

1 NEW JERSEY
2 CLEAN WATER COUNCIL

3 _____
4 IN RE: :
5 2006 PUBLIC HEARING :
6 IMPROVING WATER QUALITY :
7 PLANNING & MANAGEMENT :
8 _____

9
10 DEPARTMENT OF ENVIRONMENTAL PROTECTION
11 401 East State Street
12 Trenton, New Jersey
13 Tuesday, October 10, 2006
14 Commencing at 9 a.m.

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1 MS. GOODWIN: Good morning. My name
2 is Pamela Goodwin. I am an attorney practicing
3 law with the law firm of Saul Ewing, LLP. And I
4 am honored to serve as the chair of the New
5 Jersey Clean Water Council.

6 I'd like to ask the other members of
7 council to stand at this time and please
8 introduce themselves and their affiliations.

9 MR. HAWKINS: My name is George
10 Hawkins from New Jersey Future, public member.

11 MR. COSGROW: Jim Cosgrove from the
12 DOT Omni representing Professional Engineers.

13 MR. FINARRI: Russ Finarri, from
14 PSE&G. I'm the Vice-chair, and I represent the
15 Chamber of Commerce.

16 MR. RADKIN: Tony Radkin (Ph.),
17 Somerset Planning Board. I'm also a public
18 member.

19 MS. GOLDSMITH: Amy Goldsmith, New
20 Jersey Environmental Federation.

21 MR. VAN ABS: Dan Van Abs, New
22 Jersey Water Supply Authority.

23 MS. GOODWIN: Thank you. We're here
24 today to hear public testimony. The purpose of
25 this hearing is to satisfy the council's

1 statutory obligation to annually conduct a public
2 hearing on a current topic of interest to the
3 public which is related to water quality issues
4 in the State of New Jersey.

5 It is hard to imagine a more current
6 topic than the prospect of modifying the state's
7 Water Quality Management Plan. This is an issue
8 with far reaching implications. Not simply with
9 respect to the water resources in the state, but
10 also with respect to land use planning and growth
11 in general.

12 The Clean Water Council has
13 identified eight questions that it would like to
14 hear comment upon. They fall into the following
15 categories:

16 The Wastewater Management Plan
17 Amendment Process, the scale and scope of the
18 Waste Water Management Plan, consistency with the
19 state development and redevelopment plan,
20 adequacy of non-point source pollution control,
21 controlling saltwater intrusion, coordination
22 with the Statewide Water Supply Plan, protecting
23 sensitive environmental features and E.O. 109.

24 We've asked a group of invited
25 panelists to speak to each of these issues.

1 Following their testimony, I will invite members
2 of the council to ask them questions. I would
3 ask that others within the audience save their
4 questions and present them as comments during the
5 public comment period of today's hearing which
6 will follow immediately thereafter.

7 As a housekeeping note, if you do
8 intend to give public testimony, and have not yet
9 signed up, please go to the registration desk in
10 the hallway and sign up now.

11 Also, anyone who would like to
12 submit written testimony may do so up until the
13 end of October. Now, that's a slight extension.
14 The flier says, October 24th. We will, in fact,
15 accept written testimony until October 31st.

16 Additionally, we're making an
17 accommodation. There is some concern that
18 certain parties raised with regard to the timing
19 of our flier and their desire to submit written
20 comments, and so we are holding open the written
21 record, as I say, until October 31st. But our
22 next hearing is the 14th of November.

23 If there is anyone who did not have
24 the opportunity you to come today, and who would
25 like to present testimony to us on that date,

1 they may appear before us at that regularly
2 scheduled meeting. That will be held at
3 10 o'clock, November 14th, at the Environmental
4 Infrastructure Trust Offices on Princeton Pike.

5 Anyone who would like to participate
6 at that time should notify Ray Nichols of the
7 NJDEP. His number is listed in the flier.

8 And with that, I'd like to get
9 started with today's hearing by welcoming our
10 keynote speaker Mark Mauriello, the Assistant DEP
11 Commissioner.

12 Mark needs little introduction,
13 having spent more time at DEP than anyone I know.
14 He told me today it's been 26 years. And he
15 certainly has outlived many of our commissioners.

16 We were trying to figure out how
17 many commissioners there had been in that time
18 frame, and we have a guesstimate, but not even a
19 certainty. So anyway, Mark, welcome and please
20 join us.

21 Thank you.

22 MR. MAURIELLO: Thanks for that
23 introduction, and welcome everybody. Thanks to
24 Pam and the Clean Water Council for conducting
25 this hearing today.

1 The subject of the hearing is clear
2 to everyone. A lot of folks have been looking at
3 the department's actions over the past five, ten
4 years in a lot of areas, and saying, what's going
5 on with Water Quality Management Plans. Much the
6 same way they were saying, what's going on with
7 flood hazard area control rules and a lot of
8 other things.

9 The importance of this particular
10 rule package is not a surprise to the folks in
11 this room. You folks know it well.

12 These rules really are the rules
13 that will guide the infrastructure decisions
14 throughout the state, upon which a lot of other
15 programs are dependent.

16 So you can look at the various
17 programs, the Waterfront Development Program,
18 CAFRA, Wetland Program, which all operate on very
19 specific mandates of resource protection.

20 But the umbrella that these rules
21 provide, once aligned with these other programs
22 and with the state's vision for growth really are
23 what I think, and Larry Baier, who runs this
24 program, feel are the cornerstone to really
25 having a lot of sense in terms of development

1 patterns, appropriate development, and
2 reconciling what, to the outside world, is a lot
3 of different programs that seemingly don't align
4 in terms of common goals in infrastructure
5 planning.

6 The importance of this particular
7 set of rules has been emphasized by our
8 Commissioner Jackson a number of times. She's
9 basically identified three priorities that affect
10 me directly, one of which was published last week
11 in the New Jersey Register, was the Flood Hazard
12 Area Control Act Rules. This is a very
13 significant priority for the commissioner, and
14 she is giving us our marching orders to have a
15 proposal prepared by the end of January.

16 And the third component that really
17 does fit, in a lot of ways, is the Water Supply
18 Master Plan. I'm not going to discuss that here
19 today. But that is, yet, another priority of the
20 commissioner and another one of my programs.
21 Which, when you look at these three areas, make a
22 lot of sense in terms of the alignment.

23 For those of you who know and
24 understand how this process works currently,
25 under the WQMP process, we're stuck with rules

1 that don't have the clear standards that we need,
2 that you need, that the world needs in order to
3 know what it is we're trying to protect, how we
4 can protect that, and how the counties and the
5 communities can align with that plan.

6 We have a number of plans that are
7 outdated, have never been revised. And, really,
8 this is a deficiency that we all need to work
9 toward correcting.

10 Part of the purposes of this hearing
11 is to reach out directly to you folks to find out
12 how you think we should make these corrections.

13 A lot of what we are considering in
14 this proposal is driven by the experience of
15 staff who wrestle with this in the various
16 programs and find the problems. We've done
17 fairly significant outreach on this issue.

18 Larry convened a meeting in June in
19 this room. I think we had 50 or more folks come
20 in. And we didn't really dictate what we think
21 should happen because we're still formulating
22 those ideas.

23 The purpose of that meeting and this
24 hearing today is to collect comments from you
25 folks, suggestions, on how you think we should

1 approach the Water Quality Management Planning
2 Rule Amendments; what are the important
3 provisions and how they should be structured?

4 So you really do have a great
5 opportunity here today to have significant input
6 on something that's going to have lasting effect
7 for some time to come.

8 The recommendations of the council,
9 as one of the constituencies are very important.
10 And I look at these table of close to -- usually,
11 every week, I'm meeting with a different one in
12 this group. But you have a great cross-section
13 of folks up here, as well as in this audience.
14 So I don't think we're going to have to pull
15 teeth to get the discussion going.

16 But keep in mind two things, if you
17 would, out of respect for Larry and his staff,
18 who have been working very hard on this.

19 One, we really do -- are sincere
20 about wanting suggestions on how these rules
21 should be amended. We'd like very constructive
22 ideas and specific suggestions where you can have
23 them.

24 And I prefer that we don't look back
25 and say, why did it take 10 years, and what have

1 you been doing over the past years to fix it?
2 We're here today; we have a path forward; we have
3 a commissioner with a very serious agenda of
4 which this is a priority.

5 So, again, I welcome the opportunity
6 and encourage you to take advantage of the fact
7 that we're here to take the comment. And the
8 more constructive and specific your suggestions
9 are, the easier it is for us to look at that and
10 evaluate it and see if we can incorporate it into
11 this package.

12 So with that, I'll leave you to your
13 work ahead. And I really appreciate you coming
14 out today because we do welcome the support and
15 the input.

16 Thanks a lot.

17 MS. GOODWIN: Thank you, Assistant
18 Commissioner Mauriello.

19 Our next speaker has already been
20 referred to, is Larry Baier. Larry joined the
21 New Jersey Department of Environmental Protection
22 in 1984, where he was first assigned to the Green
23 Acres Program.

24 Between 1984 and 2003, Larry has
25 worked in various regulatory programs within

1 NJDEP, including the Division of Coastal
2 Resources, the Division of Land Use Regulation,
3 and is the Chief of the Office of Dredging and
4 Sediment Technology.

5 Since September of 2003, Larry has
6 served as the director of NJDEP's Division of
7 Watershed Management. And it is in that capacity
8 that he has been overseeing the proposed
9 rulemaking that we will be discussing today.

10 Larry.

11 MR. BAIER: Thank You, Assistant
12 Commissioner Mauriello. I'll probably wonder
13 around. If you can't hear me (Indiscernable.)

14 As Assistant Mauriello pointed out,
15 I do have a deadline. The commissioner asked me
16 to have one of two things on her desk on
17 January 31, 2007.

18 First being, either I have a rule
19 ready for her signature or my letter of
20 resignation. So I'm under a deadline.

21 My purpose here today is really to
22 tell you how things are today, not how I think
23 they should be. Because, quite frankly, that's
24 the purpose of this hearing, is to hear from you
25 how you think that they should be.

1 And, certainly, I invite and welcome
2 the input of the Clean Water Council because they
3 represent such a diverse group of interest in
4 this state. And certainly our esteemed panel
5 here, as well.

6 So with that, I'll try and move
7 through this presentation pretty quickly. If you
8 know this process, you might find this to be a
9 bit boring. Feel free to take a nap, and I'll
10 wake you up when I'm done.

11 What we're here to talk about Water
12 Quality Management Plan, Wastewater Management
13 Plans.

14 They have a genesis in the Clean
15 Water Act of 1972. Started out with 201
16 Wastewater Facilities Plans. There was a
17 construction grant program that was in the Clean
18 Water Act. And as part of that billions of
19 dollars were made available for wastewater
20 treatment.

21 And they required that there be a
22 201 Wastewater Facilities Plan to go along with
23 that funding. And they were to assess treatment
24 alternatives and beneficial reuse of reclaimed
25 water and sludge disposal.

1 So one of things that jumps off the
2 page is, that back in 1972, congress is already
3 concerned about beneficial reuse of wastewater.
4 Which is something that really hasn't taken off
5 very well here in the state.

6 There were grant limitations that
7 were placed on the future extensions of sewerage
8 from financed plants.

9 So these are sort of the genesis of
10 wastewater management planning in New Jersey.
11 The origins of wastewater management in New
12 Jersey.

13 There's also a Section 208 Area Wide
14 Waste Treatment Management Plans. Everybody
15 affectionately knows these as the 208 plans. And
16 the section required the governor to identify
17 areas with substantial water quality problems,
18 and to designate an agency to develop the Area
19 Wide Waste Treatment Management Plan. Now we
20 call these Water Quality Management Plans.

21 And there were certain requirements.
22 The plan had to include identification of the
23 treatment work needed to meet the anticipated
24 wastewater demands over 20 years, and it must
25 include a regulatory program to implement the

1 Section 201. So this the integration of sort of
2 those Wastewater Management Plans into the Water
3 Quality Management Plans.

4 In addition, the required regulation
5 of the location and modification of sewage
6 infrastructure. That's done a couple of
7 different ways here in the State of New Jersey.
8 One of the ways is through the Wastewater
9 Management Planning process, another is through
10 Treatment Works approvals and NJPDES permits.
11 And it also required assessments and controls to
12 non-point source pollution, and also required us
13 to address saltwater intrusion into rivers,
14 lakes, estuaries resulting from irrigation,
15 groundwater withdraws, and other diversions.

16 So, in New Jersey, these are the 208
17 plans. The planning areas, you've got 12 of them
18 in New Jersey. Those that have county names,
19 essentially the counties are the designated 208
20 agency. For the tri county area, it's DVRPC,
21 Delaware Valley Regional Planning Commission.
22 And in the four areas of the state without a
23 county name on it, Lower Delaware, Upper
24 Delaware, Northeast, and Upper Raritan, the state
25 DEP is actually still the designated 208 agency.

1 To implement the Federal Act,
2 obviously, we needed state legislation. The
3 state legislation is the New Jersey Water Quality
4 Planning Act. It essentially repeats the
5 requirements of the Federal Act.

6 One of the legislative objectives,
7 though, was that the Department of Environmental
8 Protection, through a continuing planning
9 process, was to coordinate federal, state, local,
10 regional plans.

11 So, in other words, the idea was to
12 have all of these plans sort of line up and
13 support each other. Obviously, those of you that
14 know the process know that, right now, those
15 plans really don't line up all that well. And,
16 again, the rest of this is sort of the same
17 language out of the Section 208 of the Federal
18 Act.

19 Again, the same thing. A process to
20 identify saltwater intrusion and to address those
21 things. The teeth in the act comes to Section
22 10, which says that the commissioner shall not
23 grant any permit which is in conflict with an
24 adopted area wide plan. So this is some of the
25 enforcement mechanism, the teeth of how these

1 plans would get implemented.

2 Then you have the Water Quality
3 Management Planning Rules. These rules then
4 implement the act. They were last updated in
5 1989. And, for the first time, required
6 Wastewater Management Plans, again building on
7 that Section 201 concept, these plans were to be
8 adopted on a graduated schedule by 1994, and,
9 thereafter, updated every six years.

10 The rules preclude certain large
11 amendments. Those involving new treatment works
12 with discharges to surface water, those involving
13 expansions of service area over a hundred acres.
14 If those Wastewater Management Plans aren't
15 adopted in accordance with the rules.

16 And then, certain minor expansions
17 were actually allowable under what is known as a
18 revision process. As many of you know, the rules
19 are very process driven. The difference, really,
20 between a revision and amendment is that I don't
21 go to a public comment, a public comment period
22 for revisions. Although, there is still the
23 opportunity for local entities to opine on
24 whether or not a revision should or should not be
25 adopted by the department.

1 Existing Wastewater Management
2 Planning Responsibility. The designated planning
3 agencies, those 208 planning agencies, if they
4 wanted that responsibility, they got first cut.
5 PVSC, then sewerage authorities, then municipal
6 authorities, then joint meetings, and finally
7 municipalities.

8 And what all of this means is that I
9 end up with about 190 Wastewater Management Plans
10 throughout the state. And out of those 190,
11 somewhere less than 10 percent of those are
12 actually up-to-date and adopted in accordance
13 with these rules. So obviously we have an issue
14 in terms of compliance with the requirements of
15 the rule.

16 One of, I guess, the challenges of
17 rule are to figure out why we have that problem
18 with compliance.

19 Do I have the wrong entities
20 identified as the WMP agencies? Should there be
21 some sort of an enforcement mechanism? So these
22 are things that I'd like you to consider today as
23 you offer your opinions.

24 So if you're trying to figure out
25 how all of this gets integrated together, you

1 have sort of the big Water Quality Management
2 Plan inside of the -- that's the 208 plan.
3 Inside of that 208 plan you have a number of
4 Wastewater Management Plans for each discrete
5 Wastewater Management Planning agency.

6 In addition to that, we adopt our
7 total maximum daily loads into the plan, which
8 then allows them to become enforceable.

9 And, lastly, if we have a Regional
10 Water Supply Plan, certainly they can be also
11 adopted into the Water Quality Management Plan so
12 that they become also enforceable.

13 So things like your E.O. 32 report
14 down in southeast, or the Gibsonville [sic]
15 Study, or other regional Water Quality Planning
16 could actually be adopted to make them more
17 effective.

18 And, again, though I show it as a
19 circle, each of those 208 entities, like Sussex
20 County is here, Northeast is here. So they're
21 not circles, obviously.

22 The way that the Water Quality
23 Planning Act basically envisioned going at this
24 authority was that, essentially, these 208 plans
25 should be practical conforming with county

1 boundaries with minor modifications to take into
2 account watersheds.

3 And that the governor shall
4 designate where practical and appropriate the
5 County Board of Chosen Freeholders as the
6 designated planning agency. So just some food
7 for thought as you think about how these
8 processes should become integrated and what the
9 legislators had in mind.

10 Back in January of 2000, then, we
11 had E.O. 109. Because the rules are very process
12 driven, and there were very little in the way of
13 standards. And there's no real -- you know, what
14 the department is supposed to base decision
15 making on.

16 We had Executive Order 109, which
17 basically said, Until such time that the Water
18 Quality Management Planning Rules are repealed
19 and replaced, DEP shall determine what, if any,
20 alternative analysis are required, including
21 appropriate wastewater management, environmental
22 build-out analysis, pollutant loading,
23 consumptive depletive water use. So, basically,
24 this Executive Order was directed at the
25 department to pay particular attention to these

1 issues.

2 So now we'll talk about WMP
3 objectives. And one of the first things that I
4 tried to do when I got here at the department was
5 to put E.O. 109 guidance on the web that would be
6 uniformly applied by all staff. Because there
7 were different ideas about what that was supposed
8 to mean.

9 So if you look on our web page,
10 there is E.O. 109 guidance that's out there. It
11 is guidance. Which runs us into some problems
12 when we run into people that want to argue a
13 particular point. It doesn't have the full,
14 force and effect of rules.

15 But out of that guidance, first
16 objective of WMPs, in simplest terms, treatment
17 capacities equals wastewater. It's a simple
18 concept. That's where we try to get to.

19 Sewer Service Area Wastewater
20 Generation at build-out must not exceed treatment
21 plant capacity. That's one of the concepts. The
22 sewer service area should account for a 20-year
23 horizon. Now, you'll notice that, in the Act, it
24 talked about a 20-year build-out updated
25 annually.

1 Well, we've sort of moved us away
2 from that principal, and we now look at,
3 basically, environmental build-out of the sewer
4 service area. Because development in the State
5 of New Jersey happens so rapidly, depending on
6 the economic conditions, that it's very difficult
7 to project exactly what is going to happen in a
8 20-year time period.

9 So we basically looked at the entire
10 service area, and then what wastewater is going
11 to come of that service area build-out, and then
12 compare that to whether or not we have adequate
13 wastewater treatment.

14 Septic density not to contravene the
15 groundwater quality anti-degradation standard.
16 Unfortunately, we haven't been very successful in
17 implementing that because we haven't been very
18 successful of getting Wastewater Management Plans
19 in.

20 If, in the course of doing your
21 build-out analysis, a treatment plan expansion is
22 indicated, then they've got to demonstrate
23 compliance with Anti-deg standard. I'll get into
24 to that a little bit later.

25 And we've sort gone away from this

1 idea of designating these general service areas
2 for discharged groundwater less than 20.
3 Largely, because those destinations were put in
4 place with little regard for what environmental
5 attributes of those particular areas might happen
6 to be. So now those would be addressed on sort
7 of a site by site amendment basis.

8 This just basically talks about how
9 you do a build-out analysis. Our hope is to sort
10 of make this a GIS based exercise in the future.
11 Make it a more simple thing.

12 There are certain areas of the state
13 where that won't happen. Particularly, when you
14 deal with the very developed northeast part of
15 the state, and redevelopment is really what's
16 happening there. So a GIS based exercise isn't
17 going to work well there. We're going to have to
18 work off of something else, like population
19 objections. Let's see -- okay. We're back
20 into --

21 If the wastewater exceeds the
22 capacity, you've got two options. One is, either
23 reduce your sewer service area, or identify
24 expanded treatment plan capabilities.

25 Anti-degradation standard.

1 Essentially, maintain existing flow. So take any
2 increase in flow and try to reuse that through
3 reclaimed water for beneficial reuse.

4 Second option -- that will be option
5 number one.

6 And second option number two is,
7 maintain the existing pollutant load via
8 treatment upgrade. So you could actually
9 increase the flow if you reduce the concentration
10 and hold your load constant.

11 The one cautionate (Ph.) that you
12 have to look at, your TMDLs and the waste load
13 allocations. Because if those wastewater
14 allocations already direct the plant to reduce
15 the loads, then that's obviously going to be
16 factored into any expansion.

17 If a pollutant load has to be
18 increased, then -- achieve no measurable change
19 in stream. So, essentially, holding
20 concentration. So now you're increasing flow,
21 but you're holding concentration, which means an
22 increase in load. Which you may be able to do
23 that without impacting or increasing -- excuse
24 me -- decreasing water quality in the stream.

25 And last, but not least, if a water

1 quality lowering is required, and this would only
2 apply for CW -- excuse me -- category two
3 waters -- you're going to have to provide a
4 social economic justification and you've got to
5 do a stream study that basically indicates that
6 the water quality, while being lowered, still
7 doesn't get lowered below the water quality.

8 Second WMP objective is getting
9 sewage to the right places. Generally, sewer
10 service areas should not encompass large
11 environmentally sensitive areas. Natural
12 heritage priority sites, large contiguous
13 wetlands areas, threatened and endangered species
14 habitat, passive open space.

15 Now comes the question of
16 integration with the State Plan. Sewer service
17 area limited to the appropriate places as
18 designated in the State Plan.

19 Again, if you're trying to line our
20 planning principals up, the State Plan lines up
21 with the locals, we line up with the State Plan,
22 if we all agree that those places are the
23 appropriate places, then maybe we can actually
24 achieve what the legislature originally set out.
25 Which was, let's have all these plans line up and

1 support each other.

2 And then, conflicts with the
3 landscape mapping should be negotiated either
4 through a State Plan or a regional habitat
5 conservation plan. And one would hope that maybe
6 those two things sort of become the same thing.
7 You know, if you are going to negotiate sewer
8 service area in marginal habitats, then you need
9 environment protections to protect the critical
10 habitats. So you sort of have a trade-off.

11 WMP Objective #3 is addressing
12 non-point source pollution impacts. Currently,
13 it's a fairly simple model. Basically require
14 Riparian Corridor Protection, 300 feet for C-1,
15 150 feet for FW2 Trout Associated and threatened
16 and endangered species. And it was 75 feet for
17 all others, but now the department has come out
18 with Flood Hazard Area Control Act Rules in
19 proposed format of 50 feet. We'll drop the all
20 others to a 50-foot Riparian Corridor to maintain
21 consistency.

22 Stormwater Management Plan &
23 Ordinances required under the Stage II NJPDES,
24 the MS4. We want to make sure that those are in
25 place. And then, any special measures that are

1 identified in TMDL. Things like low phosphorus
2 ordinances, pet waste ordinances, wildlife
3 feeding ordinances.

4 And, of course, a number of these
5 things are also included in the MS4 permits,
6 which gives you, yet, another regulatory tool to
7 use to get implementation.

8 Riparian Corridors. One of the
9 interesting things about Riparian Corridors is
10 that it's probably a lot less expensive to
11 maintain riparian corridors than it is to replace
12 them.

13 And almost all of our phosphorus
14 TMDLs end up with a recommended management plans
15 because you've got to start putting these
16 riparian corridors back in place.

17 So, again, to WMP Objective #4. And
18 this deals with the water supply component that
19 we have to address. Depletive uses. Which are
20 essentially interbasin transfer. So if you're
21 pulling the water from one place, using it,
22 treating it, and then discharging it to another
23 basin, you've got a depletive use. And then,
24 consumptive uses, which are basically your
25 evapo-transpirational losses due to irrigation,

1 cooling water, those sorts of things.

2 Essentially, what we now require as
3 an identification of water supply sources for
4 each of the wastewater service areas, an estimate
5 of consumptive and depletive losses, and then we
6 compare those to stream base flow to determine
7 whether or not those losses are excessive.

8 And if they are excessive, then we
9 want an assessment of whether or not replanned
10 water for beneficial reuse, bringing water back,
11 is actually a viable option for addressing that.

12 And then, certainly, we need to
13 require consistency with any regional water
14 supply plan. Critical areas, for example.
15 Critical areas one and two.

16 So I think that's the end of my
17 presentation to tell you sort of where we are
18 now. Make sure by hitting the button. And with
19 that, I'll turn you back over to Madame Chair.

20 MS. GOODWIN: Thank you, Larry. And
21 with that, let's start talking about where we
22 need to go with regard to these plans.

23 I'd like to introduce our panelists.
24 They will speak in the order that has been
25 identified in the flier.

1 Our first presenter is Chris Sturm.
2 Chris is Senior Director of State Policy of the
3 at New Jersey -- at New Jersey Future. She's
4 responsible for policy development and advocacy
5 in the areas of state and regional planning and
6 state agency support of Smart Growth.

7 Chris has contributed to successful
8 efforts to promote smart conservation and smart
9 growths, including passage of transfer of
10 development rights legislation and strengthening
11 the links between local planning, land use, and
12 acquisition. She's been presently working to
13 improve implementation of the State Plan through
14 plan endorsement.

15 Chris holds a Master's degree in
16 public policy from the Woodrow Wilson School,
17 Princeton University, with a concentration in
18 urban and regional planning. Her career
19 experience includes serving as the assistant
20 director of the Capital City Redevelopment
21 Corporation, as well as working for the MSM
22 Regional Council, which is now the Regional
23 Planning Partnership. She's also been at the
24 Eagleton Institute at Rutgers University and is
25 at the New Jersey Office of State Planning.

1 Welcome, Chris. And thank you for
2 joining us.

3 MS. STURM: Thank you. I want to
4 thank the Clean Water Council for having this
5 hearing, and thank Larry for that great
6 presentation.

7 It's really great to see such a
8 public process for this important ruling which is
9 so critical to land use and the future of New
10 Jersey.

11 We don't think that the governor's
12 economic -- can you hear me. I don't think that
13 the governor's economic growth strategy or the
14 State Plan will ever be realized without a
15 fundamental overhaul of these rule. At the same
16 time, I don't think these rules themselves will
17 work without strong links to those plans. And
18 that's what I'm going to talk about.

19 To help us devise recommendations
20 for this process we called on and worked with a
21 number of experts, many of whom are here today,
22 including Chris Altomari, and Jenn Coffey, Frank
23 Banisch, Marty Bierbaum, Dianne Brake, who you'll
24 hear from in a few moments, Bob Bzik, Tim
25 Dillingham, Abbie Fair, Dick Pfeifer, Bill

1 Harrison, and Dan Van Abs. This stuff is so
2 complicated that it needed a lot of heads.

3 We focused our recommendations in
4 two areas. One is, creating an institutional
5 framework that works; and, secondly, creating the
6 links that I mentioned between water quality
7 wastewater management and land use.

8 I have copies of my testimony for
9 the council if you want them now, or if I can --
10 you can pass them out later. I have copies of
11 the testimony.

12 First, we recommend creating water
13 quality management planning areas that conform to
14 watersheds. Those are the natural regions that
15 are best suited for data collections, scientific
16 analysis, and environmental standard setting.

17 And, furthermore, we recommend that
18 DEP be charged with doing this work. They have
19 the professional staff to do it, they are closest
20 to the data since they collect a lot of it
21 themselves, and they're ultimately responsible
22 for setting the standards.

23 Taxpayers have to pay for this,
24 regardless of which level of government it
25 happens at. We think the cost would be lowest if

1 we did the work overall, just come out of your
2 budget, no problem, and the outcome would be the
3 best. We also think that the result will be
4 WQMPs that set a clear framework for evaluating
5 WMPs, which doesn't exist today.

6 Our second recommendation is to
7 drastically reduce the number of WMP agencies
8 down to about -- something in the neighborhood of
9 25 or 40. Based mostly on counties, as well as
10 regional utilities and some of the regional
11 planning entities.

12 This smaller number would enable DEP
13 to actually work proactively with WMP agencies
14 doing planning, providing technical assistance.
15 There's no perfect agency to serve as a WMP
16 agency, but counties do offer several important
17 aspects. They have existing land use, capital
18 facilities planning authority, unlike watershed
19 associations or utility authorities.

20 Secondly, they operate on a regional
21 nature, matching the regional nature of these
22 natural systems and regional utilities, unlike
23 municipal organizations.

24 And, finally, many of them are
25 already doing some of the work that is contained

1 in the plans. And, in fact, some are already WMP
2 agencies.

3 There is a cost issue here, which I
4 haven't determined how to address. But if DEP
5 assumes some of the rules we recommend for the
6 WQMPs, possibly less than what it is today.

7 And, finally, we believe that WMP
8 agencies should be authorized to review municipal
9 implementation strategies. For this rule to work
10 and to get the environmental protections we need,
11 municipal master plans, land use ordinances,
12 including zoning, need to be supportive and need
13 to be in compliance.

14 Under this structure, we see WMP
15 agencies actually doing that review, counties,
16 and well they're positioned to do that, given
17 their current role in cross acceptance.

18 We see WMPs only taking effect in
19 municipalities that are in compliance with their
20 local planning and zoning. There may need to be
21 some state oversight in this review, there maybe
22 need to be a bigger stick in terms of, you know,
23 DEP's other permitting. But we think that's the
24 way to go.

25 Now, in terms of the links with land

1 use planning. As you all know, today we have the
2 State Plan that's been in place for 20 years. It
3 was originally envisioned as a blueprint for the
4 state's infrastructure. On the other hand, we
5 have this amalgamation that's really hodgepodge
6 of WMPs and WQMPs that also comprise a plan for
7 development in the state.

8 And if these two aren't matched and
9 consistent, there's something wrong. And there's
10 going to be all kinds of -- well, there is -- all
11 kinds of confusion and bureaucratic delays.

12 In the past, there's been a lot of
13 discussion about how you create this consistency.
14 Everyone knows the State Plan itself is not
15 perfect. It's getting better, but there are
16 still problems. Because a lot of the planning
17 areas are based in updated sewer service areas.

18 So as both of these maps improve,
19 they need to be improved in sync. And we're
20 recommending a process to force that
21 coordination.

22 What we would like to see is WMP
23 plans, including a chapter that evaluates
24 consistency with the State Plan, where there are
25 inconsistencies between updated sewer service

1 areas in the State Plan, we'd like DEP to
2 recommend changes to the state planning map to
3 the Office of Smart Growth and the State Planning
4 Commission, which could then be added to the
5 plan.

6 Our second recommendation in this
7 land use linkage area has to do with coordinating
8 wastewater and water quality planning with the
9 State Plan process of plan endorsement.

10 As you all know, the state has
11 multiple competing objectives for land use. They
12 call them municipalities to do land use planning,
13 to do things like produce affordable housing.
14 The Governor's economics growth strategy calls
15 upon municipalities to produce work growth
16 housing, to create opportunities for growth and
17 redevelopment. Obviously, water quality
18 protection and wastewater managing are other
19 important objectives for municipalities.

20 There are always conflicts between
21 objectives. And there is a process in place for
22 state agencies to reconcile their competing
23 objectives and to help municipalities do the
24 same, and to set their priorities.

25 And that process is the plan

1 endorsement, which is in place today. It is a
2 process by which state agencies and ultimately
3 the State Planning Commission review municipal
4 master plans and ordinances for consistency with
5 the State Plan. Under the direction of the Smart
6 Growth Policy Council that process is being
7 revised right now to become more effective.

8 We believe that if counties are
9 going to be WMP agencies, they should be required
10 to embark on both WMP planning and plan
11 endorsement simultaneously. We think that this
12 will provide efficiencies as well as better
13 outcomes.

14 One example or one reason why it
15 would be more efficient is both processes are the
16 same requirement. They both require a build-out
17 analysis, they both require natural resource
18 inventories.

19 Local governments should only have
20 to prepare those WMPs, and state agencies should
21 only have to review those WMPs. Both processes
22 are also likely to involve review of state
23 planning areas compared to sewer service areas.
24 That should only be done once.

25 Finally, the plan endorsement has a

1 broader and more comprehensive outlook than
2 Wastewater Management Planning. Perhaps it's
3 less in depth, but it's broader.

4 And I think it will result in better
5 WMP plans if counties are doing that. Because
6 they will be identifying places for growth,
7 looking at a whole host of issues, including
8 transportation infrastructure, contaminated
9 sites, affordable housing, etcetera.

10 And so, that kind of planning will
11 enable counties to allocate wastewater capacity,
12 which is going to be an increasingly precious
13 resource in the state, as well as identifying
14 infrastructure investment needs.

15 Third recommendation has to do with
16 our economic growth aspect. To ensure that
17 wastewater capacity is allocated in the best way
18 to support economic growth, we would like to see
19 WMP agencies articulating what their priority
20 system is for allocating that capacity. Also,
21 for determining how investments are made.

22 And the rule should recommend that
23 they prioritize based on health and safety first,
24 but then on economic growth in light of the State
25 Plan second. And there other things that can

1 happen outside the WMP rule to make that occur,
2 but those are important recommends.

3 Our last recommendation is that
4 these rules support center-based development as
5 opposed to the low-density sprawl on septic that
6 we all love to hate. And this could happen in
7 two ways:

8 First, the threshold for the review
9 of development on septic should be much lower.
10 And Larry indicated that the department is
11 already moving in this direction. This is
12 recommended seven years ago.

13 Second, the WQMP standard should
14 explicitly authorize the use of alternative
15 wastewater systems that meets some specified
16 criteria. And this could be in places outside a
17 sewer service area.

18 We think that they make sense in
19 certain conditions, especially where there's a
20 large 80 to 90 percent open space set asides and
21 where there are safeguards in place to prevent
22 expansion of those plans.

23 So these are recommendations. They
24 involve a shift of power, and they, therefore,
25 involve a shift of cost, depending on which

1 direction the department moves in. We'd be happy
2 to talk about how to work on some of those
3 issues. But, anyway, I want to thank you for
4 your time.

5 MS. GOODWIN: Thank you very much,
6 Chris. That was very interesting.

7 Our next speaker is Eric Snyder. He
8 is the Sussex County Planning Director and is
9 responsible for preparation of the county's
10 Strategic Management Plan, the County Master
11 Plan, the Land Development Review, Farmland Open
12 Space Preservation, as well as advising the
13 County Administration on planning issues in
14 general.

15 Eric holds his Master's degree in
16 city and regional planning from Rutgers
17 University, and a BS in Conservation and Resource
18 Management from Cornell University in Ithaca, New
19 York. Welcome.

20 MR. SNYDER: Just as my CV is
21 shorter than Chris's, so, too, will be my
22 comments. Because I'm almost tempted to say what
23 she said.

24 We are, as some of you know, and
25 certainly from Larry's presentation, a 208

1 agency. We're also in the process of putting
2 together a strategic growth management plan which
3 is currently before the State Planning Commission
4 for plan endorsement.

5 Because of that, and because I began
6 30-odd years ago as a regional planner, I am
7 delighted to see the, finally, converging paths
8 of these various efforts.

9 1976, in Sussex, we began the water
10 quality management planning process in a vacuum.
11 Just as with most of these activities, they were
12 done because somebody said you could do them, and
13 here's somebody to do them without any particular
14 reference to anything else.

15 County master planning, based on New
16 Jersey 27, really doesn't give the county much in
17 the way of clout. It's an advisory kind of
18 function. And until the State Plan came along
19 and the State Planning Commission evinced a
20 preference to work with relatively few
21 jurisdictions as opposed to 566, the counties,
22 quite frankly, didn't have a whole lot to say
23 about land use.

24 That is changing and it's changing
25 in a couple of very important ways. The first

1 being that Water Quality Management Planning can
2 now become a tool of intelligent land use rather
3 than a program in and of itself.

4 Obviously, it began because things
5 weren't going as well as they should. The Clean
6 Water Act --

7 (Brief Interruption.)

8 MR. SNYDER: The Clean Water Act was
9 designed to address obvious problems. But,
10 again, they were looked at in a vacuum.

11 What I would like to see, and what I
12 strongly suggest is that the department look into
13 as parts of its rules is a direct connection
14 between land use planning and Water Quality
15 Management Planning.

16 We are supposedly the designated
17 planning agency. That makes a lot of sense.
18 Obviously, looking at the issue on the watershed
19 basis also makes a great deal of sense since,
20 mechanically, that's how it works.

21 I'm just trying to keep this from
22 having a feedback problem. But there's no way to
23 shut the mic off that I see on here. I think
24 mine is off now.

25 At any rate, just to continue. So

1 my recommendation is this. And I didn't have the
2 benefit of a group to put this together. But
3 we've been very fortunate over the last two,
4 three years working with OSG, with Larry and his
5 group.

6 We think, that particularly in areas
7 like Sussex County, you have the opportunity to
8 focus growth where it should go. The tool to
9 make that happen is the permitting process for
10 Wastewater Management Plan permits, the NJEITS
11 and what have you. There needs to be an
12 understanding, which has been even more clear by
13 the governor's economic initiative, that this is
14 a tool to manage growth not a tool to stop
15 everything.

16 One of the great frustrations or one
17 of the questions that was asked is how better to
18 get compliance?

19 Well, if compliance becomes more
20 user friendly and the costs, thereof, tend to be
21 made available to county and local governments,
22 the chances are good you're going to see much
23 more in the way of activity in that vein.

24 Should this be consistent with the
25 State Plan? Of course, it should be consistent

1 with the State Plan.

2 In Sussex County's instance, we've
3 made our strategic growth plan consistent with
4 that State Plan. We anticipate, based on the
5 discussion we've been having with DEP, that our
6 Wastewater Management Plan will also be
7 consistent with both of those others. It just
8 makes some sense.

9 And, finally, we're doing land use
10 planning with the tools following up as a way to
11 affect that planning and come out with some
12 objectives that are consistent with the overall
13 state policy.

14 We like the idea of protecting
15 resources. But what we'd also like to see is,
16 we'd like to see some reason put in behind the
17 sometimes arbitrary numbers that we see, for
18 example, from buffers.

19 A buffer, to be effective, needs to
20 serve a function. However, if it is, say, 100
21 feet, but that 100 feet is divided from the
22 resource to be protected by a highway, or the
23 grade is such that water not flowing uphill
24 renders that buffer unnecessarily large, there
25 needs to be some room in the rules for reasonable

1 discussion and not a full-blown debate over the
2 philosophy of environmental protection.

3 It's difficult to add flexibility to
4 rules without opening too many doors, and I
5 appreciate that. The fact is that I think that
6 the discussions would be much shorter, and the
7 results consistent with good state planning and
8 good environmental protection if we were able to
9 have that kind of flexibility in the rules.

10 That, in a nutshell, is what I have
11 to say. Coordinate them with planning and carry
12 them out using this as an important tool.

13 Thank you.

14 MS. GOODWIN: Thank you very much,
15 Eric. Our next speaker is Tony DiLodovico, also
16 known as Tony D. joins us today as a
17 representative of the Association of
18 Environmental Authorities.

19 Tony is the principal and
20 vice-president of Schoor DePalma Engineers &
21 Consultants, where he is responsible for
22 supervising and managing the firm's federal,
23 state, and local permit and regulatory compliance
24 operations.

25 Prior to joining Schoor DePalma,

1 Tony served as Branch Chief with U.S. EPA, for
2 both the construction grants and NPDES program.
3 He was also the federal coordinator for an
4 inter-agency agreement between the U.S. EPA and
5 the U.S. Army Core of Engineers, and he
6 promulgated the State of New Jersey Regulations
7 and Policies while on special assignment with the
8 NJDEP.

9 Tony has his BS in Civil Engineering
10 from Manhattan College, and an MS in
11 Environmental Engineering from Polytechnic
12 University. Thank you for joining us

13 MR. DiLODOVICO: Good morning,
14 everybody. As was mentioned, I'm here
15 representing AEA. I will try to keep to the
16 script that the AEA prepared, and not interject
17 my comments too much, I guess.

18 The Association of Environmental
19 Authorities represent 108 water wastewater and
20 solid waste authorities across the states. 43 of
21 them currently have Wastewater Management Plan
22 Responsibility.

23 These planning agencies are
24 operational. They're not really planning
25 agencies. They deal more with the actual

1 operation of the wastewater treatment plans.
2 They're all to use data developed by county,
3 municipal and statewide plans to project the
4 wastewater needs for their service area in
5 20 years. They're the proverbial tail of the dog
6 relative to the planning agencies.

7 Zoning and planning must be
8 completed at other upper governmental levels
9 before Wastewater Management Plans could be
10 developed by sewage authorities. Sewage
11 Authorities have no zoning power. They are there
12 to provide wastewater treatment for the
13 development that exists and will occur.

14 Most importantly, the Statewide
15 Water Supply Master Plan must be current in order
16 to focus the planning on all levels of protection
17 of potable water in given areas.

18 And recently, it's been about a year
19 now, DEP attempted to update many of these
20 expired state and county and municipal plans by
21 requiring Wastewater Management Planning agencies
22 to do updates, such as build-out analysis and
23 threatened and endangered species analysis,
24 before review of Wastewater Management Plan
25 continue.

1 While the DEP leadership is
2 commended for their creativity in this approach,
3 the fact remains that the preparation of these
4 studies is expensive and beyond the purview of
5 the operation.

6 Rate pay of the sewage system should
7 not bear such expenses alone. All citizens in
8 the municipalities and counties in the authority
9 service area benefit from these planning studies
10 and cost should be shed by them.

11 For this reason, build-out analysis
12 T&E analysis, and any of the other analyses that
13 are currently required and being contemplated
14 should continue to be the responsibility of a
15 larger governmental unit that have planning
16 responsibility.

17 We've mentioned the counties as an
18 avenue. We believe that the 208, the Federal
19 Clean Water Act, and the State Water Quality
20 Planning Act, if not dictate, real strongly
21 recommend that the counties do this overall
22 planning.

23 Furthermore, analysis of current and
24 future septic areas are also beyond the scope of
25 authorities. If the department wants to know

1 what portion of the population will be served by
2 on-site treatment systems, then the local or
3 county Board of Health would be the more logical
4 body to address this.

5 The goal of Wastewater Management
6 Planning, from an authority's point of view, is
7 to show precedency to service areas. Areas to be
8 served by on-site systems could be shown just as
9 non-sewage service areas and the zoning and
10 ordinances that are needed to control systems.

11 There is an inherent conflict with
12 federal law which requires wastewater facilities
13 to plan and build for 20 years. And with the New
14 Jersey stated policy of facing the Wastewater
15 Management Planning on build-out analysis

16 State Planning goals for
17 infrastructure updates are in conflict with the
18 law. Anti-degradation analysis have been
19 required, in Wastewater Management Planning
20 agencies, up front, on a build-out analysis,
21 where such analysis belonged, later on in the
22 process, in the permitting process.

23 Build-out analysis could take a long
24 time. We do planning on 20-year planning
25 periods. I can't tell you what a build-out

1 timeframe would be. That would be area specific,
2 town specific, sewer service area specific.

3 The AEA does not believe it's
4 appropriate to do stream studies today at a
5 significant expense to determine what pollution
6 loads could be handled by a stream if that's not
7 going to happen for 50 years.

8 I'm going to guess that the laws and
9 regulations in 50 years might be a little
10 different than they are today. We're not sure
11 exactly what the benefit the stream studies would
12 have today.

13 If the overall intent is to limit
14 future discharges into surface waters, then this
15 plan should identify alternative means of
16 providing treatment. And if alternative means of
17 providing treatment in a certain area would be
18 difficult, then I think the plans, particularly
19 the Water Quality Management Planning, should be
20 the social and economic justification to allow
21 for whatever changes are needed in water quality,
22 and we really shouldn't address what changes
23 would be allowed until that time would come.

24 Currently, through the permitting
25 process, we have built in safeguards, such as

1 capacity assurance programs, sewer connection
2 band procedures.

3 And these processes were set up to
4 implement the Water Quality Management Planning
5 process and to ensure we wouldn't get stuck, as
6 we did back in 1988, with all of a sudden, we're
7 not going to require these rules, we're not going
8 to require these rules, we're not going to
9 require these rules. Oops, it's 1988, we've got
10 to read the Water Quality Plan (indiscernible).

11 Hopefully the new rules that have
12 developed don't have that same type of
13 procedures. That we want to get to a goal line,
14 but we have to stop in order to get there. We
15 need a nice kindering process.

16 And, in that regard, when dealing
17 with E.O. 109 analysis, we need to remember the
18 E.O. 109 analysis were put into effect because we
19 were going to a watershed management approach,
20 there were going to be watershed management plan
21 regulations.

22 Watershed management plan regulation
23 were going to basically freeze sewer service
24 areas until plans were done. And if you wanted
25 to change an existing sewer service area or

1 Wastewater Management Plan, they're going to have
2 to do these watershed type analysis with the goal
3 being and the hope being that the watershed plan
4 would do these analysis, re-analyze where sewer
5 service areas should be, and move forward, but
6 things wouldn't have stopped.

7 Unfortunately, those rules didn't
8 move forward, but we still have these E.O. 109
9 analysis out there. And hopefully this rule can
10 try to coordinate how we want to get to build-out
11 an E.O. 109 analysis without requiring, project
12 by project or sewage authority by sewage
13 authority really have no real means of providing
14 that service.

15 With regard to some specific
16 recommendation on Wastewater Management Plan's
17 process. AEA believes that municipal management
18 plan really need to drive the process right now.
19 They're the only legal plan in effect for us to
20 evaluate what the growth would be and what to
21 prepare for wastewater needs in the future.

22 When a plan is under review at the
23 department, the department should consider that
24 as being compliant with the requirement to
25 submit. Not that it has to be approved in order

1 to say that they're updated.

2 A simpler process will aide in
3 compliance. I think a lot of talk is about
4 coordinating and integrating with the state
5 development and redevelopment plan. I think we
6 really need to go there. The AEA fully believes
7 that we need to go there.

8 And, right now, as I mentioned, we
9 have local zoning that we have to look at and
10 then we have a State Plan that maybe is not
11 consistent with what the local zoning says, the
12 authorities. If we're going to plan for proper
13 wastewater treatment capacity, we need to know
14 what's going to be out there.

15 If you want us to look at build-out
16 analysis, we need to know what it's going to be,
17 not what one group wants and what another group
18 wants, and what actually is on the books today.

19 DEP should char responsibilities of
20 the various planning agencies and levels so
21 people can see what different type of planning is
22 out there, and maybe that would help in trying to
23 make recommendations of how we could coordinate
24 the planning process. It looks like New Jersey
25 Future is doing that, and we recommend them for

1 that.

2 The DEP staff certainly needs to be
3 increased if we're going to provide more input on
4 the staff to review these things in a timely
5 fashion.

6 Just think about it right now. All
7 of these plans are woefully out of date,
8 according to the department. Yet, it takes a
9 very long time to get an amendment for a new
10 plan, an update approved.

11 As an example, just as an example, I
12 recently completed a plan that was under a court
13 order. I had six months to do the plan,
14 submitted it to the department. It's been down
15 at the department for seven months now and
16 without being reviewed.

17 Not to complain about that, in
18 particular, but just to show that we can't
19 require that 180 plans be done with all sorts of
20 different requirements if we're going to have
21 five or six people reviewing them.

22 In that regard, we need to set up
23 timeframes, we need to set up staff, and the
24 department needs to analysis staffing needs and
25 ensure that a rule doesn't come out and get

1 implemented when there's just no way that the
2 workload could be managed.

3 The AEA is willing to help the
4 department in that regard, and the AEA is willing
5 to do whatever it needs to help the department in
6 self-certifying plans or analysis that they can
7 properly perform.

8 With regard to non-point source
9 pollution. Again, the authorities can't control
10 non-point source solution. And we believe that
11 the Stormwater Management Rules and the Municipal
12 Stormwater Program adequately address non-point
13 source pollution control.

14 We believe that, perhaps, the
15 Municipal Stormwater Program is not being
16 utilized to its maximum effectiveness. But
17 that's the program where an ordinance should be
18 developed and passed that control non-point
19 source.

20 We're concerned that if the
21 department puts in specific requirements through
22 a Water Quality Management Planning process on
23 items such as riparian buffers that these
24 requirements be coordinated with other programs
25 within the department, within the counties, and

1 at the local level.

2 Currently, when we do a Wastewater
3 Management Plan, we have a model ordinance for
4 riparian corridors that were problems. And that
5 model ordinance does not seem to be consistent
6 with other existing riparian corridor
7 requirements of the department, and were recently
8 proposed as riparian requirements of the
9 department. We need to have a consistency in
10 that regard.

11 And, of course, the municipalities
12 are always able to adopt more stricter
13 requirements than at the state level. But we
14 need at least one playing field at the state
15 level to evaluate moving forward. We firmly
16 believe that the Municipal Stormwater Program can
17 be further enhanced to promote this type of
18 input.

19 Coordinating with the statewide
20 Water Supply Plan, as mentioned before, that's
21 critical. In order to determine the needs and --

22 And this type of analysis really
23 needs to be done through the Water Quality
24 Management Plan. We need to identify the
25 different plans that are out there, the Statewide

1 Water Supply Plan, whatever wastewater management
2 plans that are out there now. We have the State
3 Development Redevelopment Plan. We need to
4 coordinate all this through the Water Quality
5 Management Plan to identify goals and objectives.
6 And that certainly can't be done at the AEA -- at
7 the authorities' level.

8 Regarding E.O. 109 analysis. I
9 already spoke to that. The concern would be that
10 we develop standards that someone is going to
11 have to follow in doing whatever analysis is
12 done, at whatever level its done. These
13 standards will be based upon scientific
14 justifiable reasons, and that there be a logical
15 basis for applying the various requirements.

16 And in protecting the various
17 sensitive areas, we believe that there are
18 existing regulations out there that do this, and
19 we need better coordination and identification of
20 what requirements are out there today, what
21 requirements are fairly recent that we haven't
22 seen the effect of them, and do we need to have
23 another program that mimics, contradicts, or
24 requires the same requirements? Let us see what
25 we have out there, and let us make sure we have

1 requirements that allow the program. Thank you.

2 MS. GOODWIN: Thank you, Tony. Our
3 next presenter is Diane Brake.

4 Diane is an Associate Director -- or
5 was hired as an Associate Director, I should say,
6 in 1985, and became the president of the Regional
7 Planning Partnership in 1990.

8 She was vice-chair of the Council on
9 Affordable Housing, also known as COAH, from 1990
10 TO '95, and is a member of the State Planning
11 Commission, or was, from 1996 to 2001, where she
12 chaired the Plan Implementation Committee.

13 Diane is a founding member of New
14 Jersey Future, the Coalition of Affordable
15 Housing, and Environment New Jersey Regional
16 Coalition and at Greater Mercer TMA.

17 Diane has degrees in sociology and
18 planning. Prior to her work at RPP, she was a
19 planner for an intercity borough in London,
20 England.

21 In 1998, Diane received a German
22 Marshall Environmental Fellowship which afforded
23 her the opportunity to travel to 13 European
24 studies to study land use and transportation
25 planning. She obviously brings a lot to this

1 table.

2 Thank you.

3 MS. BRAKE: Too much that isn't
4 relevant to today's hearing.

5 Many of you in the room know more
6 about Water Quality Planning than I do. But I
7 guess that I was invited because of my generalist
8 perspective and my passion for regional planning.

9 When I was on the State Planning
10 Commission, I was known for the person that
11 always tried to focus on outcomes. What is the
12 outcome? Can we evaluate the rule in relation to
13 the outcome?

14 And when Larry put up what the
15 original laws expected in 1972, and others that
16 followed, I didn't see anybody complaining about
17 what direction that was going. But we at the
18 Regional Planning Partnership, for the last 10
19 years, we've been focusing on two things.

20 One is, how do you figure out how to
21 achieve those big broad rules when you have a
22 myriad of actors all making independent decisions
23 that conflict with each other and may or may not
24 add up to that goal being achieved?

25 And the second thing is to reduce

1 the conflict that has gotten so serious in New
2 Jersey between those who are perceived as for the
3 environment and those who are perceived to be for
4 economic growth.

5 I should think, that after Katrina,
6 that we would all recognize that unless we
7 achieve a sustainable development approach in
8 which the economy, the environment, and social
9 equity are all addressed, that we have nothing.

10 They have no economy so they cannot
11 clean up the environment. They had no equity and
12 so the disparities in this country were made
13 transparent to everyone. And part of the
14 regional coalition that I'm a member of has
15 demonstrated how much those disparities exist in
16 New Jersey. So those are the big goals. There's
17 no disagreements there.

18 And we've talked a lot about
19 coordination. And it's in your act about how
20 you're going to integrate what you're doing for
21 water quality with the various agencies and land
22 use planners in the -- in your territory.

23 I always like to take coordination
24 a step further. Because when I focus on outcome,
25 you're coordinating for what?

1 You're going to have really great
2 coordination that will result in poor water
3 quality, and it could be a seamless coordination.
4 So what we really want to do is to coordinate so
5 we get the water quality that we're expecting
6 those rules to deliver.

7 So let me go back to, how do you
8 take these big broad goals, like clean water, and
9 address it in a landscape that has Home Rules?

10 And I would say, the answer is,
11 setting some planning objectives or targets for
12 each of the goals that you're trying to achieve.

13 So one of the things that we're
14 trying to do in our Smart Growth Economy Project,
15 where we're trying to make all of these things
16 work together, is to pull out the rules and laws
17 that have goals in them already. We have eight
18 goals in the State Planning Act.

19 One of the ways in which we're
20 reviewing the State Plan for this round is to go
21 back to the act, and say, what did those
22 legislators intend to happen when we set up this
23 enormous structure that's so difficult to get
24 through?

25 For this Smart Growth Economy

1 Project we set up a water infrastructure
2 roundtable, where a number of you are members,
3 and we've had two meetings. And it's hard to get
4 passed the venting about how difficult and
5 dysfunctional the process is. And it's very
6 difficult to steer that passion towards
7 constructive answers that you ask for today. So
8 let me try to look at just that.

9 First of all, let me give you an
10 example of one of the calculators that we're
11 trying to develop that takes a big goal and gets
12 it down on the ground.

13 And we've done most work, quite
14 recently, with Green House gas. New Jersey DEP
15 has a Green House gas emissions reduction plan.
16 They had a goal for 2005 that was not, in any
17 way, met.

18 So we looked at what the goal was,
19 and then we looked at, well, how would you
20 measure how big that is?

21 Henry Coleman, who advised us on
22 some tax reform, he says, how much reform do you
23 want? Do you want -- so how much emissions do we
24 want?

25 So we want to have a picture of how

1 big the problem is. And then you have some sense
2 of the strategies that could be addressed that
3 would chip away to get at the goal.

4 So one of the things that we also
5 are interested in is transportation. So we said,
6 well, how much of that emission is from mobile
7 sources, transportation, which we know is
8 connected to land use.

9 And we actually broke it down
10 through a series of calculations down to, how
11 many trips would have to get off the road in
12 Mercer County to meet their share of the
13 Statewide Clean Air Act? We came up with 25
14 million trips. That's sounds huge, unreachable.
15 As unreachable as the Green House gas emissions
16 target.

17 However, when you put it into the
18 mix, it's only 8 percent of all their trips. 8
19 percent becomes doable. Well, how do you
20 meet that 8 percent?

21 Well, Mercer County could get all of
22 those towns together to figure out the land use
23 decisions, the demand management programs, the
24 new transit services, they all could be agreed
25 that would then meet that target.

1 So we're looking for calculators
2 across a range of things. One of the things that
3 is often overlooked in land use planning is
4 impervious cover.

5 We've had some talk about build-out
6 and how important that would be to figure out.
7 And I realize that it isn't about timeframe, it's
8 about the fact that on the ground is zoning at
9 the land use -- at the local level. That if
10 nothing else happens, it could be built as zoned.
11 So you need to know what that is.

12 Associated with that zoning is an
13 impervious cover analysis. It is very easy to do
14 a zoning analysis that --

15 We've actually developed a tool,
16 that's another thing that we've developed, are
17 some tools to make it easy. And it's fairly
18 cheap and it's fairly easy and assumptions are
19 transparent.

20 Another thing makes a model
21 vulnerable to political discussion is how -- what
22 are your assumptions, and do I agree with your
23 assumptions? So we've made it so you can see
24 what the assumptions and change them if you have
25 better data.

1 But it's important to know what the
2 zoning is. Because you'll never connect to land
3 use unless you connect your water quality goal to
4 zoning. One way to do it is to look at
5 impervious cover associated with the zoning.

6 I know that we've had some
7 controversial developments in the Route 1
8 corridor that we followed. For example, Sarnoff
9 Corporation, which is a big thing right in the
10 middle of the Route 1 corridor, very important to
11 Einstein's Alley and the Governor's innovation
12 state program. They had a proposal to develop
13 almost double their capacity.

14 Well, some environmentalists were
15 concerned about the impact, and they actually
16 tried to get the amount of development to be
17 reduced. Which they succeeded, to some extent.
18 What was never questioned was the impervious
19 cover.

20 So they actually reduced the amount
21 of development that was allowed on site, which
22 reduces their transit capacity, didn't change the
23 impervious cover so did nothing for the
24 environment. So we need to make clear how land
25 use, impervious cover, and water quality are

1 connected.

2 As soon as you feel that you have
3 the responsibility for that water quality, the
4 responsibility lies with DEP, you set the targets
5 and then that local planning has to seem to
6 conform within that.

7 In terms of the State Plan. The
8 question is asked:

9 Should there be consistency with the
10 State Plan?

11 Well, the answer is yes. But the
12 difficult question is, how? And the how can only
13 be, again, that DEP sets the standards that then
14 is evaluated, we hope, within regional plans.

15 Because if you try to add up all the
16 little circles that are 566 municipalities, the
17 whole will not be greater than the sum of the
18 parks. In fact, the conflicts with each of those
19 little circles adding up may actually degrade the
20 water system more than any other way.

21 So connecting your WMPs to 566
22 municipalities on the basis that land use is
23 controlled at the local government is reneging
24 your responsibility for water quality.

25 I think DEP has to go through a

1 transformation that DOT has begun to go through.
2 DOT used to say, well, we don't do land use.
3 You, municipalities, tell us what growth you want
4 and we'll try to serve it.

5 They finally realized, within the
6 state like New Jersey, which is approaching
7 build-out, that they cannot keep up. They cannot
8 build enough transportation service to meet what
9 the towns have on their zoning books.

10 So DOT has begun to say, well, look,
11 we can't do this, so let's get together, talk
12 about the land use, and we'll talk about what
13 improvements we can make.

14 The piece that DOT has not yet got,
15 that I would ask DEP to get, is that they haven't
16 said, we need Route 1, for example, to serve this
17 role in our overall state planning system.

18 They have to be the keepers of the
19 statewide transportation system and making it
20 functional. You have to keep track of, you have
21 to set the standards for the water quality.

22 And it isn't just a matter of, well,
23 tell me what your growth is going to be, and
24 we'll see what we can do about it. It has to be,
25 look, we have the responsibility for meeting

1 these goals, what can you do to help us to meet
2 these goals? What incentives can you build into
3 the process so that they do?

4 We've actually developed another
5 tool that actually applies these regional
6 approaches in a Home Rule State. And it was
7 developed with some municipalities and counties
8 in the Central Jersey corridor. Actually,
9 through the group that -- well, the Central
10 Jersey Transportation Forum, and they actually
11 set two parameters for regional planning that
12 they could agree to.

13 One is that they have a seat at the
14 regional table; and, two, is that it wouldn't be
15 mandatory. I was really sorry about that. But
16 if we built in enough incentives then we'll get
17 better than we have today anyway.

18 And so, we came up with what we call
19 the Regional Action Plan Process, or RAPP? And
20 it's basically based on four steps: Goals,
21 facts, choices, outcomes. Based on the idea we
22 don't have to do lots of visioning and goal
23 setting. We have the goals. We have the goals
24 in the laws and in the rules.

25 What are they? And how do you

1 translate that into an amount that could be met
2 within the region?

3 Facts: What trend are you on, what
4 trajectory? That's where build-out come in,
5 that's where capacity analysis of the
6 infrastructure comes in. And a little comment.
7 Capacity based planning does not mean find out
8 what the capacity is or isn't and that determines
9 the plan. That informs the plan.

10 And in places in New Jersey, such as
11 Paterson and others, where there is no real
12 infrastructure capacity, we can't just say, well,
13 there's no growth to go there. We inform the
14 planning process, and we use it to decide where
15 we make our green and gray infrastructure
16 investment. So those are facts.

17 And if you compare the existing
18 conditions and the trends we're on to the goals
19 that we set, that gives you how big is the
20 problem.

21 So this is where choices comes in,
22 the third step. And this is the political arena
23 in which choices are made.

24 So they come to some agreement about
25 what strategies, what changes in land use, what

1 parks they're going to protect, what open space,
2 what demand management, conservation, and then
3 you measure the outcome.

4 Does it meet the goal that we set?
5 And if it does not, do you somehow reduce the
6 goal or do you increase your strategies. And
7 that's the process.

8 Now, I would argue that you can't
9 reduce the goals if they're in the acts and
10 they're in the regulations. And that's the hook
11 that you have. Because DEP has the
12 responsibility to meet those goals.

13 So that's the approach that we've
14 been taking. And I have more about our tools and
15 suggestions, but I can stop there.

16 MS. GOODWIN: Thank you, Dianne.
17 Our next presenter, Suzzane McCarthy, is the
18 manager of the Office of Environmental Planning
19 for the Delaware Valley Regional Planning
20 Commission, and is an ecologist and environmental
21 educator by training.

22 At DVRPC, too, Ms. McCarthy
23 specializes in environmental planning for
24 municipalities and counties through the program
25 she helped create, Open Space and Natural

1 Resource Planning Services for New Jersey
2 Municipalities.

3 She also serves as DVRPC's watershed
4 information specialist and educator, and is the
5 lead staff person for the tri-county Water
6 Quality Management Plan administered by the DVRPC
7 which covers Burlington, Camden, and Gloucester
8 Counties. Welcome.

9 MS. MCCARTHY: Thank you. Diane
10 just covered that beautifully, what the planning
11 process needs to be, I think. And all of the
12 panelists so far have made wonderful suggestions.

13 Tri-county members have discussed
14 this at some length. I think some of Tony's
15 comments were very much in our mind, as well.

16 Basically, the problem with the WMPs
17 and their adoption or their lack of adoption on a
18 timely basis has to do with expense and the
19 difficulty of preparation, especially for
20 municipalities, all those municipalities in
21 Burlington particularly.

22 When they are done, they tend to
23 lack the information the department really wants
24 because it's difficult for the towns to put them
25 together. Sometimes they're put together on a

1 pro forma basis so they're not very good.

2 Basically, they're not reviewed properly when
3 they get to the department.

4 And I think the point that if we're
5 going to generate new rules we have to be
6 realistic about what it is the DEP could really
7 do in reviewing these plans.

8 What we sort of came to is that -- a
9 set of questions, really, more than comments.
10 And that is, that we wonder if the Wastewater
11 Management Planning requirement is really
12 necessary and whether it should be eliminated
13 altogether.

14 They lay out actions for a 20-year
15 horizon, supposedly. Maybe a necessary endeavor,
16 but maybe done and could be done in a different
17 way. Certainly, in conjunction with the State
18 Plan which we think is where a lot of the
19 planning action is going on and should go on
20 anyway.

21 The mechanisms that exist already
22 that are kind of separated from the WMP process
23 right now, such as the use of NJPDES permits and
24 that permitting process, the state planning
25 process, the Municipal Stormwater Planning

1 Permits, and that process as well, could be
2 modified, perhaps, and could fulfill the goals
3 that its current WMP process is intended to
4 fulfill. It might be less cumbersome, more
5 efficient, might pull more threads together.

6 We had long several discussions
7 about this. I don't think we've resolved our
8 recommendations, and we haven't come up with all
9 the answers. But we are wondering -- our
10 tri-county members are wondering if the NJPDES
11 process, permitting process could be
12 strengthened, and their scope broadened to
13 eliminate some of the problems associated with
14 the WMPs.

15 I think Tony was addressing some of
16 this. Maybe the planning aspects that are thrust
17 on the utility authorities are not appropriate,
18 but maybe some aspects of those analyses could
19 still remain as part of the permits.

20 You have a five-year horizon on the
21 permits. Perhaps that's a time to review and
22 look at what the expansions are, what the
23 discharges need to become.

24 In addition, the non-point sources
25 are basically somewhat addressed by the

1 stormwater permits for the municipalities. And
2 we really think that there's an expansion
3 possible for those.

4 Towns could be required to, as part
5 of their permit requirements, to review a
6 connection be built into the permit. They could
7 be required to review subdivisions of five units
8 or more, or other developments from a water
9 quality standpoint possibly.

10 They could have a requirement that
11 all development plans include a review of
12 consistency with any TMDL that's come out. With
13 water quality standards, of course, with
14 groundwater standards, with other environmental
15 planning parameters. Maybe that would be the
16 better place for these requirements.

17 They also come up for renewal. So
18 the mechanism provides an opportunity to move
19 towns towards better wastewater management,
20 especially septic management and water quality
21 management generally.

22 One of the ideas that was raised was
23 a standard for septic system with discharges of
24 greater than 2,000 PPP, could be added into the
25 municipal NJPDES permits. This would establish

1 limits on development with five units or more and
2 would necessitate the analysis that DEP has been
3 seeking.

4 So I guess what we're saying is,
5 that you've got to go back to the towns. And the
6 fact that the land use planning and Home Rule
7 will dictate what's really happening, and where
8 it's going to happen, and let's be realistic
9 about trying to accomplish this within existing
10 structures.

11 We certainly could, in a new rule,
12 establish that Water Quality Management Plans
13 only allow new sewer service in certain state
14 planning areas. Although there's a certain
15 circulatory to that. Because, of course, the
16 planning area is determined by where the sewer
17 service area is.

18 But, nonetheless, the Water Quality
19 Management Planning agencies, whether it's local
20 or DEP, could agree that public sanitary sewers
21 are needed based on municipal water quality
22 permits as one place where expansion could occur.

23 Sewer service areas should only be
24 allowed in planning areas one and two or where
25 there is a need based on a municipal water

1 quality permit. I'm trying to say that a little
2 bit more clearly. Or three obviously in nodes or
3 centers DVRVC receiving areas, that kind of
4 location. And that they are not permit. That
5 there is no permitted expansion in farmlands
6 preservation areas unless unusual conditions
7 exist.

8 They seem to tend to plan
9 infrastructure for water, for road, and fail to
10 see that infrastructure for open space and
11 farmland preservation needs to be brought into
12 this planning process in a really direct way.
13 There's a lot of plans out there for those
14 things, but it really needs to be balanced and
15 incorporated into where we place any expansions
16 of sewer service areas.

17 A process could be established where
18 a new development on sewers can obtain approval
19 by showing only that it is in the appropriate
20 planning area, that it doesn't put utilities
21 across other planning areas, and that it needs
22 discharge requirements of the permit. In
23 essence, this would streamline the process for
24 approvals in appropriate areas. We go on. We
25 have a variety of these ideas.

1 Actually, we thought that the
2 municipal stormwater permits ought to be renamed,
3 and they ought to become municipal water quality
4 permits. A change in name would broaden the
5 purpose of the permit making responsibilities
6 clearer. These Water Quality NJDES permits would
7 then better address septic management and other
8 adopted TMDL management adding measures and other
9 issues.

10 The department is already intending
11 to create additional measures for the permits
12 where TMDLs have been established and where DEP
13 has determined sources, load allocations, and
14 waste load allocations, and the standard water
15 quality permit system could direct the
16 municipalities to address these issues more
17 actively.

18 It would allow the municipality to
19 design a measure that works for their
20 municipality, while also meeting the specific
21 requirement for implication under the permit.
22 Currently, those permits are not -- and the added
23 measure section are not strong as is needed.

24 We kept on coming up with ways to
25 incorporate the objectives, or what we think are

1 the objectives of the WMPs into the existing
2 structures and permit.

3 Because, I guess, ultimately, we
4 feel that the value of the WMPs themselves is not
5 very clear. It's not clear who should be
6 planning for sewer service, it's not balanced
7 against open space planning, it's not entirely
8 clear what's essential in the WMPs. It's
9 certainly very costly and difficult for the
10 municipalities now, and they're not doing it.

11 Those who do submit then have a very
12 long timeframe that they must wait for review.
13 So it's obvious that if you really had compliance
14 you wouldn't have anyone to review the plan that
15 you submitted anyway.

16 Once it's reviewed, there are
17 usually many costly, additional actions that need
18 to be taken in the analyses. And that, very
19 often, the towns are not equipped to do in terms
20 of cost or the utility authorities are not
21 equipped to do in terms of expertise. So
22 basically we're trying to find an alternate
23 mechanism. And we think the question hasn't been
24 asked, Why keep the WMPs?

25 I think a lot of the points raised

1 already about bringing together the different
2 threads that exist to control what is going on
3 really need to be -- there needs to be much
4 better coordination at the state level.

5 One of the suggestions that was made
6 was, we really need a state environmental
7 resource inventory. Which is basically the same
8 thing as saying, we need DEP to -- I'm sorry.
9 I'm losing my voice here.

10 We need DEP to give the information
11 to the municipalities, as they do to some degree
12 now, but in a more packaged format so that
13 there's something to base the planning on.
14 That's a little easier for towns to do. Or
15 incentives to require it or use the planning
16 endorsement process to get much more
17 participation by municipalities that you can't
18 get a certain kind of permit -- maybe that's
19 going too far -- but you can't get a certain kind
20 of action approved without doing the steps that
21 the plan endorsement process requires. So that's
22 where we have gotten so far.

23 And we think that the rules
24 definitely need to be better outlined or
25 enthusiastic about the process. And we'd like to

1 continue to help. But we started out with more
2 questions than suggestions really. And I'll
3 stop.

4 MS. GOODWIN: Thank you very much,
5 Suzanne.

6 We're going to shift gears a little
7 bit right now to focus our attention away, for
8 the moment, from planning and talk a little bit
9 about some practical experience that some
10 industry resources can share with us.

11 We're going to begin with Carol
12 Theresa Storms. Carol is the Manager of Water
13 Quality and Wastewater for Aqua New Jersey. Aqua
14 New Jersey is, I believe, a subsidiary of Aqua
15 America, which is the largest water surveyor in
16 the United States.

17 Carol's background encompasses over
18 25 years of professional experience with
19 accomplishments and skills in the area of water
20 and wastewater compliance, management,
21 supervision, quality control, plant/lavatory
22 operations and cost control.

23 She is responsible for the overall
24 management and coordination of water quality and
25 wastewater function for the entire State of New

1 Jersey for her company, responsible for providing
2 technical direction on quality treatment and
3 regulatory compliance issues, both as to water
4 and wastewater, and she interfaces often with
5 regulatory agencies here in the state.

6 And I hope that you'll share with us
7 some of your experiences, as well as your
8 perspectives on where we should be going with
9 this rulemaking. Thank you.

10 MS. STORMS: One of the nice things
11 about being one of the later speakers is that
12 everything you're prepared to say has already
13 been said.

14 One of the things I would like to
15 say to you is that, as a -- I have a lot of
16 experience in water and wastewater treatment on
17 the practical side. I am also on the New Jersey
18 Chamber of Commerce Environment Committee, and I
19 am also on EPA's technical advisory work group
20 for source water protection. So I think I'm
21 bringing some good things to the table. A lot of
22 experience, a lot on source water protection.

23 Everything, really, that I wanted to
24 say has already been said. So I really don't
25 want to bore you and rehash things. But one of

1 the things that we have not talked about is
2 beneficial reuse.

3 Question number six pointed out the
4 coordination with the State Water Supply Plan and
5 how we should look at beneficial reuse.

6 I've had the opportunity at EPA to
7 look at a lot of different states, and what they
8 are doing with beneficial readings, and New
9 Jersey does lag behind other states in beneficial
10 reuse.

11 I do commend the DEP for all their
12 hard work and the thought of looking at
13 beneficial reuse. I went to the DEP's Division
14 of Water Quality's Beneficial Reuse website, and
15 they have a wonderful definition of "beneficial
16 reuse."

17 It's taking what was considered a
18 waste, giving it specialized treatment, if it
19 needs it, and using it for public and/or
20 restricted access uses.

21 This high quality reclaimed water
22 can be used for non-potable applications in place
23 of potable water or as a supplement to potable
24 water. Everyone in this room knows the benefits
25 of reuse.

1 We all know how precious our
2 groundwater supplies in New Jersey are. I had an
3 opportunity in early September to attend New
4 Jersey's Section AWWA meeting out in Eatontown,
5 New Jersey. And all of the presentations in the
6 morning were on our precious groundwater supplies
7 and how they are being depleted.

8 One of the ones that I felt most
9 disturbing was a pond point aquifer in South
10 Jersey where the impactation was Delaware, the
11 State of Delaware is doing in their state are
12 impacting at a level in the pond points.

13 The other thing that left me very
14 uncomfortable was the levels in the critical
15 areas. Where when we first instituted the
16 critical area protection core, especially for the
17 PRN aquifer, we watched the aquifer levels rise.

18 In the last four to five years, that
19 aquifer's levels are now declining again. And it
20 is believed strictly due to the volume of water
21 that we are taking from the aquifers.

22 We all know that reuse will help
23 promote less pollutant loading on our surface
24 waters. It could also help us by postponing
25 costly investment for development in new water

1 sources and new supplies. We also know, everyone
2 in this room, that uses of beneficial reuse water
3 is good for both agriculture and golf courses.

4 So what are my recommendations? Let
5 me cut to the chase. I think that beneficial
6 reuse needs to be part of every single aspect of
7 DEP. I think it needs to be part and looked at
8 as part and parcel of all NJPDES permits.

9 Where are the opportunities for
10 beneficial regrowth?

11 I believe it should be looked at in
12 every single Water Quality Management Plan. If
13 we start looking for the opportunities, the
14 opportunities are going to present themselves to
15 us.

16 When I first started with this
17 industry as a water and wastewater back in the
18 1970s, and I'm dating myself, I, even then, was
19 thinking the fact that we took this large volume
20 of wastewater and dumped it out into the Atlantic
21 Ocean and it didn't seem practical to me at that
22 point.

23 And especially golf courses. We
24 should be looking at reuse. And every time we do
25 an allocation permit, every time we look at a

1 golf course allocation permit, that the
2 opportunities for reuse are there instead of
3 using our precious ground and surface supplies
4 and treated potable water to spread it on a golf
5 course.

6 One of the other things that DEP is
7 looking at now are the phosphorus loading to our
8 surface waters. So the opportunities to take
9 this wastewater and reuse it and reduce the
10 pollutant loading, especially the phosphorus on
11 our surface water supply, we should be looking at
12 this, every single aspect, every single permit,
13 every single action that we do.

14 I will tell you, that, in my web
15 search, the money is out there. There is money
16 out there to do it. And I think, Chris, you had
17 a good opportunity. I think the counties could
18 look at what goes on in their areas and the
19 opportunities will present themselves for
20 beneficial reuse.

21 Thank you.

22 MS. GOODWIN: Thank you very much.
23 Our next speaker is Tony Russo. Tony is familiar
24 to many of us in the room. He is the Director of
25 Regulatory Affairs for the Chemistry Council of

1 New Jersey.

2 The CCNJ is a trade association
3 which represents over 100 members involved in the
4 business of chemistry, which includes chemical,
5 pharmaceutical, refining, paint, and fragrance
6 industries.

7 Tony has been with the CCNJ for six
8 years now. Prior to joining that organization,
9 Tony spent five years in the environmental
10 consulting field with two different firms,
11 Groundwater and Environmental Services and
12 Environmental Resources Management, where he
13 dealt with various regulatory compliance and
14 enforcement issues on behalf of private clients.

15 Tony began his career right here
16 with the New Jersey Department of Environmental
17 Protection in the Division of Water Quality as a
18 senior engineer. He spent four years developing
19 and issuing NPDES wastewater discharge permits
20 and treatment works approvals.

21 Tony graduated from the New Jersey
22 Institute of Technology with a Bachelor of
23 Science Degree in Mechanical Engineering.
24 Welcome.

25 MR. RUSSO: Good morning. Hopefully

1 everybody can hear me. I just want to apologize
2 up front. I'm just getting over a sore throat,
3 so I'll try to be brief.

4 As Suzanne and some of the other
5 speakers mentioned, a lot of what I wanted to
6 cover has already been talked to.

7 When I was asked to present today,
8 it brought back a memory when I first joined the
9 Chemistry Council, I think the summer of 2000,
10 where the DEP had issued draft regulations on the
11 Watershed Management Rules. And I went back and
12 I printed out what our concerns were six years
13 ago.

14 And without seeing the new rule,
15 that's actually going to be coming out in
16 January, I can't get into the specifics. But how
17 it boils down, from an industrial point of view
18 is, if you could imagine our members, they're
19 dealing with industrial operations. Many times,
20 they're going to need more water for whatever
21 reason. It could be a process change, a new
22 process being brought in. They might need to
23 upgrade their septic field, they might need to
24 get a new water allocation permit.

25 And the thing that stuck out six

1 years ago, if you look at -- if they have to then
2 get a plan amendment first before their NJPDES
3 permit can get issued, I think the minimum
4 timeframe would have been two years. And that
5 assumed that everything went well.

6 And I can tell you, I've been
7 following regulations now 16 years. The last
8 thing we need to do for New Jersey is build more
9 layers of bureaucracy in the planning process or
10 in the permit process. I agree with Suzanne that
11 a lot of this could be handled through the NJPDES
12 permits.

13 The last thing I -- I mean, I can't
14 imagine dealing with the township, get a plan
15 amendment in a timely manner, then coming back to
16 DEP and getting your NJPDES permit
17 (indiscernible). So I think the department
18 should think about the process.

19 I know Larry mentioned that it is
20 process oriented, and that's where our concerns
21 are. Obviously, nobody's going to be opposed to
22 a proper plan, and nobody's going to be opposed
23 to water quality -- good work quality. But when
24 you get into the processes, it slows down
25 business, that's where you hurt the economy and

1 that's where --

2 And I've talked to many members and
3 many plant managers. And they tell me, not only
4 is it a global economy, but a lot of times they
5 compete with their own system plants.

6 And, basically, a general manager
7 will put a product on the table, and basically
8 say, who can make this for me, who could make for
9 me the fastest? And one of the things that they
10 have to consider is all the permits.

11 And we don't want to put New Jersey
12 at a disadvantage by building in a two-year
13 process to get water because obviously those jobs
14 are going to go elsewhere. As far as -- and,
15 again, I don't know if this is going to come out
16 in the rules itself.

17 But as far as setting a de minimus
18 threshold, what we don't want to see is, if
19 somebody has a permit for a million gallons
20 discharge groundwater, they come in for 2 million
21 or less, maybe we could think about setting up a
22 de minimus threshold there. You know, exempt
23 them from the plan amendment process, and we just
24 handle all the quality issues through a permit.

25 So, just to conclude, again, I

1 support most of the comments that were mentioned
2 and it boils down to the process.

3 MS. GOODWIN: Our next presenter,
4 Julia Somers. In June of 2006 Julia became the
5 Executive Director of New Jersey Highlands
6 Coalition, an organization working to ensure
7 effective implementation of the New Jersey
8 Highlands Water Protection and Planning Act.

9 The Act aims to protect 840,000
10 acres of environmentally critical land in the
11 northwest portion of New Jersey by promoting and
12 implementing stringent protections, safeguarding
13 the region's important water resources --
14 actually, there was a coma there. And
15 safeguarding the region's important resources.

16 Previously, Julia was the Executive
17 Director of the Great Swamp Watershed
18 Association, a membership based organization
19 working to protect the land and water of the 10
20 towns of the Great Swamp Watershed in Morris and
21 Somerset Counties. Welcome.

22 MS. SOMERS: Thanks. I am obviously
23 coming at this from a slightly different
24 perspective from everybody you have heard from so
25 far, and very much a bottom-up grounds -- ground

1 approach to what happens during a Wastewater
2 Management Planning process, and what happens
3 when you don't have a Wastewater Management
4 Planning process, which was the case in one of
5 the towns of the Great Swamp Watershed, where
6 there were substantial changes proposed land use
7 that would require, typically, a Wastewater
8 Management Plan. The town in this case didn't
9 have a Wastewater Management Plan at all.

10 We're in the northeast, so it's
11 municipalities working with the DEP that does its
12 Wastewater Management Planning and it's very hard
13 when you don't even have a Wastewater Management
14 Plan.

15 So land use is very much where I'm
16 coming from. So we don't have -- in the Great
17 Swamp Watershed, we didn't have any NJPDES
18 permits. But, of course, now in the Highlands
19 that's a very different situation.

20 Also, I've taken a slightly
21 different approach, as I've thought about
22 questions that were sent to we panelists. I'm
23 assuming that the department is very close to
24 issuing draft rules.

25 And so, I have thought about what

1 could be done in a relatively short term. There
2 have been some very good suggestions today that
3 take -- an approach that will take us a long time
4 to change the direction of the crew ship, I
5 think.

6 I totally agree with the idea of
7 watershed planning or Wastewater Management
8 Planning, and for 208 planning, as well. I mean,
9 it's the obvious and logical way to go, and it's
10 probably the only way that we will be successful.
11 I don't see it being incorporated in these rules.

12 So my suggestions are possible ways
13 to answer the questions that you ask, and see if
14 these could be incorporated in the these rules.

15 You asked, How can the DEP increase
16 compliance with the requirement that WMPs be
17 reviewed and updated as needed every six years?

18 We obviously have a situation right
19 now that is untenable. So I thought about, what
20 else are municipalities -- since most of this is
21 in this Home Rule State is starting at a
22 municipal level. What else do we do that
23 requires a six month -- a six-year review master
24 plan?

25 So how can -- what would be a simple

1 way be to marry with the master planning process,
2 the municipal master planning process to
3 Wastewater Management Plans. Since all towns are
4 supposed to have them and all towns are supposed
5 to review them every six years.

6 Couldn't we at least make a minor
7 amendment to the MLUL, and require an updated
8 utility plan. Instead, right now, it's
9 voluntary. Require an updated utility plan as
10 part of a municipal master plan. That is a great
11 first step to helping put together a Wastewater
12 Management Plan.

13 Even when you have a State Regional
14 Municipal Regional Wastewater Management Plan by
15 counties, those counties do turn to those towns
16 to help them build those plans. So if you start
17 there, that might be a help.

18 I'm going to say the thing that
19 nobody else wants to say. In fact, probably some
20 disagree with.

21 I think that there should be a
22 moratorium on permits in towns until they do
23 update and complete their Wastewater Management
24 Plan. Maybe that could be brought in in a phase
25 way, but I do think that there should be a

1 moratorium.

2 I'm sorry. But we dealt with a
3 municipality that unless DEP finally had put its
4 foot down was never going to do a Wastewater
5 Management Plan. So a moratorium would certainly
6 have caught their attention.

7 We also think that site specific
8 Wastewater Management Plans --

9 You know, the department, once
10 before, has tried to put a brake on site
11 Wastewater Management Plan, and they have gotten
12 out of control again. We don't think that you
13 should be issuing site specific Wastewater
14 Management Plan, and we think that, by saying you
15 will not, that also will catch municipal or
16 planning agency attention in helping to focus on
17 the importance of having an updated Wastewater
18 Management Plan.

19 We have very mixed feelings about
20 the E.O. 109 ordinances because they are
21 implemented at a municipal level. And our
22 experience has been that it is very easy for
23 waivers to be granted to those ordinances.

24 So at least to have some handle on
25 the extent to which that is happening, we think

1 that municipalities should at least be required
2 to have manual report to DEP on the number of
3 waivers that have been granted to the E.O. 109
4 ordinance, and why they were given. You can't
5 begin to evaluate whether or not that program is
6 successful without that kind of information.

7 I agree with several people who have
8 suggested that the DEP should be providing a lot
9 of the environmental data that is necessary for
10 putting together municipal or regional WMPs.
11 You've got it, they need it. But many of them
12 don't have -- many of the municipalities don't
13 have the ability to look at that data.

14 The world is going GIS. I mean,
15 there are sometimes we don't want to think that,
16 but the world is going GIS. And most --

17 If every county in New Jersey
18 doesn't have the ability, at this point, to use
19 GIS data and software in a sophisticated way,
20 shame on them. Though, I don't think that every
21 town should be required to do that.

22 So the counties could be the
23 resource for you to share that environmental data
24 that needs to be part of the Wastewater
25 Management Plan process with the municipalities

1 within that county.

2 If you were to assist the Wastewater
3 Management Plan agencies --

4 Looking at these questions, I was
5 very struck by the fact that number seven, the
6 second to the last question, was, how should the
7 department address protection of sensitive
8 environmental features?

9 Shouldn't that have been the first
10 question. It certainly, to my mind, should be
11 the first thing that is done in this process.

12 It was very interesting listening to
13 people talk about capacity analysis. When I talk
14 about capacity analysis, I'm not talking about
15 pipes in the ground or the capacity of the plan.
16 I'm thinking about the capacity of the natural
17 environment to support what we are doing to it.
18 And that, I think, is where we ought to begin the
19 planning process.

20 We need to first do that so that we
21 can have -- we can look at how much water we have
22 available, we can review our wastewater capacity,
23 we can look at TMDLs, if they are available.
24 Eventually, obviously, the TMDLs would be
25 available for far more the state than is now. We

1 can consider analyses for septic density. I say
2 density, not zoning because density is, I think,
3 the word we should all be using. I'm not sure I
4 like the word zoning anymore. But density, what
5 we can -- what our natural environmental capacity
6 can support is certainly one of the things that
7 we should be looking at.

8 I don't have any opinion on
9 controlling saltwater intrusion. You won't be
10 surprised to hear that.

11 And number six, coordination with
12 the Statewide Water Supply Plan.

13 I have to say, that from the ground,
14 it appears that water supply does its own thing,
15 no matter what else is going on in the state. Of
16 course there should be coordination with the
17 Water Supply Master Plan, and of course there
18 should be coordinating with the State Plan.
19 Those are kind of easy dah [sic] questions.

20 But that brought me back to number
21 four, which is talking about point and non-point
22 sources of pollution. And that's -- that's a
23 really difficult question.

24 Should it be part of this process?
25 Absolutely, it should be part of this process.

1 Is your non-point program currently being applied
2 in the way in which it was a intended?

3 I think we're maybe 18 months behind
4 where you wanted us to be at this time. I think
5 towns need additional help in putting together
6 their Stormwater Management Plans. Because that
7 will be a critical first step in effective
8 Stormwater Management Planning.

9 But the point -- I don't like the
10 idea of doing away with WMPs, and only having
11 NJPDES permits. Our experience in land use,
12 where, in the Great Swamp Watershed, the eventual
13 recipients of the natural wildlife refuge was
14 that NJPDES permits don't protect and haven't
15 protected, and I can't see that they would
16 protect our natural resources. So I don't
17 support in that.

18 The Highlands, I'm new at the
19 Highlands. Obviously, it is a much more complex,
20 brings far more issues to the table than in the
21 Great Swamp Watershed. But I do support the idea
22 of the Highlands being treated as a Wastewater
23 Management Planning agency, the Highlands
24 Council.

25 They're going to come out with a

1 plan and it will be for the region and they ought
2 to be handling that and it should be in
3 coordination with the regional master plan.

4 So that's all I have to say.

5 Thanks.

6 MS. GOODWIN: Thank you, Julia.
7 Your comments were provocative.

8 Our next speaker, Paul Pogorzelski.
9 Did I get that right? Can I call you Paul P.?

10 Paul is a partner at Van Cleef
11 Engineering Associates. Along his many
12 responsibilities he serves, by appointment, as
13 the municipal engineer, consulting professional
14 engineer for various counties and municipalities.

15 The projects that he's worked on
16 include the Initial Planning and Stormwater
17 Management design of New Jersey's first
18 Towncenter which is located in Washington
19 Township, Mercer County, and a multitude of
20 projects dealing with stormwater management,
21 wastewater planning, and wastewater management,
22 as well as watershed management and traffic
23 management.

24 Paul received his Associate of
25 Applied Science Degree with honors from Mercer

1 County Community College and his Bachelor of
2 Science Degree with honors from Fairleigh
3 Dickinson University.

4 Thank you.

5 MR. POGORZELSKI: Thank you. I've
6 spent the last 27 years of my life basically as a
7 municipal consultant. That's been my thrust.
8 I've also done private sector consulting. But I
9 focus, really, in municipal and school boards and
10 in that arena.

11 I've also spent the last 27 years of
12 my life embroiled in controversy. And,
13 ironically, it all boils down to wastewater
14 issues.

15 So I should have known, probably in
16 1973, growing up in Hopewell Township, while my
17 parents were fighting about bringing sewers to
18 Hopewell, that it was not going to escape me.
19 But it still carries with me to this day.

20 So I try to bring a little bit of a
21 practical application to what we're talking
22 about. And I think, when you look at the
23 process, I definitely agree that this is a very
24 cumbersome, a very costly process, the way it
25 exists today.

1 When I go in with a fee proposal to
2 do work for a school board or a community, and
3 they look at me, and they say, what's it going to
4 cost? And I say, well, if you look back in time
5 over all the various communities, and maybe
6 budget a quarter of a million dollars, 500,000,
7 by the time you're all rapped up, finished with
8 it. Because there's a lot that goes into it.
9 And if there's controversy involved, it's going
10 to grow well beyond that, and it has in many
11 instances.

12 So when you look at the process --

13 You know, I've tried to look back
14 and see what works. And, quite frankly, in all
15 the years I've been in this business, what has
16 worked, actually, the best, believe it or not, in
17 my opinion, has been the stormwater regulations.

18 The way they came out, the way they
19 were introduced, the way it was standardized, it
20 gave to a community the ability to grab onto
21 something, whether they liked it or not, and say,
22 hey, we have to do it. Let's just go with the
23 standard form. We can always change it in the
24 future going forward. And it became very, very
25 easy at that point.

1 And I think if you compare total
2 number of missing Wastewater Management Plans
3 that are approved versus stormwater plans that
4 are approved, I think you'll probably find that
5 there's a pretty big number, as far as what's
6 been approved and adopted as far as stormwater
7 goes.

8 Nonetheless, Wastewater Management
9 Planning is tedious and it's excruciating, quite
10 frankly. It is a planning process, I believe. I
11 believe that it's an integral part of any
12 Municipal Master Plan. I think that Municipal
13 Master Planning is -- has several layers sort of
14 superimposed upon it.

15 Today, when you look at COAH
16 requirements, when you look at State Plan
17 consistency, cross acceptance, I think you really
18 see that there's layer upon layer of overlap.

19 And I think, that if, somehow, some
20 of that overlap can be refined into a common
21 purpose and be able to use common data without
22 replication, I think it will go to the heart of
23 saving a lot of time, energy, and money, quite
24 frankly.

25 So when you start with Wastewater

1 Management Planning, for example, if you have
2 a -- if you're in the COAH for a plan
3 certification there, you're going to wind up --
4 every community is really going to have to do
5 planning endorsement.

6 So you're going to have to bring in
7 the consistency, as part of the planning
8 endorsement process, your master plan. Well, if
9 you're bringing in a consistency, your Master
10 Plan or plan endorsement, a lot of what plan
11 endorsement requires, as of day, and maybe going
12 forward, will be a lot of what is really embodied
13 in a Wastewater Management Plan process. The
14 commonality. Bringing in some of this common
15 data, all these big data basis that DEP shares
16 from the environmental side, the T&E, and all
17 those elements, rather than to debate, you know,
18 what goes on, how did you create this, say, with
19 DEP staff?

20 Well, we'll just adopt it. We'll
21 take it for granted. At some point, on a site
22 specific basis, there will be more detailed
23 debate through the permit process, the NJPDES
24 process, the TWA process where you can have a
25 healthy engagement of, hey, this *(indiscernible)

1 doesn't exist here, or it does exist there. And
2 that's more site specific related.

3 But I think, from the process
4 itself, to the greatest extent, if we can
5 standardize some of that, we're going to be a lot
6 better off.

7 I think when you talk about scale, I
8 believe that the scale and the scope should
9 remain with the overall planning perspective at
10 the county level for a coordination effort. I
11 think, however, there is this Home Rule, and I
12 think because it's embodied in the master
13 planning process, you're always going to have a
14 local presence and a local determination as to
15 where sewer service should exist.

16 I've also represented Utilities
17 Authority. And one of the things that I would
18 have a tendency to say is that you can put a pipe
19 anywhere to serve anything for any reason.

20 I think that the planning area
21 doesn't necessarily need to -- the pipe shouldn't
22 drive the planning area, that the planning area
23 should drive the pipe, in other words.

24 So I still think that while local
25 authorities are really are responsible, utilities

1 authorities are responsible for, you know,
2 fiduciary responsibility and the management of
3 infrastructure, I do believe that the planning of
4 where those pipes should go really should rest
5 with the municipalities and maybe the county at
6 that level.

7 Again, with the State Plan, you
8 know, you do have -- you do have a plan
9 endorsement requirement. Every community, I
10 think, that overlap is just going to drive a lot
11 of what's been talked about here.

12 The one thing that the State Plan --
13 everything that I've heard thus far with the
14 State Plan is good. I think the one little sense
15 of frustration that I have, representing as many
16 school boards and boards of education that I do,
17 is that if there's grand scale encouragement for
18 a development and plan area one and two and
19 centers, what's that going to drive is a
20 tremendous developer interest in those areas.

21 That developer interest just can
22 afford to buy anything. So they're going to buy
23 up all the undeveloped lands and plan area one,
24 two, and centers, and then, where are the schools
25 going to go?

1 The schools who have demands for
2 athletic fields and larger tracks are going to
3 have to either go on a perimeter or areas
4 potentially outside of those areas.

5 So here you have an inherently
6 beneficial use that really can go nowhere because
7 it's inconsistent with the State Plan,
8 inconsistent with Wastewater Management Plan that
9 really tracks what's going on with the State
10 Plan. So I think there need to be some exception
11 or some dealing specifically with these
12 inherently beneficial uses.

13 I do believe that non-point source
14 pollution control is best suited by watershed
15 with stormwater regulations, and I think that's
16 -- to me, that seems to be where it should stay.

17 Saltwater intrusion seems to be --
18 we heard about Delaware impacts. I actually do
19 consulting work down in Delaware, and I see
20 what's going on as far as growth down there.

21 You know, how is that going to
22 impact in bringing in potential saltwater up the
23 Delaware River further?

24 Now, to me, that seems to be a grand
25 scale, you know, top down type situation that

1 should be dealt with by the state. I think the
2 state should really write the script on that, and
3 everybody -- just really, everybody should be
4 forced to adhere to that. Because that's an
5 issue larger than life in some regard.

6 Statewide Water Supply Plan. Again,
7 we have a lot of, you know, watersheds and
8 aquifers really transcend municipal boundaries.
9 And I think that when you're talking about
10 statewide issues, I think, you know, again, the
11 authorities should come down from the state to
12 deal with those issues.

13 Local municipalities really don't
14 understand if there's a well a thousand feet away
15 that happens to be in a strike zone and a rock
16 aquifer that's going to significantly effect
17 what's going to happen in their plan.

18 I think that state dissemination of
19 information as it relates to that and to every
20 community on how that overlapped into their
21 community could occur, I think that's critically
22 important.

23 Now, I've had the great fortune of
24 representing a town that's actually looked at its
25 aquifers, and, you know, analyzed its zoning

1 based upon aquifer, based upon nitrate pollution,
2 and it's really been a good thing. Been a little
3 bit challenging at times.

4 Because one of the things that I've
5 seen is that there's grand scale debate about
6 methodologies used, about whether it's the right
7 methodology for infiltration, or all that.

8 Science. There still seems to be,
9 in the scientific community, a lot of debate when
10 it comes to groundwater management, basically.
11 And I think that's another reason why it needs to
12 be sort of this top down policy. You know,
13 coming down from the state, and saying, this is
14 the way it shall be. And if you send in your
15 planning based upon that, and you've imported all
16 the T&E and all the environmental map sets that
17 we have, then basically the creation of your WMP
18 is going to be a walk in the park.

19 Likewise, protecting environmental
20 features. You know, I, again, had the good
21 fortune of a town that was very aggressive in
22 that regard. We got our 150 buffers and 300-foot
23 buffers.

24 And what's interesting is
25 representing the developer interest as well is

1 that -- well, nobody likes it. But the bottom
2 line is, it's here, it's a mandate, they're
3 working with it. Same way with working with the
4 stormwater regs. It works.

5 And why does it work? Because if
6 you look back in time -- again, a lot of it was
7 standardized, a lot of it was, this is the way it
8 shall be, and people were just marching to those
9 order.

10 They always have an option, through
11 any process, public or otherwise, to come back to
12 DEP and the community and say, look, we don't
13 like this. These are all the reasons why. And
14 when they do that, they know that that process --
15 they might spend three or four yours churning
16 away in that process before they get any action.
17 And they bought into that program.

18 And a lot of people will just put up
19 on the shelf, and say, here's our long-term
20 project, let's go forth, let's go at it slowly,
21 and it seems to work that way.

22 E.O. 109, on the other hand, my
23 experience with it is that it's a little bit
24 subjective. And I guess there's no --

25 If you could create the answers that

1 you're looking for when you do -- when you seek
2 to answer all these various aspects of E.O. 109,
3 if you could write the answer first, and say,
4 this is the answer, show me the plan, and you get
5 to that answer, that would be a lot easier than
6 to say, show me the planning, and then, well,
7 when we get the planning done, well, what are we
8 looking to do? And it's easier to sort of work
9 it backwards in that regard, so...

10 I think that's about it.

11 MS. GOODWIN: Last, but clearly not
12 least, Eileen Swan. She serves, by appointment
13 of Governor Corzine, as the Executive Director of
14 New Jersey's Office of Smart Growth.

15 Prior to her current appointment,
16 Eileen served as a consultant to the New Jersey
17 Conservation Foundation, and before that, as the
18 Lebanon Township Open Space and Farmland
19 Preservation Coordinator.

20 She served as the Township Committee
21 woman in the Township of Lebanon, from 1999 to
22 2004, and the Township's mayor in 2000 and 2004.

23 She has her Postgraduate Education
24 Diploma and Bachelor's Degree in English
25 Literature and History from the University

1 College of Dublin Ireland.

2 In 2005, the NJDEP awarded Eileen
3 the Government Leadership and Lands Preservation
4 award; and in 2003, the Organization of New
5 Jersey Planning Officials awarded her their award
6 of leadership in land conservation. And we
7 welcome you.

8 MS. SWAN: Good morning, everybody.
9 Thank you very much to the Clean Water Council
10 for the opportunity to speak this morning, and to
11 Mark and Larry. And, in particular, Larry for
12 his PowerPoint this morning which sort of set the
13 groundwork telling us where we are to date, and
14 where we need to go.

15 I have planned what to say, and, of
16 course, I'm not saying pretty much what has been
17 already said coming from the Office of Smart
18 Growth. There are certain things I'd like to put
19 before you this morning.

20 My own background of coming from the
21 municipal government has been invaluable
22 assistance to me now working at the state level.
23 Because I think to understand how it works from
24 bottom up, and then when you impose decisions
25 from the top down, if you've suffered it from

1 both ends, it makes you, I think, a little more
2 qualified in pain and suffering to understand the
3 full picture.

4 And I was listening to Paul, and he
5 was talking about his pride of working with the
6 town down (indiscernible) perspective, and I was
7 proud that we did that in my town.

8 However, I'm sad to tell you that
9 the effect was not one that you'd like to see.
10 Having done the analysis, having looked at the
11 aquifer, and done the nitrate pollution models,
12 knowing where we should end up, then the
13 political pressures come to bear on the town.

14 And instead of ending up where good
15 work, good signs, the basis for making the right
16 decision, you get the threats of lawsuits. And
17 constantly, the town, when it did its Master
18 Plan, was going to have sort of a new way of
19 looking at zoning and looking at a protection of
20 your environmental types of areas.

21 We ended up with a large lot zoning,
22 and we threw away the bonus because we didn't go
23 to where we should have gone from a zoning
24 perspective.

25 And, consequently, did we meet our

1 goals of rural or agricultural protection?
2 Absolutely not. Large lot zoning doesn't protect
3 agriculture.

4 Did we really protect the
5 environment of a beautiful area within the
6 Highlands? No, we didn't. And I think we did a
7 very good job of trying get there. But that's
8 the problem with the 566 methodology of planning.

9 And, today, when we talk about Water
10 Quality Management and planning and management,
11 you can't look at 566 ways. Because 566
12 decisions impact those towns around them. And
13 you don't end up with a regional perspective.
14 They don't look at watershed quality management,
15 they don't look at the watershed.

16 In fact, in many cases, you'd be
17 surprised they might not know what watershed
18 they're in anyway, or what the effect of those
19 decisions are in their town what the effect is.

20 So I come now to work, and -- at the
21 Office of Smart Growth, previously known as the
22 Office of State Planning, and I thought I was
23 coming here today to defend the State Development
24 Redevelopment Plan and implore Larry to make sure
25 that we work together. I'm not going to say

1 who's consistent with whom, because that's --
2 it's foolish at this point.

3 And I know that there are many in
4 the room who will criticize the State Development
5 Redevelopment Plan as it is today. And the last
6 adoption was 2001. We're currently in the
7 process of adopting a new one.

8 However, I will say, that we've made
9 great progress, in my opinion, and I merit DEP
10 and the other state agencies is on firmer grounds
11 than it used to be.

12 And, thus, I think the State
13 Development Plan, Redevelopment Plan is becoming
14 more predictable, more transparent, and more
15 consistent across the state agencies.

16 And if we are to talk to
17 municipalities, if we can't have a consistent
18 approach from state agencies, we shouldn't even
19 talk to municipalities. It's bad enough to have
20 566 of them. There is -- I don't know how many
21 there are at the state agency level. But then,
22 if you look within the state agencies, at the
23 silos within them, good luck with your planning.
24 So we need to pull together, first and foremost.
25 And, as I said, I think we're getting there.

1 I will say, as well. Paul mentioned
2 the school boards. And while I'm on my team of
3 dispirit makes of state agencies, I will tell
4 you, that we have the Smart Growth Policy
5 Council, which was another thing put together and
6 accepted as number four, which calls on the
7 various state agencies to work together in this
8 planning initiative. And the -- the council was
9 pretty much not working when I came into the
10 Office of Smart Growth back last February. And
11 we have it up and running again.

12 And one of the missing partners at
13 the table was the Department of Education. And
14 if we're talking about Smart Growth and we're
15 talking about getting away from sprawl, we
16 certainly don't want to see our schools built in
17 those farm fields.

18 And not alone, it's that it's
19 furthering sprawl pattern from a perspective of
20 energy efficiency, we're sending all the little
21 yellow busses out there to the countryside, as
22 well, to transport the children.

23 So I agree with Paul that that backs
24 the whole theory of State Development and
25 Redevelopment Plan, and that is the theory of

1 center faced development.

2 I would agree with the speakers that
3 spoke before me who talked about watershed based.
4 That's obvious. I don't know how we could look
5 at it any other way.

6 I also think that 21 ways of looking
7 is probably far better than 566. And just as
8 we're working with Eric and other counties far
9 better in the cross acceptance process, which
10 leads the State Plan, I think this would be
11 another way we can enable municipalities to
12 better plan for themselves. So I think, looking
13 at counties.

14 And then, as we do plan endorsement,
15 we have regional plan endorsement, as well as
16 municipal plan endorsement. Municipal Plan
17 endorsement makes lot of sense in its current
18 form, and it is improving, I hope. Regional plan
19 endorsement, there's been a little bit of a
20 difficulty for the Office of Smart Growth.

21 And I think if we worked with DEP on
22 this, we can bring more rationale to that
23 process, as well. Because if that becomes part
24 of what regional endorsement, in particular,
25 county endorsement is all about, then it will be

1 worthwhile.

2 I think that municipalities cannot
3 afford one more thing that they're asked to do.
4 Neither have the expertise. And I would hesitate
5 to say -- well, I wouldn't hesitate.

6 But I will say, that if you put this
7 out there, and say to the municipality, you've got
8 to all do your WMPs, etcetera, I don't know who
9 they're going to find to do the work. Because
10 there's only a few agencies or consultants
11 available who are qualified to do the work that
12 would be required.

13 If DEP does the work, the
14 groundwork, then they're going to have more
15 consistent approach across the state, as well.

16 And as it was pointed out, I
17 believe, by Chris, the same people end up paying
18 for this anyway. It's the taxpayers that pay for
19 this no matter who does it.

20 So let's start at the top and get
21 something that's consistent, and those taxpayers
22 could pay for it once. That would be my --
23 that's why I would concur with the others that
24 come before me who have said, let DEP do the
25 work.

1 So when it comes to State
2 Development and Redevelopment Plan, I don't think
3 I have to argue here as to consistency. Because
4 I think everybody at this table said that we have
5 to work together. And the end result should be
6 that one would mirror the other. There should be
7 changes on both sides to make this work.

8 The Governor came out, recently,
9 with what's known as "Growth Strategies." In
10 that, he talks about the fact that it must be
11 consistent with the State Plan. Therefore, I
12 believe there's no choice. These rules must also
13 be consistent. That was his message.

14 We can't keep recreating the wheel.
15 Or, in fact, little tiny wheels everywhere in all
16 kinds of different directions. But we have to
17 have one solid movement going forward.

18 The governor also, in that report
19 talks of the infrastructure needs assessment and
20 talked about carrying capacity analysis. If
21 we're to do that, once again, we have to do this
22 exercise together. We're joined at the hip, and
23 I think we're going to stay that way. And if we
24 do a good job, we'll keep moving this forward and
25 breaking down the silos in state government.

1 I do believe that because of that
2 economic growth strategy -- and I go back to what
3 Chris said before as well. That the WMPs or the
4 WQMPs have to show some kind of a rationale as to
5 their methodology as to where those allocations
6 go. If there's a benefit to a greater good, I
7 think there that has to be taken in
8 consideration.

9 I'm not quite sure how you do that.
10 Because, unfortunately, what often drives
11 planning is the bottom line taxation issues and
12 where the buck is easy to get.

13 So municipalities doing its
14 planning, instead of looking down the road into
15 the future, too often, because of the other
16 pressures ought to bear on these municipalities,
17 will say, where can I get my quickest return; how
18 can I relieve the taxpayer's burden?

19 If there's an opportunity for a
20 large scale development here, and the opportunity
21 is right now, should I drop that opportunity or
22 should I look to better center base mixed use
23 development to take into consideration and
24 inclusive housing, workforce housing, which
25 benefits everybody statewide?

1 Unfortunately, that's not the
2 driving force behind it. The driving force, too
3 often, is that quick fix to the municipal
4 taxation problem. So with some sort of
5 prioritization methodology, maybe we'll be able
6 to address that.

7 You've heard mention of a plan
8 endorsement here a lot today. And this is the
9 process by which we endorse at the State
10 Development/Redevelopment Plan level. We endorse
11 the municipal plans and those regional plans that
12 have come before us. It is a voluntary process
13 which now is linked to the COAH rules.

14 When a town puts in its application
15 for a third ground substantive rules, then
16 they -- they then have to get planned
17 endorsement.

18 The process is an extremely
19 difficult one and very tough for towns to get
20 through. We're looking to change that.
21 Currently, it's, you've got 45 days to do this
22 and 60 days to do the other, and 90 days for the
23 other thing to occur, and all of these timelines
24 are utterly ridiculous.

25 Towns throughout the state are in

1 very different places with regards to planning.
2 They are those that can move faster than others,
3 there are those that are way behind on their
4 master plan, and, thus, it will take a lot longer
5 to do good planning. So them forcing them is not
6 going to be the answer.

7 In the office, currently, what we're
8 looking at doing, is making plan endorsement much
9 more responsive to the needs of each
10 municipality. The timelines would be responsive
11 to the needs of the municipalities.

12 But it is more and more incumbent on
13 state agencies to assist municipalities in
14 getting to the end goal. If we bring them in for
15 endorsement, they have to look forward to a
16 future where they can actually be endorsed. And
17 we need to have a high bar as to how you get
18 endorsed and what goes into the plan.

19 We work so close with DEP now that I
20 know if I put a foot forward, it has to be in
21 concert with DOT, with DEP, and the other
22 agencies. Otherwise, we don't get the end gain.

23 But we can't drop the bar, and we
24 can't allow political pressures to allow us to
25 drop the bar. Good planning dictates what should

1 occur. And if we do it together, we do a better
2 job of planning for the state.

3 If you look at where we are today,
4 which is what we've been doing a lot here today,
5 we know that what we've been doing hasn't worked.
6 Regulation alone does not work.

7 If you look at the sprawl patterns
8 that exist, they exist because we haven't been
9 able to put it all together. We have, I think,
10 an ideal opportunity now with the governor's
11 focus on the State Plan and on economic growth at
12 the same time to realize both the protection and
13 the growth that should occur. But they can only
14 occur if the plan endorsement process improves as
15 well.

16 If the state starts working for the
17 municipalities to give them the information
18 required so that the target doesn't keep
19 changing, if we say a planning looks like this,
20 show them what that plan is, tell them that's the
21 bar.

22 Too often, when the towns come in
23 for plan endorsement they have what they call the
24 complete process. So they give us all their
25 documents, we go through it, we say you're

1 complete. They read that as endorsement. And
2 then you tell them, no, no, no. We're now going
3 to measure you for consistency.

4 And that's where it gets difficult.
5 Because you tell a town, this doesn't work, and
6 they don't want to hear it. But if they don't
7 know where their potable water is coming from or
8 their wastewater is going to, they shouldn't get
9 endorsements. But the political pressures are
10 always there.

11 So I'm asking everybody in this
12 room, when you work on these rules, you've got to
13 have a bar, you've got to assist the towns in
14 getting there, but it has to be clear. And you
15 don't do good planning if you can't answer these
16 questions.

17 And to get into what Suzanne was
18 saying. Costly difficult, not clear, and the
19 review time is too long. And that's everything
20 I'm trying to say about plan endorsements, as
21 well. That the cost --

22 It is all costly. So as much as the
23 state agency, who have an awful lot of
24 information, can work with the towns and provider
25 it, we'll get to answer that question.

1 It's difficult -- it will be less
2 difficult if we can show the towns what the
3 planning is that's required and hold them to that
4 bar. And that goes to the not clear end of it,
5 as well.

6 And as to the review time. I know
7 the difficulties because these are the same
8 difficulties that we experience in our office.
9 And it goes back to those timelines.

10 If you have ridiculous timeframes in
11 which you're to respond to the towns, then the
12 agencies haven't got the ability to do good work.
13 At the same time, there has to be some
14 flexibility in what those times will be.

15 So as we work for the new plan
16 endorsement process and towards becoming more
17 predictable, I'm asking the state agencies to
18 take a good hard look of what we're asking the
19 towns to do and how quickly we can respond to
20 them.

21 Because we can't hold them up
22 forever. Because if we tell them that they have
23 do this plan endorsement, we have to tell them
24 that it is doable and we will assist them in
25 getting to the end of the line.

1 I do think that these rules need to
2 tie to plan endorsements, as well as to the State
3 Development and Redevelopment Plan. Because plan
4 endorsement is the implementation of that plan.

5 The plan itself is just a new
6 framework that guides where growth should go, and
7 you have more sense through plan endorsement, you
8 have more opportunities, perhaps, for growth in
9 other areas, such as PA-4 and PA-5. But we have
10 to be able to get them through plan endorsement.
11 So it's critical that these rules are linked.
12 And how that -- exactly that happens, I'm not
13 sure.

14 But, again, it's something that we
15 should sit down and work out with DEP so that we
16 make it something -- a bar that towns can reach,
17 but it's not a bar that towns must reach.

18 So whether it falls into the PIA,
19 which is the Plan Implementation Agreement, or
20 whether it falls -- whether it falls into preplan
21 endorsement, there have to be timeframes that
22 allow for it to occur wherever it sits.

23 So those are my basic comments
24 today. I didn't go through all the eight
25 questions mainly because I think they were well

1 covered by the rest of the panel. And because my
2 view here is regional planning, and, in effect,
3 state planning. It's critical. There's no
4 choice here. It has to be consistent with State
5 Development and Redevelopment Plan, and we have
6 to make it doable through the plan endorsement.

7 Thank you.

8 MS. GOODWIN: Thank you, Eileen, and
9 all of the panelists. We're going to take a
10 short break, we're going to come back, we'll
11 allow the members of the Clean Water Council to
12 ask the panelists some questions, and then we're
13 going to open it up to public comment. Five
14 minutes.

15 (Short Recess was taken.)

16 MS. GOODWIN: We're going to get
17 started now. As I mentioned when we began, I'm
18 going to give the members of the Clean Water
19 Council the opportunity to pose questions to our
20 panelists.

21 I know that with the perils of Route
22 1 traffic, there were a few members of our
23 council who were not here when I opened the
24 hearing, and I'd like them to please stand, state
25 their names and affiliations for the record.

1 MS. COZEN: Mary Beth Cozen,
2 Bristol-Myer Squibb, and I represent the
3 industry.

4 A SPEAKER: And I'm Razzi
5 (indiscernible) and I represent the AG. industry
6 and I work for the New Jersey Department of
7 Agriculture.

8 MR. ZOVIANOCH: Ray Zovianoch (Ph.),
9 Planning Director for Morris County representing
10 New Jersey Association of Counties.

11 MR. McCRAE: Jim McCrae representing
12 the Department of Community Affairs.

13 MS. SANCHEZ: Jessica Sanchez
14 representing DRVC. That's the Delaware River
15 Basin Commission. Sorry.

16 MS. GOODWIN: Thank you very much.

17 Are there members of the council who
18 have questions for any of our panelists?

19 Yes. George.

20 A SPEAKER: It seems like there is a
21 fair amount of consensus that -- and I'm not
22 going to prognosticate for the department -- that
23 one of the issues is to reduce the number of WMPs
24 from 190 to a more manageable number that also
25 looks at a more reasonable basis whether it be

1 county or watershed based.

2 And if that happens as of January,
3 that means a significant changeover from what's
4 been done now to what would be done in the
5 future. Which raises a set of questions, only a
6 few of which I'll ask now.

7 One is to you, Julia. You mentioned
8 that because the decisions are often made in
9 towns where there's not a planner or the plan is
10 inadequate, that there are ought to be a
11 moratorium or a limitation on site specific WMPs.

12 Even in cases where there's good
13 WMPs, there is a significant change-over to a new
14 scheme. Some of the counties already exist, but
15 others will be consolidating 190 system into a
16 broader based.

17 Do you guys see any way in which to
18 make some decisions in the interim, which is
19 going to take a period of time until the new
20 scheme is up and running and the state provides
21 consistent data that will help us all a matter of
22 time?

23 What happens -- is the moratorium
24 the answer in the interim, or is there some way
25 to make decisions about wastewater management in

1 between the new and the old?

2 MS. SOMERS: I said, the wastewater
3 management decisions can be made within the
4 existing framework. But I don't think that we
5 should be increasing our sewer service areas
6 without the basic finding. It needs to happen
7 first. And that's what has been happening up
8 until now.

9 A SPEAKER: Diane had mentioned,
10 that in some cases this will mean that there are
11 limitations in the places where most people agree
12 (inaudible) urban areas. Capacity of systems
13 there are limitation and something to know. But
14 that doesn't end the debate, that takes it to the
15 next step. What we do to respond to that
16 question.

17 Is that a case where you might
18 see --

19 MS. SOMERS: Well, I have to admit,
20 that all of my experiences is not in areas like
21 Paterson, it's not in areas where that might be
22 the case. Although, I can't imagine the entirety
23 does not permit sewer service area.

24 MS. BRAKE: But it has to embody
25 sewage and stormwater. So every time it raised

1 raw sewage goes into the river.

2 MS. SOMERS: Right. I would be the
3 first to agree that that needs to be done. But I
4 do think that if you're talking about expanding
5 sewer service areas into areas that have not been
6 included in the past there should be a moratorium
7 on that, unless is a proper Wastewater Management
8 Plan done.

9 I don't think that we should be
10 picking Wastewater Management Plans yet with site
11 specific. It makes it nonsense of the entire
12 process.

13 A SPEAKER: (George) My last
14 question is to Eric and maybe Tony.

15 You mentioned how non-point
16 component of the Wastewater Management Plan could
17 be handled in the context of stormwater
18 management system.

19 I was trying to think of how you --
20 just another -- how that would worked.
21 Stormwater plan which assesses how you manage new
22 stormwater generation site reviews and site
23 management. There's a wastewater plan that's
24 identifying where the wastewater would go, would
25 generate the goal that would cause the

1 stormwater. Are you doing these in parallel?

2 And second, how are the counties set
3 up currently, as you're seeing it this with
4 obligation to stormwater in the context of
5 potentially adding this other obligation?

6 MR. SNYDER: In reverse order, the
7 counties are not set up well from a budgetary
8 standpoint. Whatever the statute -- so is
9 everybody. The job still needs to get done. So
10 it's a matter of getting it done with what you
11 have.

12 I do think that the two processes
13 can go hand in hand. Certainly, if you're
14 looking at Wastewater Management Planning and
15 censors, which is what we are doing, part of the
16 more local analysis that we can work with
17 municipalities on is where there are existing
18 stormwater problems it can be properly addressed
19 during the course of the whole overall planning
20 process.

21 As you know, mitigation is one of
22 the elements in the Stormwater Management Plan,
23 and it may be possible to get a bigger bang for
24 your buck if you take a look at both of these and
25 start talking about encouraging growth in areas

1 where they make sense and not eliminating those
2 areas because there is some sort of a problem.
3 Looking at those areas and saying, well, if there
4 is a problem, we can perhaps mitigate through
5 this other program.

6 What I really want to make sure that
7 we do is to eliminate the inconsistency and
8 regulations between the two programs. And that
9 was part of my comment.

10 MR. DiLODOVICO: If I may add. You
11 have to look at as an umbrella.

12 The Water Quality Management Plan
13 deals with wastewater, the non-point source, the
14 water supply. And that's the overall umbrella of
15 looking at it. The Wastewater Management look
16 at, once other -- the planning is done, how do we
17 provide wastewater?

18 Under the stormwater requirement,
19 the stormwater is interesting because the
20 existing hook that prevents (Indiscernible) with
21 the Municipal Land Use Law. The Municipal Land
22 Use Law also -- already has the hook to
23 stormwater in requiring stormwater plans and
24 reviews at the county.

25 There's a lot of provisions in there

1 about looking at non-structural strategies,
2 looking at the ordinances, changing your
3 ordinances to reflect non-structural strategies.
4 That needs to start happening if we want to
5 really move forward. The towns already have a
6 requirement and they have an NJPDES permit that
7 makes them do this requirement.

8 How do they minimize impervious
9 cover; how do they make sure that they're not
10 impacting the natural drainage area?

11 And there's a need to move that
12 forward. That process I think is there. We need
13 to move that forward. We don't need another
14 process.

15 MS. GOODWIN: Thank you. Thank you,
16 panelists.

17 MS. BRAKE: One of the things that
18 seems through all of this is the inability to
19 separate the understanding of conditions,
20 planning, permitting, monitoring, and outcomes.

21 And really, it's about time to get
22 at how you look at the resource and plan to have
23 a good outcome. And that is not necessarily a
24 permitting program directly. But it is the
25 touchstone by which permitting programs should be

1 based.

2 So you don't have to have the
3 planning fit permitting programs, but you have to
4 have the planning underlying the permitting
5 programs. And that's the way you can integrate
6 and make sure that you get a range of outcomes.

7 MS. GOODWIN: Dan. Dan Van Abs.

8 MR. VAN ABS: I tried to come up
9 with a question that seems to be sort of an
10 underlying issue here.

11 If we think about the Department of
12 Environmental Protection, it really is two parts.
13 There's the service provision part of it, Green
14 Acres, the parks and forests and for wildlife
15 areas, and so on, then there's the regulatory.
16 And that's really the big split in the
17 department.

18 If the department goes to a process
19 where we're dealing with larger scale plans,
20 county watershed, and it's providing information
21 and so on, the question I have is:

22 Is it possible to do this without
23 the department, or, for that matter, the state
24 department working with other departments being
25 an actual partner in the planning process?

1 And if you -- if the state must be a
2 partner in the planning process what are the
3 implications of being both a partner and the one
4 from a regulatory perspective? Who decides
5 whether the plan is adequate?

6 MS. GOODWIN: You want to take that,
7 Julia.

8 MS. SOMERS: Well, I just want to
9 say, that I think one part of it, which probably
10 everybody else will disagree with, I think the
11 department needs to remember what it's called,
12 the Department of Environmental Protection. It's
13 not the Department of Economic Growth. That's
14 other set parts of the state.

15 Now, yes, you're obviously going to
16 get pulled into this, and you're going to need to
17 address those issues. But, first and foremost,
18 for the department, I think should be the
19 environmental --

20 I mean, I agree with you, Dan. It's
21 sort of amazing to me that one side of the
22 department doesn't seem to, sometimes, talk to
23 the other part of the department. But I think
24 environmental protection has to be key to where
25 you go with everything.

1 MR. SNYDER: If I could follow up on
2 that. I think that just as the whole effort
3 began, as pure protection, as pure regrouping
4 after decades of mismanagement, we've now moved
5 into a different era in New Jersey.

6 And that is, that we begin to look
7 at all these plans in a context, and that context
8 now is the State Plan. It doesn't mean that the
9 environmental protection piece is any less
10 important, but it now needs to be looked at as
11 part of a complex puzzle that requires that we
12 also deal with development.

13 Because if we have no development,
14 or if we continue to develop into places where it
15 ought not to go, we're going to wind ourselves up
16 in a place that we don't want to be and won't be
17 able to effect the environmental protection that
18 we'd like to, as well.

19 So, again, it sort of relates to
20 what I was saying before, it's context, it's not
21 ignoring, but it's accepting other perspectives
22 and viewpoints that are critical to the health of
23 the state.

24 MS. GOODWIN: Diane.

25 MS. BRAKE: It seems that, again,

1 I'm the both/and person, not the either/or
2 person. And development always impacts the
3 environment.

4 So if you're an environmentalist and
5 you put environment as number one, you will
6 always find objection to development because it
7 always has an impact on the environment.

8 So how do we move forward? It seems
9 to me this is why we have to do watershed
10 planning and we have to base our regulation on
11 its plan that is clear will meet the goals that
12 we all seek to meet.

13 So that if you can't do it permit by
14 permit, you can't do it project by project, you
15 have to do it as a part of a plan in which you
16 have demonstrated that if the --

17 (Audiotape portion.)

18 MS. BRAKE: -- plan is followed, the
19 goals will be met.

20 And then you can move forward with
21 development values (inaudible) the environmental
22 protection that we all agree to. It's the only
23 way forward. It may be more difficult, but I
24 would argue, it's the only effective way. And
25 specifically looking at what corridor's missing

1 or what's politically accessible or not, we
2 should be looking at what's effective. That
3 should be the criteria. And then develop a
4 system that is effective. And it has to be
5 effective to move ahead with development and
6 environmental protection.

7 It just seems that if we don't do it
8 that way, we're going to continue to fight and
9 we're both going to lose. We're going to lose
10 the economy and not protect the environment.

11 As Eileen said, in her town, the
12 politics and the imaging about development and
13 nondevelopment (inaudible) the environment.

14 And so, those arguments, they aren't
15 (inaudible.)

16 MS. GOODWIN: Eileen and then Julia
17 again.

18 MS. SWAN: April (inaudible) some
19 questions and some concerns about partnerships
20 with an organization which is basically the
21 regulatory organization. But I think the
22 partnerships really exist.

23 Because state government basically
24 is (inaudible) giving money to townships, and
25 with a partner into their future. And I think

1 the difficulty is with the regulatory agency, as
2 well. But if the planning is done well there
3 should be less need for the regulation.

4 If I look at New Jersey today and
5 where it is, and that the pattern of land use
6 development, part of the problem is that we
7 accept the regulation, it makes a situation
8 better and they haven't. So I think the time is
9 now to shift that a little bit, say yes the
10 regulations will be there. Because (inaudible)
11 as a good backup plan. But we'll put the
12 planning in place for (inaudible) planning, less
13 the money on regulation.

14 MS. GOODWIN: Julia.

15 MS. SOMERS: I'm not necessarily
16 disagreeing with (inaudible). I'm just simply
17 saying that the environmental protection part of
18 this puzzle is to come first (inaudible) what we
19 can do. We need to have a good handle of what
20 our passages are before we understand where
21 everything else is going to go.

22 MS. GOODWIN: Chris.

23 MR. STURM: I'll just build on that.
24 I think it's very (inaudible) for DEP to
25 (inaudible).

1 In the land use they use their name
2 as a local government (inaudible) really helped
3 them become successful (inaudible) at the local
4 level. So I don't think that the (inaudible).

5 MS. GOODWIN: Tony.

6 MR. RUSSO: Yes, and to build on
7 that, I think we need the department as the
8 planning partner. The regulations can't get in
9 the way. We need the regulations implemented
10 project by project, or to implement the plan. We
11 can't get in the way. We can't say, I want to
12 have better (inaudible) and (inaudible).
13 Redevelopment and (inaudible) redevelopment. We
14 need to look at it holistically when we're doing
15 the planning (inaudible) that are needed is that
16 the regulatory process is being environmentally
17 protected basically on meeting the goals of the
18 plan.

19 MS. GOODWIN: I'd like to move
20 forward to the public hearing aspect. But before
21 I do, I want to make sure there are no other
22 questions. And I see that there is one. Amy.

23 MS. GOLDSMITH: Hi. My name is Amy
24 Goldsmith (inaudible). The PowerPoint
25 presentation that was given at stakeholders

1 community state development (inaudible). And the
2 stakeholder for the last ten years (Inaudible).
3 We really focused now, in January, narrowed down
4 the question in the most provocative form and yet
5 it's still (inaudible). Assuming everybody else
6 is struck by the fact that we still (inaudible).

7 MS. GOODWIN: Larry, you're on the
8 spot.

9 MR. BAIER: Well, obviously there
10 are other (inaudible). I'd be lying to you if I
11 didn't tell you the planning act but (inaudible).
12 To gather from you in terms of planning, more
13 thought on (inaudible).

14 MS. GOODWIN: Any other questions?

15 A SPEAKER: (Inaudible) and I also
16 think that coming from a (inaudible) I assume
17 that the (inaudible) of the development plan
18 (inaudible) a copy of the plan goes from
19 (inaudible).

20 MS. GOODWIN: Chris, you want to
21 take it on.

22 MR. STURM: No, just one thing that
23 we haven't mentioned (inaudible) is that the rule
24 and (inaudible) planning to approve but we need
25 to be (inaudible). And I think that would meet

1 the cost (inaudible).

2 A SPEAKER: I think it would also be
3 that the plan long ago used to be redevelopment.
4 That this was not a planning process, this is an
5 amendment process. And it's just an amendment,
6 an amendment, (inaudible) the amendment, and it
7 isn't about the plan. (Inaudible) a thousand
8 dollars when it's not even relevant, and I think
9 that what we all hope is that there will be a
10 rule that would make the plan in order to serve
11 that role that we've been talking about in terms
12 of getting (inaudible).

13 MS. GOODWIN: One last comment.
14 Julia.

15 MS. SOMERS: I'm just wondering if
16 we're being realistic. I'm -- as I understand
17 it, these rules have to be out very quickly. And
18 there are some very serious (inaudible) that have
19 been discussed today that I personally would find
20 very hard to imagine them being incorporated.

21 Just the simple idea of going to
22 watershed planning. I can't imagine how that
23 could be incorporated into the Wastewater
24 Management Planning rules as we know them. Not
25 that I wouldn't support that.

1 So I don't know if the process that
2 we're involved in here would really incorporate
3 most of these ideas.

4 MS. GOODWIN: Larry, let me put you
5 on the spot again, which is not to ask you what
6 you intend to do, but rather ask you whether or
7 not you are open enough at this point in time to
8 have heard what the panelists have to say today?

9 MR. BAIER: (Inaudible.)

10 MS. GOODWIN: I'll open it up
11 (inaudible) for 25 minutes.

12 The court reporter is having trouble
13 with the equipment (inaudible).

14 A SPEAKER: What I wanted to remind
15 everybody is that, ten years ago, when we were
16 first looking at (inaudible). And I'd like to
17 say (inaudible) and I said, excuse me, whatever
18 happened to water supply and everybody laughed.
19 But everybody laughed, I think, because it was
20 such a fiasco in the '90s for a number of
21 reasons.

22 One of them was, the rule was
23 proposed in such a way that there is no way of
24 telling whether the environmentalists were right.
25 I think you said it would be another 365 million

1 gallons a day (inaudible) or the developers were
2 right, and said, this is going to set down the
3 state. This was rather clearly (inaudible) with
4 the same rule but they were and the DEP had no
5 answer to either one and so the rule failed.
6 Because they couldn't prove one way or another
7 exactly what the impact would be and how it would
8 work.

9 So that's something I hope is
10 learned. But I hope it doesn't mean that we
11 (inaudible) that we still feel that watershed
12 based planning although we were flawed in those
13 planning processes that we tried, it doesn't mean
14 that the concept is gone.

15 And I think that if we're looking
16 for effectiveness, that we could learn from those
17 lessons. And in prior -- a prior rule that
18 (inaudible).

19 MS. GOODWIN: Let me make a
20 suggestion, because I do want to move on to the
21 public hearing aspect. To the extent that any
22 member of the panel or any member of the public
23 wants to address this or any other issue in
24 greater detail, as I say, the written portion of
25 the public testimony is open until the end of the

1 month. So if you want to supplement what you
2 said today, please feel free.

3 Also I would ask, to ease the burden
4 on our court reporter, if you have your remarks
5 today in writing, if you could leave a copy with
6 her, that would ensure that your report or your
7 testimony is accurately reflected in our hearing
8 transcript. With that, I am going to open this
9 up to the public hearing.

10 I have only a list of names here.
11 Normally, I would get a list of your affiliations
12 as well. Although I do know many of you, I'm
13 simply going to state your name because I don't
14 want to presume for whom you are speaking today.

15 Our first speaker is Fletcher Platt.

16 MR. PLATT: Good afternoon. I put
17 together a graphic display that highlights a lot
18 of the points that were made this morning about
19 the relationship of Wastewater Management
20 Planning and overall planning in the State of New
21 Jersey.

22 Larry has seen this before presented
23 to the department staff (inaudible.)

24 And what it depicts is the
25 relationship between basic municipal planning on

1 the bottom (inaudible), municipal wastewater
2 management planning on top.

3 And the process that we go to in
4 developing the municipal plan development and the
5 wastewater Management plan (inaudible) water
6 quality management plan.

7 It talks a lot about the need to
8 integrate and coordinate local planning. That is
9 where it all started. The original Wastewater
10 Management Planning rule said, rely upon the
11 municipal wastewater -- or the municipal planning
12 to develop the Wastewater Management Plan. We
13 could rely on the population projection, we could
14 rely on the zoning. It wasn't a \$250,000 effort
15 or a \$500,000 effort, it's a \$30,000 effort,
16 developed a municipal Wastewater Management Plan
17 under the municipal regulation. Executive Order
18 109 imposed a whole lot of additional
19 regulations.

20 The (inaudible) regulations are
21 imposed through the wastewater management
22 planning (inaudible). How this conflict of
23 either bottom-up planning or top-down regulation
24 was brought out earlier. And that is part of the
25 difficulty.

1 My opinion, what needs to be done,
2 is you want to set a planning, the municipal land
3 use planning rule needs to be integrated with the
4 Wastewater Management Planning rules so
5 municipalities go through this effort once.

6 Right now, as I go through planning,
7 based on land use laws, the development master
8 plan, they identify and develop a Wastewater
9 Management Plan, the DEP says, no, you've got to
10 do it a different way. You've got to do a
11 different build-out analysis.

12 We tried to have those part of the
13 DEP (inaudible) cross acceptance population
14 suggestions that have been done (inaudible) and
15 they basically said no. At this point, we are
16 not accepting cross acceptance population
17 projections for a municipality (inaudible) based
18 on our individual build-out analysis assessment.
19 That's got to end. Municipalities should only
20 have to do planning effort once.

21 Water condemnation in the authority
22 (inaudible) authority charged with Wastewater
23 Management Planning development (inaudible). The
24 department that regulates the Wastewater
25 Management Plan. They can't affect land, they

1 can't change land use, they can't impose local
2 ordinances to implement what the state is
3 requiring (inaudible) through the Wastewater
4 Management Planning.

5 So, again, consistency has to come
6 full body. The question was raised, should the
7 township go to the counties and the authorities
8 who currently have to take care of responsibility
9 of wastewater management; possibly, such as
10 counties doing an effective job in integrating
11 all their services. I'm not aware of other
12 counties effectively integrating all their
13 responsibilities.

14 The counties also don't have direct
15 land use control. They may have some difficulty
16 as even an objective of identifying where
17 development can occur and where it should not
18 occur. What I want to make the point that's
19 brought out and once the authorities are
20 involved, primarily with few exceptions, only
21 provide wastewater (inaudible.) They're not
22 known to (inaudible) potable water. Authorities
23 that go responsibility for septic systems than to
24 (inaudible). No responsibilities for the
25 stormwater plant. Their enabling legislation

1 doesn't permit them to be involved in stormwater.

2 And potable water, you have sewer
3 authorities that are overlapping potable water
4 and not sewer management. So here we're asking
5 authorities or municipalities very, very broad
6 issues. I'm not saying they're not right. I
7 think they are right. But we're not implementing
8 a (inaudible) wastewater management plan, or the
9 build-out analysis, E.O. 109 analysis to be
10 integrated with the Municipal Land Use Law so the
11 municipality can bring it up (inaudible). Thank
12 you.

13 MS. GOODWIN: (Inaudible.)

14 A SPEAKER: (Inaudible portion).

15 MS. GOODWIN: Our next speaker is
16 Bill Wolfe.

17 MR. WOLFE: My name is Bill Wolfe.
18 I'm the Director of New Jersey Chapter of PEER,
19 which is an acronym for Public Employees For
20 Environmental Responsibility. We're a national
21 affiliation of several state resource
22 professionals that work on behalf of
23 environmental ethics, environmental --
24 enforcement of environmental laws, and our
25 mission is to defend the folks who work inside

1 the agencies on a day-to-day basis from what
2 several panelists here have confirmed as both
3 political influences. So my phone number, I'll
4 give you my phone number and website. Please at
5 all -- at your leisure, please give me names, and
6 lot and block numbers, and project names of these
7 political influences. Because I think it's very
8 interesting.

9 And I'm totally willing and able to
10 countervail that political influence with public
11 preferences and the people of New Jersey that are
12 not here today that care about environmental
13 protection and making good public policy
14 decisions based upon facts and (inaudible),
15 instead of political patronage or political
16 intervention.

17 I just want to make a few points,
18 then I'm going to ask like four questions about
19 the rule. To contextualize [sic] the question.

20 One, I was just in the cafeteria
21 this morning and I read -- I haven't followed
22 this issue. But I read that irrigation water was
23 a cause of -- potential cause of the factor in
24 that E-coli (inaudible). And I was just thinking
25 that may affect the Department of Ag

1 consideration and the Department's consideration
2 of beneficial reuse. And their recent water
3 allocation regulations, they talk about an
4 environmental review process for the agricultural
5 registration.

6 And I'm just wondering if whether
7 the Department or the Department of Agriculture
8 would like to put that in the mix with respect to
9 beneficial reuse and the Ag certification.

10 Except I think it Secretary of
11 Agriculture Kuperus went out of his way, very
12 strenuously, to differentiate New Jersey's
13 produce from (inaudible). And I don't know that
14 the consumers of New Jersey would be comfortable
15 with beneficial reuse on fruit crops or animal
16 crops, which may be allowable under both the Ag
17 rules and the DEP rules. Just something to
18 contextualize. Things that happened outside the
19 rule have -- this room have a very significant
20 impact upon the best-laid plans. That would be
21 number one.

22 Number two. There's been recent
23 discussion of the Corzine administration economic
24 growth and development plan, whatever the
25 (inaudible), and there have been focal points in

1 the New York Times that reported that Corzine
2 cabinet members exercise their training and
3 experience of Wall Street and some of the their
4 academic credentials. And they were numeric
5 objective analysts.

6 So I thought, today, I would try to
7 focus my -- just a couple of facts from a couple
8 of studies that focused on the money question
9 because I think that's the 800 pound gorilla in
10 the room that nobody wants to talk about.

11 The difficult -- just some money
12 issues which were (inaudible) over in the state
13 house you might want to look at.

14 The Department's clean water needs
15 assessment estimates a \$12.8 billion capital need
16 for water quality compliance in New Jersey to
17 meet the goals of the Clean Water Act. \$12.8
18 billion is a big ticket. And I don't hear any
19 discussion of how these plans that are supposed
20 to implement the Clean Water Act include a fiscal
21 component or any kind of component that would
22 anywhere come near generating that fund.

23 I raised this issue last year before
24 the council. That was my first point that I felt
25 is incumbent upon us as professionals to talk

1 about the lack of resources. And our plans are
2 pure rhetoric in the absence of those resources.
3 So let's not all leave the room with any kind of
4 delusion that we're making progress until we can
5 come forward with the money to actually
6 accomplish the task that needs to be done.

7 The Department has identified those
8 needs, and they're broken down between either DEP
9 numbers submitted to EPA under the Clean Water
10 Act, \$3.2 billion to upgrade sewage treatment
11 plants and distribution systems, 4.9 billion for
12 combined sewer overflows, and 2.8 billion for
13 non-point source controls.

14 Another kind of backdrop fact that I
15 think that we have to talk about, we haven't
16 talked about today is the department just
17 submitted its 305 Water Quality Inventory report.
18 And under that report over a thousand state
19 waterways are not meeting the goals of the Clean
20 Water Act.

21 So, again, we're in a situation
22 where you've got this enormous capital need,
23 you've got this dismal failure to meet the water
24 quality objectives on the ground, and there's no
25 integration at all with either of those issues

1 and what we've been discussing today.

2 And the last point I'll make is --
3 and it has been touched upon -- is that 7 percent
4 of the jurisdiction does have its wastewater
5 planning designation, that's 7 of -- 13 of 193,
6 at least the numbers that were in the October
7 proposal, have up-to-date Wastewater Management
8 Plans which raises Larry's issue of compliance
9 and how that's enforced.

10 The department just came out with a
11 bold enforcement based proposal back in October.
12 And I'm just curious as to how the enforcement
13 issue is going to be navigated in the next
14 rulemaking round by New Jersey.

15 The prior proposal rescinded
16 wastewater designation and it rescinded -- and
17 forced the entities to come back. That was the
18 six base approach. I happen to like that. I
19 just don't think it was done procedurally in a
20 manner that would pass any legal muster and it
21 was done outside any consensus, outside any
22 public conversation, and it was just composed
23 from above from the commissioner's office. So I
24 don't believe that's the way to proceed.

25 But this idea that we have

1 (inaudible) noncompliant plans at the local level
2 and the state is looking the other way is a
3 serious problem. And it's an enforcement issue,
4 and I hope it's looked at as an enforcement
5 issue.

6 The last thing I would do is just
7 ask -- I don't have them with me. One moment.

8 This is from comments I submitted on
9 the October rule proposal. And I want to
10 reiterate the four questions I asked, because I
11 think it's key to addressing the myths that were
12 propagated by opponents of the rule in the
13 development community and in the wastewater
14 operator community and in the municipalities with
15 respect to impacts on local property tax payers.

16 First one is the question of bonds
17 and the impact on revocation of sewer service
18 areas and diminution of approved NJPDES permitted
19 treatment capacity. This program cannot be
20 credible if it does not deal affirmatively with
21 shrinking the wastewater management area and --
22 or excuse me -- the sewer service area. And I
23 wish Paul Pogorzelski was still here because I
24 think the town we're talking about he represents
25 is Hopewell. And they've been struggling with

1 that issue.

2 And there have been all sorts of
3 claims made. And those same claims were made the
4 last iteration about the effects on bonds that
5 had been issued to construct the sewer
6 infrastructure. And my understanding, in
7 grappling with this issue of what was described
8 as stranded investment in the context of my work
9 at the department in the early '90s, when we
10 imposed a moratorium and we terminated about 13
11 county incinerators and over a billion dollars of
12 bonds that had already been issued, construction,
13 constructural [sic] facilities, was that the
14 local finance board has a rule in approving the
15 budget of towns and authorities.

16 And that authority is statutory and
17 that authority dictates that the local finance
18 board, when they approve the budget, that they're
19 legally obligated to compel the collection of
20 revenue to service any debt that a local
21 authority or a local government had issued.

22 So these claims that reducing the
23 capacity of a sewage treatment plant upon some
24 financial plan has said we need to increase flows
25 to collect the revenue to service that debt I

1 think is a bogus argument. We fought the solid
2 waste demand, we're still struggling with that
3 industry.

4 But I want that issue addressed, and
5 I want it addressed through the Department of
6 Treasury, have an office of financial management,
7 the Bond council (inaudible), local finance
8 boards and private bond council to further the
9 authority. But get a legal opinion on that
10 question and don't let that be an impediment to
11 taking back excess sewer capacity that's in the
12 wrong place in the State of New Jersey.

13 Second question deals with the
14 effect of contract. And it was in your
15 presentation, Larry. I think you described it as
16 permitted flow. There are contractual issues
17 between authorities, townships and developers
18 that allocate flows through contract and money
19 exchanged hands. Okay.

20 Now, my understanding in dealing,
21 again, with this very precise issue in the solid
22 waste realm, and I think the wastewater realm is
23 the same issue, is that the statute and the
24 department regulations and plans trump any
25 private contractual matter.

1 I want that issue, if any developer
2 has a preexisting contract and your planning
3 powers would break that contract or cause harm to
4 somebody who ponied up some capacity reservation
5 money to a sewer authority, I want that issue
6 addressed. And not -- not like below the surface
7 through the political intervention that everybody
8 talks about, but affirmatively and transparently
9 with -- I want names of the contracting parties,
10 how much money was changed hands, and what the
11 legal regime is with respect to the relationship
12 between the contract and the plan and the
13 regulation.

14 Because, again, claims were made,
15 and they were made on the record and there are
16 transcripts of these claims, in the context of
17 the hearing up in Morris County on the October
18 proposal. And they were made by representatives
19 of the Rockefeller brothers with respect to their
20 investment that would conceivably be wiped out by
21 that rule proposal.

22 So these are big million, hundreds
23 of millions of dollars issued statewide. They
24 have to be dealt with. In a credible way that,
25 again -- somebody made the point about, there was

1 no way to rebut a claim that the
2 environmentalists were making versus the
3 development community. You have to have some
4 credible way to rebut those claims or else the
5 front office, which is Wall Street compliance
6 driven, you know where the political
7 intervention, you know who's going to win that
8 debate.

9 Three. Effects on rate and rate
10 payers. And bring in the board and get this
11 thing -- the Board of Public Utilities and get
12 this one ironed out. Because, again, there were
13 claims, I think over-inflated with respect to the
14 effects on rate payers and sewer and water rates.
15 You've got to have some kind of data and some
16 legal guidance that will allow you to examine
17 that question.

18 Because my understanding is that EPA
19 has regulations in place that describe how the
20 rates are set and that the EPA regulations
21 dictate. And there was litigation on that
22 question in Hopewell. And I didn't get directly
23 involved in it, but the outcome was that the
24 rates were struck down as illegal and in
25 violation of these federal requirements because

1 they weren't based on the actual cost of the
2 system. But they have all kinds of disparities
3 between users in the system. And there has to be
4 a uniform rate structure. So that issue, and get
5 that resolved, because you can't have people
6 coming in here and saying, it's going to double.

7 (Side 2A runs out.)
8 speculation, it's on the record and it's in a
9 regulatory document and it's been a submission of
10 the department to the EPA, and it talks about the
11 same question of, what are the impediments?

12 All the impediments, quote -- if
13 there's a quote from that 309 assessment
14 document, quote, All the impediments to meeting
15 the 309 programmatic objective that appeared in
16 the last 309 assessment and strategy remain,
17 these include lobbying efforts of special
18 interest groups. Who are these masked men? Make
19 them transparent to the public and make them
20 accountable and have, you know, at least some
21 (inaudible) governing. Thank you.

22 MS. GOODWIN: Peggy Snyder.

23 MS. SNYDER: Hi, my name is Peggy
24 Snyder. I'm a resident of Hopewell Township, but
25 I'm here speaking as a citizen of New Jersey.

1 I should probably qualify my
2 testimony by saying I've been involved in
3 municipal engineering for about the past seven
4 years and I'm currently working on a WMP update
5 for one of my clients.

6 I've been involved in WMP issues
7 since the late '90s when I helped found a
8 group -- a grassroots group that fought and
9 defeated a massive WMP amendment in Hopewell
10 Township. I've also been on the Hopewell
11 Township's Plan Board, and I've served on the
12 Township Wastewater Advisory Committee. So I
13 think I kind of have a broad perspective on the
14 issues. I've kind of sat on all sides of fence.

15 I only have a couple of comments and
16 suggestions. They all relate to ways that we can
17 maybe get towns and entities to come into
18 compliance to get their plans updated.

19 First, I agree wholeheartedly with
20 Julia Somers on mutual site specific WMP
21 amendments. I think by permitting the piecemeal
22 changes to plans we may be inadvertently
23 contributing to this compliance problem.

24 And, secondly -- Paul Pogorzelski
25 has left. But he brought up a very good point

1 about how successful some of the stormwater
2 regulations were when they first came out. But I
3 agree with everything he said with that. But I
4 think he should have gone a step further.

5 I remember when those regulations
6 came out, they were on everybody's radar screen
7 across the state. There were cross given by DEP
8 people, by non-DEP people. I attended a seminar
9 given by the Delaware River Authority. It was
10 really -- it was just a part of everybody's
11 mindset that this is what's happening, this is
12 what needs to be done. And I think -- especially
13 if those are significant changes in this rule
14 that's coming out in January 2007, I think you
15 need to give the same PR push to that and just
16 make it a part of people's thinking so that it's
17 on everybody's mind and everybody's talking about
18 it.

19 Another suggestion that I think -- I
20 think it's important to try to encourage --
21 provide encouragement and support to the town.
22 This might be a little too hard for the DEP to do
23 initially, but if the department could provide
24 written notification to towns when their plan
25 needs to be updated, and follow it up, and let

1 them know, we're here for you, this is what the
2 plan is, this is what we need to do -- I actually
3 got that idea from a letter that I had seen.
4 Apparently, the Office of Smart Growth sends out
5 letters like this when towns -- (inaudible)
6 designations. And I think to note that this
7 could be the little motivation that these towns
8 need to get through.

9 Another concern, people talked about
10 the cost. If any kind of financial help could be
11 made available, either through the department,
12 through the OSC, that certainly would go a long
13 way to get people into compliance.

14 And, finally, if a lot of these
15 positive techniques don't work to get the plans
16 into compliance, I think there should definitely
17 be some kind of an enforceable consequence.
18 Julia had talked about a moratorium on permits.
19 I don't know what at least the law enforceable
20 consequence would be, but I think one needs to be
21 placed out there to MS and the Municipal Land Use
22 Law requiring a town to do a re-examination every
23 six years.

24 What the MLUL also goes on to say
25 is, if they don't do that, then -- and I can

1 quote from it. It says, Failure to adopt a
2 re-examination within a six-year period shall
3 constitute a rebuttable presumption that the
4 municipal development regulations are no longer
5 reasonable.

6 Can the DEP come up with some kind
7 of a statement like that and have it put in the
8 rule? Just something that the -- something to
9 think about.

10 And, finally, as far as E.O. 109, I
11 think E.O. 109 is something that absolutely
12 should be incorporated in the rule. The
13 consumptive depletive analysis is something that
14 I think is really important. Water is the
15 biggest issue in the state. And that analysis,
16 along with other environmental analyses, I think
17 are very important.

18 Thank you.

19 MS. GOODWIN: Tony DiLodovico is
20 going to put on his other hat, the NAIOP hat.

21 MR. DiLODOVICO: I might as well say
22 good afternoon to everybody. I'll take off my
23 moderator --

24 Good morning. I'm Tony DiLodovico,
25 Principal Vice-president of Regulatory Affairs

1 for Schoor DePalma, and I'm here today
2 representing the New Jersey Chapter of the
3 National Association of Industrial and Office
4 Properties known as NJ-NAIOP.

5 As the leading commercial real
6 estate, land use, and economic development
7 resource in the state, NJ-NAIOP has an impact on
8 hundreds of thousands of people. NJ-NAIOP's
9 family includes over 525 members; there's 10,000
10 businesses that are their tenants, and more than
11 600,000 people who work in their buildings.

12 Commercial real estate creates jobs,
13 beginning with the construction workers and
14 continuing to everyone from the security guard to
15 the cleaning crew on the parking attendant.
16 They're all part of our extended family.

17 NJ-NAIOP members live in New Jersey.
18 We raise our families here. We are impacted on a
19 personal level by state government actions,
20 especially those that deal with environmental
21 protection and restrictions on land use. We want
22 to be sure that New Jersey's natural environment
23 remains protected while the economy stays strong
24 and competitive with other states because it
25 matters to us all.

1 Although we are pleased to provide
2 the Clean Water Council with our thoughts on the
3 Water Quality Management Plan rules, we are
4 somewhat disappointed that the council did not
5 include us, or, for that matter, any development
6 interests on its panel.

7 The planning rules, as we believe
8 they are presently contemplated, will have a
9 significant impact on the development community.
10 And the council really needs to understand that
11 fact if it is to properly inform the commissioner
12 on the impact of any proposed regulations.

13 We must also note that NJ-NAIOP was
14 not formally sent a notice of this hearing, and
15 if it were not for word of mouth, it would not
16 have known of the hearing. That being the case,
17 my testimony here will just address highlights of
18 NAIOP's concerns and more detailed comments will
19 be submitted. Instead of being submitted by
20 October 24th, it's my understanding is that they
21 have until the 31st now.

22 With regard to the overall Water
23 Quality Management Planning process the council
24 must remind the commissioner that the Water
25 Quality Management Planning Act was enacted in

1 1977, not yesterday, and that all of the
2 area-wide plans have been completed and adopted.
3 We do not have to invent a new program to comply
4 with a new piece of legislation.

5 The Act was enacted when the federal
6 government was doling out billions of dollars in
7 federal construction grant moneys to plan, design
8 and build wastewater treatment plants, as well as
9 providing grants to states to delegate the
10 Federal Clean Water Act Sections 201 and 208 to
11 the states. New Jersey had to enact this act to
12 be eligible to receive the funding to accept
13 delegation.

14 Since the passage of this act, the
15 State of New Jersey has enacted a plethora of
16 laws and regulations that address the various
17 provisions of the act. We have laws and
18 regulations addressing flood hazard areas,
19 freshwater wetlands, CAFRA, safe drinking water,
20 water allocation, solid waste, stormwater, soil
21 erosion control, et cetera.

22 There is no need to establish
23 redundant regulatory programs and requirements in
24 area-wide plans that address these same issues.
25 The area-wide plans need to reference these laws

1 and regulations and any other associated plans
2 that have or will result from the same.

3 In response to the question
4 regarding wastewater management plans, the
5 council needs to be aware that the Water Quality
6 Management Plan Act does not specifically require
7 Wastewater Management Planning. Furthermore, it
8 was DEP, the NJDEP, that invented the entire
9 Wastewater Management Plan concept and process to
10 continue the planning process that was
11 established through the federal 201 construction
12 grants process.

13 Wastewater Management Plans are
14 solely to ensure that the wastewater that is
15 generated from development in New Jersey is
16 properly treated before discharge into either
17 surface water or groundwater. The water quality
18 planning is to be done in the area-wide plan and
19 it is to be performed in conjunction with other
20 plans. It is not supposed to be the zoning or
21 land use plan for the municipalities in New
22 Jersey.

23 The area-wide plan is to identify
24 the various state and county regulatory programs
25 dealing with water quality and ensure that the

1 municipal plans that impact water quality are in
2 compliance with these programs. The Wastewater
3 Management Plan certainly cannot properly deal
4 with any other land use issues beside proper
5 wastewater treatment for the growth that will
6 occur from the other approved land use and zoning
7 plans.

8 Regarding the process and the fact
9 that the Wastewater Management Plan agencies have
10 not submitted updates, in the mid '90s the
11 department advised the agencies, the development
12 community, and those of us who prepare Wastewater
13 Management Plans and Wastewater Management Plan
14 amendments that it did not have sufficient staff
15 to review all of the Wastewater Management Plans,
16 a situation that still has not been corrected,
17 and that it wanted the counties to assemble all
18 of the Wastewater Management Plans in their
19 county and provide a single Wastewater Management
20 Plan for the entire county. In fact, the
21 department gave out grant moneys to various
22 counties to do this.

23 In 2000, the department proposed
24 watershed management plan regulations that did
25 away with the schedule, froze all existing

1 approved sewer service areas and would have
2 required substantial Wastewater Management Plan
3 amendments depending on project changes to the
4 frozen sewer service areas or adopted provisions
5 of watershed management plans.

6 To move the process along, the
7 governor at the time issued E.O. 109 to start the
8 various analyses that would be required by the
9 watershed planning rules prior to the adoption of
10 the rules. However, these watershed rules were
11 withdrawn and the new administration, in 2002,
12 abandoned the concept, but did not withdraw E.O.
13 109.

14 The existing requirement to update
15 Wastewater Management Plans was based upon the
16 fact that township master plans are supposed to
17 be updated every six years. If these plans
18 include zoning changes, then the Wastewater
19 Management Plans should be updated to reflect the
20 changes.

21 Unfortunately, by not withdrawing
22 E.O. 109, the department took the position that
23 if a Wastewater Management Plan agency submitted
24 an update, it had to address E.O. 109, and in
25 doing so, the local zoning. This made WMPs more

1 than WMPs and the entire process broke down. To
2 fix the process, the department should go back to
3 having Wastewater Management Plans merely deal
4 with ensuring that development, however else it's
5 planned, has proper wastewater treatment and that
6 the area-wide wastewater -- Water Quality
7 Management Plan be the vehicle to coordinate, as
8 well as in the land use plan in conjunction with
9 other state plans and regional and county plans.

10 With regard to consistency with the
11 State Plan, NJ-NAIOP has always been on the
12 record of endorsing the State Plan and following
13 the State Plan. We believe that one set of
14 requirements for the development community is the
15 easiest and most proper way for us to develop
16 plans for an economic growth in the state.

17 Personally, the enabling legislation
18 mandates that the State Plan be advisory and not
19 mandatory. A proper Wastewater Management Plan,
20 in and of itself, can only asses currently
21 approved zoning and estimate the wastewater flow
22 projections from that zoning for the next
23 20 years. Anything else will really not work
24 because obviously that's what treatment plans
25 need to plan on for the growth.

1 Once the State Plan is made
2 mandatory through either legislation or some
3 other process, it can then and only then be the
4 basis for Wastewater Management Plans. If the
5 department wants Wastewater Management Plans to
6 be consistent and integrated with the State Plan
7 there has to be a process that the State Plan is
8 the plan that's followed at the local level. The
9 cross acceptance process should be the vehicle to
10 coordinate and integrate the provisions of the
11 area-wide Water Quality Management Plan.

12 The issues of non-point source
13 pollution control, saltwater intrusion, water
14 supply planning and protection of environmentally
15 sensitive features are dealt with through other
16 regulatory programs.

17 The area-wide plans should be
18 updated to ensure that all current regulatory
19 programs and requirements are identified in the
20 plan and that local master plans, with respect to
21 water quality issues, are consistent with these
22 regulatory programs. It must be noted that the
23 Water Quality Management Planning Act also
24 requires that financing and costs be identified.
25 It's interesting how the department does not

1 identify these issues in its concerns.

2 With regard to E.O. 109, it should
3 have been withdrawn when the watershed management
4 planning rules were withdrawn and abandoned, and
5 new rules should have been established. We're
6 here today to figure out how to do that. The
7 analyses that are included in E.O. 109 need to be
8 somehow incorporated into the rules, but we
9 shouldn't be calling them E.O. 109 analysis and
10 taking them as a legislative mandate.

11 With that said, it is completely
12 improper to have Wastewater Management Plan
13 agencies address these issues in their WMPs.
14 These are global watershed issues that need to be
15 addressed in watershed management plans.

16 NJ-NAIOP looks forward to working
17 with the department and the council to find
18 balanced approaches to water management issues.
19 We hope that you will consider us as a resource
20 and that you will call upon us for input on these
21 other issues.

22 Thank you.

23 MS. GOODWIN: Lee Purcell.

24 MR. PURCELL: My name is Lee
25 Purcell, Lee Purcell Associates. We're

1 consulting engineers in New Jersey.

2 I want to address Larry Baier and
3 the department with the rules and regulations are
4 changing. I think you should consider everything
5 to simplify and streamline those rules and
6 regulations.

7 All morning we've sat here and
8 talked about many other rules and regulations of
9 other agencies within the state that bear on what
10 it is you are trying to incorporate within the
11 Wastewater Management Planning process.

12 I think internally a committee
13 should be established within the department that
14 would look at what you are attempting to impose
15 and just ensure that it is the simple definition
16 of Wastewater Management Planning. Which is, you
17 have a mass of land, you have an infrastructure,
18 you have a treatment facility, and how are you
19 going to deal with that properly and throughout
20 the state?

21 So I think that everyone that spoke
22 this morning about other agencies that do things
23 and have regulations should be thoroughly thought
24 out before your regulations are issued.

25 We're not a state where we need

1 punitive damages. I think the concept of a
2 moratorium in the State of New Jersey is totally
3 unacceptable. We represent a number of
4 authorities and municipalities and I do not think
5 that is a proper route for the regulations to
6 pursue.

7 Third, something that's very simple
8 that could be done, and it could be done by a
9 stroke of a pen at the highest level of the State
10 of New Jersey. There's a big issue about
11 phosphorus limits in our streams. If the State
12 of New Jersey, at its highest level, would say we
13 are going to not allow anymore phosphorus burning
14 fertilizers to be used within the State of New
15 Jersey, we would do a lot to reduce that
16 component of point source pollution. And I think
17 that would be a very simple thing to be done.

18 And while we're all debating what
19 ought to be done, let's (inaudible). And I'm
20 sure there are other issues like that that could
21 be addressed on a very high level of state
22 government.

23 Thank you.

24 MS. GOODWIN: Michael Wynne.

25 MR. WYNNE: I'm Michael Wynne. I'm

1 Executive Director of the Hanover Sewage
2 Authority. We're located in Morris County.

3 Some of the points that were made
4 today, I think they're all important, but I'm
5 just going to speak to a few of the questions
6 that were asked to be addressed.

7 The first was the WMP amendment
8 process. And it's obviously fallen far behind
9 where everyone would like it to be. And I think
10 we would -- we support the concept that it needs
11 to be tied to the zoning and the master plan
12 requirements (inaudible) of the towns.

13 In our case, we're little bit -- I
14 would say we're unique. There's a lot of
15 different circumstances people have. There are
16 WMP agencies that cover multiple towns, there's
17 WMP agencies that cover one town but part of it
18 isn't ever intended to be sewerred.

19 In our case, we were created to
20 sewer all of Hanover Township 50 years ago. And
21 that's been our mandate and we've been doing
22 planning to do that and most of the town is
23 presently sewerred.

24 From our perspective, the town is
25 largely developed. There are areas for -- there

1 were former industrial sites that are suitable
2 for redevelopment. There is very little
3 undeveloped land available for development today.

4 For us to update our Wastewater
5 Management Plan we would do that in accordance
6 with the town master plan update. Which the town
7 has been working on -- Hanover Township has been
8 working on for the past several years.

9 And I think the coordination there
10 is very important. Primarily because the town is
11 faced with issues that they more aware of than we
12 are. New COAH requirements they have to deal
13 with. And in the midst of this process the
14 Highlands Act was passed, we were in the planning
15 area, what effect that will have? So for us to
16 dive into the process, really we need an area to
17 focus on. Because if we focus on the master plan
18 the Highland rules would change that, the State
19 Plan would change that further. There are --
20 it's sort of a moving target.

21 The rule part to that, also besides
22 the major planning areas, Executive Order 109 I
23 believe was issued five governors ago. The
24 current governor could change it -- well, some of
25 the governors have been the same governor. But

1 the governor could change that tomorrow. And to
2 what extent do you want to have a local agency
3 spend -- we were looking at \$100,000, but I guess
4 we're on the low side -- to address something
5 that's made -- there isn't any rule that could
6 change overnight.

7 So from our perspective we would
8 feel it's important that the rules or the goals
9 needs to be defined and what you'll need to do to
10 meet that goal needs to be defined.

11 Our other concern is that in
12 (inaudible) a Wastewater Management Plan process
13 we grew out of the federal regulation, which was
14 to look at the zoning in your service area and
15 determine what is needed to provide service for
16 that to grow into a means (inaudible) other
17 rules, other issues. Not that those aren't
18 important.

19 Certainly non-point source pollution
20 is important. Protecting endangered species is
21 important. But to use the WMP amendment process
22 to drive that in reverse really is what has
23 slowed the approval process and slowed the
24 development process.

25 Certainly, in the years before there

1 were municipal stormwater permits, that was one
2 of the issues that was difficult for a wastewater
3 planning agency to address. We had to go to
4 municipalities that made up your service area and
5 convince them that it was necessary for them to
6 adopt an ordinance when there were no stormwater
7 rules. That's the straw that drags this process
8 out.

9 With regard to the scale and -- of
10 the Wastewater Management Plan, I think they're
11 better left with the agency to occur in doing
12 them. To move forward in a timely manner, I
13 think requires focused rules. But to go back and
14 say, we're going to start this process over again
15 on a county-wide basis or on a watershed basis
16 just will further drag out the development of
17 appropriate planning. Because the time necessary
18 to set up that mechanism would probably be years.
19 And the people who have only -- have the
20 experience and have all the background in this
21 will basically be out of the picture.

22 Consistency with the State Plan I
23 think is important. I think there is a concern
24 on a local level, particularly with the most
25 recent state planning maps that were issued or

1 supposedly were issued to resolve an impasse
2 between the Office of Smart Growth and the DEP
3 that the new maps contain new restrictions that
4 were not part of the cross acceptance process.

5 And we only learned of those because
6 the municipalities that we provide most of our
7 service to was notified by the town, and they
8 asked -- they showed us the maps. And they're
9 drastically different from the maps that we
10 proposed a year ago.

11 Some of the other issues that were
12 touched on were beneficial reuse. And we
13 certainly support beneficial reuse. We have
14 talked to various industrial uses in our service
15 area about possibly reusing effluent. I think
16 that our state has developed procedures to do
17 that. I think there needs to be significant
18 streamlining of how they're implemented and what
19 is required of the current regular general permit
20 provisions or permit provisions took place in
21 NJPDES permits are very cumbersome, and from our
22 view actually are so cumbersome that they
23 actually are an impediment to wastewater reuse
24 effluent. They're an impediment to reusing the
25 effluent. But, certainly, we would support the

1 reuse of effluent rather than using groundwater
2 or surface water that is more suitable for
3 potable purposes. But I think that whole process
4 needs to be streamlined so it's uses implement.

5 And there is an issue to get over,
6 specifically in this state, with the concept of
7 reuse effluent is betraying as raw sewage and
8 then there's a major total deal with someone's
9 public perception.

10 And certainly, lastly, with regard
11 to the Executive Order 109 requirements, those
12 requirements that are part of water quality
13 planning on a broad perspective should be
14 addressed as part of water quality planning and
15 not necessarily imposed in the Wastewater
16 Management Plan process.

17 Thank you.

18 MS. GOODWIN: I hope I get this name
19 right. I'm not clear on the handwriting. I
20 believe it's Bob Butufucco. Anybody even close
21 to that?

22 (No Response.)

23 MS. GOODWIN: All right, Jeff
24 Tittel.

25 MR. TITTEL: I'm Jeff Tittel,

1 Director, New Jersey PEER program. I'm here
2 representing our members. I'm also here because
3 I have a very long history in both water quality
4 and wastewater planning, including a 25-year
5 battle against sewers in a town called Ringwood
6 up in the Highlands.

7 And the reason I start off with that
8 issue is because for 25 years we fought to keep
9 our regional sewer lines of -- that went back to
10 the concept of having the Wanaque Valley
11 Regional Sewer Plant being built and sewerage all
12 the areas around the Wanaque Reservoir. And our
13 town, back in the 1950s, since we still have this
14 concept where mutual zoning pushes
15 infrastructure, we had a town that believed that
16 we should have more industry on the banks of the
17 Wanaque Reservoir to the north of it than the
18 rural valley.

19 And I am not joking. Because there
20 was actually an industrial area that was supposed
21 to be sewerage that was 9 square miles and had a
22 build-out analysis of 50 million square feet of
23 industry. That sewer plant was supposed to run 5
24 miles to help service that. And the town that
25 was going to be built next to it, under our PUD,

1 which is now where the Ringwood Mine Superfund
2 site is, in fact you look at the history of that,
3 the people there were going to be pushed out of
4 their homes for this redevelopment building this
5 whole new town by Ford Motor Company development
6 on. And after they could not develop that town,
7 they started dumping toxic waste in that area.
8 The point that I'm trying to get at is that we
9 still too much allow local zoning to be driving
10 our infrastructure.

11 Back in the 1980's, we fought sewers
12 again. They wanted to build 1,200 condos on the
13 mountains overlooking the Wannaque Reservoir.
14 And we fought them. It was a big cover piece.
15 We were the first town in the state, actually
16 under the old State Plan, to be considered a --
17 we were considered a conservation area under 1973
18 State Plan in a case called Countryside versus
19 Lynnwood. We won saying that the conservation
20 benefits of Ringwood far outweigh the needs of a
21 regional share of affordable housing.

22 Back in the mid '90s we fought the
23 whole issue all over again. Some of the same
24 players, same -- you know, major developer was a
25 former judge, is the biggest contributor to the

1 local Republicans and, you know, that kind of
2 stuff. We fought it all over again. And again,
3 because we had a package plant that was built in
4 our town in the 1980's that needed to be
5 upgraded. So instead of upgrading the plan,
6 let's go out and run sewers 3 miles and build
7 1,200 condos all over again.

8 That time we took it to referendum
9 and we won after being outspent 100,000 to maybe
10 6,000, 3,500 to a thousand. And the point that
11 I'm trying to get at, in all these battles, where
12 was the state?

13 The state wasn't on the side of the
14 Water Supply Commission, the people in the town
15 that fought the development, but they're on the
16 side of the developers and municipalities.

17 And so the point I wanted to kind of
18 get at is, as we look at the State Plan and we
19 look at water supply and wastewater planning in
20 New Jersey, they are directly interconnected,
21 they are not separate. That we're still having a
22 foundation based on sand with a house of straw.

23 When you look at the State Plan and
24 the connection to wastewater planning, almost all
25 of planning area two is based on these outdated

1 sewer service maps that go back to the mid '70s,
2 when we were going to build a huge regional plant
3 for the (inaudible). That never got built in any
4 case. So that became the growth area maps in the
5 State Plan. And we went through some very
6 interesting things later on during the 19 --
7 during -- in the last ten years. And I'll use
8 Oakland as an example. Oakland has no sewer
9 plant because the people there decided they
10 didn't want to spend the 12 or \$14 million to
11 build a regional plant with Ramsey and Mahwah.
12 So the plant never got built.

13 But we have a new sewer service
14 area, and on top of it, it's planning area one
15 even though the major stream in town, the Ramapo
16 River, draws 60 million gallons a day of water
17 supply from it. There is (inaudible) for Bergen
18 County.

19 The developer says, we want to build
20 here, there's no sewer plant. So they sue Wayne
21 to run a sewer line now four miles away into
22 Oakland, in the middle of the Highlands, one of
23 the large pictures they want to build was
24 actually when (inaudible) close to the Highland
25 high mountain and the mountain -- the famous

1 picture looking towards New York to try to build
2 238 units on the side of that mountain.

3 And I think they're going to win,
4 because after the court case and everything else,
5 they're going to get the sewer line. But they
6 had a Highlands address. Some of the other
7 little games that go on.

8 And the fact that I'm trying to get
9 at is that we don't have planning, but we also
10 don't have regulation. But the regulatory system
11 is broken as a planning system. And to say that
12 planning is what's been missing. No. It's been
13 strong regulations with strong standards and
14 keeping to those standards, but it's been a major
15 part of the problem that we haven't done that.

16 We mapped all these sewer service
17 areas and we built a lot of these plants. We did
18 not do the proper environmental analysis in the
19 first place. If we did, then why is virtually
20 every tree in the State of New Jersey that has a
21 sewer plant impaired with phosphorus?

22 It just shows you that we did not
23 follow the Clean Water Act when we built a lot of
24 these plants, we didn't do the proper
25 environmental analysis, or we didn't --

1 You know, when what you look at the
2 Passaic River, and I'll use that as an example
3 because, again, we want to talk about the water
4 supply and getting back to sewers. There are 72
5 discharges on the Passaic River above Little
6 Falls. Local conditions, the intake at Little
7 Falls, there's only about 72 million gal in flow.
8 It actually was a hundred million gallon gal in
9 flow, but 34 million was taken as the intake. Of
10 that gal in flow, that hundred million gallons
11 during low flow conditions is virtually all
12 discharge from upstream discharge. There's
13 virtually no water that's been (inaudible) out.

14 What happens is that, in the middle
15 of the summer, the nitrate levels in Passaic
16 River go up to 10 milligrams per liter nitrate.
17 Which is as high as the state drinking water
18 standard would allow for taking in water. Which
19 means, during low flow and drought conditions we
20 have a real water problem for drinking water
21 supply in North Eastern New Jersey.

22 What we talked about trying to bring
23 to the State Plan is the water quality planning.
24 We say that we want it to be consistent with the
25 State Plan. We need the State Plan to be

1 consistent with the State Plan, because it lacks
2 direction. There are contradictory policies
3 throughout the plan. What pumps what? What
4 becomes more important?

5 There is not a foundation in the
6 State Plan on either water supply or wastewater.
7 The only wastewater foundation is the old map for
8 the water quality planning area. But there's no
9 analysis done on the impact, the water supply,
10 development of those planning areas, and there's
11 no impact or analysis done on additional sewer
12 discharge.

13 I'll use an example of a center that
14 I love to mention. Layton, which is up in Sussex
15 County. Layton is (inaudible). It's a village.
16 How effective is it of a village, I don't know.
17 There's about 30 buildings, a general store that
18 has (inaudible) inside who mounts packs of
19 tobacco. You'd think you're in the Shenandoah
20 Valley. Because the fact (inaudible) which it's
21 on is surrounded by a national park, there's a
22 trout stream. There's every kind of endangered
23 species in the area. But, yet, it's a center and
24 yet it's supposed to get sewerred, but it's going
25 to drain -- it's an area that has endangered

1 species, it's a B-1 stream and it drains into the
2 national park. Something is wrong with that
3 picture. And that is a growth area. There is no
4 reason for that to be a growth area.

5 In fact, when you look at the
6 plan -- and I know Eileen heard this, so you can
7 kind of zone out for a minute -- there is no
8 differential because the plan is not hierarchical
9 to clean that center that's in the middle of
10 nowhere in Sussex County in a town like Hillside
11 where I grew up, which is an industrial town that
12 has a lot of ground fields and a lot of potential
13 for redevelopment. They have no reason to buy
14 into the State Plan. They're never going to come
15 in for plan endorsement because they don't see a
16 reason to. (Inaudible) because they want growth
17 out there.

18 So the question I have for Larry,
19 and for this process is, how do we not only take
20 the State Plan's procedures but maybe water
21 quality planning procedures. Because we only
22 have a finite availability of fresh potable water
23 in this state, we only have a finite availability
24 of assimilation capacity in our streams and
25 rivers.

1 And the question becomes, Who gets
2 to pollute? Who gets that growth? Is it going
3 to be Sanderson in the middle of nowhere that's
4 going to cause environmental degradation, or is
5 it going to be Hillside which has ground field
6 that has highways and railroads? Who's going to
7 get that capacity? We've seen cities sell off
8 their capacity for the suburbs, we've seen Jersey
9 City do it by selling six million gallons a day
10 of the water supply out into Morris County; we've
11 seen it with the City of Newark selling both
12 sewer and water capacity in the suburbs. Who's
13 going to get that? So if we allow that system to
14 take place --

15 And many of the areas where they're
16 selling it to are planning areas one and two. So
17 it's not like under a State Plan scenario. You
18 can't justify growth there. But the question is,
19 who gets the priority? Does the urban city get
20 the priority, or does a growing suburb get the
21 priority? Who gets the priority for what we do
22 with the wastewater? Do we go for a new high
23 tech plant that (inaudible) somewhere, or is it
24 going to go for a housing development and a golf
25 course? You never know. Who's going to get that

1 growth? And I think that's the part that's
2 missing.

3 In fact, you hear people talk about,
4 we need to do something about E.O. 109. Yeah.
5 We need to strengthen it, we need to put it into
6 the rule and broaden its impact. Because the
7 problem we have in this state, unlike Vermont or
8 Massachusetts or even New York, is we don't have
9 an overall environmental quality review. We can
10 departmentalize and piecemeal everything, but we
11 need to pull things together so that we could
12 look at things strategically, holistically, with
13 a foundation that's based on a true carrying
14 capacity based on natural resources, but also on
15 a capacity analysis that says where we want to
16 have the growth, where the growth is appropriate
17 that we free up the ability of infrastructure,
18 whether it's infrastructure dollars to deal with
19 CSOs or state sewer plants, but we free up that
20 capacity for those areas where it's appropriate.

21 My concern in time, speaking
22 directly to the State Plan, is since the State
23 Plan makes no distinction between Alpine, Short
24 Hills, Rumson, and East Orange, Orange,
25 Bloomfield, that that's the problem on sewer

1 (inaudible).

2 Another problem is the failure of
3 the State Plan to really look at water supply.
4 And I'll use Cape May just to talk about
5 saltwater intrusion. Right now saltwater is
6 moving up just a little bit of the -- Cape May
7 peninsula factors in the traffic on the Parkway
8 on a Sunday evening.

9 And the problem that we have is that
10 the growth areas in Cape May County, the major
11 center in Middletown and the planning areas three
12 and the other centers are right on top of the
13 aquifer regrowth. So the growth areas that we're
14 calling for in Cape May are also the aquifer
15 recharge. Then you wonder why you have saltwater
16 intrusion.

17 And, to me, these are the kinds of
18 things that have to be addressed. Whether it's
19 overdevelopment along the Barnegat Bay that is
20 causing depletive stream flows of all the streams
21 coming into the bay causing high levels of
22 saltwater and the dioxin levels to drop. There
23 is a connection between sewer service areas,
24 overpumping of aquifers and the impact between
25 both non-points compliant sources. In the case

1 of Barnegat Bay, we sent the point sources out to
2 the ocean to actually depleting stream flows
3 going into the bay as a process.

4 And I heard earlier people talk
5 about beneficial reuse. Sometimes it's
6 beneficial and sometimes it's not. If you use it
7 to allow for more development in an area, it has
8 (inaudible) things actually occur there you could
9 have other impacts that are in the negative.

10 If you use it in Cape May County, as
11 an example, so you could have more impervious
12 cover, guess what, you'll get less free charge
13 and you're going to end up creating more
14 saltwater intrusion even if you're doing
15 beneficial reuse because you're creating a
16 downward spiral by putting in too much impervious
17 cover because you're using beneficial reuse --
18 the so-called beneficial reuse.

19 And there's also issues of sewer
20 authorities that take effluent from Superfund
21 sites, hazardous sites through systems,
22 pharmaceuticals and also high level of nutrients.
23 Many of the states that do a lot of reuse for
24 irrigation, like California and Nevada, do not
25 take groundwater in the areas for drinking water.

1 They bring their water in from other sources.

2 If you look at the City of Los
3 Vegas, for example, where they do a lot of
4 irrigation with wastewater, but it's been
5 treated. Under the City of Las Vegas the
6 groundwater is at 20 milligrams per liter
7 nitrate. So, again, those nitrate -- those
8 nutrients -- someone had mentioned, taking out of
9 sewer plant discharge need to be putting them
10 into aquifers. And that's not a good place for
11 them to go.

12 But the point I'm just trying to
13 finish up with, the fact that we've got a lot of
14 work ahead of us. We need to try to think
15 differently than we have in the past. But, at
16 the same time, we also don't want to create a
17 whole new set of problems. You know, we've been
18 going through this process for so many years. I
19 mean, I feel like it goes with Groundhog Day,
20 because I don't how many times I stood up here
21 and said similar types of things over the past 10
22 or 12 years.

23 But the point that I wanted to end
24 up with is that we need to fix the process. And
25 in fixing it, we also don't want to make -- don't

1 want make the mistakes based on other mistakes in
2 the past. And that the water quality planning
3 rules need to be based on the Clean Water Act.
4 We can control that. And the concept of
5 protecting, enhancing and restoring our
6 waterways. And so, we need to really, I think,
7 shift how we look at both planning in the water
8 quality and water quality planning in the state.
9 Because we're not looking at it holistically and
10 we're not integrating all the different programs
11 together. This is an opportunity to do it. But
12 I think we need to go a lot further in how we do
13 it.

14 I just wanted to end with the old
15 joke about, is this glass half empty or half
16 full? But in New Jersey what's in the glass is
17 all, just like any waste, you don't want to drink
18 it.

19 MS. GOODWIN: This is the final
20 speaker, I believe. Unless there's anybody else
21 in the room, if you would like to, speak to Ray
22 Nichols in the back and get your name.

23 Dave Pringle.

24 MR. PRINGLE: My name is Dave
25 Pringle. I'm the Campaign Director for the New

1 Jersey Environmental Federation. We have 70,000
2 members and member groups throughout the state.
3 We are founded on the part of the national
4 organization Clean Water Action; we're founded in
5 1972, by the (inaudible). That's the original
6 Clean Water Act.

7 On listening to the hearing today I
8 was disappointed that too much of discussion has
9 ignored the fact that what we're talking about
10 here is the fundamental principles of the Clean
11 Water Act, we're talking lots about planning and
12 lots about development. We're talking
13 (inaudible).

14 In preparing for today, I became
15 disappointed the more I thought about what I
16 wanted to discuss. I hope that disappointment is
17 short-lived over the next few months, but time
18 will tell in terms of what kind of rule comes
19 out, if a rule comes out, and what kind of rule
20 comes out of this process. As Yogi Berra said,
21 it's deja vu all over again in, and (inaudible)
22 all over again in (inaudible).

23 May 1st of this year DEP reviewed
24 the biannual report on repaired waterways in the
25 state. 970 waterways in New Jersey fell within

1 Clean Water Act standards and (inaudible) to
2 support swimming and fishing. Many of these
3 waterways are critical to clean water supplies.

4 The vast majority of state waterways
5 are repaired for point and non-point source
6 pollution (inaudible). The vast majority of
7 these waterways are polluted through point and
8 non-point sources, primarily fecal coliform and
9 nutrients that are primarily from development
10 driven by both sewer and septic. It's a
11 (inaudible).

12 Why is it déjà vu all over again?
13 This is the fourth time in 15 years that we've
14 had this type of meeting and the rules
15 qualitatively haven't changed in those 15 years.

16 The Florio administration proposed a
17 rule, it never got off the ground. Midway
18 through the Whitman years, in the aftermath of
19 the failed attempt to gut the Clean Water Act at
20 the federal level, which is called the
21 (inaudible) water bill (inaudible), the Whitman
22 administration proposed that (inaudible) division
23 water reg.

24 Diane made a reference to them
25 because the environmental (inaudible) 365 million

1 gallons a day of additional sewage discharge. We
2 didn't make that up. DEP never contested it.
3 That figure came from Mark Smith, a memo that we
4 had from Mark Smith as chief of staff to the
5 commissioner at the time.

6 Now, we didn't say in that, 365
7 million gallons of additional pollution. We said
8 365 million gallons of additional pollution
9 without appropriate environmental review, called
10 anti-degradation. And that remains the case
11 today 10 years later.

12 As a two-year concentrated effort
13 when we should have been advancing environmental
14 protection the environmental community was
15 (inaudible) that effort. We succeeded in
16 continued (inaudible) waterways (inaudible) and
17 it would have occurred had the Whitman rules
18 moved forward.

19 Then the Whitman administration
20 tried again, a third attempt. This time the
21 rules was so flawed that they managed to
22 (inaudible) the united support of builders
23 (inaudible) that chemical industry, and the
24 environmental community all opposing the rule.
25 Albeit for different reasons, but nevertheless

1 the opposition is so great that a bipartisan
2 majority of the legislature took the
3 unprecedented step of getting five/sixths of the
4 way of detailing the rule by a governor.

5 And knowing that that rule would
6 have been vetoed had (inaudible) decided not to
7 embarrass the governor who was about to become
8 the state administrator by having the legislature
9 reject the environmental rule.

10 So now today, déjà vu all over
11 again, fourth time. Had a little more optimism
12 several months ago. The governor made strong
13 commitments to any -- the campaign to make sure
14 growth occurred within natural resource
15 constraints to upgrade sewer, septic and
16 stormwater rules in the October -- (inaudible).

17 I'm disappointed because in today's
18 hearing, the preparation for today, I don't see
19 those commitments reflected in the questions and
20 it appears that there's some backtracking. To
21 make matters worse, and this has been alluded to,
22 no progress apparently has been made in the last
23 four months.

24 These same questions were asked in
25 this room four months ago on June 21st. And a

1 PowerPoint, and that was from June, was identical
2 to the PowerPoint done today. We have to make
3 progress. And having the same discussion with
4 virtually the same people (inaudible) we had four
5 months ago is not progress. And because it's not
6 progress given the problems that we have it's a
7 step backwards, and we can't afford it.

8 And I know this is a Clean Water
9 Council hearing, not a DEP hearing, but we all
10 know that the DEP is the driver behind all of
11 this. And it doesn't make me feel confident that
12 we're moving in the right direction.

13 Further, that -- (inaudible)
14 competent on a hearing on one of the most
15 important aspects of the Clean Water Act, a panel
16 of 10 experts, including three engineers, two of
17 which represent this structure, one of which
18 represents two types of these structures, and was
19 complaining that one (inaudible) that the hearing
20 on the panel, three representatives of government
21 planning agencies, two private planners, and just
22 one water representative, one environmental
23 representative on a panel of ten supposed experts
24 on key components of the Clean Water Act. All of
25 those folks, don't get me wrong, have a very

1 valid point of view and need a seat at the table,
2 but I don't think it's very representative of
3 what's going on.

4 The questions that were asked today
5 that were asked four months ago suggested --
6 appeared to me to be a backtracking of the
7 commitment the governor made during the campaign.

8 I was assured at that time, and I'll
9 ask the same question now, that those positions
10 and those questions, especially around what was
11 going follow what, the State Plan or the Water
12 Quality Management Planning rules and what type
13 of gathering was going to be reflected in the
14 state planning and in the Water Quality
15 Management Planning rule. I was assured that we
16 shouldn't use too much input. That, in fact, was
17 just the thought process of the Division of
18 Watershed Management, not the thought process of
19 the governor or the commissioner. But here we
20 are four months later. And it gives me, at best,
21 (inaudible), that we can get a wasted opportunity
22 because we're having the same discussion that we
23 had four months ago and we could have had a more
24 informative session as the rules have moved
25 forward.

1 So as -- so DEP concludes, given
2 that with three months out and given an estimated
3 effort of these rules and the barriers of the
4 Administrative Procedures Act that, I mean it's
5 pessimistic that these rules come out on time, at
6 least in any kind of form that they need to if
7 they're going to meet the rigors of the Clean
8 Water Act.

9 All that said, I do want to provide
10 four brief comments on four of the questions that
11 I gave four months ago, but they got blew over
12 again. I'll do it again.

13 In terms of compliance, DEP should
14 do their job, enforce the Clean Water Act,
15 enforce water quality management planning rule.
16 DEP has --

17 Last year, the DEP proposed a rule
18 by the sewer service area. We opposed that
19 initiative because the notice was unfair and even
20 on (inaudible) it was so riddled with loopholes
21 that it wouldn't have affected water quality, it
22 would have written out critical parts of the
23 state. Sussex County and Cape May arguably are
24 the two most environmentally sensitive counties
25 in the state where the entirety of (inaudible)

1 rollback. DEP can do a moratorium and say no to
2 permits and say no to further development until
3 these plans are upgraded, and it should do that.

4 In terms of the State Plan and
5 question three. Now, should the Water Quality
6 Management Planning rule be consistent with the
7 State Plan? Hell no. Not at least and unless
8 and until the State Plan is fixed. The State
9 Plan is more water data. It is more (inaudible)
10 it was more recharge area, it was more upstream
11 of intake, it was more (inaudible), it was
12 (inaudible). All of the critical water quality
13 water supply criteria are not reflected in the
14 State Plan now. And, in fact, the State Plan has
15 been progress made as a result of the data
16 changes over the summer, the State Plan hasn't
17 gotten good, it's gotten less bad. Recognizing
18 critical habitat areas and a few other features.
19 But nothing that goes into implementing the Clean
20 Water Act should rely on anything that imposes
21 (inaudible) water data.

22 I was disappointed to hear Eileen
23 talk about how great the State Planning agency is
24 because it's predictable, transparent and
25 consistent. Notice the absence from that group

1 of adjectives? What's protected? It's not
2 protective of water quality certainly. It isn't
3 even included in water quality -- water quality
4 isn't even included in the State Plan. Not only
5 is it not protective because it's promoting
6 development, it's actually unprotective.

7 On (inaudible) in terms of
8 environmentally sensitive areas -- there's a
9 seventh question on environmentally sensitive
10 areas. Water quality management planning rules
11 simply (inaudible) are not water data.

12 And, finally, the fifth question on
13 saltwater intrusion. How should the state
14 address saltwater intrusion? How about through
15 its permitting and draining program just doing
16 the job that it's required to under the Federal
17 Clean Water Act, Water Quality Management
18 Planning rule, water quality standards.
19 (Inaudible). DEP has a host of programs that
20 could stop saltwater intrusions, just has to have
21 the political will to do so, and it has the legal
22 might to exercise it.

23 I hope my disappointment is
24 short-lived. I don't want to be pessimistic, but
25 I've seen three failed efforts in the last 15

1 years and the process of the last four months
2 hasn't instilled confidence in that.

3 The rigors of the Administrative
4 Procedures Act makes it -- you have to get it
5 right the first time or you have to go back to
6 square one. So I think you need to do much
7 better given the written -- given the failed
8 history of (inaudible) rules and given the rigors
9 of the Administrative Procedures Act, I hope
10 there's a better, more transparent process in the
11 next three months so we can get a good rule
12 proposed and hopefully adopted in 2007
13 (inaudible). Thank you.

14 MS. GOODWIN: Steve Rattner, our
15 final speaker.

16 MR. RATTNER: Thank you very much.
17 My name is Steve Rattner. Just to be on equal
18 basis with the panel, I got my AF from the County
19 College of Morris, a Bachelor's in Accounting
20 with honors from Fairleigh Dickinson University,
21 and an MBA from Seton Hall University in finance.
22 I'm just a Jersey boy and really believe in New
23 Jersey.

24 I'm also on the Morris County
25 Planning Board which I'm not representing. I'm

1 here amongst (inaudible) the Netcong Sewage
2 Authority which I am representing and I'm
3 Vice-president of the Township Council, Mount
4 Olive Township which I'm also representing.

5 And I think while we have the
6 opportunity -- I wasn't sure what this was going
7 to be. I heard improving water quality and
8 planning management, I heard a lot of basically
9 advertising from each person, department or place
10 of interest about the State Plan, and how we're
11 going to be able to make everything consistent
12 and that's how we're going to get clean water.

13 But I think right now while we have
14 the opportunity we can be AT&T 10 years ago or we
15 can be IBM. Both of them struggling, both of
16 them had a lot of failed philosophies,
17 implementation, and people wondered if they were
18 going to stay around.

19 AT&T just kept doing the top down,
20 trying to tell people what is right, not always
21 looking at the market, not always looking at the
22 finance; IBM went the other way, and said, what
23 is out there and what's the right way to do
24 planning. IBM is around today. Everybody knows
25 that AT&T is gone. The name is just being used.

1 But they went -- the largest corporation in the
2 country went out of business in 20 years.

3 What the issue is, from the point of
4 view of somebody who has to live under these
5 regulations, is the consistency. With the MSA,
6 back over two and a half years ago trying --
7 Mount Olive Township trying to keep up, our
8 wastewater management plan was expiring, we put
9 in our new permit or new information. I won't
10 say how long it took to get the response back,
11 but you don't count it in months.

12 We got back seven pages. Half of
13 them were grammatical additional information. We
14 responded within the time limit with the
15 corrections and the additional information they
16 wanted. First thing we got is a letter a couple
17 months later saying we didn't respond to
18 everything (inaudible). When we straightened
19 that out, we came back and we responded that
20 basically we just got information from the
21 Highlands and that the new permits are going to
22 require to have the Highlands master plan in
23 there. So we wrote back saying, for a town like
24 Mount Olive to send over \$100,000 to have to redo
25 it again, we weren't going to go forward.

1 Here we are trying to obey, trying
2 to do the right thing, and we just were basically
3 blocked out. That is really some of the issue.

4 We have Larry Baier, the
5 commissioner sends him out, he's the face that
6 puts on this. But if you go back, we have all
7 these different committees, we have all these
8 different groups, and if you ask them how many
9 people are reviewing plans and how many people
10 are in permitting, it's embarrassing. And that's
11 why the things just don't happen. Until we get
12 that we can have every rule in the book, but if
13 we don't have somebody review it to look at
14 endorsements, it's not going to mean anything.

15 (Audiotape ends.)

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1 C E R T I F I C A T E.

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7 I, MIRIAM RIOS (License No. XIO2031), a
8 Certified Shorthand Reporter and Notary Public of
9 the State of New Jersey, do hereby certify the
10 foregoing to be a true and accurate transcript of
11 my original stenographic notes taken at the time
12 and place hereinbefore set forth.

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 MIRIAM RIOS, CSR

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21 Dated: November 11, 2006

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