do this AS a matter of administrative policy." And there's been a 20-year history with DEP being sued for adopting administrative policies in the absence of the rulemaking. But in this case, they were doing it to weaken a standard. It's an egregious thing to do. And they're not doing it in no context. They're doing it when the Legislature is holding oversight hearings, when the press is beating them up on a regular basis about weaknesses in their cleanup program.

ASSEMBLYWOMAN GREENSTEIN: Bill, let me ask you this question. The thing you're -- because I want to rein us in here a bit. Are you saying that this is a result of one of these needed legislative changes?

MR. WOLFE: What I'm trying to suggest to you, and this all occurred since the last Legislative Oversight hearing --

ASSEMBLYWOMAN GREENSTEIN: Just in the last few weeks?

MR. WOLFE: In the last few weeks.

The other three things that occurred -- you need
to know about because you're not getting briefed by the Department. You have heard about the public participation rules.

ASSEMBLYWOMAN GREENSTEIN: Yes.

MR. WOLFE: Those rules will suffer because they do not enable any effective remedy, meaning they will have the same thing I identified earlier. So, again, they're putting a Band-Aid on a gaping wound that's misleading in terms of its effectiveness.

ASSEMBLYWOMAN GREENSTEIN: With all due respect, I don't think it's misleading. I think we all know that because of legislative changes that have happened over the years, the Department is probably a very different place than it was at some point. It's under completely different rules and regulations. And I think there's some belated recognition that that's a problem and there are many problems. And what we need to do is what we can realistically change what we need to change. It's certainly important or we wouldn't be looking at it. We've have to think of what we can do legislatively and also what they can do under their regulations. Can you summarize?
MR. WOLFE: Let me -- I need to give you two more examples so you understand this. The WR Grace thing --

ASSEMBLYWOMAN GREENSTEIN: Be brief.

MR. WOLFE: Very, very brief. The WR Grace debacle revolved around private certifications of compliance, private consultants and contractors. Everybody agrees we need to get more handle, more control. The DEP is expanding and accelerating their program known as Cleanup Start. The Cleanup Start Program is designed to reduce the DEP's oversight and consultancy. So they're over here testifying, "Oh, yeah, we need stronger programs, we more authority," but administratively they're over there on the other end of State Street, they're doing things exactly the opposite of what they're telling you here. Inquire about that.

The other piece --

ASSEMBLYWOMAN GREENSTEIN: If you would make this your last point. I think we've definitely gotten lot of your testimony here.

MR. WOLFE: Again, you held June 1 oversight hearings. That was Thursday. On Saturday the Star Ledger's front page story was
about an issue of scientific fraud whereby a
scientific journal withdrew a study about chromium
carcinogenicity as to whether chromium was a
carcinogen, human carcinogen, by injection. And
that fraudulent science that the journal itself
revoked because it was fraudulent influenced the
DEP's deliberations in setting the chromium
standard.

ASSEMBLYWOMAN GREENSTEIN:
Unfortunately, that was bad information out there.

MR. WOLFE: But what happened was,
there were DEP -- if you read the article, there
were DEP scientists who said just what I said, and
there are other DEP scientists that felt they
needed reflect the press office and the
commissioners and the company line. So in the
newspaper, DEP scientists were debating each
other. As a result of that kind of embarrassing
type of situation where you have your own staff
disagreeing in the newspaper and the prior leak
about the DEP policy on 10-fold increase in
groundwater standards, the Assistant Commissioner
issued a memo to 600 and some odd staff members
saying, "You shall not disclose or talk publicly
about information." Just as we're getting to the
point where for years we've been saying there's
something wrong with the Cleanup Program. We have
public discussion about the Cleanup Program. Now
that we're starting to have public discussion on
the Cleanup Program, the Assistant Commissioner
issues a very intimidating gag order to her staff.

That's the game. If you don't
recognize we're in that game, then you're not
going to have a very effective dialog.

ASSEMBLYWOMAN GREENSTEIN: I think
the fact that we are have the hearings is a
recognition that there is change needed. I
certainly appreciate all of the input you've
given, and we do have your testimony with
suggested legislative changes. I know I'll be
looking at those. And certainly your knowledge, I
appreciate fact you have some very good
information here. You've given us a couple of
very good ideas.

I don't know if Mr. Haven -- do you
want to make any comments on any of the testimony
today at all?

Certainly, DEP gave us very good
testimony the last time. I think it was pretty
thorough.
Is there anybody that wants to ask any questions or has any comments? Anybody here or in the audience?

Thank you all very much. I appreciate it. Thank you.

(The meeting was adjourned at 11:45 a.m.)
CERTIFICATE

I, Lisa C. Bradley, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination, the witness was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

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LISA C. BRADLEY, CSR, RPR
CSR NO. 30XI00228700

DATED: July 12, 2006