

Committee Meeting

of

ASSEMBLY JUDICIARY COMMITTEE AND ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE

*"Testimony from invited individuals concerning asbestos contamination
at the former W.R. Grace Zonolite plant in Hamilton Township, Mercer County"*

LOCATION: Committee Room 11
State House Annex
Trenton, New Jersey

DATE: May 10, 2005
11:00 a.m.

MEMBERS OF COMMITTEES PRESENT:

Assemblywoman Linda R. Greenstein, Chair
Assemblyman John F. McKeon, Chair
Assemblyman Patrick J. Diegnan Jr., Vice Chair
Assemblyman Michael J. Panter, Vice Chair
Assemblyman Peter J. Barnes Jr.
Assemblyman Robert M. Gordon
Assemblyman Reed Gusciora
Assemblyman Louis M. Manzo
Assemblyman Bill Baroni
Assemblyman Michael Patrick Carroll
Assemblyman Larry Chatzidakis



ALSO PRESENT:

Rafaela Garcia
Carrie Anne Calvo-Hahn
Office of Legislative Services
Committee Aides

Kay Henderson
David Eber
Assembly Majority
Committee Aides

Mary C. Beaumont
Thea M. Sheridan
Assembly Republican
Committee Aides

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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ASSEMBLYWOMAN LINDA R. GREENSTEIN (Chair):

Good morning, ladies and gentlemen.

Ten years ago, W.R. Grace ended a more than 40-year relationship with Hamilton Township, when it shuttered its Zonolite insulation plant on Industrial Drive.

For the people who work there, and the residents who lived in the shadow of the factory, the hope was that they would be able to simply move on to a new chapter in their lives. Sadly, that has not been the case. As we now know, much of the vermiculite ore processed in Hamilton was, in fact, contaminated with tremolite asbestos, the most dangerous form of asbestos.

For the people who worked at the plant, the families who lived, literally, under a cloud of vermiculite dust, and the children who played in the boxcars and ore piles on the factory grounds, the past 10 years have brought more questions than closure.

Without question, W.R. Grace processed contaminated ore in Hamilton Township, leaving tons of soil to be removed and countless lives in the balance. But for 10 years, residents and former workers have asked whether the asbestos contamination at the factory is the reason their loved ones have fallen ill or died, or whether their health is at risk.

Without question, the regulatory system that was meant to protect the community from dangerous asbestos instead allowed this pollution to fall through the cracks, and allowed W.R. Grace to leave New Jersey without having to pay a cent for remediation. But for 10 years, residents and former workers have asked whether their former neighbor

knowingly covered up the extent of asbestos contamination to free themselves of responsibility for cleanup.

And so here we are today, trying to get them an answer, finally. Today, this system and W.R. Grace's actions will come under our scrutiny, so Hamilton's residents will no longer have to live under a cloud of uncertainty.

And now I want to introduce my colleague John McKeon, the Chair of the Environmental Committee.

ASSEMBLYMAN JOHN F. McKEON (Chair): Thank you very much, Assemblywoman.

First and foremost, I would like to compliment you, Assemblywoman Greenstein, for the incredible investigatory work you've done thus far. You've really done much to enlighten myself, as well as the Committee, in bringing this issue to the forefront. And, again, I compliment you for that.

Simply put for all of it, there's been a horrific health hazard that has been visited not only on the workers, but the people of the community. And although this is limited at this point to Hamilton, this is really all one state, all one place -- and a horrible health hazard visited upon the citizens of New Jersey.

And the worst of that, of course, is that our own DEP, back in the early 1990s, signed off on it, as this company went off to perform its other work, or like, in other places. They left us with a mess to clean up. Something's wrong. Surely, the criminal courts have already been involved

with W.R. Grace and are looking into whether or not there was any actual criminal wrongdoing. We need to make certain this never happens again.

So with that, I very much look forward to these hearings. I compliment all of those members who are here for these special hearings.

My Environmental Committee, as I always take pride in saying, is a very hardworking bunch of individual public servants who meet many evenings, whether it be on Oyster Creek, the Highlands. But when you guys signed onto the Navy here, you didn't realize it was going to be such a hitch. So I respect all of you and thank you all very much.

With no further ado, I'll turn it back to the Chairwoman.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

I'd also like to announce that this is being transcribed and, I believe, recorded today. So everybody has to speak into those small microphones. We can only have a maximum of four people up there at any one time. I'd also like everybody to turn off your cell phones.

Thanks.

We're going to start the hearing by calling Mayor Glen Gilmore, from Hamilton.

Good morning, Mayor.

And, also, Kathy Fitzgerald, who--

Which title-- Give your full title.

KATHLEEN FITZGERALD: Director of Health.

ASSEMBLYWOMAN GREENSTEIN: Director of Health for the town.

Thank you.

Mayor, would you begin by providing us with some background on this case, how you first became involved?

M A Y O R G L E N D. G I L M O R E: Assemblywoman, I think you--

ASSEMBLYWOMAN GREENSTEIN: Make sure your microphone shows red, I believe. That means it's on.

MAYOR GILMORE: I think we're on.

Madam Chair, earlier this year I learned of the crisis at the former W.R. Grace factory when our newspapers called to the attention of everyone a real crisis -- a crisis of enormous magnitude, a crisis that will continue to affect the lives of thousands upon thousands of people for many years to come.

What we learned is that this factory -- W.R. Grace had closed in the mid-1990s. At the time when they closed, they provided a report that said, "There's no health hazard here." What we later learned is that there is a very, very serious health hazard there. And as we have begun -- and only really have just begun to examine what has taken place at this factory, what we have begun to learn is very troubling.

What we know is that for nearly half a century, hundreds of men and women worked at this factory, and worked with a substance that was known to be contaminated with asbestos. And what we also know, as well, is that the W.R. Grace corporation, at some point in time while those men and women were still working at the factory, became aware of the fact that the substance they were working with was literally killing them and yet continued to allow them to work with that substance.

What we've also later learned is that even the EPA, at some point in time in the mid-1980s, became aware of the hazard and did nothing to alert the workers, or nothing to alert the community. As we have tried to struggle with this, we have been very troubled by the lack of action by governmental agencies entrusted with protecting our community.

And certainly, the W.R. Grace corporation-- I know that they are now under Federal indictment, an indictment charging that they did know that they were exposing their workers to hazardous levels of asbestos. And we as a community, and I hope that we as a State, are now going to join in that effort to bring some justice to our community and to so many people who have been put at risk because of corporate greed and governmental inaction.

ASSEMBLYWOMAN GREENSTEIN: Mayor, how did you first learn of the situation there at that site?

MAYOR GILMORE: It literally was through a report in our local newspapers. What I have subsequently come to learn is that, in 2002, our local health officer was actually called to the scene, along with the health officer from Lawrence Township, and given a tour of the site by a representative of the EPA and also of State Health. And at that time, they informed the health officer -- who did not share that visit with our Health Director or with me -- but rather was told, "We're going to conduct a cleanup at this site. We'll let your community know if there's anything needed of your community." And that was the last contact that they had with anyone from the EPA concerning this site.

What we did discover though, as we became aware of this crisis-- I had asked to take a look to see if anyone had any sort of documents concerning this subject. What we discovered was that back in 2003, these two volumes were sent to our township library. They weren't sent to me, they weren't sent to our health officer. They were sent to the government records section of our local library and left there.

As we've asked for additional information, we noted a report that was generated about the same time our health officer was given a site inspection. And that report is from the EPA and dated 2002. Unlike this two-volume set, this is a pretty concise executive summary. And on the very first page, it notes that this is the action memorandum concerning the plant in Hamilton Township. And it notes that a -- that the EPA is going to conduct, essentially, a \$2 million "time-critical removal action at the W.R. Grace Zonolite Factory located in Hamilton Township." It goes on to talk about the threat to the workers and to the community.

There are 21 people CC'd on this report from the EPA. There is no one from Hamilton Township that was CC'd on that report from the EPA.

ASSEMBLYWOMAN GREENSTEIN: Mayor, what types of people are CC'd on that report? Like, where are they from?

MAYOR GILMORE: Well, Madam Chair, troublingly, I do note that it appears that more than one person from the New Jersey DEP were copied on this report. And I would be happy to provide you with a copy of this, as well.

ASSEMBLYWOMAN GREENSTEIN: Please.

Thank you.

I did want to ask you-- Your local health officer who did do the walk-around, you said, in 2002-- Would it have been-- First of all, what is that person's name?

MAYOR GILMORE: Jeff Plunkett.

ASSEMBLYWOMAN GREENSTEIN: And would it have been customary for that person to share it with you, or did that person have the impression this was not a major to-do?

MAYOR GILMORE: Mr. Plunkett has served as the health officer well before I came there, and someone who has substantial experience in the field. From the tour that he was given, and the discussion that he had with the EPA, they were very emphatic about the fact that the EPA was going to be handling this in conjunction with the State, and that the township would be notified of anything that was needed of us. And, certainly, I would hope that as a result of this hearing, and as a result of this crisis, that new procedures will be put into place.

I know that Councilman Dan Benson has introduced a resolution, through our Council, calling for such additional notification. I know that I've spoken to the DEP Commissioner, Brad Campbell, who has expressed his support to look into new ways of providing added notification when a community is confronted with a major health crisis, so that those who have been duly elected to represent the community are directly informed of that risk, and that added measures are taken so, at that particular site, any member of the public will be aware that a health hazard

exists by the presence of some sort of signage that will alert them to that fact.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

When did you first have occasion to visit the site?

MAYOR GILMORE: Immediately upon learning of the crisis over at the factory from the news reports that we saw on the subject-- I immediately went to the site to take a firsthand look at what might be there.

ASSEMBLYWOMAN GREENSTEIN: And what were your observations at that time?

MAYOR GILMORE: Well, again troublingly, when we went to the site, and went to the area that we were pretty confident was the area that supposedly still had tons of contaminated soil that needed to be removed, we saw no signs warning of it, we saw no fences blocking it. What we later learned was that the area where I had my aide and I drive is an area that really should be off-limits and now is off-limits. And I know at that time, I also had-- The manager of the plant came out as he saw us looking at the site.

ASSEMBLYWOMAN GREENSTEIN: Was that Mr. Mandarano, from the Accurate Documents?

MAYOR GILMORE: I don't believe that that was his name. I know that he is with us here today.

UNIDENTIFIED SPEAKER FROM AUDIENCE: That's the name.

MAYOR GILMORE: That is the name, I've just been told, from the gentleman who I spoke to at the time.

ASSEMBLYWOMAN GREENSTEIN: I was hoping I pronounced it right.

MAYOR GILMORE: Sorry about that.

But when I spoke to him, he told me that at that time, because of what he had learned also from the papers, he was providing respirators for his workers. But as he pointed out, it's kind of like putting a Band-Aid on a bullet wound, because one has to wonder, for the many years before, what might have occurred at the site.

ASSEMBLYWOMAN GREENSTEIN: So you're saying, Mayor, that as a result of the lack of notice to the proper officials -- yourself and others, including the person who was in that plant at that time -- people didn't know that they were supposed to take precautions.

MAYOR GILMORE: That's right.

And, Madam Chairwoman, one of the requests that I have made is that we provide screenings -- health screenings for our emergency responders. What we do know is that over the course of the many years that that plant is in operation, at a time in which they were using the asbestos-contaminated substances, there were numerous occasions, because of the character of the operations, that firefighters and other emergency responders had to go to the scene. They weren't wearing, on many occasions, respirators. But they were certainly in an environment that, at that time at the very least, was a hazardous environment. Some of them have come to me and expressed their concern. I've called upon just about

everyone I can think of to help provide the, sort of, health screenings that they'll need now and into the future to monitor what effects, if any, this has had on their health.

ASSEMBLYWOMAN GREENSTEIN: Now, Mayor, when this -- when you learned about this, you wanted to have, besides those screenings you just talked about, various other kinds of tests done. Did you make an appeal to the EPA or the DEP to do those tests? And were you turned down?

MAYOR GILMORE: Yes, Madam Chair. We had been given a day before the town meeting that took place -- that was hosted by the EPA and DEP -- an executive summary, which provided the same sort of information that was given the very next day at that public hearing.

During that briefing, I once called upon them to provide a fence that would keep people out of the area. At first, I was told, "Well, they've tried in the past, but people just knocked it down." I said, "Well, if you put some signage that says that this is a contaminated, hazardous site, your chances of having people not knock these down will be better." Then I was told, "Well, people just take these as souvenirs." Fortunately, they did respond to that request and put up a sign -- and multiple signs and a fence. And last time I looked, those were still in tact. Because even children who might go to the area, otherwise unsuspecting, hopefully are able to recognize when they see signage that indicates a warning.

So I'm hoping that, with this, we'll be able to put into place some actual formal procedures that will make sure that I don't have to request this, that as a matter of automatic procedure this will be done.

ASSEMBLYWOMAN GREENSTEIN: Now, Mayor, besides testing in the actual plant or right on the site, did you want to go out into the neighborhoods to do some kind of soil or other testing?

MAYOR GILMORE: Well, as we met during that briefing, I did ask that they undertake -- the EPA and the State undertake off-site testing. I do know that the U.S. Department of Health and Human Services, in a report that they prepared in March of this year-- They show a -- what appears to be, in essence, an aerial shot of the W.R. Grace building. And in their own report they show wind blown deposits of vermiculite. And you can see, kind of, a plume going away from the factory itself. So during that very first briefing that I had, I asked that soil testing be done, not simply on the site, but off-site, as well: in the parks, in the neighborhoods that surround this. I was told at the time that they first wanted to complete some wind modeling that would tell them, perhaps, what the direction of the wind might have been, leaving me to wonder-- I would guess that over a 40-year period or 50-year period, the wind is blowing in every direction. And I would hope and think that they can do a radius around this factory and do some random sampling that would add some piece of mind to my community and the surrounding community, as well, as to what might be in their neighborhoods.

ASSEMBLYWOMAN GREENSTEIN: Now, did you-- Did they agree to do that kind of testing or not, at that point?

MAYOR GILMORE: To my surprise, Madam Chair, they still have not agreed to do any off-site testing. I ordered-- To my amazement, I found out at the town meeting that they were not going to do off-site

testing, soil testing, at that time. I ordered that our health department undertake its own testing by bringing in a consultant who, I understand, is -- has been subpoenaed to testify here today, as well.

ASSEMBLYWOMAN GREENSTEIN: Actually, we didn't subpoena. We just sent letters requesting, today.

MAYOR GILMORE: Fortunately, only one of the sites that had been tested revealed any trace of asbestos. But what is disconcerting about that one site -- it's a residence in which the homeowner noted that he had taken vermiculite from the site, which apparently was a common practice during the height of the operations there and something that the factory allowed people to do, just as a supposedly kind thing to do in the community. Although in the process, they were allowing people to take a hazard into their yards and into their homes. He indicated that he had taken bags of this stuff and used it throughout his yard. Although we only discovered a trace of it -- less than what is considered to be a health hazard -- when we asked both the DEP and the EPA what action, if any, should be taken, we were told that they really couldn't provide us with any guidance at this time. When I asked if they would do additional testing, we were told that they're still exploring whether or not that should take place. I'm hoping that they're going to reach a decision soon, and I'm hoping that that decision will be to conduct further testing at that particular home, at the very least, because we know that vermiculite was brought into that home in large quantities.

ASSEMBLYWOMAN GREENSTEIN: Now, do you have the off-site soil sampling that the town ordered? What was the cost of that testing, and do you have the results of that?

MAYOR GILMORE: I'm told that the cost was approximately \$1,500 for that testing.

ASSEMBLYWOMAN GREENSTEIN: What was the result so far?

MAYOR GILMORE: Well, the result was only a trace of asbestos at one location, which was the home that I just spoke about. However, I can't pretend that, in Hamilton Township -- although we have a very dedicated health department -- I can't pretend that we have the level of expertise needed to gauge other than the way in which we've done it, which is a random testing, to undertake the magnitude of testing that should be done.

ASSEMBLYWOMAN GREENSTEIN: Have you had any contact with any governmental agencies concerning this crisis?

MAYOR GILMORE: Madam Chair, I have sent a letter -- actually on March 21 of this year -- both to the Honorable U.S. Attorney, Christopher Christie, and the Honorable New Jersey Attorney General, Peter Harvey, asking that they both undertake a criminal investigation of what took place here.

Troublingly, part of the information that we've heard, for example, from some former workers is that prior to OSHA inspections that were supposed to be unannounced, surprise inspections -- that the workers

have indicated that those so-called *surprise* visits were preceded by frantic cleaning at the factory site.

ASSEMBLYWOMAN GREENSTEIN: And that's even though the visits were supposed to be unannounced, is that right?

MAYOR GILMORE: That is. I'm also hoping that our State will join in bringing W.R. Grace to be held accountable for their actions here.

I know that for so many of the people who worked at this factory-- At the very least, we know that those people -- and there were hundreds -- were exposed to hazardous levels of asbestos. Asbestos and asbestosis -- the disease caused by exposure to asbestos -- can take approximately 30 years for someone to begin to develop the signs of asbestosis. And there is no cure for asbestosis. And when asbestosis, when it takes hold of a person, ultimately kills a person.

So for those individuals who worked at that factory, and even perhaps for their family members-- Because one of the things that we know about the asbestos fibers is that there are studies that show people who worked at a factory and went home with fibers on their clothes -- the spouses or other family members who may have done the wash were even exposed and, in some cases, died as a result of that exposure.

So I'm hoping that as a result of my reaching out to both our Attorney General and the U.S. District Attorney, the State of New Jersey, on behalf of the residents of Hamilton Township and on behalf of so many others who have been exposed as a result of this, will be able to hold

accountable people like the W.R. Grace company and all of its corporate executives.

If I might, as I was doing some added research this morning, I went on the Web and found an article that spoke about the outgoing CEO of W.R. Grace, who as he left his post in, I gather, March of 1995-- The former president and CEO of W.R. Grace was given a severance package of \$20 million in cash and stocks. Twenty million dollars would certainly help those families that are now going to have to pay for health screenings and pay for medical care. It will certainly -- I would hope -- help to do the additional testing that will let us know whether or not there is any other contamination in our community. I know it would go a long way in providing some examinations for our emergency responders who are left wondering what their health future might be.

ASSEMBLYWOMAN GREENSTEIN: Mayor, can you summarize what you think needs to be done now, what steps remain to be taken, and which agency or who would you like to see take those steps?

MAYOR GILMORE: Madam Chair, I'm falling on you and these two Committees for assistance in several ways.

I've noted the fact that I've already sent letters to our Attorney General and the U.S. Attorney, Chris Christie. I hope that these two Committees will add their voices to that request, calling for both criminal and civil charges against the W.R. Grace corporation and its corporate leaders, individually, for knowingly and recklessly putting at risk our entire community.

I'd also ask that an investigation be launched into how it is that one of the largest environmental firms in the country provides a report that says no health hazard at this site. At a site where, already, the EPA has taken out 9,000 tons of contaminated soil that had a 40 percent asbestos contamination. And they've told us that another 6,000 tons of soil still needs to be removed.

I'd also ask that we investigate how it is that the EPA apparently was aware as early as the mid-1980s of the risks posed to our community and did nothing about it to notify our community or those workers.

I'd also ask that the State establish new rules for community notification, to include posting of any contaminated sites and requirements that any contaminated sites have barriers put immediately, so that, until the cleanup takes place, there could be some measure of security knowing that children will not be playing on those sites or others may not be wandering on those sites.

I would also ask that additional off-site testing be conducted to determine whether or not there is any additional contamination within our community.

I'd also ask that the State make every effort to help us to track down all those men and women who were at the W.R. Grace Company during the time we knew that there was asbestos contamination there. Many of those workers may well not only have left our community, but may well have left our state. So while those in our area may read about what we're doing here, many others may have gone on to their retirement

only to learn that, later in their life, they're going to have a health problem that doctors, unless they're aware of the fact that there is some reason to suspect asbestos contamination, may give other explanations as to why it is they are slowly dying.

I should note that we in Hamilton Township have reached out to the CDC, and also to the State, to begin to reach out to the medical community in this area to make them aware of this risk, so that they don't overlook the possibility that what they're looking at may, in fact, be asbestos contamination.

I would also ask that the funding be found to provide health examinations for the emergency responders, for those who are also living in the area, as well as who are the many men and women who worked at that factory. And, certainly, for those who worked at that factory, I would hope that when outgoing corporate executives can get a \$20 million severance package that they weren't required to receive, that funding could somehow be found for the needs of those who provided those profits and may be dying as a result of that work.

ASSEMBLYWOMAN GREENSTEIN: Mayor, thank you for all those great suggestions.

Assemblyman.

ASSEMBLYMAN McKEON: Mayor, just very briefly-- I have no questions, just compliments. It's difficult enough, in today's day and age, to be the mayor of any community. But to be visited with this additional burden, we wish you the best. And we owe it to you -- where systems in the past allowed things to fall through the cracks -- to be there to

be supportive now. So the best to you. And we should and will stand behind you.

MAYOR GILMORE: Thank you, Chairman. I appreciate that.

ASSEMBLYMAN McKEON: I don't know if any other members of the Committee have questions.

I guess I'll go to the right first, and I'll turn it back to the Assemblywoman to pick up on the Judiciary Committee.

Assemblyman Manzo.

ASSEMBLYMAN MANZO: Mayor, you mentioned the fact that the report that the EPA issued did not get into the hands of any of the elected officials in your township. They didn't send a report to your health department or any other agency either?

MAYOR GILMORE: Not that I'm aware of and not that we've been able to locate. And as I note, this two-volume set, which was dated April 2003, was located in our governmental records. And when we asked the folks at the library how they got it, the best they could say is that, "We think we just got it with one of our regular shipments of governmental records." And they could not locate any sort of cover letter that was part of it which indicated any copy being provided to anyone else in the township.

And as I note, an earlier report here, which was provided by the EPA to 21 people, to include some DEP representatives -- that was not shared with our community either.

ASSEMBLYMAN MANZO: Thank you.

MAYOR GILMORE: Thank you.

ASSEMBLYMAN McKEON: Any other members of our Committee? (no response)

All right, Linda, I will let you--

ASSEMBLYMAN BARONI: Thank you, Madam Chairwoman and Mr. Chairman.

Mayor, a couple brief questions in two different categories.

First, focusing on something that I've somewhat been confused about in the process. And it strikes me, from your comments-- It strikes me that you, too, have been sort of puzzled by this.

In some of the earlier stories about this, one of-- The triggering mechanism is 9,000 tons of contaminated soil were trucked out of this facility. And you and I both live in Hamilton. We know that area. I mean, that's not a small amount of trucks rolling through that neighborhood. One of the questions that was earlier raised was, how could 9,000 tons of material have been trucked out of a facility without there being any communication with the township at all about that process?

Now, there's an earlier article where the EPA said that -- I'm quoting from the *Times* of Trenton. An EPA spokesman said, "Several township officials were notified before the work began. The spokesman yesterday clarified that certain departments were notified so permits could be received --" I assume received by the EPA -- "for a trailer on the cleanup site." No permits were ever filed?

MAYOR GILMORE: I would be happy to see a copy of the permits that they have, because as I've asked the engineering department, they've been unable to locate any such permits. I would certainly say that a

permit request for a trailer is a far cry from a -- forget the two-volume binder -- but is a far cry from a very concise action memorandum that says, "We have a time-critical removal action because of potential threats to the local population." That's easy to understand, by anyone, of the magnitude of what we're talking about here.

ASSEMBLYMAN BARONI: Does it strike you that the -- that they should have applied for permits from the township?

MAYOR GILMORE: I would certainly think so.

ASSEMBLYMAN BARONI: What permits would those be?

MAYOR GILMORE: I would think that, ordinarily, when you're removing this sort of amount of soil that is taking place-- I think, generally, the soil conservation -- that's a county-- I would just hope that they would be required, as a matter of it going into the future, to receive some sort of approval from the local community. From what I gather at this point in time, they had the latitude to come in and do that sort of removal without getting our approval to do so, which is what occurred here.

I would hope, as I ask for new rules to be put into place -- one of those rule would be to get some sort of a sign-off that provides consent for the action plan that has been put together here.

ASSEMBLYMAN BARONI: If they did, hypothetically, have a trailer on site, and they ran electricity to the trailer, it strikes me that that would violate, at some level, our municipal -- town municipal code.

MAYOR GILMORE: I understand that if they had any sort of electrical run, they would need to get some sort of electrical permit.

ASSEMBLYMAN BARONI: If they didn't do that -- which we assume, because there's no reason to believe that they did, because we have no evidence of it, as you said -- would they have violated municipal code?

MAYOR GILMORE: To be completely candid, I'm not sure if that is necessarily the case. Because, again, there are certain instances in which the State or Federal government may believe, based on other legislation, that they are, in some fashion, exempt from getting those sorts of permits.

ASSEMBLYMAN BARONI: I think it would be worth -- and I'm going to ask the EPA folks when they get up here -- about whether or not they believe they have some sort of an exemption. The average person in Hamilton Township who wants to do something to their home goes -- put new electricity in their home -- goes and gets a permit. But they're going to take 9,000 tons of contaminated soil, put up a trailer, run electricity to it, and think they're exempt from our municipal code--

The reason why I raised that is, I wonder whether it's worth the town looking into, as a matter of municipal court law, as to whether or not this was a violation of municipal court law. And could these -- could the entity that removed the material be liable under our municipal code -- under charges within Hamilton Township.

MAYOR GILMORE: Unfortunately, Assemblyman, if they were, you'd be looking, potentially, at a violation of a municipal ordinance. And I believe what we're dealing with here, in terms of a health risk, requires a far greater response.

ASSEMBLYMAN BARONI: Oh, I certainly agree with that. I certainly agree with that.

Let me move on to the second, Madam Chair, very briefly.

You had mentioned, Mayor, about a memorandum that had 21 officials notified. Could you tell me the date of the memo, again? I'm sorry, forgive me.

MAYOR GILMORE: Sure, that's actually dated-- Well, I see a date stamp on here of November 6, 2002. Let's see if there's any other date. It's actually signed by the Director of Emergency and Remedial Response Division of the U.S. EPA. And it's dated both by way of signature and stamp the sixth of November, 2002.

ASSEMBLYMAN BARONI: Can you-- I know you mentioned it before, that you'd provide it to the Committee. And we're grateful for that. And I'm sure the Chairs will provide it to all of us. But you said that there were members of the Department of Environmental Protection who were named on it, that received -- that were CC'd on -- received that document. I know you're going to provide that document.

But, Mayor, we're going to have the opportunity, in a few minutes, to ask questions to DEP. Can you share with us the people from DEP who are named on that document?

MAYOR GILMORE: They have, by way of carbon copy, an R. Van Fossen, NJDEP; and a J. Smolenski. They also have additionally noted someone from the New Jersey Department of Health Services, I guess this would be -- NJDHSS, a J. Pasqualo, as well.

ASSEMBLYMAN BARONI: Is there anyone else from any other governmental agencies? Has anyone from Mercer County received that document?

MAYOR GILMORE: There are other abbreviations, which I'm not aware of what they stand for. There is an NJSFB. Again, I'm not sure what that would stand for. And there are others which I suspect are Federal levels.

ASSEMBLYMAN BARONI: And finally, Mayor, on the issue of the two-volume report. I, like you, am troubled by the fact this would show up at our great township library. Is there a process-- Where would, normally, this kind of a document go? Would it come to the clerk's office, to your office?

MAYOR GILMORE: If something-- If it's a governmental record, it may well go just directly to our library. I would hope that a document of this sort would not just simply be mailed to anyone, but rather be preceded by a phone call saying, "Mayor, we'd like to meet with you and your health department to review a voluminous report that we have just completed." That was never done.

ASSEMBLYMAN BARONI: Would you join me in thinking that that was planned? It was purposeful not to trigger anyone's attention, to file it in the library with thousands of other books?

MAYOR GILMORE: I think it highly unusual and unconscionable not to have reached out to the mayor of the community to say, "Hey, you should be aware of this."

ASSEMBLYMAN BARONI: Thank you, Mayor.

MAYOR GILMORE: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Any other questions from anybody on the Committee? (no response)

Is Kathy going to say anything?

MAYOR GILMORE: No, Madam Chair -- but here to help in case the Committee had any additional questions she might have been able to answer.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

MAYOR GILMORE: Thank you, all.

ASSEMBLYWOMAN GREENSTEIN: Thank you very, very much. You gave very helpful testimony.

ASSEMBLYMAN McKEON: If I may, Madam Chairwoman, there are five individuals who have signed up to testify who are residents and, slash, former employees of W.R. Grace on that site. We're going to call all five of them together. I think one or two -- and I don't know you by name.

Denise McCall, Linda Ramos, James Moore, Gregory Rue, and Curt Williams. If our staff could help with one other seat-- And then you may have to pass at least one of the microphones over.

I'm going to ask you to identify yourselves as you begin.

I'm going to start with the gentleman to my left, and we'll go straight down the line.

And please say your name before you speak.

Is there a fifth person, who I called, who didn't come up to the podium?

And if you could put the buttons to red -- that way we can hear you. (referring to PA microphones)

What we'd ask, with the greatest of respect-- I know that many of you have been visited with a lifetime of hardship because of corporate irresponsibility on this site. Nonetheless, in light of a lot of the other individuals we want to get to, we'd ask you to limit your testimony. Try to keep it to a couple minutes. And that way, we'll get a flavor of what the community is feeling, and what some of the victims are feeling. But yet, we'll get to some of those probing questions we have for some of the officials that are lined up next.

So, with that greatest of respect and thanks to all of you, we can start.

Sir, if you'd state your name and--

C U R T I S N. W I L L I A M S: I first came in contact with W.R. Grace--

ASSEMBLYMAN McKEON: Can I have just your name again, sir?

MR. WILLIAMS: --when I went into the service.

Oh, Curtis N. Williams.

ASSEMBLYMAN McKEON: Welcome, Mr. Williams. Please proceed.

MR. WILLIAMS: And as I said, I first came in contact with W.R. Grace when I went into the service, because he was in the ship building business then. And the ship that we were transported to Germany in was the U.S.S. Greely. And it was so raggedy, everybody was wondering

if we'd make it. And that ship was destroyed in Germany. It never came back to America. So it just gives you an idea of what you're up against when you're up against W.R. Grace -- the type of person that you're working for.

I know, as far as asbestos is concerned-- I have this. As you see, I'm beginning to get short of breath, even now. But I'm considering myself fortunate, because I'm 76 years old. I worked for Grace for 32 years. And this thing hasn't really bothered me up until the last two years. But I've been diagnosed with it several years past, but it never affected me unless I was to run with somebody or something. But that I didn't do -- even now. Because of my condition, I walk slow and I do a lot of things to help myself. But I think I'm fortunate, because a lot of people have passed on that worked for W.R. Grace that don't even know what killed them.

ASSEMBLYMAN McKEON: Mr. Williams, have you been diagnosed with an asbestos-related disease?

MR. WILLIAMS: Yes.

ASSEMBLYMAN McKEON: Which is mesothelioma, cancer, respiratory-- If you can help us and let us know.

MR. WILLIAMS: Prostate cancer, bypass. I've had everything but sugar. And the last time the doctor said, "Well, you dodged that bullet." I said, "Well, I wished I had the sugar and didn't catch some of the other bullets." But this thing here, now, is to the point where I can't walk five steps without being short of breath. I can't go to the bathroom without being short of breath because of the asbestos. And that has been -- even claim at this point that it could be something else.

ASSEMBLYMAN McKEON: Sir, thank you for your courage in coming here to testify. We all wish you the best, and we all revere in your service to the United States military during World War II. God bless you.

Sir, could you state your name and--

G R E G O R Y R U E: Yes, my name is Gregory Rue. I was there, employed from '82 to '84. I was a truck driver. And anything you want to know -- how the material was loaded in the trailers. Sometimes it would get so thick outside in the rain it would be like pancake batter. So when you drove the rigs through to make your deliveries to the other towns and the other states, you would track the material through the streets of Hamilton Township, and you never really had any placards on the truck. And they never told us it was -- what do you call it -- contaminated or harmful to humans. There was never any packaging on the material that stated anything like that.

ASSEMBLYMAN McKEON: What years did you work there, sir?

MR. RUE: '82 through '84.

ASSEMBLYMAN McKEON: And the specific position was as a--

MR. RUE: Truck driver, tractor trailer.

ASSEMBLYMAN McKEON: Tractor trailer. And was there any protective equipment -- gloves, respirators, or alike -- that you--

MR. RUE: No, sir.

Then when we came back from the run, naturally the trailer was loaded with the vermiculite. And sometimes they'd wet it down through there to shovel the stuff off, out of the trailers, so the trailer wouldn't get too heavy for the next day's delivery. And it would just lay on the ground. And like I say, when it would rain it would just get like pancake batter. And you would just walk right through it with your shoes, your clothing. It was inside the truck. It was just all over the place.

ASSEMBLYMAN McKEON: This was the mid-'80s. Was there any-- Did you speak to anyone in authority relative to concerns? And what, if anything, happened?

MR. RUE: Well, there was nothing. No, there was nothing. Nobody ever even had a hint that it was harmful to humans. They never told you anything. You never asked, because it was the only union company in the State of New Jersey.

ASSEMBLYMAN McKEON: Thank you very much for your testimony.

Did you have anything, in addition, you'd like to add to that?

MR. RUE: Well, the only addition I'd like to add-- I watched a picture-- I told a couple of people it was on TV. It was a documentary called "Dust to Dust." And it was about Libby, Montana -- just the other day on the Comcast channel. And it shows that X-rays -- you could take X-rays, for I would guess, five to 10 years. And it didn't show anything on this one lady. And she took a CAT scan, and the CAT scan showed that it turned out to be pleural plaque, which is scarring of the lungs. And X-rays never showed anything. And she never worked there, she just lived in the

town of Libby, Montana. But it was a very good documentary for about, I'd say, an hour-and-a-half to two hours. And it just told you everything that went on there.

ASSEMBLYMAN McKEON: Thank you for that information. We're going to have some folks from the Department of Health answer some of our questions relative to the specifics of the types of health hazards that could occur. And, God forbid, that the people who just generally live in Hamilton, let alone the workers, suffer a similar fate. We hope that's not the case.

Thank you for your testimony, sir.

MR. RUE: You're welcome.

Ma'am.

D E N I S E M c C A L L: Yes, my name is Denise McCall. My husband Bobby McCall worked at W.R. Grace in the early '70s. He was diagnosed when he was 23 that he had asbestos.

They tried to cover up the X-rays -- where my father-in-law worked -- I mean walked through the office and overheard them discussing about his X-ray report -- that something showed up -- and that he needed to go in there and ask to see it. So when he did, that's when he came home and he told me that "Babe, the job is killing me." And I said, "What do you mean?" He said, "I was just diagnosed with asbestos."

I've been with my husband since I was 16. I've been married over 30 years. It hurts because they kept it under cover. He told me quite a few times they had to clean up the plant because someone was coming

through to check out the asbestos. And when they came, it would be a low percentage. The next day, everything would go back to normal.

So I wish you could hear us out. They can't speak for themselves or, either, the former workers that have gone on and the ones that are living. They're barely making it. So I'm asking you all to please listen to Mayor Gilmore, and the former workers, and the people out in Hamilton.

I've seen the stuff when it went airborne. I used to go out there to pick him up. It was blowing with the wind. They want to know what direction. It went every direction. You have people in Hamilton, back in the '70s and '80s wondering, "Why did I have respiratory problems?" Or some might have went on to have cancer. That's because they didn't know what was going on out there. And they were working-- And the neighborhood should not be in vain, from W.R. Grace's mistakes -- that they knew about it.

Thank you for listening.

ASSEMBLYMAN McKEON: Thank you for your courage in coming forward. And we'll all say a prayer for you.

Thank you.

Ma'am.

H E L E N M c C A L L: I'm Helen McCall.

ASSEMBLYMAN McKEON: Welcome.

MS. H. McCALL: I lost two people to W.R. Grace. That's my son. This is my husband. My husband worked there 37 years. And during that time, all of my family -- my children -- they cleaned W.R. Grace's

offices, and they were exposed. And we had to wash my husband's clothes when he would bring them home, because-- W.R. Grace, in the '80s, started bringing uniforms in. But my husband started working there in '57 -- 1957. From '57 up until the '80s, I washed his clothes once a week. And he was covered in all this stuff when he would come home.

So I gave birth to four children while he was working there. Now I'm going through all kinds of tests, because the doctor said I've been infected with asbestos -- due that my husband brought it home. I have to sleep in a machine over me at night to get my breath. So I'm going through all this stuff.

And I watched my husband and son deteriorate right before my eyes from W.R. Grace. And all the letters I can get from W.R. Grace -- they're telling me how they're going bankrupt. I don't want to hear anything like that. I need some answers why they let them work like this. Me and my husband had been married 51 years when he passed. We were together from -- when we were 15. And I hurt, I hurt. No one knows what I went through to watch them deteriorate.

Excuse me for crying, but I hurt -- to lose people like that for a company that knew what they were doing. They knew they had those men out there working with this.

So thank you for listening.

ASSEMBLYMAN McKEON: Thank you for speaking with us. We all, collectively, provide our deepest sympathies to you.

And the point being made, in the 1950s, maybe nobody knew exactly the issues from a health perspective. But at some point in time, and

certainly by 1992, they knew and still left us with that hazard on site. And we will get those answers.

And I thank you very, very much on behalf of all of us.

Ma'am.

L I N D A R A M O S: Hello, my name is Linda Ramos. I'm here on behalf of my husband Gerard Ramos.

ASSEMBLYMAN McKEON: Linda, move that closer -- Ms. Ramos, move that closer to you, please. (referring to PA microphones)

MS. RAMOS: He's not here, because he suffered a stroke in September of 2003, but he is living.

The reason I'm here is, the asbestos -- they knew about it. They didn't tell you. They did do testing back in the '70s. I have reports at home from '75, '76, '77, and '78, sending them for X-rays. They did have a chest X-ray. It came back normal. But, of course, chest X-rays will not show asbestos. You have to have a CAT scan done, or a pulmonary function test done.

Back in '89, '90, and '91, all the employees were sent by W.R. Grace to Helene Fuld Hospital to have a pulmonary function test done, to have a hearing test done, to have chest X-rays done. The reason they were told to go have these tests done was because -- to use respirators. My husband worked there from 1970 until 1995, when the company officially closed. They state on records of '94, but there were still people there doing some remaining things, closing up the plant. So it didn't officially close in '94 as stated.

The reason they were sent for these tests was to get an okay by a physician to use a respirator. They never, ever used respirators. The only thing they used were the little masks that you can buy at Home Depot. That's what they used.

They went for these tests to say-- Actually, what it does state here is-- It says, "The individual named above has undergone a physical examination, has been found medically qualified for a hazardous waste site. Second, undergone a physical examination, per OSHA -- qualified to use a respirator." How could you be qualified to use a respirator and to work at a hazardous waste site, when you've been diagnosed with asbestos in 1983? We were informed that he had it Christmas time. Nice Christmas present, isn't it?

My husband had the asbestos, he also has heart problems which, I believe, to work-- It has something to do with the asbestos. Because when you have asbestos, or you have a pulmonary lung disease, you can get polycythemia, which is a blood disease that is caused by a lack of oxygen to the blood, because of the constricting of airflow. He also had an aorta bypass, he's also had a pacemaker, and he's also suffered a stroke in 2003, in September. I'm not saying all the conditions are based on the asbestos, but I can think the asbestos is a contributing factor. And he is only 53 years old. And he was diagnosed with asbestos in 1983.

And also, as was W.R. Grace-- If you go into the computer and you look at their press releases, W.R. Grace gave \$100,000 to the tsunami fund. But they are still in bankruptcy, which the CEOs and all the officials -- from what I'm reading on the Internet is -- yes-- Bankruptcies like to see

them get incentives, bonus packages to keep the company going so that they don't go under while they're in bankruptcy. And, basically, if you commit a murder, you go to prison. But it seems like with companies, if you commit -- and produce products that will kill families, that is murder. Indirectly, it is murder. And I think they should be held liable, criminally -- definitely criminally, and somebody should pay for it.

Thank you.

ASSEMBLYMAN McKEON: Thank you, Ms. Ramos.

ASSEMBLYWOMAN GREENSTEIN: Thank you, all, for your compelling testimony.

I just had one question for Mr. Rue. You were around the plant itself, and in the plant itself on a daily basis?

MR. RUE: Yes, ma'am.

ASSEMBLYWOMAN GREENSTEIN: Does somebody have their lights on there? (referring to PA microphones)

ASSEMBLYMAN McKEON: You may borrow mine.

ASSEMBLYWOMAN GREENSTEIN: I think that is what I'm going to do.

ASSEMBLYMAN McKEON: But if you go too long, I take it back.

ASSEMBLYWOMAN GREENSTEIN: All right.

Tell me, what was a typical day like there? What type of equipment did they have there? And what was the general dust and other situation there?

MR. RUE: Well, when you first walked in there, the main big door, sometimes you would walk in there and there would be a lot of dust around. But most of the time, you couldn't see maybe 10 feet in front of you. That's how bad it was. And she's right, the workers did -- all they did was wear these little masks that you bought at Home Depot.

The trucks were lined up to the right side of the building. That's where they loaded the trucks, right there. In and out with the forklifts, just moving it all around, just completely dust all over the place-- When you backed under the trailer to pull the trailer out, which -- the excess dust fell, naturally, into the ground. The guy would come out with a shovel, just throw it in a bin or a bucket, and bring it back inside. You pulled the trailer out to the ground. Over here, to the right, there was a fenced in area. That's where you dropped all the trailers that were loaded, ready to go.

Now, also on that ground there, there was the asbestos, like I said. Now, when you walked over there to get your trailer, you had it all on your clothes, on your shoes, and everything like that there. You brought it inside the tractor. Now, you're inside the tractor most of the day until you get to your trip. You go drop a trailer, come back and pick up an empty trailer that has asbestos in it, and bring it back. Now, meanwhile, you have asbestos all over the wheels of the trailer.

ASSEMBLYWOMAN GREENSTEIN: Let me ask you, did you ever notice -- while you were there -- anything going on outside the plant in the way of burying asbestos, pushing it aside with shovels or other equipment, or machinery? Did you ever see any activities outside?

MR. RUE: No, the only heavy machinery they had there that I had seen -- because we were out in the yard a lot -- was the forklifts. And that was about-- Now, if they rented something or did something at night-- Now, they were open at nighttime. Sometimes they were open from 8:00 on to midnight and everything. They had extra shifts. Now, at nighttime they could have done something when we weren't around, because our time to work didn't start until like 6:00 -- you know, 5:00 in the morning. So between that time, they could have done whatever they wanted to do, because back on Industrial Drive, there's nobody there.

ASSEMBLYWOMAN GREENSTEIN: Right.

Does anyone have anything else you want to add?

MS. RAMOS: Just to give you an idea of what the particles looked like-- When the workers came home-- Originally, their uniforms were like what a gas station attendant uses: green pants, with a green thin shirt that said W.R. Grace on it. When they came home from work, for their clothes to be washed-- If you take angel hair, and you cut it up into little tiny pieces and poured it all over yourself-- This is what they came home with, this is what we washed. Later on, it was a white dust. It was in the cars. It was all over. And if you touched it, you would itch from it. But you had to touch it in order to put it in the washing machine.

I'm trying to think of anything else.

MS. D. McCALL: My husband was covered from head to toe. It would be so bad -- to where it was in his scalp, where I had to take a comb to lift it so I could wash it. I mean, it would be in his ears, all in his nose -- he cleans it. I mean, he was covered from head to toe in white dust.

MS. H. McCALL: I can help you with the cleaning. When OSHA would tell someone that they were coming out to check, they'd take a week and clean that plant. And they had a lot of sweeping and everything going on, sweeping that stuff out. This I do know -- that they would take a week off and clean that plant. And then when OSHA would come in, they didn't find anything, because someone would let them know that they were coming. And you want to ask me how I know -- because my husband didn't keep any secrets. And he would come home, he would say, "OSHA is coming, because we've got to clean the plant up."

ASSEMBLYWOMAN GREENSTEIN: Assemblyman Diegnan.

ASSEMBLYMAN DIEGNAN: Now that they're in bankruptcy, what are your medical benefits like? Are all of your-- Are you continued--

MS. D. McCALL: Well, I work for the State of New Jersey, so I have medical coverage.

ASSEMBLYMAN DIEGNAN: But those that do not have--

MS. H. McCALL: I'm on Medicare.

ASSEMBLYMAN DIEGNAN: So you do not have continuing benefits from the company.

MS. H. McCALL: No, they turned me off when my husband got sick. And after my husband died, they told me to get my own insurance.

ASSEMBLYMAN DIEGNAN: And all of your circumstances are similar?

MR. RUE: No, I have benefits through the union.

ASSEMBLYMAN DIEGNAN: Because you were a union employee.

MR. RUE: Yes.

ASSEMBLYMAN DIEGNAN: How about you, sir? What's--

MR. WILLIAMS: Just Medicare.

ASSEMBLYMAN DIEGNAN: Amazing.

How about your husband?

MS. RAMOS: I work for the State, so he's under my insurance.

ASSEMBLYMAN DIEGNAN: Okay, but if it was not for that--

MS. RAMOS: When W.R. Grace closed the plant, the medical benefits that were issued to the employees of W.R. Grace were through the 65 Security Plan. (phonetic spelling) It was through them that all the insurance was given. The dental plan was actually at the 65 Security Plan in Woodbridge, on Green Street.

In the paperwork, when the company was closing, you could keep the insurance for a period of time. As to this day, I don't believe that many employees still have insurance through W.R. Grace at the 65 Security Plan.

And also, the pension fund that was given to the employees by W.R. Grace-- Well, in the next few years, they are also going to be out of money. So the employees that worked for W.R. Grace that are entitled to a pension-- There is not going to be any money for them to collect as a pension, even though my husband worked there since 1970. I was told that

he would get, at 55 -- even though he is disabled -- he would get \$221 a month. But that may not even be available because of the bankruptcy.

MS. D. McCALL: Well, I received a letter from pension also that when my husband -- at the age of 55 -- he's supposed to be getting 200 and something dollars a month. So I called the pension and they sent me a letter that I would be getting \$42 a month when I become 55.

ASSEMBLYWOMAN GREENSTEIN: Assemblyman Gusciora.

ASSEMBLYMAN GUSCIORA: Thank you, Madam Chair.

It actually was a follow-up to the health benefits.

ASSEMBLYWOMAN GREENSTEIN: Assemblyman, I think this gentleman wanted to say something.

ASSEMBLYMAN GUSCIORA: I'm sorry.

MR. WILLIAMS: W.R. Grace -- I received a letter not too long ago about my pension being cut because there weren't enough funds for it. Now, I thought when that was first applied, that that was good for as long as you are. Evidently-- And they say there might be a cut further down the road for some reason or another.

MR. RUE: Excuse me. One more thing. I belong to a different local -- 701 was the trucker's local. Inside they had a different local. But what I'm saying is, if you went back-- And they would say, "Well, you have a problem." They say, "Well, now this is work related. Now, this comes under workman's compensation." They might be able to come back and say something like that. So they won't cover you, because they say, "Go to your employer." Now there's no employer to go to, only the insurance company.

ASSEMBLYMAN GUSCIORA: Thank you, Madam Chair.

This is, indeed, troubling. And I hope that our national government takes a lesson about privatization of pension plans.

But notwithstanding, after '92, did W.R. Grace, at any time, advise you of any health consequences from possible asbestos exposure or request any kind of medical examinations?

MS. H. McCALL: No.

MS. D. McCALL: No. My husband was diagnosed when he was 23 -- like I said, from them taking X-ray reports. He knew then that he had asbestos. And they couldn't understand why he was so young, and only worked there -- I believe then -- about three years -- he was diagnosed with it. Well, he was the mixer man. If you're sitting in front of something that's bad for your health -- you're mixing it or either you're in the trailer, you're inhaling it.

ASSEMBLYMAN GUSCIORA: Were there any medical personnel on the plant site at all?

MS. RAMOS: No.

MS. D. McCALL: No.

MS. H. McCALL: No.

MR. WILLIAMS: No.

MS. RAMOS: None at all.

ASSEMBLYMAN GUSCIORA: Thank you.

I think this is troubling for us, because not only -- outside of the environmental consequences -- obviously, there's going to be lasting health consequences. And I think the State of New Jersey is, probably,

ultimately going to get the bill for it. And this is one of the -- will be the profound, everlasting tragedy of this episode.

Madam Chair, I remember reading an article a couple of years ago about environmental racism and about corporate polluters putting plants in urban areas. And, particularly, this is one instance of a total disregard for the health consequences of the neighborhood and of the workers. And I applaud you for taking the leadership on this matter. And I hope we do follow through, because if there's one thing that government needs to do is to ensure that the health and safety of our citizens are protected.

Thank you.

ASSEMBLYWOMAN GREENSTEIN: Assemblyman.

ASSEMBLYMAN BARONI: Thank you, Madam Chair.

Mr. Rue, could you help me with a couple of questions? One of the things we're obviously trying to do here is investigate what Grace did. And it seems like everyone who comes up here and testifies -- it becomes apparent-- It's sort of a damning indictment of W.R. Grace and their behavior towards the people of my hometown.

But, Mr. Rue, maybe you could help me with some, sort of, fact questions on the issue of trucking and trucking the material. What point did you-- What was in the trucks you were driving? Physically, what was in it?

MR. RUE: You mean in the trailer or in the--

ASSEMBLYMAN BARONI: Yes, in the trailer. What were you driving?

MR. RUE: Well, I was driving an 18-wheeler.

ASSEMBLYMAN BARONI: No, no, I mean-

MR. RUE: Oh, inside the box of the trailer.

ASSEMBLYMAN BARONI: Yes.

MR. RUE: It was all vermiculite. It was all asbestos on the floor and everything from the previous loads that -- in the bags. And they unloaded it at the job site. And whatever was left was still left in the trailer.

ASSEMBLYMAN BARONI: Left in the trailer.

And then were you trucking material back out of the site?

MR. RUE: As far as-- What do you mean, dumping it somewhere or something like that?

ASSEMBLYMAN BARONI: Exactly.

MR. RUE: No. All our trailers were-- All our trailers that we took out from the factory were going to the job site. The job site unloaded it. Or you dropped the trailer and picked up the empty trailer, which was always empty -- and you had the dust that was left in there from maybe the day before or weeks before -- and brought that back. You never dumped anything anywhere. That much I can say.

ASSEMBLYMAN BARONI: Where did you go?

MR. RUE: Well, Atlantic City, New York, Delaware, West Jersey, up to the Exxon building up there around Phillipsburg -- up around there.

ASSEMBLYMAN BARONI: So these trucks that you were driving, carrying this material -- carrying, in some cases I imagine, empty material -- but dust -- asbestos-dust lined trucks-- Were they opened?

MR. RUE: No, they were all closed boxes.
One time, not very often, did they use an open flatbed -- very rarely.

ASSEMBLYMAN BARONI: And that decision was made by the plant.

MR. RUE: Right. Yes, sir.

ASSEMBLYMAN BARONI: And when you were driving this material around the state -- forgive me for not completely understanding -- were you carrying paperwork from the plant? You get stopped for any reason on the road-- You're on Route 31, you're going Northwest, you get stopped-- Did you carry any paperwork from the plant that says, "This is what I'm carrying?"

MR. RUE: No, the only thing you carried was your log book. That was it.

ASSEMBLYMAN BARONI: Okay. Was there any indication-- In the log book, was there any indication of what you were carrying?

MR. RUE: No, that's just the hours you worked, on the road, off, everything. That's all.

ASSEMBLYMAN BARONI: So if a State Trooper were to have pulled you over at any point and said, "Hey, what do you have in the back," you'd tell them, obviously -- not you, but the plant-- W.R. Grace, at no point, had paperwork saying this is what this is.

MR. RUE: Right.

ASSEMBLYMAN BARONI: Shame.

Mr. Rue, thank you. You've been very helpful.

The point is-- What we now know is this is not just trucks that were going around my hometown, our hometown, this was driving across the State of New Jersey -- from what you've just established.

MR. RUE: Yes, sir.

ASSEMBLYMAN BARONI: Chairman McKeon, as you had said in your opening remarks, this is not just an issue that affects the good people of my hometown, it's an issue that affects everybody in the State of New Jersey.

Mr. Rue, thank you very much.

MR. RUE: You're welcome.

ASSEMBLYWOMAN GREENSTEIN: Yes, Assemblyman.

ASSEMBLYMAN MANZO: You said after the plant closed-- Was there any workers still involved in the shutdown process, the cleaning up of the plant?

MS. RAMOS: There were some workers. One of them was my husband, and one of them was Jim Kelly (phonetic spelling). And Jim Kelly is now living in Georgia. And he does have asbestos also, and he's also had one lung removed.

ASSEMBLYMAN MANZO: Do you know for how long a period they were working after the closure of the plant?

MS. RAMOS: Off hand, I'm not sure. I'd have to look at my tax records, because he was still being paid. It would either be '95 or '96.

MS. H. McCALL: Kelly went to work with my husband, so both of them had 37 years. James Kelly, who she spoke of-- He had 37 years, too. They went to work the same day there.

MS. RAMOS: This plant wasn't much publicized. One time, I was working downtown and a police officer-- I was walking by, and I heard a radio go off, and it said W.R. Grace. So I asked the officer, "What's going on with W.R. Grace? That's where my husband worked." I had to give the police officer directions to give to another police officer to find W.R. Grace, because they had no idea where W.R. Grace was. So it was very quiet, very discrete.

And I don't know why OSHA never did anything. And the Right to Know law went into law in 1985. So Grace didn't have to give anybody anything saying -- with the truckers -- that there were hazardous materials, because Right to Know didn't go into effect until 1985.

MS. H. McCALL: W.R. Grace's name changed. It was originally Zonolite. That's what-- When my husband went to work there, the original name was Zonolite, and then Zonolite changed into W.R. Grace.

ASSEMBLYWOMAN GREENSTEIN: It was Zonolite from 1948 to 1963.

MS. H. McCALL: Yes.

ASSEMBLYWOMAN GREENSTEIN: And then it was W.R. Grace from '63 to '94.

MS. H. McCALL: Yes.

ASSEMBLYWOMAN GREENSTEIN: Does anyone else have any other questions for these folks?

ASSEMBLYMAN PANTER: My light isn't working either. (referring to PA microphones) I'll try to speak--

Oh, thank you, Bob.

I just wanted to make a comment, really, more than anything. And that is to say -- and I know I echo the thoughts of many of our Committee members up here today -- we certainly thank you for coming forward. I know this is a difficult topic for you and, certainly, something that you've been living with and your families have been affected with for years.

And I just want to say that on behalf of myself -- and I know that others share this thought -- I think that this Committee really has a few very specific responsibilities to you today, as we continue to look into this problem. One is, certainly, to make sure that victims -- whether they're current victims or those who may suffer in the future as a result of being exposed to this asbestos -- are able to take advantage of any resource that our State government has, in terms of providing for them and making sure that their families are as well taken care of as we can do.

We also need to look at accountability. And I think we're going to ask many of our pointed questions today of the representatives from W.R. Grace and also of our own State government. Because the one glaring issue that I see here today is not just what occurred, but that our State government let it occur.

I think that, although we still need to hear from more witnesses, I will certainly be willing -- and I'm sure many of my colleagues up here on the panel will agree -- to sponsor legislation to make sure that not just local officials -- as we heard from Glen Gilmore -- but that employees of companies like W.R. Grace and the residents who live in these

communities are aware of any health hazards and any issues as quickly as our government might be. Because, clearly, there was a breakdown in communication here, and you were not given the information that you and your families needed to make intelligent choices about these dangers.

And I think the second thing is that the process, through the Department of Environmental Protection in New Jersey and the EPA on the Federal level, failed you, as well. Because what we essentially have is a State department, through what may be a flawed process, getting a clean bill of health from the company -- years before the company closed -- taking that at face value, and giving them a clean bill of health in return. So you had no way to know of these dangers. And not until media accounts arose a decade later did our government wake up and smell the coffee, and start alerting the people to the dangers that you were facing.

So I applaud you for your courage. I assure you, from my perspective and from the Committee's perspective, that if there are solutions, so to speak, to make sure there is accountability -- and to make sure that we don't go down this track so that others suffer in the way that you and your families have suffered -- we certainly promise that to you.

So thank you very much for coming here today.

MS. D. McCALL: Thank you.

MS. H. McCALL: Thank you.

ASSEMBLYWOMAN GREENSTEIN: I just want to ask one last thing of all of you -- just very, very quick, quick answer.

Did you say, Ms. McCall, that-- Your husband came home and said, "I've been exposed to asbestos." But did the plant -- did anyone at the

plant, any of the officials ever tell you, at any particular stage, that you were being exposed to asbestos?

MS. D. McCALL: No, I educated myself on the Internet, where learning more about the asbestos exposure-- I washed his clothes for 30 years, so there's a strong possibility I might be affected, or my children may be affected -- which are grown now, out of high school and college -- possibility they might be affected, because they were around him. He even took them out to the plant, not knowing that--

You know, he's working hard to support his family, not knowing that it's killing him and might affect his family at the same time.

ASSEMBLYWOMAN GREENSTEIN: No one ever told him, you never received official letters, no notification.

MS. D. McCALL: No.

ASSEMBLYWOMAN GREENSTEIN: None of you -- that there was asbestos--

MS. RAMOS: No, the only notice I got--

ASSEMBLYWOMAN GREENSTEIN: --at any point.

MS. H. McCALL: We went to court with W.R. Grace in 1983. They told my husband that he had 29 percent of asbestos, because he had sued them for his health. And they knew in 1983 that my husband was diagnosed with 29 percent asbestos. They knew this.

ASSEMBLYWOMAN GREENSTEIN: But no official notifications.

MS. H. McCALL: No.

MR. RUE: No, the only thing they told us was, it was a fireproofing material. That was it. Nothing else.

ASSEMBLYWOMAN GREENSTEIN: Okay.

Thank you, all, for sharing your stories with us. Our hearts go out to you. Our prayers are with you. And we'll try to meet our responsibilities to do whatever we can.

MS. D. McCALL: Thank you.

MR. RUE: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Next, we're going to call Anthony Marchetta, from W.R. Grace.

And is anyone else here, sir, besides yourself, from the Company?

A N T H O N Y J. M A R C H E T T A, E S Q.: No.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

ASSEMBLYMAN McKEON: Madam Chairperson, if I might, I don't know how the Chairperson feels, or the rest of the Committee--

Has the rest of the Committee gotten the statement?

MS. GARCIA (Committee Aide): We're distributing it now.

ASSEMBLYMAN McKEON: Okay.

I mean, it's my understanding that this witness, who -- I'm not killing the messenger -- is Counsel for W.R. Grace -- he's going to read a five-page statement with us -- to us -- that, to me, does nothing other than to try to sidestep the issue and basically says that, "I can't answer any of your questions, because there's an indictment." So what are we wasting our time for? If you read the statement, they talk about trying to make a-

They say they won't answer any questions, but try to make a distinction between a 40 percent mix of the asbestos, versus 2 percent. It's like saying, "I'm only slightly pregnant." I mean, what's the difference? That's over the -- what's permitted under the law.

So I don't know if anybody wants to hear him just read the statement.

ASSEMBLYMAN GUSCIORA: I agree that we don't need to have the statement. But I'm more concerned about the former workers' health benefits. And I was wondering if he has a comment on whether W.R. Grace should feel responsible for taking care of their health benefits or their health needs from here on in.

Is there a moral obligation?

MR. MARCHETTA: I can't address a moral obligation. What I can address is the fact that, as you know--

ASSEMBLYWOMAN GREENSTEIN: Press your-- Sir, can you press your button? (referring to PA microphones)

MR. MARCHETTA: I'm sorry.

What I started to say was, I can't address the moral obligation. What I can address is the fact that the company is in Chapter 11, and the company is concerned about the environmental, as well as the health, issues. It is doing, and will do, everything it can, in the context of its bankruptcy, to meet its obligations.

ASSEMBLYMAN GUSCIORA: Well, I hope you go back and tell your chair that he should feel some concern for these workers. It's absolutely disgusting that they would come before us, tell us their stories.

And I'm sure that this is just the tip of the iceberg. But to have a corporation such as W.R. Grace have an absolute disregard for their well-being, not even bother to contact them-- That speaks volumes about the moral and the corporate responsibility of this company.

ASSEMBLYMAN BARNES: Madam Chair.

ASSEMBLYWOMAN GREENSTEIN: Yes.

ASSEMBLYMAN BARNES: I recognize you're the attorney for the company, and you didn't have anything to do, I assume, with the overall responsibility on the part of W.R. Grace.

But from a personal point of view, prior to my getting involved in politics, I had my own consulting firm when I retired from the F.B.I. And I conducted -- personally conducted, I would say -- over 200 investigations in connection with individuals who worked in factories that handled asbestos. And the basis of the inquiry that I was making was that this information -- and I think it's pretty well-known in the public -- that the asbestos industry recognized that this was a health hazard many years ago. And if my memory is correct, there was a study done by a Canadian company that dealt with asbestos that recognized -- and it was in the late 1930s -- and it recognized that asbestos was injurious to a person's health, and it did cause asbestosis, and lung cancer, and all the other bad things that happen. And they suppressed that in that investigation. And the information was found in a home in Connecticut. The study was found in a home in Connecticut, where a person that worked with the asbestos -- the company, and moved to Connecticut-- When he passed on, his family made known this report. And that is based on the investigations that I

conducted personally. And a couple of times it took a dying declaration from an individual dying in a hospital from lung cancer -- where he worked in a factory and soaked this stuff up.

And the basis of the lawsuits that were brought to bear was that report -- that the asbestos industry knew. They suppressed the investigation. And it came to light in about -- I think it was the 1970s. And then, finally, this whole thing mushroomed, and there were asbestos cases all over the United States. It became so much now that they're trying to correlate all these people who were injured.

And I know you didn't have anything to do with it, but it just-- You were the person who represented, in a tangential way. And I thought that it was very important for the Committee and the general public to realize that the basis of these lawsuits -- that this is a lot of the reason why W.R. Grace, and Johns Manville, and a whole bunch of other companies went out of business, because they knew. It's the old story about Nixon, when did he know, and what did he know, and he knew it. And those folks, they knew it a long time ago, and they suppressed it.

And a lot of people died and have terrible health conditions because of the lack of information in the general public, brought about by the very company that you're protecting, representing. And I recognize you're just the attorney for the company, and I'm sure that you're just as sympathetic to these people as anyone else. But you happen to be the whipping boy, probably, in this, because it was a little more to the point that W.R. Grace -- someone has a lot to atone for.

And when somebody takes \$22 million at that factory, and these poor folks don't even have health coverage-- Boy, I tell you, it really goes to the heart of the matter. That's one of the reasons why these investigations are important, particularly to help the ones that need the help, and nobody else is helping them.

Thank you.

ASSEMBLYWOMAN GREENSTEIN: I'd actually like to ask you a couple of questions. I'm not sure what you can answer and what you can't.

In the procedure that went on in 1994, upon the closing of the plant, how did ERM get its information? Did it do a completely independent study, or was it provided with this information by Grace?

MR. MARCHETTA: I think it was a combination of the two, Madam Chairwoman.

We have given the Committee the copy ISRA report prepared by ERM, and also some of the documents from the EPA involving the soil removal issue. But as to ERM-- ERM compiled certain data from the company, and then visited the site and did some of its own investigations. And that's all documented in the ISRA report.

ASSEMBLYWOMAN GREENSTEIN: But ERM did not do its own soil tests. Is that right?

MR. MARCHETTA: I don't know if they did soil testing or not.

ASSEMBLYWOMAN GREENSTEIN: From the reports, I don't think that they did.

MR. MARCHETTA: I didn't see anything in the report, but I can't say whether they did the soil testing or not. Everything's noted in the report.

ASSEMBLYWOMAN GREENSTEIN: But the process that would have taken place at that time would have involved discussions between some of your company representatives and ERM to put this together.

MR. MARCHETTA: I have no doubt of that. I'm sure there were discussions between the two. And some of the information-- For instance, the information on the history of the plant, the various operations of the plant, the information on the material data safety sheets, the material used at the plants-- All that information, of course, had to come from the company. And it's documented in the report. A bunch of it did come from the company reports.

ASSEMBLYWOMAN GREENSTEIN: Would the company -- or did the company, anywhere in that 1994 report, make any mention about asbestos at the site?

MR. MARCHETTA: Oh, absolutely.

ASSEMBLYWOMAN GREENSTEIN: And that is in the reports?

MR. MARCHETTA: Yes, it is.

ASSEMBLYWOMAN GREENSTEIN: So in spite-- And what was the finding on asbestos?

MR. MARCHETTA: Well, as to the use of asbestos at the site, that's documented in the report in two ways. Use of asbestos, in the prior

Monokote process, is documented in the report. That's a chrysotile type of asbestos. And then the tremolite asbestos, which is found as a very small percentage of the vermiculite, is also documented in the report. So both processes that were at the plant over various periods of time are documented there. And the fact that asbestos is in the products -- or the raw materials -- was also documented in the report.

ASSEMBLYWOMAN GREENSTEIN: If ERM didn't do any soil testing -- and I think it's accurate that they didn't -- we need to confirm that -- then what were the testing -- what were the test results that you were looking at to decide the percentage? Did you do your own independent tests?

MR. MARCHETTA: What happened was, Madam Chairwoman, after the EPA came to the site in 2000, as part of its investigation of sites where vermiculite had been processed, there were soil samples done.

ASSEMBLYWOMAN GREENSTEIN: Actually, sir, I'm asking back in '94.

MR. MARCHETTA: Oh, I'm sorry. I misunderstood the question.

ASSEMBLYWOMAN GREENSTEIN: Because we're pre-2000 there. So I'm wondering if, indeed, soil tests were not done by ERM as part of the preliminary assessment process that they were doing for ISRA, what tests were you basing your conclusions on? It seems from your statement here that you're making the conclusion that you did not -- certainly didn't go up to any kind of a large percent of asbestos.

MR. MARCHETTA: Just so we're clear, all the soil testing that we're talking about is 2000 and thereafter. It's all based on the EPA's tests, and our own tests, and then a comparison of the two. And that's the testing I'm referring to. We also had the deposition of Mr. Ferriola (indiscernible) of the EPA. And his deposition revealed, indeed, they were not confident of the test results.

ASSEMBLYWOMAN GREENSTEIN: Again, you're talking post-2000. I'm back in '94.

MR. MARCHETTA: There are no soil-- There is no soil testing data in '94. The soil testing data we're talking about is all, I believe, 2000 and thereafter.

ASSEMBLYWOMAN GREENSTEIN: Then can you-- I'm trying to, sort of, analyze how the decision was made, in '94, not to go further, not to do soil testing at that time. What were the thinking processes? What tests, if any, were those processes based on? How did one know that one shouldn't go further? I mean, knowing in '94 that there was asbestos there, how did you know that you didn't have a problem?

MR. MARCHETTA: I don't know how that decision was made. We were trying, at the time, to comply with the ISRA requirements. We can inquire further to see if anybody knows how those decisions were made. Maybe ERM has some idea. But to be honest, the people that were doing that work in '94 -- we'd have to ask them how those decisions were made. It may have been just meeting the requirements of ISRA at the time.

ASSEMBLYWOMAN GREENSTEIN: All I can say is, whatever process was in place at that time, it's important for us to

understand to what extent that decision of No Further Action was based on information given by W.R. Grace, what was that information. It sounds like you're not able to provide that to us today. How much of it was ERM doing some kind of independent assessment? It doesn't appear they did much of it, because they didn't do any testing. But we need to know more about that. And, finally, the role-- We'll try to find out more about the role DEP played in that process. But we have to understand what information W.R. Grace was giving.

Knowing that you had asbestos at the site -- which you did know in 1994. Is that correct?

MR. MARCHETTA: That's correct.

ASSEMBLYWOMAN GREENSTEIN: When the plant was closing, it would seem that it would be incumbent upon the company, at that point, to look into whether you have problem levels. And I'm not aware -- you tell me if I'm wrong -- of any testing that was done at that point.

MR. MARCHETTA: There was testing done in and around the plant. What I was referring to was soil testing. And I don't know if any soil testing was done. I know there were tests done in and around the plant. It's all in the ISRA report. ERM worked on that.

ASSEMBLYWOMAN GREENSTEIN: ERM did those tests?

MR. MARCHETTA: Yes, ERM did any testing in connection with the ISRA report.

ASSEMBLYWOMAN GREENSTEIN: Okay.

MR. MARCHETTA: And as to the other, Madam Chairwoman-- To the extent Grace can, any information that we can take back to the company -- if we can provide the information, we will.

ASSEMBLYWOMAN GREENSTEIN: We'll definitely be wanting to get more information.

MR. MARCHETTA: Okay.

ASSEMBLYWOMAN GREENSTEIN: The indictment, of course, says that as far back as the 1970s, Grace would have known. And at this point that isn't proven, but the company is under indictment for that. So we need to find out how much was known, and what your tests showed, and what you thought the levels were, whether you thought they were in the dangerous range or not.

Clearly, the people here have suffered. And it's now been proven that the amounts were in the dangerous range. So it's incumbent on the company to help in any way possible.

MR. MARCHETTA: We understand.

ASSEMBLYWOMAN GREENSTEIN: Assemblyman Manzo, then Assemblyman Baroni.

ASSEMBLYMAN MANZO: Can't get my button on. (referring to PA microphones)

ASSEMBLYMAN PANTER: Hey, Reed, is yours on?

ASSEMBLYMAN MANZO: I got it. Thank you.

The contract with ERM-- One of the things I would like to see, number one, is the contract between W.R. Grace and ERM. And as I understand your statement, and the questions you've asked, is -- generally,

in whatever tests were done back in '94, prior to the 2000 EPA supplemental requirements-- Whatever W.R. Grace had done was in -- basically in what their consultant was telling them to do -- ERM.

MR. MARCHETTA: We relied on the consultants for the filing of the ISRA report. As you can imagine, going from state to state, and having to comply with local regulations, local regulations -- local environmental regulations. You have to rely on your local consultant. And I'm sure we've worked closely with ERM in coming up with the report.

ASSEMBLYMAN MANZO: Do you know who the principals of ERM were at the time?

MR. MARCHETTA: No, I don't.

ASSEMBLYMAN MANZO: Do you know if W.R. Grace retained a political lobbyist in conjunction with assisting them in getting their ISRA compliance with DEP?

MR. MARCHETTA: I'm not aware of that, no.

ASSEMBLYMAN MANZO: Could you ask them if they did?

MR. MARCHETTA: Sure.

ASSEMBLYMAN MANZO: And who that person might have been.

No further questions.

ASSEMBLYWOMAN GREENSTEIN: Assemblyman Baroni, then Assemblyman Gusciora.

ASSEMBLYMAN BARONI: Thank you, Madam Chair.

Mr. Marchetta, I do understand that you are here representing your client. I don't think that any of us expected that the retiring CEO of W.R. Grace would come here to Trenton, although he should have.

I have a series of factual questions I'd like to ask you, but first sort of a rhetorical point.

Mr. Marchetta, on behalf of your client, this is not a simply legalistic issue for a lot of us. I grew up a couple of miles from this place. I used to play soccer -- there was a little soccer place maybe less than a mile from this location. Does your client-- Does W.R. Grace know what they have done to my town? Do they know what they have done to the people of my community -- not just the people you saw before you, but the people who are scared to death they may get this disease?

Your client -- and I understand it is your client -- they are not simply a bad corporate citizen. And I agree with my colleague, Mr. Gusciora. They have affected the lives of the people of my town unlike anything I have ever seen. And with that in mind, I've got some questions.

When did W.R. Grace first receive notification from any government agency that asbestos was part of the process of what they were doing in any of their plants?

MR. MARCHETTA: I can't answer that question.

ASSEMBLYMAN BARONI: When did W.R. Grace's location in Trenton -- or Hamilton -- first receive notification that asbestos was being made in any percentage in their plant?

MR. MARCHETTA: There are references in the ISRA report, which I've submitted to the Committee, where the local health department

official came in and did various inspections of the plant. The material data safety sheets were filed at the plant. So I can't say what local people took from that, in terms of what information they took from it. But there was information given as to what was happening at the plant, and the various materials that were being handled.

ASSEMBLYMAN BARONI: The material data sheets that were on file at the plant -- who produced those?

MR. MARCHETTA: Who produced?

ASSEMBLYMAN BARONI: Who made the forms?

MR. MARCHETTA: I don't know who made the forms. They are part of the ERM report.

ASSEMBLYMAN BARONI: Were those documents readily available to any of the employees?

MR. MARCHETTA: I can't answer that question.

ASSEMBLYMAN BARONI: Were the documents available to any of the unions that represented the employees?

MR. MARCHETTA: I can't answer that question.

ASSEMBLYMAN BARONI: Did the local health officer review those documents?

MR. MARCHETTA: I don't know.

ASSEMBLYMAN BARONI: When the Environmental Protection Agency first issued their 1982 report about vermiculite, did the -- did W.R. Grace recognize that report as accurate?

MR. MARCHETTA: I'm sorry, I didn't understand the question.

ASSEMBLYMAN BARONI: The initial report on vermiculite, I believe, was 1982 -- saying the material that was being -- at the Trenton-Hamilton plant did contain some level of asbestos.

ASSEMBLYWOMAN GREENSTEIN: '85, I think.

ASSEMBLYMAN BARONI: Thank you, Madam Chair -- '85.

Did W.R. Grace recognize the accuracy of that report?

MR. MARCHETTA: I don't know who read the report at the time, so I cannot comment.

ASSEMBLYMAN BARONI: Did anyone in the Trenton-Hamilton plant receive a copy of that report?

MR. MARCHETTA: I don't know.

ASSEMBLYMAN BARONI: Did the management of the plant inform the employees of that report?

MR. MARCHETTA: I don't know.

ASSEMBLYMAN BARONI: When ERM was contracted to perform its study, did ERM ever ask anyone at W.R. Grace the percentage of the material that contained asbestos?

MR. MARCHETTA: I don't know if they did. I know they had the material data safety sheets with--

ASSEMBLYMAN BARONI: Say again.

MR. MARCHETTA: I said, I don't know if they asked the questions. I do know, because they are contained in the report, they had the material data safety sheets with the percentages of asbestos in them.

ASSEMBLYMAN BARONI: Mr. Marchetta, I have not great knowledge of the process, but it's my understanding that, at some point,

there is an end product that can no longer be used, and must be disposed of -- it's a waste product, correct?

MR. MARCHETTA: I believe that's correct, yes.

ASSEMBLYMAN BARONI: And W.R. Grace, obviously, didn't store the complete end product on site. Is that correct?

MR. MARCHETTA: I don't know.

ASSEMBLYMAN BARONI: Are you familiar with whether or not that end product was removed from the plant?

MR. MARCHETTA: It must have been removed. But where it was removed to I can't tell. You're talking about the waste?

ASSEMBLYMAN BARONI: The waste -- the waste product.

MR. MARCHETTA: I assume it was removed, but I don't know where it was taken.

ASSEMBLYMAN BARONI: If I told you it was removed to GROWS Landfill, would you agree or disagree with that?

MR. MARCHETTA: I don't know.

ASSEMBLYMAN BARONI: The process, from what I understand, of removing any waste product from any factory or location-- There is something called a *waste manifest*. Are you familiar with a waste manifest?

MR. MARCHETTA: I'm familiar with the forms, yes.

ASSEMBLYMAN BARONI: You've seen the forms?

MR. MARCHETTA: I've seen them in other litigations, not in connection with this.

ASSEMBLYMAN BARONI: Understood. So in concept you've seen them.

And these are files that are kept at the disposal site.

MR. MARCHETTA: I'm aware of that.

ASSEMBLYMAN BARONI: Those forms are certified by the company making the distribution to the site, correct?

MR. MARCHETTA: I don't know if they're certified. I know that the company does fill out the forms.

ASSEMBLYMAN BARONI: Did W.R. Grace fill out those forms?

MR. MARCHETTA: I don't know.

ASSEMBLYMAN BARONI: If we were to look at those forms, would we see any indication of asbestos on those forms?

MR. MARCHETTA: I don't know.

ASSEMBLYMAN BARONI: Is there any indication that the words *W.R. Grace* and *asbestos* were ever together on a document produced by or signed by W.R. Grace?

MR. MARCHETTA: Right in the ERM report--

ASSEMBLYMAN BARONI: That wasn't produced by W.R. Grace.

MR. MARCHETTA: The material data safety sheets were -- yes, they were.

ASSEMBLYMAN BARONI: Okay.

MR. MARCHETTA: As well as the information that was signed off on by Grace officials concerning the ERM report.

The fact of asbestos, and the fact that asbestos was contained in the vermiculite product, and also in the earlier Monokote product, are documented in the report. There's nothing that is hidden or, in any way, secreted. It's all set forth in the report.

ASSEMBLYMAN BARONI: Do you believe-- Excuse me, does your client believe that the material that was being produced at the Trenton-Hamilton plant -- that we heard from my neighbors just a couple of minutes ago -- is a health hazard to them?

MR. MARCHETTA: I can't comment on that.

ASSEMBLYMAN BARONI: Does it believe that the material that was in the air causes asbestosis?

MR. MARCHETTA: I can't comment on that.

ASSEMBLYMAN BARONI: Does your client believe that the process that was undergone in the Trenton-Hamilton plant, and the connection to the people who are in the room and the people who have passed away-- Is there any connection at all?

MR. MARCHETTA: I can't comment.

ASSEMBLYMAN BARONI: Does W.R. Grace have any responsibility for the health concerns of its former employees?

MR. MARCHETTA: Grace recognizes that it has both environmental responsibilities and health responsibilities.

Assemblyman, if--

ASSEMBLYMAN BARONI: Based on what, Mr. Marchetta?

MR. MARCHETTA: Based on the statement that you have before you. I have been authorized, on behalf of the company, to say to

this Committee that Grace takes its environmental responsibilities very seriously. It will do everything it can, subject to the bankruptcy proceedings, to meet those responsibilities.

ASSEMBLYMAN BARONI: I understand that, but I was asking you a second ago if there's a connection between the health illnesses of the people who worked in the plant, and their families, and their neighbors, and whether or not Grace recognizes that it has a health responsibility? Did something that happened at the Grace plant cause the illness in these people?

MR. MARCHETTA: I can't comment on that. I have no way of knowing that.

ASSEMBLYMAN BARONI: Then how can you be responsible for that? You just told me you were responsible for the health.

MR. MARCHETTA: No, I said responsible for -- environmental responsibilities. I said it is.

ASSEMBLYMAN BARONI: Okay. So you're responsible for the soil, the land, the air, but not the health.

MR. MARCHETTA: I'm not saying we're not responsible for the health. All I said was that Grace takes its responsibilities very seriously. It's doing everything it can, in the context of the bankruptcy, to address its responsibilities.

ASSEMBLYMAN BARONI: Madam Chair, thank you very much.

Thank you, Mr. Marchetta.

MR. MARCHETTA: You're welcome.

ASSEMBLYMAN GUSCIORA: Thank you, Madam Chair.

Mr. Marchetta, I apologize if I was a little curt with you before, but I'm sure you can understand, under the circumstances-- Some of my best friends worked at Pitney Hardin, so I'm sure you're a stellar firm.

I'm taking the ERM report that you made reference to, and under Table 1, in Appendix 2, there's a list of 50 substances that, indeed, ERM identified on the site: vermiculite, Monokote, and different types of other potential hazardous chemicals and substances. Well, it does recognize that under Code IV, there were -- exceeded a hundred thousand pounds of such substances. On the last column, invariably, for all 50 -- under the column -- it says, "To remain on site--" -- all 50 substances say, "no."

Now, what does that mean, to remain on site?

MR. MARCHETTA: I can only take from the reading of the report that none of this material was to remain on site, that it was all to be removed at the time of the plant closing.

ASSEMBLYMAN GUSCIORA: Now, would that information be based on an interview ERM would have with W.R. Grace? How would ERM come to the conclusion that no, none of these substances would remain on site?

MR. MARCHETTA: I don't know. There's no way for me to know. But I would have to assume they had to be speaking to people with the company. That is, ERM had to speak with people from Grace.

ASSEMBLYMAN GUSCIORA: Now, is this based on your-- Are you part of the environmental legal team at Pitney Hardin -- would understand a document like this, or are you talking as a corporate counsel?

MR. MARCHETTA: I'm neither, I'm a trial attorney.

ASSEMBLYMAN GUSCIORA: Okay.

MR. MARCHETTA: I would imagine that an environmental attorney would understand this better, as to what its meaning would be.

ASSEMBLYMAN GUSCIORA: Yes, because my questions would be about this document and familiarity with filling it out. So I guess that wouldn't be helpful.

Do you know if, in fact, the 50 substances that were listed in this appendix were indeed removed from W.R. Grace, as stated in the ERM report?

MR. MARCHETTA: I have no way of knowing, personally, whether they were removed.

ASSEMBLYMAN GUSCIORA: Thank you very much.

Thank you, Madam Chair.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Any other questions from the Committee?

Assemblyman Panter.

ASSEMBLYMAN PANTER: Thank you.

I appreciate your coming here, as well. And I just wanted to ask a few questions. I think that Assemblyman Baroni was certainly headed down the right track with some of the tough questions he was asking about when the company had information about the potential health hazards and

of the materials being manufactured at Grace, and whether -- and if that information was passed along to employees.

I wanted to ask you a brief question or two about your written testimony, and then a few follow-up questions to what my colleagues have asked, as well.

I guess the first question is -- and while I do appreciate that there are certain things that a company can and cannot say while they're in the process of litigation or, in this case, there are governmental proceedings against them-- It is distressing to read this written testimony, in the sense that we have, in a nutshell, about a page of, I'll say, legal lip service to how important Grace considers its responsibilities to the community. And then we have two more pages -- which if I'm reading this correctly -- this is my first question -- essentially say that the studies that were done by your environmental consultant, while portrayed in the media as showing 40 percent asbestos content -- that you believe that is high-- But you believe-- According to your own numbers here, you were at least two or three times above the legal level by your own admission. Is that correct?

MR. MARCHETTA: If what you're asking is, because the legal limit is 1 percent, if in some of the samples it was as high as 3 percent, that's correct. However, what I was -- what we were responding to were the media representations continually using the representation of 40 percent. It was that 40 percent number that caused quite -- was quite alarming -- admittedly quite alarming to hear a number that high. But when the TEM results finally came in on those very same samples, they were down just above the action level.

Now, we're not gainsaying that. The soil had to be removed. Grace has to meet the responsibility of compensating EPA for that soil removal. And that work needed to be done. The only thing we were addressing was that number of 40 percent, which continued to be repeated again and again. And, indeed, there was really a great deal of doubt about that number. And as these TEM results show, we believe it was wildly exaggerated.

ASSEMBLYMAN PANTER: So is it fair to say that while your subsequent test results may have come back with different data than that which was reported in the media -- and I think it is important to make sure that we don't latch on to numbers that might not have scientific support. What you're saying is that the consultants hired by Grace provided a report to DEP and to EPA, which -- I guess the first question I'll ask -- was inaccurate.

MR. MARCHETTA: No, it was not inaccurate.

ASSEMBLYMAN PANTER: But your subsequent samples, as you just said, show that the asbestos content was two to three times-- It was between 2 and 3 percent, rather than less than 1 percent, which was the legal threshold at the time.

MR. MARCHETTA: I think the problem is that there is an assumption that there was soil testing and sampling in 1994-95. As I was addressing to the Chairwoman, I don't believe that was the case. The soil sampling, I believe, all took place around 2000 and thereafter. And it was trying to get those numbers correct that led to all the various back and forth over what's the correct percentage, but not from numbers in '94 and '95.

ASSEMBLYMAN PANTER: I appreciate that.

What was the legal-- What was the test, as far as the percentage of asbestos, that DEP applied in issuing that No Further Action letter in 1995?

MR. MARCHETTA: I don't know what they applied.

ASSEMBLYMAN PANTER: I have a letter here -- and perhaps I'm reading it incorrectly. But it's from the New Jersey Department of Environmental Protection to W.R. Grace, which specifically states that 1 percent is the level upon which that NFA, that No Further Action, level was based. In fact, when they rescinded it in 1995, they did it on the basis of test results showing that the asbestos levels were significantly higher than 1 percent. Is that accurate?

MR. MARCHETTA: You mean the most recent letter where they rescinded it?

ASSEMBLYMAN PANTER: May of 2005.

MR. MARCHETTA: Yes, the most recent letter that we just received-- We understand they rescinded it based on the information that they have been hearing, as well.

ASSEMBLYMAN PANTER: I guess the next question that I have is-- And this is, perhaps, putting it much more simply than some of my other colleagues had put it. But putting aside all the legal and regulatory requirements of DEP, and EPA, and the current litigation that Grace is involved in-- Do you have an accurate estimate -- I understand it might be an estimate -- of when W.R. Grace -- because this is the heart of

the matter -- when W.R. Grace was aware that they were using materials which might have a harmful effect on their employees?

MR. MARCHETTA: I can't comment on that.

ASSEMBLYMAN PANTER: Are they aware of it now?

MR. MARCHETTA: I can't comment on that.

ASSEMBLYMAN PANTER: I guess that makes my subsequent question somewhat moot, which is, was any of that information passed along to the employees. But your position here today is that the company is not in a position to comment on whether they currently believe the materials they were using have ever been hazardous.

MR. MARCHETTA: My position here today, as contained in the statement, is, Grace, unfortunately, is in the position right now of having to defend against a criminal indictment. An indictment is not a conviction. An indictment is just that, it's an indictment.

ASSEMBLYMAN PANTER: I understand.

MR. MARCHETTA: We had to defend against that. And we are also in the middle of bankruptcy proceedings. So our creditors have an awful lot to say about what happens with this company. So in that context, I cannot comment on that.

ASSEMBLYMAN PANTER: I can appreciate that. And I personally -- and I'm sure that many up here on this panel share the view that my concerns are the victims and potential victims, rather than the creditors.

MR. MARCHETTA: And Grace recognizes that. Grace understands those concerns. Grace shares those concerns. However, we are

in a position, right now, where I just can't comment on some of the Committee's statements. But to the extent we can help this Committee, that we can meet our responsibilities as a corporate citizen, meet our environmental responsibilities, we will answer questions and we will do whatever we can, in the confines of our present situation, to deal with it.

ASSEMBLYMAN PANTER: And the last comment that I would make -- and I appreciate that sentiment-- But I think that this Committee -- and whether it comes about as this litigation or this indictment progresses -- and there is some opening there, when Grace can discuss this problem with us more frankly and more effectively-- I think there's very limited use of us speaking to the company today, because they're not answering our toughest questions. Whether that's because of the pending indictment or not, we have not gotten the answers from the company that I think these victims we heard from here today deserve.

And I recognize that you're their counsel, and so on a certain level you're meant to be the legal buffer between them and really getting at the information that we need to hear. But we will continue to pursue it. And I hope the company will be more forthcoming.

MR. MARCHETTA: We will try to answer any questions we can.

ASSEMBLYMAN PANTER: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Anybody else have any questions here? (no response)

I just wanted to ask a couple of questions here.

Can you describe-- First of all, you were the owners of the property from '63 to '94.

MR. MARCHETTA: That's correct, I believe. Yes.

ASSEMBLYWOMAN GREENSTEIN: And can you describe the company's operations? What went on in this plant? What type of machinery--

MR. MARCHETTA: I think, Madam Chair, certainly I can't, as an attorney. But what I can do is, I can refer you to the ISRA report, which we provided to your office. In there are not only descriptions -- written descriptions of what happened at the plant, in terms of the various processes, but also their schematics of the various processes, and how the materials were processed on site. I think that's really the best summary of that. I couldn't do it. As an attorney, I couldn't do that.

ASSEMBLYWOMAN GREENSTEIN: Do you-- As an attorney, are you able to describe the exfoliation process or any of that?

MR. MARCHETTA: I'm also not an engineer. But I understand that there is a process by which the vermiculite is expanded to its final stage, where it's used. And that's also described in the report.

ASSEMBLYWOMAN GREENSTEIN: Do you know when Grace first began to use that process?

MR. MARCHETTA: No, I do not.

ASSEMBLYWOMAN GREENSTEIN: Okay.

Did you have any information-- Do you have any information, as the attorney for Grace, about what effect the various processes had on employees and residents of the neighborhood?

MR. MARCHETTA: No, I do not.

ASSEMBLYWOMAN GREENSTEIN: Did you have any listing of complaints from these people?

MR. MARCHETTA: No, I do not.

ASSEMBLYWOMAN GREENSTEIN: Does your company maintain a list of-- You have no knowledge of written complaints to the plant?

MR. MARCHETTA: I do not, no.

ASSEMBLYWOMAN GREENSTEIN: Again, when did W.R. Grace know that Libby, Montana ore was contaminated with asbestos?

MR. MARCHETTA: I can't comment on that.

ASSEMBLYWOMAN GREENSTEIN: Did W.R. Grace, at any point in its process -- obviously prior to 1994 when it closed down -- ever discontinue use of the ore from Libby, Montana?

MR. MARCHETTA: Yes, that's documented in the report -- in the ERM report.

ASSEMBLYWOMAN GREENSTEIN: Do you know what year that was?

MR. MARCHETTA: I believe it was in 1992. But I'm just going on memory. It is in the report as to the year there was a switchover from the Libby, Montana ore to the South Carolina ore.

ASSEMBLYWOMAN GREENSTEIN: Actually, I do-- I think I'm on that page here. I think I see that.

MR. MARCHETTA: It is in the report.

ASSEMBLYWOMAN GREENSTEIN: Did W.R. Grace conduct any investigations or analysis, either prior to '94 or after, to determine whether the ore from Libby, Montana was, indeed, safe?

MR. MARCHETTA: I don't know.

ASSEMBLYWOMAN GREENSTEIN: Did you change over from using that ore at about 1992 because of safety concerns or other reasons?

MR. MARCHETTA: I don't know.

ASSEMBLYWOMAN GREENSTEIN: You were asked a couple of questions before about waste. Are you familiar with the processes that were used?

MR. MARCHETTA: Only as it's set forth in the ERM report. There are schematics that show a waste stream as part of the process. That's as much as I know about it.

ASSEMBLYWOMAN GREENSTEIN: In the deposition, which I can ask the EPA gentleman about -- and Mr. Ferriola -- he's here -- there seem to be some discussion in there about how waste was disposed of. Generally speaking, the question was, was it buried, was it sort of taken out and surreptitiously buried, or was it just swept on top of everything else and mounds just built up? I mean, there was some issue there. Was it put into holes, was it actually buried intentionally? I mean, do you know anything at all about--

MR. MARCHETTA: I don't know what happened to the waste stream.

ASSEMBLYMAN McKEON: Madam Chairperson.

ASSEMBLYWOMAN GREENSTEIN: Yes.

ASSEMBLYMAN McKEON: Before you continue, with your permission--

The Commissioner has about a 15 minute window left. He came here, as you know, at 11:00.

ASSEMBLYWOMAN GREENSTEIN: Yes.

ASSEMBLYMAN McKEON: We asked him to return.

ASSEMBLYWOMAN GREENSTEIN: Yes.

ASSEMBLYMAN McKEON: He has a commitment he has to get to. Shall we tell him to return for a subsequent hearing?

ASSEMBLYWOMAN GREENSTEIN: Actually, I think we are--

Does anyone have anything else? (no response)

I think we're pretty much finished at the moment with this witness.

Thank you.

MR. MARCHETTA: Thank you.

ASSEMBLYWOMAN GREENSTEIN: And then we can have the Commissioner.

And, also, sorry to keep you waiting, Commissioner. I know we asked you to come back at 12:30.

Commissioner, good afternoon. Thank you very much for coming. We appreciate it.

Can you explain to us the recent letter -- May 3, 2005 -- to Paul Norris, CEO of W.R. Grace? Can you tell us a little about the purpose of that letter, and what spurred it?

C O M M I S S I O N E R B R A D L E Y M. C A M P B E L L:
Well, the purpose of that letter -- and, first of all, thank you for calling attention to this critical issue -- was to rescind what had been issued as a No Further Action letter in 1995, essentially releasing W.R. Grace from further cleanup responsibilities.

We rescinded that No Further Action letter, or NFA as we call them, because in light of subsequent revelations that -- we discovered a record -- a pattern, really, of false and misleading submissions to both the State and Federal governments. I believe that was coupled with significant regulatory failures, both on the part of State and Federal agencies, including my own. Obviously, it predates my tenure.

And I would say that, at this point, we don't have all the answers yet, but we're actively investigating it. But our concern has been the pattern in which the actual operations of the plant, and the material used at the plant, was misrepresented to both the State DEP and the Federal regulators.

ASSEMBLYWOMAN GREENSTEIN: Commissioner, can you tell us the first point at which you see misrepresentation on the part of Grace?

COMMISSIONER CAMPBELL: Well, the first point, I think, that's explicit in the record is in 1972, when a -- when Grace sent a letter to the Department of Environmental Protection saying that they -- Grace

Construction Products Division does not use asbestos in the producing of any product.

ASSEMBLYWOMAN GREENSTEIN: That was a letter sent to the State DEP?

COMMISSIONER CAMPBELL: On March 2, 1972. And I'm happy to provide a copy of that to the Committee.

ASSEMBLYWOMAN GREENSTEIN: Yes. If you would do that through the Chair -- Chairs, we'd really appreciate that.

COMMISSIONER CAMPBELL: And that pattern of misrepresentation and omission really continues and pervades the regulatory record. And I would have to add taints, to some extent, some of the material -- some of the testimony you just heard.

Because I think it's important to understand the issue of whether asbestos was disclosed versus whether -- versus the concentrations. And as was pointed out, what was represented to the Department, at the time of the No Further Action letter, was that there was no material exceeding the regulatory threshold.

Remember, vermiculite is used in a variety of products, from potting soil, to animal feed, to building products. There's a relatively small number of ore sources that have asbestos in them mixed in with the mineral. And the representations that were made to the Department were, first, that very little asbestos-containing ore was used at the facility; and, secondly, that all of that ore was below that 1 percent. Below that 1 percent threshold, it's not considered a hazardous substance.

So it was represented to the Department, first in 1972, that there were no -- there was no -- there were no products using asbestos being processed at the facility. Then, in '94, the representations, first, that there was no material on-site that exceeded the threshold; second -- and I think Assemblyman Gusciora was pointing this out earlier -- representation that nothing was left on site. There was no on-site disposal. Both of those representations are not accurate. And it is difficult to beat, or to look behind, or have regulatory -- effective regulatory oversight, when a company is willing to make affirmative misrepresentations to the regulatory agency.

ASSEMBLYWOMAN GREENSTEIN: Commissioner, I just wanted to check. You said there was a 1972 letter with a concrete denial of use of asbestos. And then we shoot over to 1994, where there's an admission of some asbestos, but below the standard of 1 percent. Is there anything in between? Were there any letters or contacts with your Department where there was some statement about asbestos on the part of W.R. Grace? Because the gentleman we just interviewed seemed to say, "Oh, yes. We always said we had asbestos there." I'm trying to figure out at what point they began to acknowledge that there was, indeed, asbestos on-site.

COMMISSIONER CAMPBELL: There was a 1980 community Right to Know filing, which obviously goes to a different portion of the Department, that suggested that. That's the only other instance we can identify.

Again, in fairness, the ERM report -- the consultant's report did acknowledge asbestos-containing materials on the site, but represented that

all of them were below the regulatory threshold, and represented that none were remaining on site, both of which were not true. And, frankly, it's difficult to imagine the circumstances in which the company, or anyone familiar with its operations, would have been able to make that representation in good faith.

ASSEMBLYWOMAN GREENSTEIN: Can I ask you, from reviewing the documents back there in 1994, do you have a sense of how the interaction would have gone, at that time with the processes in place, between ERM and W.R. Grace? In other words, would ERM have gotten all of its information from W.R. Grace? How much would have been done independently at that time?

COMMISSIONER CAMPBELL: A firm like that has to -- in its assessment -- has to rely substantially on the company's representations about the nature of the operations, the materials used, any disposal practices that went on.

And I think it's important to understand-- Obviously, the state of knowledge is not -- of W.R. Grace is not simply limited to New Jersey. This was a problem that-- As early as 1982, there were reports -- the Midwest Research Institute report -- documenting that the material from Libby, Montana, which was being shipped to Hamilton, exceeded the regulatory threshold. Understandably, at that time, there were still products on the market -- popularly marketed products -- that had 80 to 90 percent asbestos.

So, in some sense, the regulatory focus was on those higher-risk products at the time. But, nonetheless, there was no effort ever to change

the record. And it was clearly-- It appears clear to us -- although, as I said, we still have additional investigation to do -- that, certainly, by 1994-95, there was knowledge within the company that there was material exceeding the regulatory threshold.

ASSEMBLYWOMAN GREENSTEIN: At that time, with the processes that were in place, what would have been DEP's role? Would it have been-- I mean, it does seem like, in some of the things that we've read, it almost appeared to be a rubber stamp type of role without any real, independent look. There was a checklist for the preliminary assessment that ERM prepared. And it looks like ERM got to a point where they had to make a decision -- soil testing or not. It doesn't appear that they did do soil tests. And they just gave it a clean bill of health. To what extent would there have been a real second look by DEP at that time?

But my related question on all of this is, have those processes change in the last 10 years?

COMMISSIONER CAMPBELL: Let me answer both of those questions.

First, one of the difficulties is, if it's affirmatively misrepresented that no material of concern is being used at a site, and no disposal occurred at a site-- Those are not circumstances in which we would typically require anyone to do testing. I think that's something we need to look at, particularly in terms of, if -- as is true here -- there's a representation that, "Well, there's material there, but it doesn't exceed the threshold." That's something I think we need to look at, in terms of whether that should have been done differently.

I certainly think that -- and I think the Committee has to recognize that there are-- When I mention that there are regulatory failures, I think there are also a number of fixes that we would commend to the Committee. And maybe, if it would be useful to the Committee, I can outline what I think some of those are; again, recognizing that we are still in the process of understanding both what Grace knew and when they knew it, and where any failures might have been on the Department side.

First, I think we have to recognize that, in terms of legislation, in terms of the statute, that this is a case in which there is a statutory 45-day review time. Obviously, in any case in which you have a complex cleanup site -- that in which 45 days is all you have to review, for complex cleanup sites -- that's problematic from a regulatory perspective. This emerged from the statutory changes that were made as part of Governor Whitman's Open for Business program, as I understand it, in which ISRA amended ECRA to streamline the process and reduce red tape.

A second process, which I think is both statutory and -- but can be fixed through regulatory changes, which Assemblywoman Greenstein and I have discussed at some length-- Or, we need more effective public notice.

Clearly, even if the company was misrepresenting what happened at the plant, there were workers, there were members of the public, there were local residents who would know or might have known and been able to identify disposal activities or other activities that took place.

A third area, which might be less applicable to this type of circumstance, but one that I think the general cleanup programs need -- or

for those circumstances in which the community does have a role -- that there be some assistance available. And we've sought this in legislation currently pending -- some ability to use the remediation funds to provide technical assistance grants to communities so that they could be better armed in reviewing cleanups.

A final statutory provision, I think, that needs to be examined is the-- And as I've mentioned, we've referred these matters to the Office of Criminal Justice to pursue any wrongdoing that occurred on the part of the company, on the part of the consultants. We need to make sure that, where a company or its consultants succeed in concealing this type of information for this type of long -- for more than a decade in this case -- that they do not get the benefit or the protection of any applicable statutes of limitations under the criminal code. That's not to suggest that they have that protection, but, obviously, that's something we need to make sure is completely clear under the law.

At the regulatory level, as I said, I think we can -- there needs to be more effective notice. I think there needs to be better integration of programs. For example -- and I think this we have achieved -- to ensure that, for example, when a report like this comes in-- If there are community Right to Know reports, which there were in this case, from five years earlier that might have put the agency on notice that some of the representations were not correct -- that those are integrated in the file. First, that the consultant has to bring them in. And, second, that the agency has in place -- which we are doing through our information technology structure -- make

sure there's, essentially, a way in which those items are raised in the record early.

And those three changes: public notice, a crosswalk with other programs, the requirement that consultants review and present all filings-- All of those are things -- changes we are undertaking currently in response not only to this failure, but also comparable failures in the Ringwood cleanup, a federally supervised superfund cleanup in which Ford Motor Company was able to represent large areas of contaminated property were cleaned, declared them clean in the record. And yet, today -- even today, one can see with the naked eye, with no expertise, large volumes of paint sludge that were left on site.

Finally, it's critically important that there be both consultant and polluter accountability. I'm proud that during my tenure, for the very first time, we have actually issued notices of violation directly to consultants, assessed penalties directly to the consultants. In one case, requiring a term of disbarment when those consultants make representations to the Department that are inaccurate, that fail to disclose information, or are otherwise deficient. We need any help the Legislature can give us in reinforcing that, ensuring the very strictest penalties, and also looking at some of these other issues, in terms of timing, assistance to communities, and public notice. And we would welcome the opportunity to work with the Committee on those legislative changes.

ASSEMBLYWOMAN GREENSTEIN: Last question I want to ask-- Those are excellent suggestions, and I'm sure many of us here will want to take them up.

How will you assess the actions of your agency -- you were not there at the time, obviously -- given the laws and the regulations that were in place at that time? What do you feel should have been done differently, if anything, by your agency? And do you feel-- To me, what's always seemed very clear, from the day I started looking at this stuff, is that if in '94 there's a clean bill of health, and in 2001 or '02, 9,000 tons of contaminated dirt are taken away-- I mean, that, to me, shows there's definitely a problem. Do you assess that the same way? Do you think that shows there's definitely a problem? Do you think the problem is of negligence? Do you think it's a mistake? Do you think it's negligence? Do you think it's worse?

COMMISSIONER CAMPBELL: I think that there were definitely regulatory failures at the State and Federal level. I think that some of those result from the -- both the specific statutory direction, in terms of 45-day review times, and the overall tenor of those times -- which was, move this along quickly at all costs, and that speed is more important than community protection. I think some of those changes can be made legislatively. I think it is-- In terms of the Department's performance, it will always be difficult to root out omissions and misrepresentations when a company is, at the company officer level -- as they were in this case -- willing to certify misrepresentations and reports that are, at some level, inaccurate or untruthful.

That having been said, I think if the measures, in terms of the penalties for consultants' submissions -- or misleading consultants' submissions are strong, if there's better public notice, if the community's

better armed-- If those are achieved, you not only have -- you have a set of safeguards. They may not work in every case, but they're certainly going to be better than the safeguards that were in place at the time.

As I said, many of these are coming into place now. Many of those penalties are being assessed now. But I am looking at this in terms of our hindsight, to understand how the process can be improved going forward, even as we remain concerned.

There are also, I would acknowledge-- I think it's important to acknowledge there are certain changes since then that would have made it much harder for this type of conduct to occur. For example, at the time -- in 1971, DEP ordered this facility to install a baghouse to capture its air emissions, because the Department was concerned at that time about fine particulate emissions. We have a high degree of confidence, because of the effectiveness of baghouses in reducing particulates and because asbestos fibers are a particulate, that that remedy would have captured all of any off-site, airborne emissions. But it's also the case that, today, if that facility were coming in for a permit, or an operating permit renewal, we would require them to speciate -- in other words identify, contaminant by contaminant, what was in those emissions. And that would have put us on notice not to accept these types of representations. And so, in some sense, the maturing of our regulatory system between 1972 and even since 1994, I think, has put in place a series of substantive regulatory safeguards that would make it even harder than it was in 1994 to evade regulatory scrutiny, as W.R. Grace was able to do here.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Assemblyman Manzo.

ASSEMBLYMAN MANZO: Commissioner, I concur with your observation.

But to me, the glaring problem here was that W.R. Grace hires an environmental consultant who, for whatever rhyme or reason, tells them that there's not a problem with the site. That information is given to Grace, they present it to DEP. Wouldn't it be a more practical legislative process, or regulatory process, that would require Grace to have come to DEP, and for DEP to establish or have a bureau that environmental consultants from around the state would have to participate in? And W.R. Grace would then have to come to the Department and say, "I want a look-see at this property." They would have to pay for it, but DEP would pick the consultant through a pool for a random selection process. The obligation then, on the reporting, would much more be independent and a direct result to DEP, where the consultant is now working, sort of, for the Department of Environmental Protection -- is going to be more honest and forthcoming with their answers.

COMMISSIONER CAMPBELL: I think that any proposal that increases the accountability of the consultants who submit this type of information is something we would welcome working with you. I think there are a couple of different models. You identified one which is more -- which shifts the, if you will, the loyalty of the consultant to the Department and the public purpose, rather than necessarily to the client. And I think there are a lot of ways to achieve that. And we would welcome the opportunity to work with you on that.

I think, in this case, it's very difficult -- and I think we're at an early point -- in terms of characterizing whether the consultant's conduct was negligent, willful, deliberate. It's hard to say. It's sort of going back to Assemblywoman Greenstein's point about filings.

There was a lone, isolated community Right to Know report in 1989 that suggested the asbestos presence on site. That was the only real affirmative disclosure, if you will, of asbestos at the site. But then, when they submitted the later report, the '95 preliminary assessment, they only referred to a 1993 community Right to Know disclosure form, which said, again, no asbestos. So it's, in this case I think, very difficult to assess what the right structure would be. But I think all of those models should be on the table, in terms of discussing different accountability measures that we might adopt.

ASSEMBLYMAN MANZO: Commissioner, do you know if Mr. Krisak, who was the Section Chief of the Bureau of Field Operations, is still an employee of the Department?

COMMISSIONER CAMPBELL: I can check. I do not-- I'm sorry, could you repeat the name?

ASSEMBLYMAN MANZO: Vince Krisak. And at the time, he issued the noncompliance. It was August of 1995. And he was the Section Chief of the Bureau of Field Operations.

COMMISSIONER CAMPBELL: Yes, he is still employed at DEP.

ASSEMBLYMAN MANZO: If there's a follow-up Committee, I'd like him to appear.

The other point I want to make and get your impact on-- At this very same time, going back into 1994, W.R. Grace is involved in another matter in another area of the state, relative to Hudson County and chromium. And they're virtually doing the same practices up there.

One of the problems I see, Commissioner, that we allow as a State, is the interference, a lot of times, of not only environmental consultants, but lobbyists involved in lobbying on behalf of polluters. And a lot of sway was given that, back in the '90s, to the chromium problem. And I'm wondering if, through your investigation of this, you could look into the impact of lobbyists upon the agency, relative to this procedure.

COMMISSIONER CAMPBELL: I appreciate that, Assemblyman. To date, I will say we have looked at that question. We have not identified, at this point, any effort to influence the Department unduly, with respect to this issue, or really any influence -- attempt to influence the Department at all, other than the misrepresentations that were presented to the Department saying -- failing to disclose any disposal that occurred on site, failing to -- affirmatively representing that no material exceeding the regulatory threshold was present on site. And if you're willing to make those misrepresentations that are that egregious, you don't need a lobbyist to help you along, because it completely steers the agency, and deceives the agency, and avoids that next level of scrutiny that would have been appropriate in this case.

ASSEMBLYMAN MANZO: Thank you, Commissioner.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Assemblyman Diegnan.

ASSEMBLYMAN DIEGNAN: Commissioner, maybe you could clarify for me-- I'm not interested in the time of the incident. I'm interested in today. What are the present notification requirements, in terms of EPA and DEP, if there is a suspected contaminated site, in terms of notification -- notifying the municipality and any adjoining property owners?

COMMISSIONER CAMPBELL: Well, in essence, it depends on the circumstances. There is-- There are disclosure requirements for anything -- any kind of release of these types of materials, they're required to file those under the community Right to Know Act and under relative provisions of State law. In this case, the reports that were filed-- There was an isolated -- one of those reports, which are annual, that disclosed a discharge of asbestos. But in the main, and the ones that were actually presented as part of the request for -- under ISRA -- there were no reported discharges.

So, in some sense, again, there is an extent to which we rely. Just in the case of a spill, if someone doesn't report it and then takes affirmative steps to conceal it, it's very difficult to identify those. And we can-- Those community Right to Know Act reports are also on file locally, typically with first responders, fire departments, and the like.

ASSEMBLYMAN DIEGNAN: If I may, through the Chair-- I mean a more affirmative or proactive approach. If, let's say EPA for example, determines that there are potentially hazardous substances found on a site in a municipality, and they direct that particular

private property owner to remove those substances, do they have an affirmative duty to notify the municipality also?

COMMISSIONER CAMPBELL: Under the National Contingency Plan, there are requirements of notice. And I'm happy to follow up, through the Chair, to lay out what all of those are. What I would say -- and what we have found consistently -- is that the notice provisions under State law, under just our own programs, are not adequate. They're not adequate for communities. And many, if not most, of the petitions under the Environmental Justice Executive Order, for example, are really using the executive order process now to give communities more of a voice in cleanups, because they didn't receive appropriate notice -- because municipalities didn't receive appropriate notice.

And even in the case of the Federal programs, which does have notice requirements, today -- going, for example, to Ringwood -- the community, the neighbors did not receive notice, were not asked about the contamination. And even the municipality has expressed concern about the adequacy of notice.

ASSEMBLYMAN DIEGNAN: That's something I'm sure all of us would like to work with you--

Thank you.

ASSEMBLYWOMAN GREENSTEIN: Definitely.

We would very much appreciate if you could, through the Chair, submit that information on the notice, because it is something of great interest to many of us.

Thanks.

ASSEMBLYWOMAN GREENSTEIN: Assemblyman Gordon.

ASSEMBLYMAN GORDON: Thank you, Madam Chair.

Thank you, Commissioner, for your candor and for your suggestions for improving the regulatory process.

I am deeply troubled by the apparent flaws in the process. I'm also troubled by the fact that if anything, we seem to be going in the wrong direction with -- I witnessed the recent approval by this body on the Fast Track legislation, where we're saying that someone can hire a consultant and just submit that report. And we truncate the time frame. So I think we need to take a second look at the process.

I'm troubled by the fact that-- I understand that, here, we may have had an organization that submitted false documents, false data. But I think we need to look at other mechanisms for checking the veracity of the consultants' reports. Maybe it is along the lines of what my colleague Assemblyman Manzo suggested -- of having a list of approved consultants who, perhaps just on a random basis, conduct audits of consultants' reports that are being submitted to the agencies as part of these reviews.

I would like to suggest another possibility in the category of improving the effectiveness of public notice. I seem to recall that there was legislation, at least drafted, last year -- I think it went by the name of the Pollution Prevention Participation Act -- which would enable employee representatives to participate in on-site reviews of some kind of facility when the DEP shows up. And just based on the testimony that we heard from some of the employee -- former employees and their families -- they knew that there was asbestos on site and that there was a potential

problem. And I'm thinking that perhaps it would be useful for us to pass legislation of that kind that would enable greater involvement of employees. And perhaps Mr. Engler can -- who I see is on the testimony, or on the list to testify -- can comment on that.

But I think it's important that we not truncate the review process, but do what we can to audit and check the veracity of these reports that you're getting at the agency.

COMMISSIONER CAMPBELL: I do think the analogy to Fast Track is apt in the sense that we need to recognize that certain regulatory decisions, and certainly where you're having to review the work of consultants, cannot realistically be done in a way that ensures the public interest is protected in a 45-day time frame.

I do also want to emphasize that the safeguards are critical when consultants do this type of work. I have been more than willing to expand the role of consultants, even as we have in the -- in our Cleanup Star program, but only when that's coupled with safeguards -- the ones you mentioned -- that their work is audited, that they're penalized if they submit inadequate work. But it's those safeguards that are vitally important. And I would welcome the opportunity to work with the community.

I would mention, also, with respect to worker participation, we have worked with the Work Environment Council to pilot the approach that's in that legislation. I think that provides us a good baseline from which to incorporate some of those proposals in the suggestions we make to the Committee.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Assemblyman.

ASSEMBLYMAN GUSCIORA: Thank you, Madam Chair.

And thank you, Commissioner, for coming here. It's always very enlightening. And you certainly are very able, and residents are well-served by your tenure in the Department. I also hope you'll educate our democratic members to the need to modify Fast Track. So I hope we can enlist your support in that effort.

And I do realize that DEP is a much different agency than it was 10 years ago, when probably the motto was "polluter plays," and now it's "polluter pays." So I want to congratulate you on your stewardship.

Regarding plant closings, how many -- about how many plant closings does DEP oversee per year?

COMMISSIONER CAMPBELL: I can provide you that information. I don't know those numbers off the top.

ASSEMBLYMAN GUSCIORA: And how about No Further Action letters? About how many No Further Action letters does DEP issue?

COMMISSIONER CAMPBELL: Roughly, in excess of 3,000 last year.

ASSEMBLYMAN GUSCIORA: Would that have been the same back in 1995?

COMMISSIONER CAMPBELL: Probably fewer in 1995, simply because fewer cleanups had matured. But I can provide those numbers. But I'm quite sure-- I think our numbers, in excess of 3,000, have been increasing since the start of my tenure, because we've made it a

point to try to move-- NFA can be a good thing if it means that a cleanup has actually been completed. What I have concerns over are the No Action -- No Further Action items that you mentioned here.

You know, I also want to highlight, as a matter of candor, that while we are making improvements in the process, a lot of that has been learned even in the last several years. For example, also in Hamilton, there are a lot of community concerns about the cleanup at the American Standard facility. The Assemblywoman brought those to our attention. And it really, I think, sparked a broader look, along with other sites, at how we can give communities better notice and ensure that they're armed in the process so that the information-- Often, they have better information about what happens at a facility than a staffer, or certainly a commissioner of DEP will. And we need to get them engaged in the process. We need to do it in a way that doesn't slow down the cleanup process. But we certainly need to get them engaged. And some of those-- Some of that recognition and some of that reform effort, I will concede, is too long in coming, even under my tenure.

ASSEMBLYMAN GUSCIORA: One of my concerns when I first started out here in 1995 was the fact that the former Governor was eliminating much of the investigatory services of the Department. And I was most concerned that things like this would happen, where we're gutting the agency of its investigatory powers. And I was wondering, how much of a result -- is the grace experience as a result of that?

COMMISSIONER CAMPBELL: Well, it's difficult for me to characterize or assign blame on events that happened 10 years ago.

ASSEMBLYMAN GUSCIORA: Do we have enough investigators?

COMMISSIONER CAMPBELL: Let me just-- Let me articulate the facts, the underlying facts, which I think lend credence to your characterization, which is, in essence, that over those years since '94 -- between 1994 and 2002, the staffing at the DEP was cut by 20 percent in both the regulatory realm and in the enforcement realm -- more than 20 percent in the permitting and enforcement realm. We've been able to rebuild that, even in tough budget times, given the support of the administration and Governor Codey for restoring a vibrant enforcement function to DEP. But we're still 13 percent lower than we were in '94, even though the universe of permits, decisions, and so forth has increased. Some of that gap we've been able to close by being smarter, using information technology better, consolidating and removing needless layers of bureaucracy. But I also think we need to recognize that protecting public welfare, protecting public health requires a robust agency, one that's adequately staffed, given the number of cases that come through the door. So I think that also needs to be part of the lesson that's taken away from this. And it's my hope that the Assembly will recognize those lessons. Even as tough as the budget challenges are this year -- to recognize the types of stakes and public health exposure that can occur if the agency's staffing is, again, cut back.

ASSEMBLYMAN GUSCIORA: One of the things, when this whole episode blew up -- I found it incredulous -- was that W.R. Grace was permitted to hire its own consultant to basically issue a report saying, "No

problems here," almost like sending the wolf out to guard the sheep. And yet, DEP then takes this report and then issues a No Further Action approval, gives it a green light to close down the plant when, indeed, the gross misinformation and inaccuracies were contained in that report.

What is -- to prevent future occurrences, does DEP ever audit these reports? Do you have enough manpower to check the accuracy of these consultant reports?

COMMISSIONER CAMPBELL: Well, we have actually initiated a -- and, essentially, a consultant accountability approach in which we are holding-- We actually created at the DEP, in the last several years, a new Office of Accountability. And that was created in 2003 for precisely this problem, the submittal of bad documents, inadequate documents. This is the most extreme case. But in other cases, they may not be misrepresenting information, but they're not providing adequate information. And that's slowing down the cleanup process.

And as in any case, you need accountability. Because what happens if you don't have that accountability is, even polluters who are unwilling to make affirmative misrepresentations are still able to gain the system to delay the cleanup process. And that's what we're trying to avoid -- not just the extreme case that you have here, but also some of the intermediate cases where, by submitting inadequate documents, or failing to document conditions adequately, it generates more delays in the cleanup process.

ASSEMBLYMAN GUSCIORA: Thank you very much, Mr. Commissioner.

I do always think that DEP is almost like the watchtower that we have to protect the public health and the environment. And, clearly, there was some misconnect in 1995. And I hope we can all work together to make sure that we are, indeed, the protectors of public health and the environment in the future. And I know you are doing a stellar job at the DEP. So I want to congratulate you for your efforts.

COMMISSIONER CAMPBELL: Thank you.

I want to add one point to this, though, that touches on points that you made and Assemblyman Manzo made, which is, part of the shift to the -- part of the polluter-pays principle should always be that we do -- that the responsible party does the work, whether it's cleanup work, sampling work, or any other work. So I share the Committee's view, as I understand it, that we need more safeguards and more accountability in that system. But I'd urge the Committee to not make changes that would shift the burden of doing the work back into the Department, rather than the oversight work in the Department. Because the experience was, in the early days of cleanup programs, that that, too, slowed down cleanups. And so we need to learn those lessons, as well.

ASSEMBLYMAN GUSCIORA: Unless we give you the resources.

COMMISSIONER CAMPBELL: I'm sorry?

ASSEMBLYMAN GUSCIORA: Unless we give you the resources and the money, which will probably never come.

COMMISSIONER CAMPBELL: Well, that's true, but also recognize that even in terms of the oversight work we do, there's the--

We have-- We charge the responsible parties for oversight, the time it takes to review these documents if we require additional information. So those tools are in the Spill Act and the related legislation today. But we need to make sure that we have the will to use them, and we're using them effectively, and we're holding consultants accountable.

ASSEMBLYWOMAN GREENSTEIN: Assemblyman Baroni.

ASSEMBLYMAN BARONI: Thank you, Madam Chair.

Mr. Commissioner, if I might -- and I think my colleagues' contribution on the issue of the policy issue behind this is highly relevant. But if I might, I'd like to return to the facts of this particular situation.

You made a comment that in 1971, you-- And, Mr. Commissioner, when I misuse the word *you*, please understand I mean -- using it in the plural in the sense of the Department. I will try not -- and it's certainly not being singular.

COMMISSIONER CAMPBELL: I appreciate that.

ASSEMBLYMAN BARONI: The Department ordered the baghouse to be created.

COMMISSIONER CAMPBELL: That's correct.

ASSEMBLYMAN BARONI: And you said that if the world existed today, we would require them, we'd be on notice -- I think were your words -- and we'd be able to understand what the particulates were, correct?

COMMISSIONER CAMPBELL: Right.

ASSEMBLYMAN BARONI: Here's what confuses me. In 1974, the DEP charged W.R. Grace with a violation of the State's then

existing air control rules. It happened again in 1977. Wasn't the Department on notice?

COMMISSIONER CAMPBELL: The Department was on notice of the problem with fine particulates. Fine particulates encompass a number of substances. It can be everything from the soot from the operation of a diesel engine to asbestos emissions. Here, because of the affirmative representations -- remember, this is in the presence of an affirmative representation that no asbestos was being used at the facility, and also given that in those days, air regulators looked at fine particulates as one big category and didn't subdivide that category -- I wouldn't say that they were on notice. In fact, the only evidence they had at that point was that -- was the representation by Grace that there was no material -- asbestos-containing material on the site.

ASSEMBLYMAN BARONI: So in 1974, the DEP -- the Department charges W.R. Grace with air pollution violations. What happened to the charge?

COMMISSIONER CAMPBELL: I can follow up and identify that information. I do not have that.

ASSEMBLYMAN BARONI: Okay. And it would be very helpful, because apparently it happened three years later -- again. And I understand the concept that, certainly, maybe there was not a discussion as to what was in the particulate. But I would like to know if that's the policy. Was the policy that after ordering the plant to put in a baghouse process, and then having, even with that, two further violations of the State's then lax -- compared to what exists today -- air quality regulations, that nobody

ever bothered to say, "Are you sure there's no asbestos in there?" I'm not saying you. But I'm intrigued that -- what could possibly have gone on. I'd like to see the paperwork between the Department and W.R. Grace, where W.R. Grace keeps saying, "No, no, there's really not asbestos there, Mr. Commissioner. We don't mean it." It's sort of like saying the elephant in the room -- no, it's really not there.

COMMISSIONER CAMPBELL: Those are the right questions, Assemblyman. There's another piece to this. And as I began my testimony, we're still trying to unravel all the aspects of the record. At some point, under the air program -- a program known as the asbestos NESHAPS program became effective. And one of the things I'm trying to -- that I've asked my staff to look at is, were there additional either misrepresentations or reporting duties that might have been overlooked or ignored, whether by the Department, W.R. Grace, by EPA when those requirements kicked in, given what we know about the facility now.

ASSEMBLYMAN BARONI: If I might, Madam Chair -- changing subjects to the notification issue. And what I mean by notification, is notification from the company -- my colleague Mr. Manzo also addressed this issue -- to the community. And let me do some backup, because you have the benefit, I think, to all of us, of not only your time at DEP, but your time at EPA preceding that. So you sort of span the time period that these events were taking place. It may be very helpful.

When was the cleanup order given -- what has become of the 9,000-ton cleanup? When was that given?

COMMISSIONER CAMPBELL: I believe that was -- that postdates the -- obviously it postdates the '95 order.

ASSEMBLYMAN BARONI: Right.

COMMISSIONER CAMPBELL: I believe that was in-- Let me check on that date.

ASSEMBLYMAN BARONI: Certainly.

COMMISSIONER CAMPBELL: 2003.

ASSEMBLYMAN BARONI: So in 2003, there was a cleanup order -- at some point in calendar 2003 a cleanup order was given. From whom did the order generate? From whom did the order come?

COMMISSIONER CAMPBELL: That's from the United States Environmental Protection Agency, based on an investigation that began in 2000, which is about the time the asbestos content in the Libby, Montana mine was being publicly disclosed.

ASSEMBLYMAN BARONI: So in 2003, the United States EPA orders W.R. Grace to clean up this site. Is that right?

COMMISSIONER CAMPBELL: That's my understanding, yes.

ASSEMBLYMAN BARONI: Who did they, being EPA, tell of this order? Did they tell the DEP? Did they say, "Dear DEP, by the way, this site in Hamilton, New Jersey, we've just ordered to be cleaned up?"

COMMISSIONER CAMPBELL: Typically, they provide us notice. I will have to determine whether that was an informal notice or whether we actually have notice in writing.

ASSEMBLYMAN BARONI: What would be an informal notice, a phone call?

COMMISSIONER CAMPBELL: A phone call.

ASSEMBLYMAN BARONI: Who would get that phone call?

COMMISSIONER CAMPBELL: Someone in our site remediation program.

ASSEMBLYMAN BARONI: Would that person normally have the responsibility to report that up the responsibility ladder, or does that sort of-- And I'm not casting--

COMMISSIONER CAMPBELL: They would typically report it up, and I believe they did at the time.

ASSEMBLYMAN BARONI: So we do know there was informal notice then.

COMMISSIONER CAMPBELL: I'm sorry?

ASSEMBLYMAN BARONI: We know there was notice.

COMMISSIONER CAMPBELL: I don't know that there was informal notice. It would have been typical for there to be notice and for that to be reported up.

ASSEMBLYMAN BARONI: So let's take a hypothetical, whether it was formal or informal.

ASSEMBLYWOMAN GREENSTEIN: Excuse me for one second, Assemblyman. We do have some people from EPA here. If they can answer that and help you with that, that may-- We're going to be questioning them next.

ASSEMBLYMAN BARONI: Okay, I'll move-- The questions do move on, beyond this issue.

Doesn't matter. Some notification-- Let's assume, for the sake of argument, some notification-- We're going to ask your colleagues -- former colleagues from EPA. What is the process? Do you tell the town? Is there an internal DEP process, when something like this occurs -- whether it's Hamilton or anywhere else -- that someone picks the phone up or writes a letter to the mayor or the town council and says, "By the way, this is about to happen." Is that a process within DEP?

COMMISSIONER CAMPBELL: That is a process that's not-- It is a process that's done -- has been done historically on an ad hoc basis. And it's one of -- when I identified for the Committee that -- both in terms of revising our regulations and legislation -- that more effective public notice both to neighboring property owners, to affected municipalities, and to communities is an essential reform.

ASSEMBLYMAN BARONI: And it's done on an ad hoc basis?

COMMISSIONER CAMPBELL: Currently, it's done on what I would describe as an ad hoc basis.

ASSEMBLYMAN BARONI: So why would you need new regulations then, if it's already being done in some places and not others?

COMMISSIONER CAMPBELL: Because you want to make sure that that's consistent, because we have cases recurring. And the American Standard redevelopment was another example in which the community had an interest in what was going on, on site. And the mayor felt that the notice that the municipality had received was not adequate.

And I think that one of the reasons you want it to be systematic -- you want it to be required by regulation -- is that, first of all, that means that the responsible parties bear more of that burden. Again, consistent with the polluter-pays principle, they should be notifying the community, and creating those opportunities, and making sure that whether or not the community gets notice doesn't depend on -- isn't ad hoc. It shouldn't be ad hoc, it should be systematic.

ASSEMBLYMAN BARONI: And I very much agree with you. But I think the burden needs not only to be on the ordered remover -- in this case W.R. Grace. But what we have here is a situation where the State has some level of information, directly relevant to communities, being shared with some and not others.

Again, Mr. Commissioner, I know -- I'm not blaming you for that. But it strikes me that that is idiocy, not at you-- But structurally some towns get it and some-- How do you decide whether the--

COMMISSIONER CAMPBELL: Well, there-- As I said, EPA may be able to address-- Under the National Contingency Plan, there are notice requirements. They may be better versed in them--

ASSEMBLYMAN BARONI: Great.

COMMISSIONER CAMPBELL: --than I would be right off the top.

There's a separate set of issues in that-- Just as a matter of resources and as a matter of responsibility, when EPA's assumed responsibility for the site, we try not to double-team or duplicate effort. And in this case, since the investigation of the Libby plant began several

years earlier, the follow-up as to individual sites that took material from vermiculite -- or asbestos-containing vermiculite from Libby was very clearly something EPA had assumed responsibility for. And so that does not mean that better notice shouldn't have been provided. I'm just trying to give you a sense of the institutional division of responsibility.

ASSEMBLYMAN BARONI: Okay.

I'll move on. The issue of-- Mayor Gilmore provided a report -- or a short report, and CC'd two or three of your employees, at least at the time of the report. Did anyone above those employees see that report who were not CC'd on it?

COMMISSIONER CAMPBELL: It was transmitted to me, as well as to the employees at the time. These are the recent sampling reports that the Mayor prepared?

ASSEMBLYMAN BARONI: No, no. This was the report that the Mayor complained he was not one of the 21 -- correctly complained he was not one of the 21 CC'd. Your employees, R. Van Fossen and J. Smolenski, in your Department received that--

ASSEMBLYMAN MANZO: EPA report.

ASSEMBLYMAN BARONI: Thank you, my colleague Mr. Manzo.

The EPA report. Did you see that report?

COMMISSIONER CAMPBELL: I did not see that, no.

ASSEMBLYMAN BARONI: If I might move on.

Is there any -- very simple question. Are there any records of any applications for any permits being filed by State DEP, filed with the township of Hamilton, when it comes to the W.R. Grace site?

COMMISSIONER CAMPBELL: Can you ask the question again?

ASSEMBLYMAN BARONI: Is there any record of any permits filed with the township of Hamilton for any work done on the W.R. Grace site, filed by the Department of Environmental Protection? Did DEP ask for a permit to put electricity in? Did they ask for a permit to put a trailer?

COMMISSIONER CAMPBELL: Not that I'm aware of. Typically, in terms of emergency response, we -- because of the emergent (indiscernible) nature of it, we don't apply for permits.

ASSEMBLYMAN BARONI: Right.

COMMISSIONER CAMPBELL: But I will -- I'm happy to check and report back.

ASSEMBLYMAN BARONI: And finally, it seems to me -- and you were very persuasive in arguing that W.R. Grace submitted false statements to the Department of Environmental Protection.

Forgive me for not knowing the answer to this first of two questions. When one sends that document in to you, I imagine they are submitting it under penalty of perjury. Is that correct?

COMMISSIONER CAMPBELL: They have to sign an affirmative certification, which I believe is, in the case of the ISRA report -- that's correct. In the case of the 1972 letter, it's simply a letter of representation. There are separate statutes that prohibit making false or

misleading statements to an agency. And we're actually, currently, reviewing those, both in this case and in Ringwood, and in other cases, to understand what the scope of any liability may be.

ASSEMBLYMAN BARONI: If your Department were to find that someone materially misrepresented itself in a certified document to your Department -- you would refer that to the Office of the Attorney General?

COMMISSIONER CAMPBELL: And we have, in this case.

ASSEMBLYMAN BARONI: You have? Okay. Thank you. Thank you, Madam Chair.

ASSEMBLYWOMAN GREENSTEIN: Any other questions?
(no response)

My last question is really a follow-up to what the Assemblyman just asked you. You've already done some referrals to the Attorney General's Office?

COMMISSIONER CAMPBELL: We have referred the matter, generally, to the Office of Criminal Justice, to understand. Because, obviously, that is critical to -- deterrents is to ensure that people are held accountable, including criminally accountable where appropriate.

ASSEMBLYWOMAN GREENSTEIN: Well, we appreciate that, because--

COMMISSIONER CAMPBELL: We have not made any judgments as to the scope of liability.

ASSEMBLYWOMAN GREENSTEIN: I know that the Division of Criminal Justice will be able to do a good assessment of what

happened here. And you're right. We have all of the new ideas -- many of which sound excellent, and I'm sure we'll be pursuing them and you'll be pursuing them. And then we have accountabilities. So those have to go hand in hand. Anything that you hear, if you could get back to us -- any further documentation on this. And we may be in touch with you to ask some further questions in writing, or whatever.

ASSEMBLYMAN BARONI: Madam Chair?

ASSEMBLYWOMAN GREENSTEIN: Yes.

ASSEMBLYMAN BARONI: Mr. Commissioner, I apologize. There's one question I did want to ask, going back to the -- using your word, is the *ad-hoc* notification of municipalities. Are there municipalities in New Jersey today that are undergoing cleanups, and they have not been informed of?

COMMISSIONER CAMPBELL: In terms of formality, I would like to follow up with you on that specific point, in terms of how they interact, the technical regs -- regulations for site remediation interact for municipal cleanups. But it has been at least my experience that however those notice functions are working, they are working inadequately. Because in case after case, mayor after mayor -- and I mentioned American Standard, that Assemblywoman Greenstein brought to my attention -- they're not as aware of the cleanups as they ought to be. And so, for example, one of the things that we're considering is whether -- in the case where a cleanup is affirmatively required, whether at some point there ought to be a public hearing. Because it's one thing to send a notice letter to a mayor that may or may not come to their attention. It's another to

say, once you have a cleanup plan, to bring that to the public's attention. And I think that's one of the difficulties of the statutory 45-day review period -- in this case is that it's really -- it may be difficult to incorporate that kind of regulatory requirement given that time frame. But we are looking at doing it both from a regulatory and statutory perspective.

ASSEMBLYMAN BARONI: Thank you, Commissioner.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Thank you very much, Commissioner.

COMMISSIONER CAMPBELL: Thanks very much.

ASSEMBLYWOMAN GREENSTEIN: Thanks for your time.

I'm going to call Councilman Dan Benson, from Hamilton.

C O U N C I L M A N D A N B E N S O N : Thank you very much, Madam Chair.

ASSEMBLYWOMAN GREENSTEIN: Good afternoon. How are you doing?

COUNCILMAN BENSON: Good afternoon.

ASSEMBLYWOMAN GREENSTEIN: Would you let us know -- the mayor, earlier, told us a little bit about a -- I believe it was a resolution or an ordinance that you did on the local Council, having to do with the notice issue. Would you talk to us a little bit about your experience with this problem in Hamilton, what the Council's done, and also the resolution, I guess, that you put forth.

COUNCILMAN BENSON: Absolutely.

Again, I'd just like to thank the Committee members for staying around and having a chance to, again, listen to a little bit more

input from a local community's perspective on the process as we saw it. As the Commissioner spoke earlier, we had a similar situation under American Standard where a cleanup began without adequate notice to the municipality, which we felt -- again, there was great interest in the community in hearing more and having a chance to ask questions about the process. We saw again, here, with W.R. Grace, in this case of being a Federal issue, where a cleanup was begun without notification to the municipality. And so the Council -- in cooperation with the mayor, and also speaking with yourself, Madam Chair -- looking for ways to increase cooperation, notification, and coordination. The notification issue, as many of you may be aware -- any time you try to do any type of development in the community, there's a whole host of notifications at a public hearing, at either a zoning or a planning board meeting.

In the cases where there's such a high-profile cleanup, as with American Standard or with the W.R. Grace, the Council felt that there was a need to have not only notification of the residents in the surrounding area, but also to give an opportunity for them to give input back to the agency that is mandating the cleanup; and to have the contractor they have hired to do the cleanup, to be there on-site, to address their issues; and to find out what is the oversight in terms of making sure particulate matter stays on the ground and other type of scientific needs that would be there to protect the safety and welfare of the residents of Hamilton Township.

One particular issue with notification -- and this was not addressed in the resolution -- but after reading some more about this, that I would like to add, is the need that the regulations need to have flexibility

based on the contaminant. In the case of W.R. Grace, we've learned that there's particulate matter, depending on where the wind blew -- there's a certain radius. So the radius of notification should match the type of contamination that exists on the site. So, again, if there were a public hearing, those residents that could be affected in the larger area could be addressed.

ASSEMBLYWOMAN GREENSTEIN: Great.

Any questions, comments?

Yes.

ASSEMBLYMAN BARONI: A quick question, Councilman. I'd like to ask you to put on a different hat than you've worn in the past. You were the mayor's representative of the Hamilton Library Board for a number of years.

COUNCILMAN BENSON: Absolutely.

ASSEMBLYMAN BARONI: The mayor quite correctly was concerned about the fact that the document was filed with the library. Why do you believe that the library didn't tell you, as a trustee of the library, or tell the township that this document had arrived?

COUNCILMAN BENSON: Sure. In fact, the time period that I believe that they said, in 2002 or 2003, I was no longer a trustee on the Board of Trustees for the library. So I'm not sure whether the library did notify the trustees at that time. However, in the past, it was not a policy of the library to notify trustees of any documents that were received from other governmental areas, such as the Federal Government. This type of document should have gone to the clerk's office who has the responsibility

for maintaining government records, and then again that would be then disseminated to the mayor's office, then to Council, and to other areas.

ASSEMBLYMAN BARONI: Should there have been a policy in the library to notify the governing body when something like this would have arrived?

COUNCILMAN BENSON: Generally, almost all the documents that they do receive, again, are going through the clerk's office. So without knowing that there were documents going through, the trustees, I doubt, would have known that there would be need for a change of policy. Now, in terms of recommendations through our resolution that we talked about, that would become a moot point. Because again, all documents would have to go, for identification, would have to go to the township. And I think that's the most appropriate way to make a change.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Councilman, have you heard from many people in the town about this problem? Have a lot come forward to Council, let's say?

COUNCILMAN BENSON: Sure. Well, as you are aware, the Council meetings in Hamilton occur twice a month, and it's really one of the few places where residents can come and speak to a governmental body on any issue that they wish to speak. And so, in terms of informally, we have spoken with a number of residents in the surrounding neighborhood, both from the American Standard site and from residents near W.R. Grace, that talked about going onto the site, not knowing that, as the mayor has spoken up earlier, there not being appropriate safeguards or signage on the property. So we did hear from residents about concerns of notification.

And that was one of the reasons why we spoke to Commissioner Bradley Campbell, as well as yourself, to address those concerns.

ASSEMBLYWOMAN GREENSTEIN: What's your sense of the general mood in the town right now in terms of this problem? Are people very worried? Because there was that newspaper article with the big headline that the 1985 EPA report showed that 92,000 people could be affected.

COUNCILMAN BENSON: Right.

ASSEMBLYWOMAN GREENSTEIN: Have you found that there is a widespread sense of panic or upset? Are people just waiting to see what happens? What's your sense of it?

COUNCILMAN BENSON: Well, I think any time that there's a governmental action without notification to residents there's a level of trust that is lost. And we saw that with both the American Standard and the W.R. Grace, when there's a lack of notification. And then they start to see action on a site, they are unsure of what is the purpose of that action. And any time there's a void of information that is then filled with either gossip or misinformation. And again, that's been harder to remove once that's there. So I think there is a level of trust that needs to be regained still. I think residents in the community are quite rightly outraged by the culpability of W.R. Grace for continuing, for a long period of time, in not notifying their workers or the residents of the danger; and again, their concerns about the State/Federal Government not contacting the local officials about the cleanup.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Anybody else? (no response)

Thank you very much, Councilman.

COUNCILMAN BENSON: Thank you very much.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Next, we'll call EPA, whoever is here from EPA.

Good afternoon.

R A Y M O N D B A S S O: Good afternoon.

ASSEMBLYWOMAN GREENSTEIN: Can you identify yourself, please?

MR. BASSO: My name is Ray Basso. I'm the Acting Deputy Director of Superfund in the Region 2 Office.

ASSEMBLYWOMAN GREENSTEIN: I think it might be the small microphones, but you have to show Ray. (referring to PA microphone)

M I C H A E L F E R R I O L A: My name is Michael Ferriola. I'm also with the U.S. EPA, and I'm the On-Scene Coordinator for this particular site.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Can you talk to us about your role, where you first got involved with the Hamilton site, what your involvement's been, and the steps you've taken?

MR. BASSO: In late 1999, a series of news articles reported that miners and their families in the area of Libby, Montana, were suffering adverse health effects from the exposure to asbestos-containing vermiculite ore that was mined near Libby. In the Libby mine, asbestos is mixed in

with deposits of vermiculite, although not all the vermiculite from Libby contained asbestos; but some of it did, obviously. Ensuing investigations brought to light information about exposure to the asbestos-containing vermiculite from this mine and the dangers it posed.

In April 2000, concerned about the potential environmental and health implications, EPA directed its regional office to use Superfund authorities to evaluate and identify facilities in the United States which received vermiculite ore from the W.R. Grace Mine, and that brought us to the Hamilton facility.

ASSEMBLYWOMAN GREENSTEIN: Can you talk to us a little bit -- are you familiar with this 1985 report?

MR. BASSO: I'm not personally familiar with it, but I've been getting familiar with it over the last few days.

ASSEMBLYWOMAN GREENSTEIN: Okay.

MR. BASSO: What happened was, in June 2000, there was additional news articles, from Libby, and media reports that EPA officials knew about the dangers of the vermiculite and did not take action. Consequently, EPA's headquarters office asked its Office of the Inspector General to conduct a review of the historical events related to the Libby situation. This investigation by the IG sought to determine, number one, what actions the EPA took to address the asbestos exposure; and what barriers EPA faced, and they continue to face, in addressing the issue.

That report was completed in March 2001. We've provided that report to the Committee, as well. And in it, it said that the IG found that EPA's efforts to take that report and move forward with it were

hampered by fragmented authority; communication issues; the limitations of science, technology, and health effects data.

Since that time, though, EPA has taken actions to address many of these issues, including improving and updating the state of the science on asbestos, forming a national task force to better communicate agency actions, and developing a pamphlet on asbestos-containing vermiculite attic insulation to help educate the public.

ASSEMBLYWOMAN GREENSTEIN: I was just searching for some notes that I had on that OIG. But I just wanted to ask you. I have a copy here of that '85 report. It's called "Exposure Assessment for Asbestos Contaminating Vermiculite." It isn't clear, even from looking at the report, exactly for what purpose it was prepared. It says inside, "This document is an exposure assessment." So it isn't clear what prompted the writing of this. It looks like the sort of document you might see on the shelf. What I mean is, it has a nice cover, and it looks like something that might have been prepared, really, for the general public. In fact, it does say it's for complete review by anybody who wants to review it. Something prompted it. As I say, it isn't clear from the report itself what did.

How many reports like this are done by the EPA? This report has some very serious findings in it, because it's talking about, at minimum, a risk, if not a danger, of exposure to some particular chemicals. How often does something like that happen, historically? Does it happen as much now as it did, let's say, 20 years ago? Because one wonders why this wouldn't then be passed into the hands of those that would be pursuing it. It seems like that's not what happened here.

MR. BASSO: First off, I cannot tell you what the purpose of that report was. Just from anecdotal information that I've reviewed, it looks -- that office that prepared that report, they're charged with regulating chemicals, especially in the manufacturing processes. I think that that report may have been utilized to support EPA's asbestos ban and phase-out rule in 1989. And EPA did try to promulgate that rule, and the U.S. Court of Appeals reversed the ruling in 1991. So that information in that report may have been used to support the agency's ban that they proposed in 1989.

ASSEMBLYWOMAN GREENSTEIN: It definitely is my impression, looking at something like this, that what now might spur immediate action when we see that people are at a health risk, did not apparently do it in 1985. The sort of information in here would get people very worried. And I guess in our litigious society everybody would be jumping on it immediately. Here you're saying it was used to support, perhaps, asbestos removal or to change views on asbestos. But it certainly is of concern--

MR. BASSO: Manufacturing--

ASSEMBLYWOMAN GREENSTEIN: I'm sorry.

MR. BASSO: For manufacturing facilities.

ASSEMBLYWOMAN GREENSTEIN: Yes.

MR. BASSO: And that's just my interpretation of all the information that I've read prior to this hearing.

ASSEMBLYWOMAN GREENSTEIN: Right. But they talk about dangers and risks to people living around plants, working at plants.

It's of great concern to me, and I'm hoping this doesn't happen anymore -- that reports like this are done, that this information is out there, and clearly the lines of communication are not good. In fact, in the 1991 OIG report that you spoke of, that seems to be the conclusion. That there are communication problems, as well as, in a sense, manpower problems that make it hard to set priorities. There are so many big priorities. This was just one of many.

How did the agency respond to those OIG findings that there were real problems here, of communication of this type of information to those who need to know it?

MR. BASSO: Well, what happened-- Let me look through my notes here. Yes. The actions that we've taken is -- specifically on asbestos -- is updating the science and forming a national task force. There's a number, now, of coordinating bodies on asbestos particularly, directly as a result of this OIG report that came out. So, in terms of asbestos, I think that's well under control due to the OIG report that we asked to have done.

ASSEMBLYWOMAN GREENSTEIN: As a result of this report or similar ones that you do, if you show some immediate risks in different parts of the country, do you have a process now to notify all of the affected parties?

MR. BASSO: Well, you have to understand that, the way EPA is set up, the headquarters office sets priorities and promulgates regulations and gives direction. The regional offices implement what comes down from headquarters. And the one major point that came out of that OIG report was they asked that Superfund look at all these satellite sites of the Libby,

Montana site, which once we found out about it-- In fact, we took action at the Hamilton site before the OIG report even came out. Because we knew things were in the works. So that's how the process works.

And once we got tuned in to what was going on with Libby and the satellite sites, we got out here to Hamilton and started the sampling effort. And that sampling effort revealed that there was asbestos on the site, and we did two follow-up sampling efforts. I think the last one, in 2002, where we took 220 samples of the soil on that facility. And that's where it was revealed that there was between nondetect and up to 40 percent asbestos in the soil, which then formed the basis for us to negotiate with, not W.R. Grace, because they told us that they were not able to conduct that work-- So I think, before, someone mentioned that it was W.R. Grace that did the work. They did not. It was Amtrak and an underwriting insurance company that was also involved at the properties, the site owners.

ASSEMBLYWOMAN GREENSTEIN: Which work are you referring to, which work?

MR. BASSO: The removal of 9,000 cubic yards of contaminates work.

ASSEMBLYWOMAN GREENSTEIN: Oh, yes. W.R. Grace had nothing to do with that, right?

MR. BASSO: That's right.

ASSEMBLYWOMAN GREENSTEIN: They said they couldn't do it.

I just wanted to ask you both -- and I've read Mr. Ferriola's deposition, which went through a lot of this in great depth and detail -- do either of you see any way-- I mean, what's your assessment of what happened in 1995, given what you've found in your soil samples? Do you have any sense of what took place there?

MR. FERRIOLA: No, I don't.

ASSEMBLYWOMAN GREENSTEIN: Do you?

MR. BASSO: Do you mean in terms of the DEP involvement and the--

ASSEMBLYWOMAN GREENSTEIN: Well, I'm thinking of the interaction between W.R. Grace and its consultant, and DEP later. Do you have any sense of it at all or any opinion on any of that?

MR. FERRIOLA: No, I don't. No.

MR. BASSO: I couldn't speculate on that either.

ASSEMBLYWOMAN GREENSTEIN: I wanted to ask Mr. Ferriola, in reading through your deposition, that whole issue of whether there was deliberate waste disposal -- I'm a little bit confused about. I mean, is it your impression, either from your visual there or from the work that you did, that there was, literally, a burying of asbestos-tainted materials, or was it more along the lines of it just got swept out and was all over the place, falling off trucks and everything else? Was there really a deliberate hiding of that material? There was something mentioned there about holes, waste piles. I just wanted to get some further understanding of that issue.

MR. FERRIOLA: There were a combination of resources or things that I looked at to make a determination or assessment. One of them was historical aerial photographs. EPA obtained a number of photographs that were taken by various government agencies over the years. And one particular photo there, which was dated 1969, clearly indicated or revealed piles of material that were deposited on the site. And there was a clear pathway coming out one of the doors in the building where the materials were deposited.

Also, during the sampling event that we conducted in August of 2001, which was a very intensive sampling event, the sampling results clearly showed asbestos in those areas that were indicated in the photos.

ASSEMBLYWOMAN GREENSTEIN: Because it sort of shines, right? You could see it?

MR. FERRIOLA: Well, you could also visually see vermiculite in the soil, okay. The other thing that matched up with that was when the responsible parties conducted their cleanup action, beginning in November of 2003. When the materials were excavated, you could clearly see vermiculite in the ground. I mean, heavy concentrations of vermiculite.

ASSEMBLYMAN McKEON: Madam Chairperson, I need to hook into a preset meeting. We went a little further than I thought. Assemblyman Gordon and I just designated Assemblyman Manzo as my substitute Chairman, with Vice Chairman Panter not there. So if you wouldn't mind, Lou, convening, because I know you have a bunch of questions for this witness, which is why I'm doing so.

ASSEMBLYWOMAN GREENSTEIN: Thank you so much.

ASSEMBLYMAN McKEON: Thank you very much.

Thank you all.

ASSEMBLYWOMAN GREENSTEIN: Mr. Ferriola, what was your conclusion -- if I saw the results correctly, and I just want to understand this a little bit better -- what was your conclusion? The 40 percent figure was found in one area, is that right? I saw a table-- Let me just finish the question. I saw a table in the reports with lots of numbers. Some of them were below the 1 percent standard. I saw the 40 percent. I wanted to get some sense of how-- You did a very careful sampling, so you have a pretty good sense of what was on that soil around the entire property and moving out from the plant as well. Is that right?

MR. FERRIOLA: That's correct.

ASSEMBLYWOMAN GREENSTEIN: And what was your sense of that?

MR. FERRIOLA: There was one particular grid line that was essentially in line with the property boundary between the current property owner and the Amtrak Millham Yard. And along that line, we found the highest concentrations. There were a few sample points that were between 20 and 40 percent asbestos, as per a particular analytic method. There were other areas on the property that were above 1 percent, and there were many areas that were below 1 percent. We collected an excess of 220 samples during that sampling event. Each and every sample did not show asbestos. However, there were areas that were contaminated in excess of 1 percent.

ASSEMBLYWOMAN GREENSTEIN: You said you collected 220. Do you know how many you found asbestos in -- in how many you found asbestos, of the 220, approximately?

MR. FERRIOLA: No. I couldn't answer that without looking at the analytical data.

ASSEMBLYWOMAN GREENSTEIN: I was trying to get some sense of, as sites go, how badly contaminated was this site? What's your sense of it? I know even a small amount above 1 percent is considered contamination. Would you say most of the site was contaminated? How much would you say there was? To cart away 9,000 tons sounds like a major action. So I'm presuming that you found enough to do that.

MR. FERRIOLA: Well, just to try and put that in perspective -- 9,000 tons does sound like a lot of soil. However, when you think about the number of trucks -- there was approximately 350 to 370 loads that we shipped out from the site. We excavated an area that was approximately 250 feet by 300 feet, at a depth of two feet. Just going from memory, I don't have my diagram in front of me, here, but it was quite a bit of soil. But not necessarily the largest soil removal that I've ever performed. I've had some jobs where we removed 40,000 tons, okay? And this is roughly about a quarter of that.

ASSEMBLYWOMAN GREENSTEIN: And on the earlier question I asked you, do you have any sense, from the pattern of what you saw, as to whether there was a deliberate burial or hiding, or whatever you'd want to call it? Can you tell by looking if the asbestos was concealed in some way?

MR. FERRIOLA: Based upon the aerial photographs that were reviewed, the sample test results which mimicked the aerial photographs, and the excavation that was performed in that area, it's apparent to me that materials were buried on site.

ASSEMBLYWOMAN GREENSTEIN: And wasn't there some issue as well -- I can't remember the details of it -- when Mr. Mandarano's group was working in there, about dust that was set off by their operation, and you had to redo some tests?

MR. FERRIOLA: Are you referring to the indoor sampling that was conducted?

ASSEMBLYWOMAN GREENSTEIN: Yes.

MR. FERRIOLA: Yes. The operation that -- the paper recycling operation generates a lot of paper fiber dust in the air. We did collect samples at one time, and we ended up resampling because the sampling filters were overloaded from the paper fiber in the air.

ASSEMBLYWOMAN GREENSTEIN: I guess my last question to you: in terms of your operation, the place where there seems to be -- and I'll just use this word loosely, because I can't think of another word -- at least, let's say some potential problem has to do more with the 1985 report, and how it was or wasn't put out there properly. My question is, do you see it, first of all, as -- have you changed your processes now, so that something like that wouldn't have happened? And do you see that as something that is at least potentially actionable? Are you looking into it for accountability purposes?

MR. BASSO: That process that you're talking about would have to be handled at the headquarters level, not at the regional level. I tried to explain that before, that--

ASSEMBLYWOMAN GREENSTEIN: Have you referred it, though?

MR. BASSO: No, we haven't. But they're very much aware of it, because they know that we're here today, and they know what the issues are. If I could speculate, I would expect that we have all sorts of peer review processes that have been put in place over the last decade or so. I think we're much more adept at sharing information, not just within the agency, but outside the agency, than we were in 1985. So if I can speculate, I would say that something like this would probably not happen today.

ASSEMBLYWOMAN GREENSTEIN: And what about the issue that I think we discussed earlier -- getting to the 2000 and beyond part of it, with notice to the towns? I think there was some discussion earlier with the mayor about whether there was actually notice in terms of even your getting various electrical permits. To what extent has that process been beefed up, perhaps, as a result of this?

MR. BASSO: Well, sitting back there for three hours, it came across loud and clear that we didn't do a perfect job when it came to notification. Our process, or our guiding, says that we should mail the administrative record to the librarians, specifically. Obviously, in this case, that didn't work. I will take back from this that, from here on in, that we should be-- All of this could have been avoided with just a CC to the mayor or a public official. And in many other instances when we do removal

actions, when there's right at the outset a lot of public interest in that process, public officials are notified as a matter of course. In this particular case, I don't believe there was that level of interest early on when we started looking at this, and so we used our normal process tailored to what we thought the interest was. But I think as a matter of course now, we should just notify public officials.

ASSEMBLYWOMAN GREENSTEIN: I think what happens, if I could editorialize here, is that the reason there wasn't the level of interest is that people just didn't really know. They wouldn't have seen those earlier reports. And it sounds like for a very long period of time the people in the town, the local elected officials, just had no idea this was going on -- didn't have a sense of the enormity of it. And that's really what has to be improved -- that real communication. Because otherwise, it comes across that somebody is trying to hide something at different places, different points.

MR. BASSO: Yes. And I heard speculation on that early on, and that's completely not true. If anything, it serves us better to go out there and highlight the good things that we do do. And this is an instance where if there was one agency that stepped forward when we got the proper information and conducted a fairly expeditious response, it was EPA. And we're not done there yet. We're going back to remove up to 5,000 cubic yards more, in addition to working with our State counterparts in developing an offsite sampling plant that we hope to implement fairly shortly as well.

ASSEMBLYWOMAN GREENSTEIN: Assemblyman.

ASSEMBLYMAN MANZO: Thank you, gentlemen, for both coming here. In your statement that you've submitted to us, you make a comment on the Inspector General's overview of EPA. And it says, in brief, "The Inspector General found the EPA's efforts were hampered by fragmented authority, communications issues, limitations of science, technology and health effects data, and competing priorities." Can you give me a little bit more of a definition of what is alluded to by competing priorities?

MR. BASSO: I can speak to that, generally, because I'm not in the headquarters office. But there's always more things to do than what you have resources for. I think this was a case that, after EPA's asbestos ban ruling got overturned in court, I believe the agency then turned its efforts, in terms of asbestos, to cleaning out asbestos from schools for reoccupancy.

ASSEMBLYMAN MANZO: One of the arguments that Grace, through their consultant, had put forth for trying to attain its No Further Action status from DEP -- and if you look through their application, there's a redundancy of this argument, and if you'll bear with me -- "Any vermiculite presence on site cannot be viewed as asbestos-containing material because of the following" -- and they list three reasons. "One, the asbestos-containing Montana vermiculite concentrate comprised only a percentage of the total concentrate stored on the gray side at Hamilton; two, the use of the Montana vermiculite was less than 10 percent from 1991 to 1992, and was discontinued in 1993; and three, less than 1 percent of asbestos would be present in the vermiculite concentrate." Which was

the criteria in which DEP then said, "We're not going to require sampling." Having heard that argument, what stands out, as the EPA says, that says something is wrong with that synopsis?

MR. BASSO: Well, I think the facts speak for themselves. The site is contaminated. So I don't know why they took the position that they did, but I think the end result is that we removed 9,000 tons of contaminated soil from the facility.

ASSEMBLYMAN MANZO: So as an official, you see, as I see it, that this glares out as such a mistake.

MR. FERRIOLA: When I first read that report, I questioned those statements that you had just read. I don't recall if I read that report before we conducted the initial round of sampling or afterwards. But based on the information that I was obtaining from my own research, from the Libby site, I didn't think that those statements in the report were completely accurate. And then after obtaining sample results, we knew that they weren't accurate, because we found quite a bit of asbestos on the site. That's about all I want to say on that. It was ironic or unfortunate that they had made those statements, and our results were completely different from that. We found up to 40 percent in a few areas, and 5, 10 percent in many other areas. And a lot of others that were slightly above 1 percent.

ASSEMBLYMAN MANZO: Madam Chair, the reason I bring this out is, I'm a registered Environmental Health Specialist and I have a little background. But to the layperson, this might just be something passed over and say, "It looks like they're making a good argument." But this just glares out at me as illogical why any agency, not EPA in this

instance, but why DEP didn't step in at that very point and said, "This," based upon all the information that they were presented up to that point "is a bold misstatement of fact," and should have required sampling at that point. And that's where I think we have to go further in this process, in finding out from those DEP persons who should have known that this was a problem, where and what they were being told to do or--

ASSEMBLYWOMAN GREENSTEIN: You're talking about that one page in the report, there, that in the '94 report--

ASSEMBLYMAN MANZO: It's redundant.

ASSEMBLYWOMAN GREENSTEIN: But there's one particular--

ASSEMBLYMAN MANZO: It's redundant. That phrase, yes, is redundant throughout for the reason of not requesting sampling, which I believe and which I can't help but believe that DEP would issue-- There was no way DEP could issue a No Further Action statement if they had taken sampling. And I have to believe, reading this, that there was insufficient reason not to sample.

ASSEMBLYWOMAN GREENSTEIN: Right. I agree that when I read that list of reasons that were given not to go further, they seemed spurious. They just seemed like a poor set of-- They said things like -- what was it again? You just read it. It made no sense to me.

ASSEMBLYMAN MANZO: They lead to three conclusions which basically you couldn't have read the report from EPA, going back, and have jumped to those conclusions -- the last of which is that less than 1

percent of asbestos, which is the threshold limit for doing any sampling, would be present in the vermiculite concentration on the site.

ASSEMBLYWOMAN GREENSTEIN: But they don't tell you how they come up with that, how they know that.

ASSEMBLYMAN MANZO: Well, they put together a pretty flimsy synopsis. And someone at a regulatory process -- they should have just stood out and said, "Stop sign. Wait a minute." And I think that's what we have to be focused on.

One final question which has bothered me, aside from the problems from the Grace plant in Montana and the one in Hamilton, but obviously, products were made with this asbestos-laden vermiculite. Plant food, I imagine. Also, insulation. Throughout this time that government agencies now have known that this stuff was contaminated, have any recalls been put out to the public to-- Is there a danger to the public who has purchased vermiculite asbestos-laden products? Is there a danger for those folks who now have that in their home, in their potting beds, or in their attics?

MR. BASSO: I really can't answer that question. I do know that the asbestos task force -- this is a huge issue -- and this asbestos task force down in Washington is looking into all these things. I do know a little bit about the attic insulation made from this exfoliated vermiculite. I think there's a million homes in the United States with this material in the walls or in the attic crawlspace. And the agency has released information to the public in the form of a pamphlet which basically explains to them that if you have this stuff in your house, what you should and shouldn't do.

ASSEMBLYMAN MANZO: Have they specifically identified, for example, potting soil manufactured by this particular--

MR. BASSO: I don't know about that part of it. I do know about the insulation, which is a little bit different.

ASSEMBLYMAN MANZO: Is there a process in EPA or a mechanism in EPA, like FDA has, for example, if there was a problem with a drug or a problem with a food? They would go, "Here's the manufacturer or here's the serial number of the commodity, and you should take this off your shelf or return it."

MR. BASSO: I think we'd like to get back to you on that, because I don't know that answer, specifically.

ASSEMBLYMAN MANZO: Yes, I would-- Because to me, that's another problem which -- it's a question out there. What about the public?

MR. BASSO: No, you're right.

ASSEMBLYMAN MANZO: If the same stuff that was in the plant harmed the workers, and it's just being packaged and sold to the public, what is their exposure and what process is in place?

ASSEMBLYWOMAN GREENSTEIN: Actually, one of the things -- I was thinking the same. I was reading one of your brochures. We had some sample copies. And the way they described it, it sounded as if, if you did have that type of insulation in your attic, they said, "Don't go up there too often." What does too often mean? "Don't touch it. If you have to touch it, don't touch it too often." So I think those kinds of instructions to people can be very confusing, frightening, and lead to bad results. It just

sounds almost as if what you're really meaning to tell people is, "Get it removed and do it professionally." But I realize that's a big expense for many people.

MR. BASSO: Without a doubt, if you're going to remove it through a professional, correct.

ASSEMBLYWOMAN GREENSTEIN: So that's a problem.

ASSEMBLYMAN MANZO: My final question is, was the same environmental consultant that helped process the information for them to receive their notice of No Further Action involved with them in representing the company to EPA?

MR. BASSO: I don't understand the question.

ASSEMBLYMAN MANZO: In other words, did EPA, in dealing with W.R. Grace, were you--

ASSEMBLYWOMAN GREENSTEIN: ERM. Did you have any contact with ERM?

ASSEMBLYMAN MANZO: --dealing with a company, ERM?

MR. BASSO: No. I don't think we dealt much with W.R. Grace on this case, because they hid behind Chapter 11 and said--

ASSEMBLYMAN MANZO: That's correct.

ASSEMBLYWOMAN GREENSTEIN: They were out already. They were out.

ASSEMBLYMAN MANZO: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Before I get to Assemblyman Baroni, I just want to ask a few other things. This summer you'll be removing about 4,000 tons more?

MR. FERRIOLA: Yes. There's another area. It's the area that we split off. It's called the Phase 2 area. And that's an estimated 4,000 to 6,000 tons.

ASSEMBLYWOMAN GREENSTEIN: Now, what sort of a notice process will you use now? How will it differ from what you did before in terms of working with the locals?

MR. BASSO: Probably the highest level of notification possible will personally go to the mayor. (laughter)

ASSEMBLYWOMAN GREENSTEIN: You'll be holding hands, okay. (laughter)

MR. BASSO: Yes. This is not going to be an issue going forward. I guarantee it.

ASSEMBLYWOMAN GREENSTEIN: And did I- It works periodically. I keep going from one to the other. (referring to PA microphone)

Did I read that there was a change recently? That at first -- I saw this somewhere, can't remember where I read it -- that at first EPA was refusing to do sampling to see if there were-- I'm not sure if this was soil problems or testing for health problems or whatever -- probably soil-type testing, in the neighborhood surrounding the plant, but that you recently decided that you were going to do something like that?

MR. BASSO: I don't believe we ever refused. There was a process laid out which included the Department of Health officials from the State. When they released their report on what the health impacts were from the previous operations of the plant and what the current situation is,

there was a question regarding the potential off-site migration of contaminants from the facility. What was proposed was looking at an air model to apply that to this particular area. And then, based on that air model, target off-site areas for sampling. And since that report was released, we've been working with DOH. And we've told DOH that we would step up and do that off-site sampling. So we will be formulating the work plan in conjunction with the Department of Health and ATSDR, and EPA will be conducting the sampling off-site.

ASSEMBLYWOMAN GREENSTEIN: Okay.

Thanks.

ASSEMBLYMAN BARONI: Thank you, Madam Chair.

I've got a couple of questions that I'm confused about, and it does go to the notification process. I'm grateful that, throughout the course of this testimony, that -- the realization by the administration that notification was lacking. But I have some questions, however, because I'm somewhat confused. Because, forgive me, but my understanding is that you, sort of, said that there wasn't notification to the township, because you didn't think there was people interested. I don't mean to put words in your mouth. Correct my statement.

MR. BASSO: Well, there was a lot of notification. It just didn't go to the political level. Mike, in his conduct of sampling and figuring out what needed to be done at the site and all the logistics, was involved with a number of people from the local government, including the whole issue of putting a trailer, getting a permit for the trailer, and electricity. We do have a permit. It was hanging up in the trailer. And we

also put in a public notice on May 28, 2003, that was in the newspaper, in the Trenton *Times*, requesting public comment and saying that the administrative record is now in place at the library. I think, also, in November of 2002, we provided an on-site briefing to the Hamilton and Lawrence Township Health Departments to tell them what was going on out there. What I'm saying is, that is notification. I think what I'm hearing today is where we fell short was we should have gone the next step and notified political people within the Township.

ASSEMBLYMAN BARONI: Well, take a step back with me, though. I'd like to focus on -- because we seem to have two different perspectives here. You're saying -- unless I just misheard you -- that you have a permit from the Township of Hamilton--

MR. BASSO: That's correct.

ASSEMBLYMAN BARONI: --for what? What's the permit for?

MR. FERRIOLA: The permit was for siting a temporary office trailer and for electrical connection to the paper recycler.

ASSEMBLYMAN BARONI: And--

MR. FERRIOLA: They would not let us site a trailer without the appropriate permits.

ASSEMBLYMAN BARONI: Who's the *they*?

MR. FERRIOLA: They was the -- I believe it was construction code official, who I personally met with.

ASSEMBLYMAN BARONI: Who was that?

MR. FERRIOLA: Pardon me?

ASSEMBLYMAN BARONI: Who was that person?

MR. FERRIOLA: His name was -- is Fred Yeady (phonetic spelling).

ASSEMBLYMAN BARONI: So when you began this process, you believed when you opened up the trailer and you went to work that first day in the trailer, that you had all the Township approvals you needed to begin this process?

MR. FERRIOLA: Well, as I mentioned, they would not hook up the electric. The electrician would not perform his services unless there was a permit.

ASSEMBLYMAN BARONI: And this permit--

MR. FERRIOLA: And this permit was posted in the trailer.

ASSEMBLYMAN BARONI: The permit was filed by whom?

MR. FERRIOLA: The permit was filed by one of our contractors, called Weston Solutions.

ASSEMBLYMAN BARONI: Weston Solutions?

MR. FERRIOLA: Yes. W-E-S-T-O-N Solutions, and they're based out of Edison, New Jersey.

ASSEMBLYMAN BARONI: Weston Solutions goes into the Township, as many of my neighbors have done, whether it's to build a swimming pool or put up a fence, and you fill out a form requesting a specific permit. You were requesting a temporary office permit. You were requesting an electrical permit. On those applications that you filled out, did it say why you were doing it?

MR. FERRIOLA: Well, I personally didn't fill out a permit.

ASSEMBLYMAN BARONI: Well, no. I meant *you* plural, the person who filled it out.

MR. FERRIOLA: Oh, I don't know if Weston put down the reason for the permit. But when I met with Mr. Yeady, I explained to him what we were doing out at the site and why we needed the permit.

ASSEMBLYMAN BARONI: And what was that--

MR. FERRIOLA: I'm sorry. Why we needed the office trailer, because of the conduct of the removal action.

ASSEMBLYMAN BARONI: And removing of what?

MR. FERRIOLA: The removal of contaminated soil.

ASSEMBLYMAN BARONI: Do you have -- you plural -- does EPA have copies of the documents that Weston Solutions filed with the Township?

MR. FERRIOLA: I don't know. I can look into that and find out.

ASSEMBLYMAN BARONI: It would be helpful to find that out.

MR. FERRIOLA: Okay.

ASSEMBLYMAN BARONI: To find out what was actually told to the Township. Because now, apparently, we do have some documentation. Something happened. Something happened.

If I might, very briefly, Madam Chair, and if it's all right, Madam Chair, through you, if Mr. Ferriola -- if you could provide, through the Chairs, that documentation. I think we'd all be very interested in that.

ASSEMBLYWOMAN GREENSTEIN: Yes, that would be interesting.

ASSEMBLYMAN BARONI: You were present on-site during this process? You were there? You were working at the site as the removal was taking place?

MR. FERRIOLA: For the removal action, that's correct.

ASSEMBLYMAN BARONI: Can you tell me what happened? What, physically, would take place? You'd get there in the morning, and what would be happening?

MR. FERRIOLA: The responsible parties would have their clean-up contractor on site. There was heavy equipment. There was a water truck to spray the area down in the event that it was too dry. There was site setup going on. We put orange fencing around the excavation area. There was silt fencing installed to prevent erosion and runoff. There was air sampling equipment set up to perform perimeter asbestos sampling and also particulate monitoring. This was done on a daily basis.

As the area was excavated, it was placed into a stock pile, which was covered on a daily basis. As the materials were stockpiled, there were a series of trucks that arrived that the contractor loaded. Prior to the material being placed in a truck, there was a liner in the truck. The material was placed in it. The liner was zippered closed. It was a special liner. And then the tarp would go over the truck. The trucks would be placarded for asbestos, as per DOT regulations. They would sign the manifest, and the material would be on its way to a landfill in Pennsylvania.

ASSEMBLYMAN BARONI: So you're saying 340-50 trucks were marked asbestos?

MR. FERRIOLA: Well, they were placarded for asbestos.

ASSEMBLYMAN BARONI: Define placard for me?

MR. FERRIOLA: Placard is a piece of cardboard in a diamond shape.

ASSEMBLYMAN BARONI: On the back?

MR. FERRIOLA: It's about this size (indicating). It's posted on four sides of the truck.

ASSEMBLYMAN BARONI: And what does it say?

MR. FERRIOLA: It doesn't say asbestos. It has a number -- a UN number on it, and it's a black-and-white placard, which has a designation of a Class 9 waste for environmentally hazardous substance.

ASSEMBLYMAN BARONI: So the average person who was living down the block on Fourth Street just sees a truck with a black sign on it. And unless they're schooled in what those numbers mean, they don't know that's asbestos.

MR. FERRIOLA: That's correct.

ASSEMBLYMAN BARONI: Why is that?

MR. FERRIOLA: Well, as per the DOT regulations, there are certain requirements that need to be met.

ASSEMBLYMAN BARONI: Federal DOT?

MR. FERRIOLA: Federal DOT.

ASSEMBLYMAN BARONI: If I might, you make an interesting point about water runoff. You said that we brought in, I

imagine, one of those buffalo trailer things with nonpotable water. You said if it was too dry, we spray it down.

MR. FERRIOLA: Well, we would implement engineering controls. If our sampling equipment, or the visual, told us that there was dust in the air -- so we would spray it down to eliminate any potential for asbestos fiber release.

ASSEMBLYMAN BARONI: Where was the runoff site?

MR. FERRIOLA: The runoff actually went back into the excavation.

ASSEMBLYMAN BARONI: So it all went back into the excavation?

MR. FERRIOLA: Well, when I'm talking about the silt fence -- the silt fence was installed around the excavation area. So any surface water, rain, that fell onto the site, or snow melt, was diverted away from the excavation area. So we wanted to keep that area dry. Or not dry, but not flooded, because then we'd have another waste stream to deal with.

ASSEMBLYMAN BARONI: What was the contractor's view-- At the conclusion of Phase 1 -- your words. You said it was Phase 2, and there's approximately 6,000 -- pick a number -- 5,000 more to be removed. What was the thinking not to fence it?

MR. FERRIOLA: The area was fenced with an orange, high-visibility fence.

ASSEMBLYMAN BARONI: So that the Phase 2 was fenced?

MR. FERRIOLA: Well, Phase 1 was fenced.

ASSEMBLYMAN BARONI: Right.

MR. FERRIOLA: And at the completion of Phase 1, Phase 2 was fenced. And it is currently fenced right now.

ASSEMBLYMAN BARONI: What was the thinking about not doing it collectively at the time?

MR. FERRIOLA: That was a decision that the responsible parties made, based on funding.

ASSEMBLYMAN BARONI: And that was an acceptable decision to you?

MR. FERRIOLA: Yes, it was.

ASSEMBLYMAN BARONI: Finally, you made a very interesting comment about the grid line along the back property line. It struck me that -- I'm not sure if *back* is the appropriate adjective. But that the property line between, for whatever -- W.R. Grace's property, now owned by somebody else, and the Amtrak yards -- that you found a higher percentage of asbestos contamination at that point.

MR. FERRIOLA: Yes. We found the highest levels on the property line, which was bordering the Amtrak Millham Yard and the current property owners. Well, formally W.R. Grace, but Grace never owned the property. They actually leased it.

ASSEMBLYMAN BARONI: So you're telling me that you found -- again, forgive me for the dumb question -- that the further back you went in the property towards the train, the higher the percentage of asbestos got? Is that fair?

MR. FERRIOLA: Well, I would say the midpoint between the current building and the rail line, not necessarily all the way back toward the rail line.

ASSEMBLYMAN BARONI: Is a layperson-- As a non-engineer, is a layperson's thought, that that indicates a purposeful placement of material, an incorrect conclusion?

MR. FERRIOLA: Well, based on the contour of the land, which appears to have changed over time, I would speculate that that material was placed and dumped there.

ASSEMBLYMAN BARONI: That conclusion is -- and we've seen it before -- is stunning, in the sense that we, for the first time-- Unlike the person from the company, I give you great credit for saying it like it is -- that this company dumped toxic chemicals, and they pushed it as far back on their property as they possibly could in order to, at some point-- And to use your words, the land has changed over time. And I can tell you, having spent 33 years, or almost 33 years, of my life in Hamilton Township, there was no earthquake that I knew of to force the change in the topography of the land. It strikes me that we have here -- by the very presence and physical presence on the site -- and concentration of presence on the site -- we have a purposeful placement of this material toward the back of the property. Would you agree with that conclusion? Oh, just say it.
(laughter)

MR. FERRIOLA: Based on my visual observations, based on the aerial photographs, based on the excavation that was conducted, based

on the presence of vermiculite which still remains at the base of the excavation, I would say that it was purposely dumped there.

ASSEMBLYMAN BARONI: Thank you.

Madam Chair, thank you.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Does anyone else have any questions of these witnesses? (no response)

Okay. Thank you very much. Thank you. I really appreciate it.

MR. FERRIOLA: Thank you.

MR. BASSO: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Yes.

MR. FERRIOLA: Excuse me. One other quick point. We will be having a public meeting on May 17. Let me see where it's going to be. At 7:00 p.m., at the Hamilton Civic Center, to bring the community members up-to-date regarding our investigations, findings, and cleanup activities to date.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

And we'll probably be in touch with you further to follow up on this and to see what might be done. Particularly, I'm interested in that issue. I'm interested in moving ahead and looking ahead, and I do think that there will be some great changes in the processes here in terms of notice. But I'm also interested in that accountability issue, and I would like to speak with you further about that. So we'll be talking with you.

Thank you very much.

MR. FERRIOLA: Thank you.

MR. BASSO: Thank you.

ASSEMBLYWOMAN GREENSTEIN: The next person, I guess, that we'll ask up is from Sadat Associates.

Thank you. I know you've been here all day. We really appreciate your sitting through all this, and I hope you found it moderately interesting, because it really has been a (indiscernible).

Could you identify yourselves?

M A R W A N S A D A T, Ph.D.: Yes. I will do that, Madam Chairman.

I am Marwan Sadat. I'm the President of Sadat Associates. We are an engineering and environmental science consulting firm located in Trenton. I have a Ph.D. from Rutgers University in civil and environmental engineering. I'm a registered professional engineer in the State of New Jersey.

I am very pleased to brief the Committee on the sampling for asbestos that was conducted on March 28. So, on behalf of Hamilton Township--

ASSEMBLYWOMAN GREENSTEIN: By the way, Mr. Sadat, was that your first work on this project for Hamilton, in March of this year?

DR. SADAT: That is correct, Ma'am.

ASSEMBLYWOMAN GREENSTEIN: Okay.

DR. SADAT: In fact, Suzanne Macaoay, who is on my right, is the person who actually did the sampling. She's a project manager. I

brought her along because, if you have some specific questions, she is probably more qualified to answer you than I am.

ASSEMBLYWOMAN GREENSTEIN: I think what we'd want to know, in terms of that particular sampling, is when the testing began, when it ended, where were the samples taken from, and then, of course, a discussion of the results.

DR. SADAT: Madam Chairman, we did the sampling, as I said, on March 28, 2005. And we had 15 samples that were taken. Five were done at the Amherst Park, five were done at the Whitehead Park, and then we had another five samples that were taken from residences which were within a mile of the W.R. Grace site. Now, we received the results of the samples -- I think was in a short period of time -- we had 72 hours. We had to expedite it. And the results at the Amherst Park were nondetect; there was no asbestos that was detected in Amherst Park. Obviously, there was a lot of concern about public space.

Whitehead Park, similarly, no detection of asbestos. The two residences -- I'm sorry, there were three residences -- two had no asbestos and one had traces of asbestos. In fact, we found one residence where vermiculite had been brought to the property, and this is where we found some asbestos. Less than 1 percent. But I have to tell you, in conversation with EPA, Region 8, that was doing the Libby investigations -- we were told by EPA that, in effect, you can get unacceptable exposure, even if the levels are less than 1 percent.

ASSEMBLYWOMAN GREENSTEIN: And who told you that, I'm sorry?

DR. SADAT: That was conveyed to us by U.S. EPA Region 8 staff, Dr. Aubrey Miller, who is a senior toxicologist for the Libby Superfund site in Montana.

ASSEMBLYWOMAN GREENSTEIN: I see.

Now, did you find less than 1 percent? Did you find less than 1 percent, or more?

DR. SADAT: No. We found less than 1 percent. The highest concentration we found was 0.25.

ASSEMBLYWOMAN GREENSTEIN: Okay. Now, I did notice in some of the documents a distinction made between polarized light microscopy--

DR. SADAT: Microscopy.

ASSEMBLYWOMAN GREENSTEIN: --and -- what was the other one -- electron. Let me see here. Oh, electron -- transmission electron microscopy.

DR. SADAT: Yes. We did it by polarized light.

ASSEMBLYWOMAN GREENSTEIN: And did you have some issue about that, where you thought, perhaps, that doesn't quite go as strongly as you need it for this?

DR. SADAT: I think the results we have are reliable. I think if we had gone to electron microscopy, we may have gotten maybe a little bit better resolution, but I don't think it would have significantly changed the results.

ASSEMBLYWOMAN GREENSTEIN: And what were the results?

DR. SADAT: As I said, the results were nondetect in the parks, nondetect in two of the residences. One residence had traces of asbestos, because we did find vermiculite on the site, and the level that was detected was about 0.25 percent, which is less than 1 percent, one-quarter of 1 percent.

ASSEMBLYWOMAN GREENSTEIN: I believe it said in your report, in the summary, that you could not declare the area asbestos free. Was that a result of the finding at the one house, or something else that led you to that conclusion?

DR. SADAT: Well, Madam Chairman, I think it's a combination. One, we have 15 samples. This is a fairly large area. Fifteen samples, statistically, really, is not going to give you a reliable result. What we were doing for Hamilton Township -- and we must commend the Township, because it's really not their responsibility to do this -- is (a) immediately focus on public spaces, which is the parks where you have a high degree of exposure, if there is exposure to asbestos. So based on the 15 samples and the large areas that are involved, frankly, we can't say that there is no asbestos contamination throughout the area.

ASSEMBLYWOMAN GREENSTEIN: What -- and you did strictly soil testing, is that right, just soil testing?

DR. SADAT: I'm sorry. Soil testing. Yes, I think for asbestos that is really the main method of detection. EPA, when they were doing their excavation, were doing air sampling, which is the appropriate way to do it. Because, obviously, if you were excavating material, you want to make sure that your particulates are not going off-site.

ASSEMBLYWOMAN GREENSTEIN: What do you think needs to be done next, and how much concern do you think there should be at this point?

DR. SADAT: I think EPA is proposing to do off-site sampling, which I think is the appropriate thing to do. The EPA moves in very deliberate ways. I worked -- I served with government for 11 years, many years ago at the DEP. And I knew how deliberate EPA is. But in general, everything they do is based on very, very good science. So I suspect that once they are finished with the off-site sampling, the public then will really know what is going on. At this point, I think we are just speculating, because we have only one sample that showed traces of contamination.

ASSEMBLYMAN MANZO: Thank you, Mr. Sadat, for your testimony today.

First off, when the town of Hamilton came to you and asked you to go out and do some sampling, did you think it was a prudent measure on their part to do some sampling?

DR. SADAT: Well, we certainly thought it was really going beyond and above what townships usually do -- (a) there is no budget for such efforts, in general. It's really more of a function of the Department of Health or the DEP or EPA. Townships are not equipped to do that kind of investigation.

ASSEMBLYMAN MANZO: I didn't mean as far as what it-- As based on the science and technology of what they were being presented with, in relationship to a problem that existed, do you feel that someone

should have taken the onus of sampling? Not just them, but somebody should have, based upon what you have read.

DR. SADAT: I think off-site, I think the township did the appropriate thing by going off-site. Somebody -- and especially the public spaces. You have two parks which are within a mile-and-a-half of the site. And the question that comes up is, is there exposure at these parks from asbestos? And I think the only way that you can determine that is to go out and do some sampling. So I think they did what was appropriate. It's too bad that they had to do this. I think other agencies should have done that before.

ASSEMBLYMAN MANZO: So when I -- again, and not to be redundant -- but, again, the whole premise for why the DEP had issued a notice of compliance and why they had not addressed sampling on the site was basically the report given to them by Grace's consultant, which basically listed these three criterias, again, for not sampling: asbestos-containing Montana vermiculite concentrate comprised only a percentage of the total concentrate stored on that site; number two, the fact that less than 1 percent of asbestos would be present in the vermiculite concentrate -- their conclusion; and that the Montana vermiculite was less than 10 percent from 1991 to 1992, and was discontinued in 1993. Now, had someone come to you, as an environmental engineer, and given you that criteria, based upon what you already knew about that site, do you think that was sufficient reason not to warrant additional sampling?

DR. SADAT: Well, I think what should have been done is, some sampling should have been done. I really think that on a site that has

had industrial activity for a number of years -- certainly it's almost three decades or almost four decades -- not to do any sampling, to me, seems imprudent. And I have to add that I think one of the weaknesses of the system that we have right now is that documents are produced and delivered to DEP without basically anyone signing them, being responsible for them. So the document goes in and it is based on a certification by the company. There is no seal. That is, you don't have a professional engineer sealing a document that goes to DEP and says, "This document is, to the best of my knowledge, a document that reflects what's on the site."

Everything in this state -- you can't build a building, you can't do anything without an engineer signing a set of plans and saying, "I've certified that these plans are going to work." You do 3,000 cleanups at DEP, and it is not signed by any professional engineer, which I think is a fallacy in the system.

ASSEMBLYMAN MANZO: You hit on something which I think this -- especially the Environmental Committee wants to look at in regards of regulatory. But let me just get your thoughts on this. You're telling me that despite the fact that an environmental consulting firm does work for a responsible party, or a suspected responsible party, relative to an environmental issue, even though that they might have within their employ the services of environmental engineers, it is not required for a certification to be made -- on important data like sampling or evaluations or permits -- when passed on to DEP?

DR. SADAT: That is correct, Assemblyman.

The only time that a certification from a professional engineer is required is when there is a deed restriction. That is, where the property has a deed notification attached to it. At that point, there has to be a certification by a professional engineer, otherwise there isn't.

ASSEMBLYMAN MANZO: Do you think there is a -- I'll put you on the spot with this question -- did you think there might be a tendency for companies, or suspected polluters, to fudge a little on data and criteria because of that fact?

DR. SADAT: Well, I think it would be purely speculation on my part. I certainly would be somewhat hesitant to make a statement like that, because I have no evidence to that effect. But I do know that when a document is presented to the agency and it is not signed by the author, there is something wrong with the system.

ASSEMBLYMAN MANZO: Thank you, Mr. Sadat.

ASSEMBLYWOMAN GREENSTEIN: Thank you very much. Thank you. I think those were all the questions.

DR. SADAT: Thank you very much.

ASSEMBLYWOMAN GREENSTEIN: We really appreciate your testimony. Thank you.

The next -- I'll call Rick Engler, from the Work Environment Council.

And I also don't know if Jeff Tittel is in the room, because I was going to invite him up at the same time.

Rick, thank you for waiting all this time.

RICK ENGLER: Thank you very much.

And I know that the hour is late, and I appreciate the patience of the Committee in addressing what are certainly technical and difficult issues, in part. First, to introduce myself to those who don't know me. I'm the Director of the New Jersey Work Environment Council, which is a nonprofit coalition of 65 labor, community, and environmental organizations that focuses on both safe workplaces and healthy environment.

And frankly, although this has been a long day, I think I was tired from the moment I walked in. And I was particularly tired after hearing the disgraceful testimony of the representative of W.R. Grace. Because we've heard all this before. And, in fact, in 1989, the New Jersey Department of Health and Senior Services contracted with Mt. Sinai, in New York, the Center for Environmental and Occupational Health, to do a study on the extent of occupational disease in New Jersey. And they found -- and I'm not even going to go into the statistics -- that this was a major public health problem, that it was entirely preventable, and that the State ought to take a number of steps to do something about it. And unfortunately, despite that report, which was subsequently updated to show the millions and millions of dollars of financial burden passed on to the residents and taxpayers of New Jersey for paying for the costs of occupational and environmental disease, very little was done to follow through on the recommendations of the 1989 report.

One comment I would like to mention, before going into what our specific policy recommendations are -- you can go back to the 1930s to find the initial suspicions about asbestos-related disease. You could look in

our own state -- in Paterson, in Manville -- for thousands and thousands of workers who have died dealing with asbestos. It is a disgrace that we are having a hearing today, in this year, focusing on what the hazards of asbestos are. And why we're doing it is because there's essentially systemic problems that are underlying this. These are not things that got lost in the cracks. These are evidence of systemic occupational environmental health problems that has to be prevented in a serious way in the future.

So I would just like to, sort of, launch into a few very specific policy recommendations, to keep this process short, because I know you still have other testifiers today. One is, when DEP inspectors go inside a workplace and they see a dangerous condition, there is no policy, to our knowledge, that they refer such a dangerous condition -- in a private sector workplace -- to OSHA for follow-up enforcement, or to the Department of Labor or Health for public sector occupational safety and health enforcement. This is a no-brainer. They should do that. Now, OSHA may not want to sign a formal Memorandum of Agreement referral process. The DEP could do this unilaterally. The DEP is, in fact, in far more workplaces than OSHA is in our state, all the time, and they have to be able to recognize the connection between the impact on the community which they're focused on, and the environment, back to the health of workers. And a lot of this is not rocket science. No doubt, it could be addressed in an internal DEP training program. There should be that kind of formal referral arrangement.

Another example of something that should be done. The Trenton *Times* -- and I should note that our organization actually alerted

the Trenton *Times* to this story -- and that's why there followed some 40 different newspaper reports. Because we were just looking at routine things that came across our desk, and we saw the follow-up study that was going on from the Libby, Montana situation. So we see this as an opportunity not to bemoan, although we're sympathetic to everything that's happened, but to make, frankly, some advances on the policy issues -- that I'd like to talk about further.

One is, when workers' compensation claims are filed with the New Jersey Department of Labor, there doesn't seem to be, as yet -- and maybe there is, but we haven't heard about it -- a procedure by which, if there's a pattern of disease claims, that there's a notification to anybody else. Now, for years, the excuse was, "It's not computerized." We're dealing with tons and tons of paper of these first reports of occupational disease claims. Well, now, they have gone to a computerized system, and even the Department of Labor's Web site says, as of yesterday, "The new system will make data readily available that can potentially be used to reduce the incidence and severity of industrial injuries and illnesses." But we know -- and frankly, I read this part, based on the research in the Trenton *Times* -- that there's been numerous workers' compensation cases filed with the Labor Department.

So how come, based on these first reports -- now electronically done -- does not a trigger go off that says, "Okay. We have a pattern based on alleged illness or injury. A pattern based on the occupation, by the employee, or perhaps other criteria." And that should serve to alert the appropriate regulatory bodies of how to deal with this. Again, that's in the

private sector; it's Federal OSHA. In the public sector, it's the New Jersey Departments of Health and Labor. It seems to me this is another example of a no-brainer that should be done.

Third, the Web proposes that the Department of Health and Senior Services occupational and disease reporting requirements for physicians be truly enforced. Believe it or not, there is a law already in place. There is a regulation -- I believe since 1990 -- that physicians must report certain diagnoses regarding workplace illness to the Department within 30 days of diagnosis or treatment. However, we know that very few physicians obey this law. I'm on the Department of Health's Occupational Health Surveillance Committee, which is an informal advisory group, and it's a great group of people. And we have heard, in the past, reports about how many reports there are from physicians. Now physicians are busy, they're under pressure, they're dealing with managed care. Nonetheless, they should be reporting these cases. But based on the data from the Department of Health -- and this is actually more for asbestos than other diseases -- from 1996 to 2004, only 564 cases of asbestosis have been reported in the entire state. And there were no reported asbestosis cases in 2003 and 2004. Something is wrong here.

We know that thousands of workers contract occupational diseases each year. There needs to be an enforced mechanism where a physician has to notify at least the Department of Health. And then, if patterns again become apparent, there has to be intervention in the workplace to prevent the conditions that cause disease and injury. This is again another no-brainer. It's a law that is not being enforced. I think the

assumption is, we can't do anything to penalize physicians about this. I understand there's an education and outreach program -- which is to be applauded -- in the Department of Health on this. But frankly, we know that there are doctors, who are dealing with multiple occupational disease and injury cases subject to this reporting requirement that work for employers, whose job is to send people back into the workplace as soon as possible. One of those doctors should probably be looked at very carefully and penalized in some fashion. And if they can't be penalized, then the Legislature and the Department ought to do a review of the statutory and the regulatory procedures so that there is appropriate financial penalties or other incentives to get physicians to report. Because clearly, based on the number of likely asbestosis cases just coming out of the Hamilton plant, you would think it would have triggered something in the way of further intervention.

Fourth, criminal liability for employers is an issue. We think this also should be reviewed. And there are three specific issues. One is, the discovery period under the Industrial Site Recovery Act should be a longer period, rather than just being able to go back five years. Because, obviously, some of these disease-producing matters have -- began much earlier. Redefining serious bodily injury in the criminal code so that it includes chronic low-level, occupational and environmental exposures. The definition in the criminal code basically -- and I'm not an attorney -- but as I understand it, addresses shootings and stabbings, but doesn't address a company that, from whatever we can tell, with malice of forethought, or whatever the term is, poisoned and killed people, and yet is not-- It will be

much harder to prove in a court of criminal law that this constitutes serious bodily injury.

There is also a section in the criminal code called Creating the Risk of Widespread Injury or Damage. And the number of people potentially exposed to risk that triggers use of this is five people. If you have five or more, that applies. If you have four, it doesn't apply. That is not rational public policy. So that if four people get chronic disease from a particular chemical, particularly something unusual, which is just being found out about, there is no way that the Attorney General could intervene through the Environmental Crimes Unit to proceed to prosecute. We think that should be looked at.

We think the smoking ban legislation should be pursued in the Assembly. Now, I know that doesn't seem related, but, in fact, smoking is a major occupational health problem. Many workers are exposed against their will to tobacco smoke. It clearly has all kinds of health effects. And we urge the Assembly to follow the lead of the Senate Health Committee, which recently passed tobacco smoke legislation.

It was fascinating, number six -- I'm getting toward the end -- to listen to the testimony of Commissioner Campbell about this, and his comments on 45-day permitting. And all I can think about was Fast Track. Our organization, along with the entire environmental community in New Jersey, thinks the Fast-Track law should be repealed. The idea that we're going to further speed up permitting without adequate controls in place is clearly inappropriate and, perhaps, there's some lessons here for what the impact is on the Fast-Track issue.

We shouldn't do anything to roll back worker and community protections for preventing exposure to disease. And I'm really troubled about this one. Because at the very time that Commissioner Campbell has correctly referred this matter to Attorney General Harvey for criminal investigation, Attorney General Harvey is in the process of rolling back our right to know about toxic chemicals in the workplace and community. Specifically, his office has proposed a rule -- was proposed last October -- that would gut the Open Public Records Act. That would basically mean information about hazardous materials would not be accessible under OPRA. And maybe, as they claim, they're accessible under existing common law or the existing Right to Know laws that exist at the State and Federal level. But we're thoroughly confused, and our attorneys are thoroughly confused. We wrote 17 pages blasting this, and the position of the Department is, "Oh, no, you can still do that."

Well, if terrorists can get this information, which is the extensible reason for modifying OPRA, by using Right to Know and common law, what's the point of the Attorney General modifying OPRA? This is an absurd situation, and we would urge the Judiciary Committee and the Environment Committee to consider holding a special hearing on the OPRA rollback. Because this is an outrage that the Attorney General proceed in this way.

One other thing about community notification -- again, extensively to stop terrorists. The community Right to Know information that Commissioner Campbell referred to -- very useful information. That information is required by the worker and community Right to Know law,

and until a couple of years ago -- again in light of September 11 -- was on the Web site of the Department. It's been taken off the Web site, or at least for the public it has, and only emergency responders--

At this point, Sid Casperson was quoted -- just, I believe last -- in the *New York Times* a couple of days ago, saying at this point the greater danger is people not knowing about the risks around them, than it was necessarily from terrorists who have access to this kind of information already. So we would urge the Committee to tell Commissioner Campbell and Attorney General Harvey to put the Right to Know information back on the DEP Web site. And we would also ask you to address the question of enforcement. Because despite the back and forth about enforcement -- the question of what materials are hazardous materials in our workplaces, although there's a few other DEP involved in it -- the basic fact is that there's only, to my knowledge, three or four inspectors in the entire DEP looking at the question of toxic chemical inventories that are reportable under the Worker and Community Right to Know Law.

Finally, we think that there's a lot here -- there's a lot of lessons. We certainly don't have a monopoly on what those lessons are. And we would urge some type of task force be set up, or continuing discussions to address this. Because these are long-standing issues. And here we have a situation where people, frankly, have died. People are dying. People are contracting horrendous and painful diseases. And yet, in 1989, of late, the State warned us -- the Department of Health issued this excellent report. And it's time that we really took a systemic look at these various issues. And whether it's through statutory change, regulatory

change, or just simple program directive, it's time for action on this issue. And we look forward to working with the Committees in whatever capacity you would like.

ASSEMBLYWOMAN GREENSTEIN: Rick, I want to say that you've had some fantastic suggestions today. We had some earlier, from other speakers. And I have a feeling that a lot will come from this. And I do like your idea of the task force, because I think it needs to be brought together. That's something I'll request to see if there's a way to do it. I think it's a good idea.

Does anybody have any questions? (no response)

MR. ENGLER: The one thing the task force has to do -- just one last comment -- is we really have to look at occupational and environmental health in an integrated way. Because too often it's -- we're in charge of the workplace, we're in charge of the community, and I don't know--

ASSEMBLYWOMAN GREENSTEIN: And your group brings that together.

MR. ENGLER: But if this example of what's happened here in Hamilton doesn't prove the nature of the impact, the nature of the connection, nothing ever would.

So thank you, again.

ASSEMBLYWOMAN GREENSTEIN: Thank you very much.
Thanks.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Madam Chairman, given that Jeff Tittel, from the Sierra Club, is not here, would you mind if I sit in lieu of some environmental representative today?

ASSEMBLYWOMAN GREENSTEIN: I'm sorry, I can't -- couldn't hear you.

UNIDENTIFIED SPEAKER FROM AUDIENCE: In light of the fact that Jeff Tittel is not here to speak on behalf of environmental interest, would you mind if I stand in, in lieu of that. I'm a 13-year former DEP employee. I've spent eight years in the Sierra Club. I was on Senator McNamara's Brownfields Task Force.

ASSEMBLYWOMAN GREENSTEIN: What's your name?

BILL WOLFE: Bill Wolfe.

ASSEMBLYWOMAN GREENSTEIN: Okay. Could you hold just for one minute, because there's somebody I want to take first, if you want to wait.

MR. WOLFE: Sure.

ASSEMBLYWOMAN GREENSTEIN: I just want to see-- Is Mr. Mandarano still here? I think he might have left.

STEPHEN MANDARANO: (speaking from audience) No, I'm still here.

ASSEMBLYWOMAN GREENSTEIN: You are still here? Which one are you? Okay. Come on up.

And after that, we'll do ERM. Who's here from ERM? Okay, thanks.

It's a long day for all of us, I know. I'm trying to get this all into one day.

Thank you very much for waiting and for being here. And I'm sure all of us are probably hungry right now.

Do you feel okay?

MR. MANDARANO: Fine.

ASSEMBLYWOMAN GREENSTEIN: You're all right? Okay.

Can you identify yourself and--

MR. MANDARANO: My name is Stephen Mandarano, and I'm the Chief Operating Officer of Accurate Document Destruction.

ASSEMBLYWOMAN GREENSTEIN: And that's the company that was in the W.R. Grace Plant.

MR. MANDARANO: Yes.

ASSEMBLYWOMAN GREENSTEIN: Now, you've relocated as a result of a fire in that plant?

MR. MANDARANO: We're in the process of relocating.

ASSEMBLYWOMAN GREENSTEIN: Okay. And can you tell us -- I guess we'd want to know a little bit about your experience. How you first came into that plant, what you were told by the various officials and others who you were in contact with, what your general experience was in terms of the plant?

MR. MANDARANO: Well, actually, I was originally in that plant in the early '90s, because I was the President then of Robert A. Keasbey, Incorporated, which was founded in 1865. And it was one of the largest asbestos abatement and insulation and fire-proofing firms. And we

used, extensively, the Monokote No. 6, produced by W.R. Grace at that facility, for fire coating.

ASSEMBLYWOMAN GREENSTEIN: Did you say, sir, that you worked in that plant in the early '90s?

MR. MANDARANO: No, Ma'am. I said I was in the plant--

ASSEMBLYWOMAN GREENSTEIN: Oh.

MR. MANDARANO: --as the result of my presidency of an environmental firm--

ASSEMBLYWOMAN GREENSTEIN: I see. I see.

MR. MANDARANO: --that used their products.

ASSEMBLYWOMAN GREENSTEIN: And what did you observe in the plant? What was your experience in the early '90s?

MR. MANDARANO: Well, it was a manufacturing facility that had a cracker in it. It had various silos in the back of it for the acceptance of the vermiculite.

ASSEMBLYWOMAN GREENSTEIN: Is the cracker the machine that did the exfoliation process?

MR. MANDARANO: Yes. Heats it up and pops it. Vermiculite is the Latin word for worm bearer, because it looks like a worm when it's finished.

So we used the product extensively. The company was sold in -- Keasbey was sold in 1994. I ended my relationship with them, and in '95 began Accurate. I was aware of the fact that the building was available after Grace had moved out.

ASSEMBLYWOMAN GREENSTEIN: At that point, did you know anything about any problems in the building relating to asbestos or any other environmental problems? Did you have any concerns?

MR. MANDARANO: No. All the manufacturer safety sheets, the MSDs, clearly stated, under Grace's good graces, that it was asbestos-free. So you would get the safety data sheets, and this is what you relied on in using their Monokote No. 6 for spraying.

ASSEMBLYWOMAN GREENSTEIN: What did you use that for?

MR. MANDARANO: It's a fireproofing spray that took the place of asbestos.

ASSEMBLYWOMAN GREENSTEIN: Did you use that in the plant when you were there? I know it was manufactured.

MR. MANDARANO: No, Ma'am. I used that for the Robert A. Keasbey Company, which was an asbestos abatement and insulation company.

ASSEMBLYWOMAN GREENSTEIN: Oh, I understand. Okay. But not in your later function?

MR. MANDARANO: No.

ASSEMBLYWOMAN GREENSTEIN: Okay.

When you got into the plant, as Accurate Document Destruction, was it -- did you still find some remnants of any of the product, any of the dust, any of the vermiculite, or was it quite clean at that point?

MR. MANDARANO: No. The vermiculite was present. It was throughout the exterior of the facility on all points of the land.

ASSEMBLYWOMAN GREENSTEIN: But not in the building when you were in there?

MR. MANDARANO: There was no vermiculite ore in the building. There was vermiculite ore outside the building.

ASSEMBLYWOMAN GREENSTEIN: When did you first find out that there might be any dangerous amount of asbestos?

MR. MANDARANO: When the EPA first approached us. I believe it was sometime in 2000, 2001.

ASSEMBLYWOMAN GREENSTEIN: And what did they tell you?

MR. MANDARANO: That there was a considerable amount of vermiculite found in the Libby, Montana mine, and that their records indicated that this particular facility handled the second greatest volume of vermiculite of all the Grace facilities. I think the largest one was in Illinois. And that it resulted that they were going to do some testing on the exterior portions of the building, which they did.

ASSEMBLYWOMAN GREENSTEIN: Anything else you want to tell us about your stint there in relation with the agencies, contact with the agencies?

MR. MANDARANO: As far as the EPA goes--

ASSEMBLYWOMAN GREENSTEIN: EPA or DEP?

MR. MANDARANO: Well, the DEP -- we had no relationship with, other than the fact that they gave us a letter of No Further Action when we purchased the property.

ASSEMBLYWOMAN GREENSTEIN: Right.

MR. MANDARANO: And obviously, we could not get it financed, or what have you, if we did not have that letter. So the DEP actions right now, of rescinding that -- and I will have discussions about that -- of extrapolating all portion of land from that rescinding letter. Of course, it's our intentions to rebuild. And obviously, without a final clearance, Mayor Gilmore is not going to be too happy in issuing me the various permits and licenses and what have you, or the Mercer County Improvement Authority, to conduct the business there. So that's an issue we'll have to address then.

ASSEMBLYWOMAN GREENSTEIN: Were you a renter? Mr. Mandarano, were you renting that property? The ownership was--

MR. MANDARANO: The ownership is in the name of MLB Properties, which are -- co-owns corporations of several different natures, with ADDI and several other interests.

ASSEMBLYWOMAN GREENSTEIN: Are you considered a renter, lease?

MR. MANDARANO: I am considered a tenant.

ASSEMBLYWOMAN GREENSTEIN: A tenant, okay.

Anybody have any--

Yes.

ASSEMBLYMAN BARONI: A very quick question -- maybe I misunderstood you. You said that when you took possession of the property that there was vermiculite ore still on the site.

MR. MANDARANO: Yes.

ASSEMBLYMAN BARONI: What happened to it, or was it just left there? Did you all just leave it there?

MR. MANDARANO: We had a letter of final -- of No Further Action, okay.

ASSEMBLYMAN BARONI: I understand that. But what actually happened to the ore?

MR. MANDARANO: It remained there.

ASSEMBLYMAN BARONI: And no one, when they came out to do any sampling, noticed that? Maybe I'm misunderstanding the use of the word ore, yes.

MR. MANDARANO: Perhaps you are. The EPA became aware of the contamination of the vermiculite shipped to Hamilton in the year 2000, as a result of their examination of the Libby Mine, in Montana, that supplied the vermiculite ore to the Hamilton facility.

ASSEMBLYMAN BARONI: Right.

MR. MANDARANO: So they became aware of it in the year 2000. We were already a tenant in the building at that period of time.

ASSEMBLYMAN BARONI: Right.

MR. MANDARANO: The letter of No Further Action indicated that there was no asbestos levels, according to the ERM report, greater than 1 percent, which was your threshold for contamination in that

year. It has since been reduced. This was material that to us, having a very attractive look to it -- of being gold and not contaminated-- Why wasn't it contaminated? Because ERM said it wasn't contaminated. And DEP issued a letter of No Further Action. So there would hardly be any reason for us to say, "Let's clean it up." It's part of the earth. It gets embedded into it. Some of it sits on top, some of it gets embedded to it. Along the railroad tracks, it was greater where the deliveries came in. Where the silos were in the back, it was greater. So depending on what activity Grace did at that facility, that's where your concentrations of vermiculite were.

ASSEMBLYMAN BARONI: Thank you very much.

ASSEMBLYWOMAN GREENSTEIN: Does anybody have anything else? (no response)

Thank you very much.

MR. MANDARANO: Have a nice day.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

ERM.

S T E V E N P I C C O, ESQ.: Thank you, Madam Chairman.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

MR. PICCO: In the interest of time and keeping foreheads off the desks as long as possible, I'll dispense with the reading of my statement -- just ask it be entered into the record. My name is Steve Picco. I'm an attorney for Reed Smith and counsel to ERM. And with me is Dr. Andrew Huggins, who is a principal of ERM.

ASSEMBLYWOMAN GREENSTEIN: And I do want to say, I appreciate your waiting.

MR. PICCO: That's okay.

I think the easier way to begin this is to anticipate the question I think is going to come from Assemblyman Manzo, which will probably be in two parts -- how the hell did you write this report the way you did and why in God's name didn't you sample? It's actually a pretty straightforward answer, that is based in large part upon Brad Campbell's testimony, if you recall his statements that in this process consultants rely substantially, almost entirely, on information provided by their clients. In the preliminary assessment and in the procedures in effect at that time -- and in fact in the procedures in effect today -- a consultant is retained to do an ISRA filing, accumulates all available information from the client, conducts a site visit to see if there are any obvious discrepancies between what was supplied by the client and what is, in fact, in the field, and then finalizes a report, sent to the client. The client will revise it or not revise it as the case may be, and then the client signs it. The key thing that you should understand in this process is that the certifications on all of these documents are corporate certifications. They're not ERM certifications, and that is because the information largely comes from corporate sources. And that's why the certification process is set up the way it is currently.

ASSEMBLYWOMAN GREENSTEIN: In fact, Mr. Picco, I thought I was missing documents when I went through. I couldn't find ERM's name anywhere.

MR. PICCO: Right.

ASSEMBLYWOMAN GREENSTEIN: Somebody showed me it was on the lower, left-hand page, like a little logo. On five or six pages, I

couldn't find a transmittal letter, a certification. I was very surprised by that process.

MR. PICCO: I've been doing this for more years than I care to think about, and I noted Marwan's plug for professional engineers signatories. Being a professional engineer, it was a totally predictable position. I also noted he was getting a little grief from his staff, on the way out, who aren't PEs, but--

ASSEMBLYWOMAN GREENSTEIN: They were probably hungry. (laughter)

MR. PICCO: Yes, they might have been hungry. That's correct.

He has a point, but the way the system is set up now. And there were talks -- I think you had talked about having Assemblyman Manzo -- about having some audit procedures done, some third-party peer review things done. A lot of states do that. It's a good way to do it. But this system has evolved from one that was totally commanded and controlled by DEP. In other words, DEP did the review. DEP did the inspections. And if you recall, it used to be called ECRA -- the Environmental Cleanup and Responsibility Act -- and everyone was ripping their hair out, because it took years and years and years to get a decision out of the Department. And in the early '90s, they came up with the Industrial Site Recovery Act, called ISRA. Everybody thought it was a good name until Marwan Sadat testified that ISRA meant *prisoners of war* in Arabic, which took a little sheen off the acronym.

But nevertheless, the changes were intended to speed up the process and--

ASSEMBLYWOMAN GREENSTEIN: Mr. Picco, let me ask you this. Given the particular, let's call it, case study that we have in front of us today--

MR. PICCO: Right.

ASSEMBLYWOMAN GREENSTEIN: --this seems to have gone too much in the other direction. Because if you have--

MR. PICCO: No. Go ahead.

ASSEMBLYWOMAN GREENSTEIN: If you have a company that perhaps is either not giving you all the information, is leaving something important out, or maybe even giving you misinformation, then that's where the process falls apart. Because what are you doing independent in that-- In other words, if you're not certifying, as a professional, standing in as a professional, what is really the role, what is the purpose of what you're doing?

MR. PICCO: The role of a consultant at that time was to accumulate the available information on the project, to put it in a form required by the DEP regulations, and to basically tee it up for DEP review. The site visit that we conducted is really, like I say, to see whether or not there are conditions at the site that vary in any significant degree from the information that was given to us by the company. And if you'll look -- you have the pictures. There weren't soil piles. There weren't anything like that at the time.

I agree that, as you described it, there is a logical hole in the review process. If there are misstatements and they're transmitted without review, there is no real mechanism to pick that up unless DEP picks it up. And candidly--

ASSEMBLYWOMAN GREENSTEIN: But it sounds like even DEP, at that point, was -- I hate to say it--

MR. PICCO: Again--

ASSEMBLYWOMAN GREENSTEIN: --rubber stamping. The whole process seemed like a big rubber stamp of what the company was telling you, both of you.

MR. PICCO: I can see where you'd get to that conclusion. Again, think back to where we were in 1994. The Versar Study was not available. We were looking at a material safety data sheet -- you had some testimony on that earlier.

ASSEMBLYWOMAN GREENSTEIN: Which is the Versar Study?

MR. PICCO: Yes.

ASSEMBLYWOMAN GREENSTEIN: Which one is that?

MR. PICCO: That's the 1985 EPA study--

ASSEMBLYWOMAN GREENSTEIN: Oh, the '85, yes.

MR. PICCO: --which is the only document, by the way, that we've been able to find that raised those kinds of issues in this relevant context.

ASSEMBLYWOMAN GREENSTEIN: Well, it sounds like the DEP Commissioner had letters from the community Right to Know, where there was some mention -- maybe in '82, he said.

MR. PICCO: There was a mention, yes. The only difference-- The mention was -- and it really wasn't a community Right to Know. If my facts are correct, and I can yield to others on that, that was a reference to whether or not there was asbestos in the building materials. And there was no asbestos. They did not have asbestos in the building materials. They conceded that there might be trace amounts of asbestos in the building materials, which is-- Again, when you look at it in view of the prevailing standard for regulation -- which was 1 percent by weight -- and this is what ERM did. We had a bunch of material from a well-known, international corporation that -- including the material safety data sheet -- all of which indicated that there was either no asbestos present on the site, or that the asbestos that was present was less than 1 percent. We formatted. We went out. We looked at the site to make sure there weren't any extra underground storage tanks, or that sort of thing, around. We formatted the material, submitted it to DEP. DEP reviewed it and approved it.

And from our perspective, that means two things: One, that the material that was submitted was submitted in a form that was compliant with the regulatory requirements at the time, and that DEP reviewed the statements and didn't see any internal significance to any of those statements sufficient to ask for further sampling or--

ASSEMBLYWOMAN GREENSTEIN: I have two questions. I'd like you to describe, if you could, what the process would have been back then? Give me a general sense--

MR. PICCO: Oh, sure.

ASSEMBLYWOMAN GREENSTEIN: --from looking at the report, what you were given and what you would have actually done, other than maybe compiled it into a table. And then also, you made a comment, Mr. Picco, that there's been a change over the last 10 years in how this is done?

MR. PICCO: Well, let me talk about the change first, and then we can go back to the process at that time. There have been several references to understaffing at DEP during that period, which was true. They were under tremendous pressure to turn these documents over. From just an independent assessment, not necessarily as the ERM counsel, DEP staff people were under a lot of pressure to move these things forward. When they got something from a reputable company, like ERM, referencing another nationally known and reputable company like W.R. Grace, and making affirmative statements of compliance, that was not going to trigger, absent anything else -- was probably not going to trigger a higher level of review at those times.

I think if this application was submitted today with the same statements, given the increased staffing, that there probably would have been a bounce back. It's very rare for me to see a preliminary assessment put in today that does not require a confirmatory sampling of the

statements in there. I could tell you that in 1994, however, we had several of those kinds of submittals, with those kinds of responses from DEP.

ASSEMBLYWOMAN GREENSTEIN: So what would have been the process back in '94?

A N D R E W H U G G I N S, Ph.D.: Good afternoon.

I wasn't actually involved in the project at the time, but I can describe to you what I think could have gone on to the best of my ability. We would have prepared a proposal to do this work -- it may or may not have been competitive and been selected by Grace -- and begun the process by collecting some information: sending in some (indiscernible) request to the State, in terms of notices of violation; collecting aerial photographs from an aerial photographic survey company, obtaining those. I think we have 11 sets. We appear not to have gotten the same year that EPA referred to earlier in 1969. But we would obtain information from Grace in terms of the nature of the products, the waste materials--

ASSEMBLYWOMAN GREENSTEIN: So, let me ask you. If you got information from Grace, the issue here would be, did they discuss with you that there was asbestos in their products? Because the gentleman who testified before, I believe said, I believe Mr. Marchetta said, "Yes, we said there was asbestos in our products," although probably smaller amounts.

MR. PICCO: And the answer is they did, at least based on the record that we have so far. Let me say that ERM's files on this -- it's 11 years old. The document retention policies, even if they exist, would have had those files gone long ago. We've picked up some invoices and things

like that. But there's nothing to indicate anything other than we were advised what we told the State, which was there was asbestos-containing material there, but it was below the 1 percent threshold.

DR. HUGGINS: So the MSDS we got from Grace -- that's an official document under OSHA. We would take that at face value. Typically, we would take MSDS sheets at face value.

ASSEMBLYWOMAN GREENSTEIN: But there's nothing that you might have seen as professionals. If you looked at aerials, if you visually observed, you might have seen some things on the ground.

DR. HUGGINS: We did aerial photograph reviews, and that's in the document. We looked at 11 aerial photographs. We didn't see disposal areas. We didn't see soil piles.

ASSEMBLYWOMAN GREENSTEIN: It's just, it's -- did you say that there was or has not been a change in the process over the 10 years?

MR. PICCO: Yes. I think the DEP today is much more inclined to require confirmation sampling on preliminary assessments than they were then.

ASSEMBLYWOMAN GREENSTEIN: Okay. So there's at least some--

MR. PICCO: Yes.

ASSEMBLYWOMAN GREENSTEIN: --new protection built in. There's some new protection. But it's very troubling that this really doesn't -- given that these are professionals with licenses and everything else, that the process seems -- what you're describing -- seems like they

don't put any of their professional judgment into it. Things are triggered when people say things to you, and that process sounds like it doesn't lead to any questioning.

MR. PICCO: In the files-- I've done the review of the file. We also looked at the one that's at the library, which probably is the most complete of the files. There was nothing in the documents that we got that would have triggered a professional response to say, "You're not telling us the truth, you're not telling us everything you know." They said, "We used vermiculite. Here's the MSDS." For us, the MSDS is the controlling document.

ASSEMBLYWOMAN GREENSTEIN: What's MSDS?

MR. PICCO: MSDS is -- I'm sorry -- is an acronym. It's an environmental thing -- material safety data sheet. And in this case, it would have been prepared by Grace. And it's used for OSHA compliance purposes and to notify first responders, and that sort of thing, of material at a location. That document is a document on which every consultant relies without question.

Even if we went out, and we clearly did, and saw material on the ground, based on the information that we have in front of us, that material would have been described as non-asbestos inert material.

DR. HUGGINS: And around the railroad tracks we did observe some. But we again believed that to be not asbestos-containing material, based upon the definitions.

ASSEMBLYWOMAN GREENSTEIN: What could they have told you back then that would have triggered a soil test?

DR. HUGGINS: I think, first of all, if we were -- and this is speculating -- but if we were above 1 percent. If we believed that the information would indicate we would be above 1 percent, because DEP at the time was using that as a surrogate for their direct contact standard. They didn't have one for soil. And so that we at ERM knew that that was a pretty important cutoff.

ASSEMBLYWOMAN GREENSTEIN: But you were basing whether it was 1 percent or not on what they're telling you?

DR. HUGGINS: Yes.

ASSEMBLYWOMAN GREENSTEIN: So if they weren't telling the truth or maybe they're guessing--

MR. PICCO: Again, I have to jump in. The standard process at the time was to take the information that you were given, unless there were internal inconsistencies. And generally, they show up one of two ways: By having looked at one document that says one thing and another document that says another, based on the information you get; or looking at site conditions that are markedly different than they are described to you by the client. Neither of those things happened in this case. And thus, there was no recommendation for sampling. Now, could DEP, under the rules in effect at the time, required additional sampling? Absolutely. Would they have, again, under the policies they were operating at the time? Probably not. This was not the only -- I did not represent Grace in this one, but I did represent many other people filing these things at the time. And there were a number of preliminary assessments that recommended No Further Action that came back approved without further sampling.

ASSEMBLYWOMAN GREENSTEIN: Does anybody have questions?

ASSEMBLYMAN BARONI: Thank you, Madam Chair.

A couple of follow-up questions that somewhat confuse me, a little bit. We have a preliminary report.

MR. PICCO: Yes.

ASSEMBLYMAN BARONI: And we've gone through -- we've all talked about it a number of times. It's my understanding that the basis of the preliminary report was information provided from Grace to ERM that none of the material on site, none of the asbestos on site, was more than 1 percent. Is that statement incorrect?

MR. PICCO: That's correct.

ASSEMBLYMAN BARONI: Who told you that?

DR. HUGGINS: We obtained that from the material safety data sheet.

ASSEMBLYMAN BARONI: Solely from MSDS?

DR. HUGGINS: To be honest with you, I'm not sure, because I wasn't interacting with Grace at the time. But the only--

MR. PICCO: The only documents we have are the ones that we've submitted. The only documents we have on that point are the ones that we submitted. So for purposes of our testimony here, we have to say that we relied on those documents. Now, we are continuing a file search.

ASSEMBLYMAN BARONI: Are there -- in the process of that, were there communications between your predecessor at ERM, or whoever did this work, and Grace?

DR. HUGGINS: I'm sure there were communications. That would be a normal part of the process of trying to gain an understanding about the site.

ASSEMBLYMAN BARONI: Is it a regular process for you to -- when a client -- tell me how it works. Do you ask a question -- not you -- but does your colleague at ERM ask the question, "By the way, is there asbestos on the site?" And they say, "Well, yes." And you say, "Well, what percent?" And they say, "One percent," and you say, "Okay." Is that how the conversation goes?

DR. HUGGINS: Well, I think we start off with checklists and we begin to ask for information. We do the site inspection. I know that there would be discussion about that particular issue, because it was so germane--

ASSEMBLYMAN BARONI: Right.

DR. HUGGINS: --to the decisions that were being made. So it would be hard for me to believe there weren't discussions.

ASSEMBLYMAN BARONI: Because it strikes me that your predecessor -- two testimonies ago, or immediately before you, are the CEO of the successor company -- made the comment that they liked it because it was gold. Right? You couldn't miss it?

MR. PICCO: Right.

ASSEMBLYMAN BARONI: Not since Dorothy did we have the yellow brick road.

MR. PICCO: Our pictures clearly indicate the presence of that stuff on the ground. But again, given what we knew at the time, that was considered to be inert material.

ASSEMBLYMAN BARONI: It was inert material. Going back to the communications again. As you do your document requests -- and I know it's 11 years past, and I understand that -- are these communications that would likely indicate, perhaps, a difference of 1 percent? Do you have internal documents? Do you have any staff people who may have said, "You know, we better look at this 1 percent issue"?

MR. PICCO: Yes. It depends on what you get back from the State. We did not have a uniform document provision supply/response-type thing in DEP until basically OPRA came through. The document recovery from DEP was very much a hit-or-miss affair, and it was done on an office-by-office basis.

ASSEMBLYMAN BARONI: But I mean internal documents. Does ERM, in their files, have any internal employee communications? Two coworkers working on this report saying--

MR. PICCO: No. I've reviewed the entire internal file. There's nothing like that.

ASSEMBLYMAN BARONI: There's nothing like that. If you had to do it all over again?

MR. PICCO: (laughter) Not fair.

ASSEMBLYMAN BARONI: Always fair, always fair. Because we're going to learn lessons out of this. This is not just--

DR. HUGGINS: We would have been so expensive, we wouldn't have been selected. (laughter)

ASSEMBLYMAN BARONI: Can you say that again?

MR. PICCO: They would have been so expensive, they wouldn't have been selected. Rates have gone up, I guess, since the last time they did this.

Look, I've got to answer as the lawyer on this. And the lawyer in me says everything they did at the time that they did it was consistent with the regulations and the practice at the time. So the answer is they would have done the same thing all over again. Should they have? Twenty-twenty hindsight is a wonderful thing, but their decisions were supported by the record and justified by the policies at the time.

ASSEMBLYMAN BARONI: Speaking of policies, was ERM notified by their professional liability insurance carrier for the possibility of litigation?

MR. PICCO: Not through me.

DR. HUGGINS: I don't know that.

ASSEMBLYMAN BARONI: Thank you, Madam Chair.

ASSEMBLYWOMAN GREENSTEIN: Yes.

ASSEMBLYMAN MANZO: What is it exactly, on the material safety data sheet that--

DR. HUGGINS: I think it's on Page 2, tremolite asbestos.

ASSEMBLYMAN MANZO: Let me finish -- exactly on the sheet that lead ERM, do you feel, to the conclusion that they could advocate a position that it was not necessary to sample, number one?

DR. HUGGINS: Sir, there were two sources of material. There was the Montana source, which is represented here, and another source from South Carolina, as I read it, which was asbestos-free. And so this source had to be 0.3 and 1 percent.

MR. PICCO: As stated in the MSDS.

ASSEMBLYMAN MANZO: Yes. But the Montana source, as we know and I'm sure you're aware, was the result of the problem, the contamination problem.

MR. PICCO: Assemblyman, you're absolutely right. Again, we knew nothing about Libby, Montana, at the time.

ASSEMBLYMAN MANZO: You mean to tell me at the time you prepared this report, you were unaware of their problems in Libby, Montana?

DR. HUGGINS: I would almost guarantee you the guy who prepared this report would be. He's a professional geologist, but he's very much a local guy. I don't think he would have been aware of--

ASSEMBLYMAN MANZO: And W.R. Grace mentioned nothing to them?

MR. PICCO: There's nothing in our records that we've been able to find so far that contains any mention. And again, this MSDS specifically references the Montana source, and specifically concludes that it's less than 1 percent.

ASSEMBLYMAN MANZO: Yes, that's why I'm-- My understanding here today was that in preparing the report for DEP, ERM had information available.

MR. PICCO: No. The only information available on the Montana problems was a report generated in 1985 by Versar that disappeared into EPA, never to see the light of day until 15 years later, as far as I can tell.

ASSEMBLYMAN MANZO: Let me ask a hypothetical. Had you been aware of the Libby, Montana, problems with Grace, saw the MSDR (*sic*)--

MR. PICCO: We would have questioned the internal inconsistency. I can't go any further than that.

ASSEMBLYMAN MANZO: Okay. My only other question then, relative to that, would be, you're even-- Even with the report that you did and submitted to Grace for their approval, if you were asked to, or had there been a process involved in DEP which asked for certification for this document, would you certify?

DR. HUGGINS: Well, I can't speak to the guy who was involved with it, but I think that, based on my understanding of the information that was available, that it would have been certifiable. Because the logic was fairly robust. It was less than 1 percent. The worst source of asbestos coming to the site is declared to be less than 1 percent. We know the Department uses this as its definition. And so I think we would have been prepared to certify it.

ASSEMBLYMAN MANZO: This is the only -- and one final question -- this is the only problem I have with your explanation. The reason they call you in the first place is because they have a problem. Okay?

MR. PICCO: No.

ASSEMBLYMAN MANZO: Well, they're looking to get something out of DEP. Okay? Doesn't the firm then ask, "Well, what is your problem?"

MR. PICCO: No. Their problem was that they were closing their plant and ISRA required certain information to be submitted to DEP in a certain form. They came to us because ERM, at the time, was doing a lot, and still does, a lot of work in that area.

DR. HUGGINS: And I would say, Steve, that most of our projects go on beyond that stage. So we're involved in multi-year ISRAs.

ASSEMBLYMAN MANZO: And there's no question asked about the past practices of the company you're doing the ISRA report for and saying, "Have you ever had environmental problems with EPA, DEP"?

DR. HUGGINS: Yes. Yes. And we would search the public records for that as well, and some of that is in here -- the notices of violation.

ASSEMBLYMAN MANZO: And nothing came up--

DR. HUGGINS: Nothing came up with regard to asbestos.

MR. PICCO: And specifically, nothing came up with regard to problems with the Montana operation.

ASSEMBLYMAN MANZO: Did you question DEP? Do you do a search site--

MR. PICCO: I'd suggest that, based on my other clients' reaction, they would have taken the No Further Action, or other, and said, "Thank you very much," and moved on to other things very quickly.

ASSEMBLYMAN MANZO: I mean, usually when you do a study like -- for a property or for a company, one of the things is to look at -- to go to, like, the Hamilton Board of Health, Environmental Agency, County Environmental Agency, or the State Environmental Agency and say, "Do you have any" --

MR. PICCO: Yes, give your violation records.

ASSEMBLYMAN MANZO: Yes.

DR. HUGGINS: We would request from DEP the violation records, yes.

MR. PICCO: And we have.

DR. HUGGINS: And we did.

ASSEMBLYMAN MANZO: And you did?

DR. HUGGINS: Yes.

MR. PICCO: And they were, almost exclusively, air violations.

ASSEMBLYMAN MANZO: Okay. And DEP, which had knowledge at that time of Libby, Montana, doesn't make you guys aware that they might have had a problem in Libby, Montana -- DEP?

MR. PICCO: No.

DR. HUGGINS: Correct.

MR. PICCO: No. And in fairness to DEP -- I know as a matter of law you impute knowledge of a part to the whole -- but I would have thought that if DEP was, in fact, aware, it was probably at a very isolated staff level and not generally known throughout the Department.

ASSEMBLYMAN MANZO: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Anything else? (no response)

I actually have just one other question here. Who is the person or persons from ERM who did this work? Because I see a very long CC distribution list here. You can't tell who actually did it, since there--

DR. HUGGINS: No, I can offer you that. A fellow who ran the geology group, his name was Drew Gould, G-O-U-L-D.

ASSEMBLYWOMAN GREENSTEIN: G-O-U-L-D?

DR. HUGGINS: Yes. He's a professional geologist.

ASSEMBLYWOMAN GREENSTEIN: Now, does he still work for your company?

DR. HUGGINS: He does not. None of the people involved with-- Part of the problem we've had, Chairwoman, is that the people involved are no longer with us.

ASSEMBLYWOMAN GREENSTEIN: You don't have to say where right now, but do you know where they are?

MR. PICCO: We know where one of them is, and we're in the process of trying to identify the current locations of the others.

ASSEMBLYWOMAN GREENSTEIN: So Bruce Gould is the name of the person?

DR. HUGGINS: Drew.

ASSEMBLYWOMAN GREENSTEIN: Drew. Drew Gould. And he was a geologist?

ASSEMBLYWOMAN GREENSTEIN: He is. He's still practicing. Yes.

ASSEMBLYWOMAN GREENSTEIN: Okay. And who else was involved in this?

DR. HUGGINS: Two other people that I've been able to identify just by looking at the invoices. That was the way I identified it.

ASSEMBLYWOMAN GREENSTEIN: If you look in this document-- This is the document, right? (indicating)

DR. HUGGINS: Yes.

ASSEMBLYWOMAN GREENSTEIN: Are there names anywhere in here?

DR. HUGGINS: Drew's name is on the CC list -- the NFA letter CC list, coming from Jeanette Cleary (phonetic spelling).

ASSEMBLYWOMAN GREENSTEIN: What page is that on?

DR. HUGGINS: On my document--

DR. HUGGINS: It's the second-- No, it's the opening-- It's hard to tell, because we took this from the Hamilton Township-- It's a letter from DEP-- I'm sorry. A letter from Harry Olsen (phonetic spelling) from Pitney Harden, who is the attorney on the file, to Jeanette Cleary, dated June 5, 1995. It copies J. Burell (phonetic spelling) from W.R. Grace, and D. Gould from ERM.

ASSEMBLYWOMAN GREENSTEIN: And then who else did you say, besides that person?

DR. HUGGINS: Two other people I've identified. One was Lori Warner, L-O-R-I; second name Warner, W-A-R-N-E-R. And Frank Nemec.

ASSEMBLYWOMAN GREENSTEIN: Frank what?

DR. HUGGINS: Nemec, N-E-M-E-C. Now, Frank may have only been involved in the well closures. After we completed this work, the last piece of work that we did at the site was to close the wells that were installed; and not by ERM, by someone else associated with the underground storage tank removal. There were two USTs removed from the site. I know that Frank worked on that project. I'm not sure he worked on the PASI.

ASSEMBLYWOMAN GREENSTEIN: Of Mr. Gould and Ms. -- what is the name -- Warner, you know how to find one of those two, if you needed to?

MR. PICCO: Yes.

ASSEMBLYWOMAN GREENSTEIN: And they worked on this?

DR. HUGGINS: Yes.

ASSEMBLYMAN MANZO: Just a follow-up to Chair Greenstein. Were there any lobbyists involved in making presentations to DEP that you're aware, either on your behalf or the behalf of W.R. Grace, that worked in conjunction with this?

DR. HUGGINS: I've never really been involved in a case where there was.

MR. PICCO: Nothing in the file. And the attorney who handled this for Pitney was and is one of the top-flight ISRA practitioners in the state. It would be pretty unusual on a project that on its face looks pretty open and shut to involve any kind of other activity. And there's nothing in the file to indicate that there was anything.

ASSEMBLYMAN MANZO: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Okay. Anybody else?
(no response) We're all set.

Thank you very, very much.

MR. PICCO: Thank you.

DR. HUGGINS: You're welcome.

ASSEMBLYWOMAN GREENSTEIN: We appreciate it.

The very last -- I just want to ask -- is anyone here from the Health Department? I just want to ask one or two questions. As far as I know, that's the last.

Is there anyone else here to testify? (no response)

Okay.

Hi, how are you? Could you please identify yourself?

D E P U T Y C O M . J A M E S B L U M E N S T O C K: Sure.
Good afternoon.

My name is Jim Blumenstock. I'm the Deputy Commissioner for Public Health Protection and Emergency Preparedness, for the State Department of Health and Senior Services. And with me is Dr. Jerry Fagliano. Dr. Fagliano is our Program Manager for Health Hazard Site Evaluation, and also one of the principal investigators for this site that we're talking about today.

ASSEMBLYWOMAN GREENSTEIN: And I want to thank you both for being here all day. I appreciate it.

DEPUTY COMMISSIONER BLUMENSTOCK: Our pleasure.

ASSEMBLYWOMAN GREENSTEIN: I just wanted to ask you-- I have something here dated March 10, 2005, and it mentions -- let's see -- a summary of two consultations that I guess the Health Department has done. One involves the potential for human exposures to site-related contamination. The other is about the incidence of asbestos-related cancers. Are these two recent studies that you've done?

DEPUTY COMMISSIONER BLUMENSTOCK: Absolutely. And time permitting, what I'd like to do is just spend a few moments and give you an overview of the process, and then I'll turn to Dr. Fagliano if you have any special questions concerning the findings of those two studies.

ASSEMBLYWOMAN GREENSTEIN: Yes. And also, your relationship to that -- what is it -- NT--

DEPUTY COMMISSIONER BLUMENSTOCK: ATSDR.

ASSEMBLYWOMAN GREENSTEIN: ATSDR, right.

DEPUTY COMMISSIONER BLUMENSTOCK: Exactly. Our Department became involved in this site as part of the national asbestos review project. And you've heard, most of the day, regarding the Libby, Montana, national investigation. So our Department, as the State Health Department, is a cooperative agreement agency with ATSDR. ATSDR stands for the Agency for Toxic Substances and Disease Registry, which is a sister agency to CDC, and actually part of the U.S. Public Health Service. So the activities that we conducted -- as basically being their State agent. But much of the work, and certainly the products of our investigation, were reviewed by ATSDR. In many respects, they're jointly owned as a product. So that's how we became involved.

The Hamilton Zonolite site was actually one of 28 sites, nationally, that were recognized as priority one or Phase one that would require this immediate level of attention. New Jersey has another site up in North Jersey, which again, our work is not to be done there yet, so certainly we haven't released that report. So that was, basically, the very brief history of how we became engaged in doing the two health consultations. One was the cancer incidence analysis of the community, and the other one was looking at exposures -- past, present, and projecting to the future -- of the environmental contaminants associated with the W.R. Grace ADDI/Zonolite site. So that's kind of the quick overview of the process. And I'll turn to Dr. Fagliano if you have any questions concerning, really, what our findings and recommendations were.

ASSEMBLYWOMAN GREENSTEIN: I'd like to know the findings, and I'd also like to know any follow-up studies you'll be doing and how you'll be working with EPA, DEP?

J E R A L D F A G L I A N O, Ph.D.: Again, my name is Jerry Fagliano, and I'm with the State Health Department. The two consultations or the two reports that we issued in March of 2005 were the following: First was an analysis of what we call exposure pathways -- how people could have been exposed to asbestos from the Libby materials over time and potentially in the future. So it's just an analysis of how people could be exposed, and who those people are. The second one is an analysis of cancer incidence, specifically cancers that may be asbestos-related, in the community surrounding the Zonolite W.R. Grace site.

With respect to the first report, our main findings there were that the former Zonolite W.R. Grace workers were likely to have been exposed to hazardous levels of asbestos from their work. Although the industrial hygiene measurements that had been made over time may have met OSHA requirements during their operations, according to today's standards the asbestos exposures were likely to have been considered hazardous, today. We considered other ways that people could have been exposed, either through the community or visitors to the site. And we felt, at the time, that we didn't have sufficient information to fully evaluate the degree of exposure. So we are in the process now of trying to collect as much information we can from the community through a series of community meetings that we've held in the past couple of months.

ASSEMBLYWOMAN GREENSTEIN: Will you be doing some sort of a health assessment out in the community, and how far out will you go, geographically?

DR. FAGLIANO: Well, let me describe the cancer incidence analysis, which is what we've done to date. And the cancer incidence analysis looked at the population living within approximately one mile of the site and incorporates portions of Hamilton, Lawrence, and the city of Trenton. And what we did was look at -- during the period 1979 through 2001, I believe were the years -- the incidence of various cancers, specifically lung cancer; mesothelioma, which is a rare cancer of the lining of the lungs; and digestive tract cancers, which have been associated with asbestos exposures in the past. And we found that, over that 28-year period or so, that the incidence of those cancers in that geographic area was not elevated.

It was pretty much what would be expected in a community of that size over that time period.

ASSEMBLYWOMAN GREENSTEIN: I would have to say that of all the findings I read in preparing for this hearing, I thought to myself, well, that's definitely one on the W.R. Grace side of the ledger. Because almost everything else was negative. But that's something that goes sort of in the other direction of what one might think, perhaps.

DR. FAGLIANO: We certainly had no preconceived notion--

ASSEMBLYWOMAN GREENSTEIN: You didn't go in with preconceptions.

DR. FAGLIANO: --as to what we would find.

ASSEMBLYWOMAN GREENSTEIN: Right.

DR. FAGLIANO: And that's what the data shows. We used data from our State Cancer Registry, which is one of the best in the country for being a complete reflection of cancer incidence in a community. So we took that as somewhat comforting in terms of community exposures in the past. But not completely comforting in the sense that people do move out of the area. And to the degree that there is population mobility, it would limit our ability to actually pick up an increase in cancer.

So that's what our two consultations were. We are in the process, as we noted in March when we met with the community in Hamilton Township, that we're really at the beginning of our investigation. And we are in the process of trying to determine what are the next best steps in conjunction with our Federal partners at ATSDR. We do feel it is important to, first and foremost, notify and provide information to the

former Zonolite W.R. Grace workers, as well as educating the medical community in the area.

ASSEMBLYWOMAN GREENSTEIN: Will you, in so notifying the former workers, will you go out of the area and try to get a list all over the country?

DR. FAGLIANO: We are trying to get as comprehensive a list of former workers as we can. We have information from the records that we've gathered from the EPA and DEP over the years, as well as from ATSDR and EPA, who've gathered data from W.R. Grace directly, to try to put together as comprehensive a list of workers as we can. At this point, we have about a list of about 80 workers. We know that's not complete, and we don't have current information on many of those individuals, in terms of where they live or how we could contact them. So we are in the process of doing that.

ASSEMBLYWOMAN GREENSTEIN: Okay. So you're doing a health assessment. You're going to go further with that. Any other studies that you intend to do at this point?

DEPUTY COMMISSIONER BLUMENSTOCK: If I could just add, in the health assessment, one of our recommendations is actually to conduct off-site sampling for this contaminant, but also soil--

ASSEMBLYWOMAN GREENSTEIN: Soils?

DEPUTY COMMISSIONER BLUMENSTOCK: --primarily. But also recognizing that you need to have a very structured sampling design, recognizing again the points that Mayor Gilmore and the consultant mentioned, that even with the 15 spot samples that they acquired in late

March, given the size of the community and the age of the community, certainly there needs to be more scientific rigor in strategizing of how best to take samplings. So part of our effort is actually to use air dispersion modeling to help us identify the most likely area in the community that would be impacted by downwind off-site migration of airborne asbestos particles, to basically help us focus and target our investigations. And then obviously, depending on our findings, decide whether or not we need to fan out or bracket the samples, whether we have positive or negative results.

So we are hopeful, and as our colleagues from U.S. EPA mentioned, that they will make a commitment to the public next week that, in fact, the Federal, State environmental agencies will be committing to doing off-site sampling. And we're assisting them in actually creating a sampling and analysis plan that really meets our scientific needs and, hopefully, will address the needs of the community as well.

ASSEMBLYWOMAN GREENSTEIN: Just based on, generally, what you see here, what you've heard today, what you've read, and what you know about the type and amount of asbestos there, I take it you would, at a minimum, recommend that all the families -- all the people who are still alive who worked in the plant get some assessment for possible asbestosis, lung illness, whatever. But I'm also interested in to what extent you think people in surrounding neighborhoods should be concerned, should take any precautions, or any steps?

DEPUTY COMMISSIONER BLUMENSTOCK: Sure. Certainly, the first point, as to the workers of W.R. Grace and their families, they are our primary concern, our primary focus. So we are

working with them to basically educate, inform them; to help their physicians become better informed as to the signs and symptoms of asbestos related disease. And I'll turn to Dr. Fagliano, who'll give you a little more details on that.

Regarding the community at large, what they should know and do today -- actually, that was the last question that was raised when we had the town hall meeting back in late March. It was a young housewife who was concerned about herself and her three children. And the best advice I could give her today is: what we know and what we see and what we feel, there should be no alteration of their quality of life in their practices and behaviors. Life should go on, because there's no indication at this point in time that there's any off-site migration of those contaminants that are of concern to us.

ASSEMBLYWOMAN GREENSTEIN: Should people go to the doctor and get checked out for this?

DEPUTY COMMISSIONER BLUMENSTOCK: Well, if people are concerned, we would certainly provide them with as much information as we can and for them to bring to their family physician so that proper physician-patient relationships could be nurtured. But at this point in time, there is no evidence suggesting that we would recommend individuals in that neighborhood, that they actually seek medical attention, unless they really feel it's in their best interest to do so. So we would try to counsel and guide them, which is a different set of messages that we are sending to the former Grace workers, and of course, their families.

DR. FAGLIANO: I just wanted to call your attention to a packet that, I think, all the members have received, which -- although we aren't recommending necessarily that nearby residents seek medical attention, should they have concerns we certainly would support their going to their family physicians to discuss their concerns. We're providing, to all those who are interested, this package that they can bring. So we want to provide that at least as a service. Although we don't fully recommend that they do that, they can certainly feel free to do that and we'll provide the data to them -- the information to them.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Do you have anything else?

DEPUTY COMMISSIONER BLUMENSTOCK: No.

ASSEMBLYWOMAN GREENSTEIN: No?

I think we're all set.

DEPUTY COMMISSIONER BLUMENSTOCK: Thank you for the opportunity.

ASSEMBLYWOMAN GREENSTEIN: Thank you. Thanks a lot.

(MEETING CONCLUDED)